

OREAT Appeal No.46/2024

14) 16.07.2025

The appeal is taken up through hybrid mode.

2) Already heard Mr.S.Rath and Mr.B.P.Kar, learned counsels appearing for the appellant, Mr.A.K.Sahoo, the respondent no.1 appearing in person and Mr.B.Nayak, advocate appearing on behalf of Mr.P.S.Nayak, learned counsel for the respondent no.2-Regulatory Authority.

3. Aggrieved over the impugned order dated 05.12.2023 passed by the Odisha Real Estate Regulatory Authority (herein after referred to as the "learned Regulatory Authority") in Complaint Case No.180 of 2023, the appellant, who was the sole respondent there in, has filed this appeal praying to set aside the said order. The respondent no.1 of this appeal was the complainant in the aforesaid complaint case and the respondent no.2 is the learned Regulatory Authority which has passed the impugned order.

4. Facts and circumstances leading to the filing of the present appeal are as follows:-

On 26.05.2023, the present respondent no.1 filed the aforesaid complaint case before the learned Regulatory Authority on behalf of his son Soury Sitikant Sahoo claiming to be his power of attorney holder. In the complaint petition the complainant has claimed that his son Soury Sitikant Sahoo, a NRI staying at Sydney, Australia purchased a duplex complex (House No.11)

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from the respondent-Chatrubhuja Nirman on payment of the amount claimed. The complainant has alleged that initially House No.28 was allotted to his son, but it was subsequently changed mysteriously. It is further alleged by the complainant that it took his son more than six years to get the house i.e on 16.03.2016 and that was also without the approval of the building plan by the BDA. The complainant has claimed that it was only after his personal approach the BDA approved the plan of the duplex on 12.09.2022 on payment of an amount of Rs.77,981/- under the "Scheme for Regularisation of Unauthorised Constructions". The complainant started possessing the house from the second week of September, 2022. He had to pay Rs.20,000/- towards installation of a transformer in the Golakhapuri but no receipt was issued to him in respect of this payment. The complainant has claimed that though the original plan of Golakhapuri colony showed a side road to the south of his house, but it is not existent now. It is alleged by the complainant that some new construction though not shown in the initial plan of the project are now going on. The complainant has further alleged that the construction of his house is very poor and below the approved standard and therefore he had to change a lot of fittings. The house being 10 inches below the Kachha road of the colony, rain water in absence of any drain and proper

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sewerage system enters his house flooding the ground floor completely. It is further alleged that, as the sewerage pit of the house is a very small storage tank of four to five feet, he had to construct another pit. It is further alleged that no fitness certificate in respect of his house has been obtained from the BDA till date. With the aforesaid claims and allegations, the complainant prayed before the learned Regulatory Authority to direct the respondent to complete the road, the drains and the sewerage lines before July, 2023 and to make the side road to the south of the house, which was earlier in the project plan.

Pursuant to the summons issued by the learned Regulatory Authority, the respondent was found absent on 18.10.2023, the first date fixed for his appearance and filing of show cause, in spite of the postal tracking report showing the summons to have been duly delivered on him. The respondent was accordingly set ex-parte and the case was taken up for ex-parte hearing. On 21.11.2023 after hearing the learned counsel for the appellant and taking into consideration the complaint petition together with the documents relied on by the complainant, the learned Regulatory Authority passed the impugned order on 05.12.2023 directing the respondent to complete the road, drains and the sewerage line and also to make the side road to the south available in the project plan,

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within a period of three months from the date of the order. The learned Regulatory Authority made it clear that in the event of failure on the part of the respondent to comply with the order, the same shall be enforced as per law.

