

OREAT Appeal No.34/2024

15) 9.04.2025

The appeal is taken up through hybrid mode.

2) Heard Mr.M.Agarwal, learned counsel appearing for the appellant and Mr. S.S.Mohapatra, advocate appearing on behalf of Mr. P.S.Nayak, learned counsel for the respondent-Regulatory Authority.

3) Aggrieved over the impugned order dtd. 18.1.2024, passed by the Odisha Real Estate Regulatory Authority in Suo Motu Complaint Case No.269/2023, the appellant who was the respondent in the said case has filed this appeal praying to set aside the said order in the interest of justice. The respondent of the appeal was the learned Regulatory Authority who has instituted the complaint case and passed the impugned order.

4) The facts and circumstances leading to the filing of the present appeal are as follows :

On 18.8.2023 the respondent instituted the aforesaid suo motu complaint case against the appellant for failure to comply with the directions passed by it vide order dtd. 26.4.2023 in complaint case No.388/2022 and thereby violating section 63 of the Real Estate (Regulation & Development) Act, 2016. As notice issued to the appellant in the suo motu complaint case on 18.8.2023 was received back without service for "insufficient" address, fresh notice was issued to the e-mail address of the appellant fixing 8.11.2023 for its filing show cause. As the appellant was found absent on 8.11.2023 and e-mail report showed that notice had been seen by the appellant, the service of notice on it was held to be sufficient. Accordingly, the appellant was set ex- parte. Ex-parte hearing of the case was fixed to 6.12.2023 and in the meantime the Enforcement Officer of the Regulatory Authority was directed to visit the project and to submit a report on the

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project status as well as estimated cost of the project giving him liberty to take the assistance of the Empanelled Engineer of the Regulatory Authority. After the required report was received from the Enforcement Officer on 8.1.2024, the impugned order directing the appellant to pay a penalty of Rs.2,64,000/- within a period of two months was passed on 18.1.2024 making it clear that in the event of the appellant's failure to comply with the order the same shall be enforced and penalty shall be realized as per law.

5) In the hearing of the appeal, the learned counsel for the appellant has submitted that the complaint case is defective as it has been filed against one Kripa Shankar Mahawar in his individual capacity whereas the agreement to sale and the sale deed in respect of the project were executed between the buyers and a company namely-M/s. Kirsten Tieup Pvt. Ltd., which is a distinct legal entity. It is further submitted that the consideration amount was paid by the buyers to the aforesaid company and not Kripa Shankar Mahawar and there being no contractual relationship between him and the buyers, the impugned order is not executable. It is further submitted that the company has received the completion certificate dtd. 10.7.2017 from the Architect who has certified that the project has been completed in June, 2015. It is further submitted that though the company had applied for occupancy certificate to the Sambalpur Development Authority on 13.7.2017, the said Development Authority has sat over the same. The company then moved the Vice-Chairman, Sambalpur Development Authority on 22.5.2018 to issue the occupancy certificate but the same has neither been granted nor has been rejected till date. The Occupancy Certificate is therefore deemed to have been granted on 23.7.2018 in accordance with Regulation 70 (2) of the Sambalpur Development Authority (Planning and

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Building Standards) Regulations, 2016. The learned counsel for the appellant has also drawn the attention of this Tribunal to the fact that though the registered address of the company had been changed w.e.f. 26.1.2022 and the Registrar of Companies, Kolkata had changed the address accordingly on the basis the filing of Form No.INC-22 by the Company, but the complaint case has been filed against the appellant in the previous address of the company. As a result, the company did not receive the summons from the learned Authority and ex-parte order has been passed. It is further submitted that the assessment of the penalty amount of Rs.2,64,000/- is arbitrary and whimsical as the inspecting team had visited the project without any notice to the appellant-promoter and it has not been made clear as to in which manner the estimated cost of the project has been calculated. Asserting that, the impugned order is a violation of the principle of natural justice for having been passed without service of notice on the appellant, the learned counsel for the appellant has made the prayer as mentioned earlier in paragraph-3.

6) On the other hand, the learned counsel for respondent-Regulatory Authority has submitted that the learned Regulatory Authority has rightfully exercised its power under section 63 of the RERA Act and imposed the penalty on the appellant after he has been found to have not complied with the directions of the Regulatory Authority issued vide order dtd. 26.4.2023 in complaint case No.388/2022. Terming the appeal to be not sustainable in the eye of law and justifying the ex-parte order due to the appellant's intentional default in appearance inspite of due service of notice on it, the learned counsel for the respondent-Regulatory Authority has prayed to dismiss the appeal.