5. In the hearing of the appeal, the learned counsel for the appellant has submitted that only because of his non-appearance on the first day of the posting of the complaint case, the learned Regulatory Authority should not have acted in haste and passed the impugned order disposing of the complaint case as this would amount to violation of the principle of natural justice. It is further submitted that the learned Regulatory Authority has committed a gross illegality by not verifying the genuineness of the allegations made in the complaint petition and there has been a total non-application of mind to the facts in the complaint. Drawing attention of this Tribunal to Section 35 of the RERA Act, 2016 and Rule 39 of the ORERA Rules, 2017, the learned counsel for the appellant has contended that the Regulatory Authority is required to hold necessary inquiry to be satisfied that there is need for hearing of the complaint and only if any person fails or neglects to appear before the Regulatory Authority, it has the power to proceed in absence of such person after recording the reasons for doing so. The learned counsel has submitted that as the aforesaid safeguard has not been complied with by the Regulatory Authority, the impugned order

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must be held as *ab-initio* void in the eye of law and is therefore liable to be set aside.

6. On the other hand, the respondent no.1 has submitted that the appellant willingly abstained from appearing in the complaint case. It is further submitted that the appellant had given misleading information in the brochure to attract customers for the Golakhapuri project when it had not yet been approved by the BDA. Sticking to the claims and allegations in the complaint petition, the respondent no.1 has prayed for dismissal of the appeal being without any merit.

7. As regards the alleged violation of the principle of natural justice, it is seen from the record of the complaint case that order to issue notice to the respondent (present appellant) was passed on 11.09.2023 fixing 18.10.2023 for his appearance and filing of show cause. On 18.10.2023 the complainant was present but the respondent was found absent. As the postal-tracking report showed that notice had been delivered on the respondent on 20.09.2023, service of notice on the respondent was held to be sufficient and accordingly, he was set ex-parte. Case was then fixed for ex-parte hearing on 21.11.2023. On that day, hearing of the case was taken up and concluded and the impugned order was passed on 05.12.2023. The appellant has not denied the service of notice on him prior to 18.10.2023. His plea is that only on the first day fixed for his

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appearance he should not have been set ex-parte for his absence, but this does not sound reasonable. If the appellant was not able to appear before the learned Regulatory Authority on 18.10.2023 i.e the first date fixed for his appearance he could have asked for time by engaging an advocate or by his own written communication to the Regulatory Authority but that has not been done. It is seen that the learned Regulatory Authority had fixed the case for ex-parte hearing more than one month after the appellant defaulted in his appearance and so there has been no haste in taking up the hearing of the case as alleged by the appellant. It may be noted that, the appellant has not cited any specific reason for his non-appearance on the date fixed for his first appearance i.e 18.10.2023 and also thereafter. So in absence of any sufficient cause shown for the non-appearance of the appellant and when he was not responsive to the notice issued to him no prudent person would support the contention that the learned Regulatory Authority should have still waited for the appearance of the appellant. The learned Regulatory Authority in our opinion has therefore acted rightly in fixing the case for hearing on 21.11.2023 in absence of the appellant and passing the impugned order on 05.12.2023. There has been no violation of principle of natural justice at all in the present case.

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8. Now coming to the merit of the case, it is necessary to analyse the correctness of the impugned order with reference to the facts on record and existing law. It is seen that Soury Sitikanta Sahoo, who has been stated to be the actual owner of the duplex house in question and the actual aggrieved person, has himself not instituted the complaint case for the reliefs prayed therein, but his father Akhil Kumar Sahoo is the complainant. The father has claimed himself to be the power of attorney holder of his aggrieved son describing him as such in the 'cause title' and 'verification' of the complaint petition but he has not mentioned a single word about the execution of the said document in his favour by his son in the facts of the case mentioned therein. The power of attorney document filed by the complainant (Annexure-V of the complaint case) is found to be an incomplete document. The document is found to contain only a single page with two photographs purportedly of Soury Sitikant Sahoo and his father Akhil Kumar Sahoo, the name and description of Soury Sitikant Sahoo as the First Part (Principal), the date of execution of the document and signatures of Soury Sitikanta Sahoo and Akhil Kumar Sahoo thereon. Other essential details of a General Power of Attorney like the personal information of the agent or holder of the power of attorney, the specific tasks the agent is authorised to perform on behalf of the principal and the duration as

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well as termination of the authorisation are found absent in Annexure-V. So, in absence of the aforesaid facts in the document, respondent no.1 Akhil Kumar Sahoo has not been able to establish that he being the holder of Power of Attorney executed by his son Soury Sitikant Sahoo is legally entitled to institute the complaint case on his behalf.