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7) Suo Motu Complaint Case No.269/2023 was instituted by the Regulatory Authority against the appellant and the penalty of Rs.2,64,000/- has been slapped on it as per section 63 of the RERA Act for non-compliance of the directions issued vide order dtd. 26.4.2023 passed in complaint case No.388/2022. The said complaint case was instituted by Samaleswari Vatika Maintenance Committee against the appellant for alleged non-completion of the project and non-compliance of certain amenities as per the brochure as well as certain statutory requirements under the RERA Act. The appellant in the said complaint case was set ex-parte after the learned Regulatory Authority found the notice issued to have been duly served upon it. Ex parte hearing was taken up on 27.3.2023 and the impugned order was passed on 26.4.2023 against the appellant directing it to complete the project, to obtain completion/occupancy certificate from the local authority after completion of the project, to obtain registration certificate from the authority u/secs. 3 and 5 of the Real Estate (Regulation & Development) Act, 2016, to provide fire safety measures in the project, to provide roof top rain water harvesting system as per the terms of the agreement and to make provision for disposal of garbage. The appellant was further directed to comply with the order within a period of two months and it was made clear that in the event of its failure to comply with the order, the same shall be enforced as per law. The learned Authority subsequently found the appellant to have not complied with the aforesaid directions and accordingly instituted the present Suo Motu Complaint case No.269 of 2023 and imposed the penalty amount as already mentioned in paragraph-4. In deciding the penalty amount, the learned Authority has taken into account the report of the Enforcement Officer and the Empanelled

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Engineer of the Regulatory Authority with regard to the estimated cost of the project. However, this tribunal in OREAT Appeal No.16 of 2024 preferred by the present appellant against the order dtd. 26.4.2023 passed in Complaint Case No. 388/2022 has passed the final order today wherein it has been held that, the address of the registered office of the builder company had changed from 12, Ho Chi Minh Sarani, Kolkata to 63/3B, Sarat Bose Road, Kolkata-700025 w.e.f. 26.1.2022. It is further held that, as complaint case No.388/2022 was filed on 17.12.2022 against the appellant in the previous address of the builder company i.e. 12, Ho Chi Minh Sarani, Kolkata, 700071, the notice issued to the appellant in this address was certainly not delivered in the correct address. The postal tracking report confirming the item delivery on 2.1.2023 at 16:50:49 hours has been held to be erroneous and accordingly the learned Regulatory Authority's order dtd.24.1.2023 setting the appellant ex-parte, the ex-parte hearing of the complaint case taken up on 27.3.2023 and the final order passed on 26.4.2023 are all held to be erroneous and illegal. It has been categorically held by this Tribunal that the disposal of the complaint case No.388/2022 on merit with directions for compliance to the appellant in his absence when notice was not duly served on it amounts to violation of the principle of natural justice as well as fair adjudication. Resultantly, the impugned order dtd. 26.4.2023 passed in complaint case has been set aside by this Tribunal and the complaint case No.388 of 2022 has been remanded back to the learned Regulatory Authority for fresh hearing after providing opportunity to the appellant to file his show cause to the complaint petition. The appellant has been directed to appear before the learned Regulatory Authority on 23.4.2025. So, when the order dtd. 26.4.2023 passed by the learned

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Regulatory Authority in complaint case No.388 of 2022 has been set aside and the matter has been remanded back to the learned Regulatory Authority for fresh hearing, the institution of present Suo Motu Complaint case No.269/2023 against the appellant for non-compliance of the said order (26.4.2023) and also the impugned order dtd. 18.1.2024 passed therein directing it to pay the penalty of Rs.2,64,000/- u/sec. 63 of the RERA Act have become infructuous and are not sustainable under law.

8) For the reasons discussed in the preceding paragraph, the suo motu complaint case no. 269 of 2023 is held to be not maintainable and the impugned order dated 18.1.2024 passed therein is hereby set aside. The appeal is accordingly allowed on contest against the respondent.

The statutory amount deposited by the appellant be refunded to him alongwith the accrued interest thereon with proper identification and application.

Send an authentic copy of this order alongwith the record of the complaint case to the learned Authority for information and necessary action. Also send a copy of this order to the appellant.

Justice P.Patnaik
Chairperson

Shri S.K.Rajguru
(Judicial Member)

(Dr. B.K.Das)
(Tech./Admn. Member)

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