The copy of the possession letter in respect of the duplex house no.11 (Annexure-1 of the complaint case) shows that the possession of the house has been handed over to son of the respondent no.1 by the appellant on 10.03.2016. The complaint petition is however silent if at all any sale agreement was executed by the appellant and the son of the respondent no.1 relating to the duplex house in question. The complaint petition also does not disclose if the ownership of the house in question has been transferred by the appellant in favour of the son of the respondent no.1 on execution of a registered conveyance deed. In absence of the sale agreement the terms and conditions of the transaction between the son of the respondent no.1 and the appellant relating to the house in question is not clear. As per Section 14 (1) of the RERA Act, a real estate project is required to be developed and completed by the promoter in accordance with the sanctioned plans, layout plans and specifications as approved by the competent authorities, but no such plan or specification

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has been produced by the respondent no.1 to show that the appellant is required to complete the road, the drains and the sewerage lines and also to construct the side road to the south of the duplex house in question, as prayed for in the complaint petition. It is not mentioned in the complaint petition as to when the duplex house in question was completed and also no completion certificate in respect of it has been produced. Annexure-II of the complaint case shows that Bhubaneswar Development Authority vide its correspondence no.32660 dated 12.09.2022 to the son of the complainant has granted permission to him for regularisation of G+1 storied residential building on Plot NO.1673/5780, Sub-plot No.11, in Khata NO.725/3275 of Kalarahanga mouza, Bhubaneswar under the "Scheme for Regularization of Unauthorized Construction", notified in the Extraordinary Gazette No.1475 dated 06.08.2019, but it is not clear if the unauthorised construction was made by the appellant before delivery of possession of the house in question to the son of the complainant or is a subsequent development after the handing over of possession of the house. Be it what may be, in absence of any material showing the date of completion of the house in question, it can not be said to be under the fold of the RERA Act.

In absence of the aforesaid minimum details in the facts of the complaint petition and supporting

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relevant documents, it is not possible to come to the conclusion that the duplex house in question is a part of a real estate project developed by the appellant and the transaction between the appellant and respondent no.1 is that between a promoter and an allottee under the RERA Act. As already mentioned earlier, the respondent no.1 has not been able to establish that the reliefs asked for by him in the complaint petition are required to be complied with by the appellant as per the sanctioned plan or the terms of the sale agreement relating to the duplex house in question.

8. In view of the discussions made in the preceding paragraph, we are of the considered opinion that though there has been no violation of the principle of natural justice by the learned Regulatory Authority in hearing as well as disposing of the complaint case in absence of the appellant, but the complaint petition being devoid of the minimum essentials required for the reliefs under the RERA Act, is certainly not maintainable. The learned Regulatory Authority while passing the impugned order in favour of the respondent no.1 has failed to take note of this fact and in arriving at the finding of the case has made reference to certain documents which are not available in the record such as allotment letter, the general power of attorney and the BDA approved plan requiring the appellant to complete the road, drain, sewerage line and the side road to the south of the house in question.

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In the result, the impugned order dated 05.12.2023 of the learned Regulatory Authority is hereby set aside and the Complaint Case No.180 of 2023 is dismissed being not maintainable.

The appeal is disposed of on contest against the respondents.

Send an authentic copy of this order along with the record of the complaint case to the learned Regulatory Authority for information and necessary action. Also send a copy of the impugned order each to the appellant-promoter and the respondent no.1.

Justice P.Patnaik
Chairperson

Shri S.K.Rajguru
(Judicial Member)

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

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