

OREAT Appeal No.98/2024

13)07.07.2025

The appeal is taken up through hybrid mode.

2) We have already heard Mr. L.K.Maharana, learned counsel appearing for the appellant, Mr. J.B.Das, learned counsel appearing for the respondent no.1 and Mr.B.Nayak, advocate appearing on behalf of Mr. P.S.Nayak, learned counsel for the respondent no.2-Regulatory Authority. Learned counsels for the appellant and the respondent no.1 have filed their respective notes of submissions.

3) Aggrieved over the order dated 18.06.2024 passed by the Odisha Real Estate Regulatory Authority, Bhubaneswar (hereinafter referred to as 'learned Regulatory Authority') in Complaint Case No.344 of 2022, the appellant, who is the respondent in the said case, has filed this appeal against the respondents praying to set aside the said order and to dismiss the complaint case for being not maintainable. The respondent no.1 of this appeal is the complainant in the complaint case and the respondent no.2 is the Regulatory Authority who has passed the impugned order.

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

The respondent no.1 of this appeal has filed the aforesaid complaint case before the Regulatory Authority on 29.10.2022 against the present appellant alleging that, pursuant to the offer of the appellant-promoter to provide various lucrative facilities in the project named 'Utkal Heights' near Pahal, Bhubaneswar, she had agreed to buy a 3-bed room flat for a total consideration amount of Rs. 83,04,333/-. On 27.11.2020 the respondent no.1 booked the flat with a chargeable area of 1895 square feet and on 4.12.2020 agreement for sale was executed between her and the appellant-promoter. On 8.2.2021 sale deed was executed by

(II)

the appellant-promoter in favour of the respondent no.1 relating to the flat in question. The flat is now under the possession of respondent no.1 but no occupancy certificate has so far been provided. It is alleged in the complaint that the appellant has failed to provide basic amenities of the project which it had promised to provide. It is further alleged that no fire clearance certificate has been obtained in respect of the project till date, no association or society of allottees has been formed and one of the three lifts for general operations is out of order. The aggrieved respondent no.1 though sent a legal notice to the appellant on 26.9.2022 about her grievances, but no satisfaction reply was given and also no action was taken to redress her grievances. Some other occupants of the project approached the Hon'ble State Consumer Disputes Redressal Commission, Odisha, Cuttack and the Hon'ble Commission after deputing a pleader commissioner to the spot and obtaining a report from him about the compliances relating to the project inter alia directed the appellant-promoter to remove the deficiency of service by providing the amenities as per report of the pleader commissioner, to issue completion certificate and occupancy certificate within thirty days from the date of the order together with compensation and litigation cost. Claiming the project to be an ongoing one and her grievances to be similar to those of the allottees of the project who had approached to the Hon'ble SCDRC, the respondent no.1 has prayed to exempt her from payment of future maintenance charges, to refund maintenance charges amounting to Rs.77,483/- with interest @ 12%, to provide occupancy certificate in her favour and to direct the appellant to bear the cost of legal expenses incurred by her.

(III)

On 30.1.2023 when the complaint case was posted for filing of show cause by the appellant, its counsel filed a petition challenging the maintainability of the complaint case. After objection to the petition was filed by the respondent no.1, the petition was heard on 20.3.2023 and order was passed on 18.4.2023 rejecting it on the ground that the project was an ongoing one. The learned Regulatory Authority held that the completion certificate issued by the architect as per the original plan cannot be considered to be a valid one when permission has been revised by the local authority on 5.11.2019 i.e. after the commencement of the RERA Act permitting construction of more houses. Aggrieved over the said order, the appellant-promoter preferred OREAT Appeal No.74 of 2023 before this Tribunal and vide order dtd. 18.3.2024 this Tribunal set aside the order dtd. 18.4.2023 of the Regulatory Authority without delving into the merits of the case and remitted the matter back to the Regulatory Authority for fresh adjudication and disposal of the matter on the question of maintainability giving liberty to the parties to file necessary documents, if any, before the Regulatory Authority in support of their respective claims with a direction to the Regulatory Authority to consider the same as per their merit in accordance with law. On fresh adjudication of the matter, the learned Regulatory Authority again rejected the petition challenging the maintainability of the complaint case on the ground that completion certificate has not been issued by the competent authority under the Act after inspection of the project and the promoter could not establish the Completion Certificate to have been issued u/sec. 2 (q) or the Occupancy Certificate to have been issued u/sec. 2 (zf) of the RERA Act.

5) The learned counsel for the appellant-promoter in the hearing of the appeal has submitted that, the Secretary,

(IV)

BDA vide letter dtd. 7.4.2022 while complying with the order passed by the Hon'ble High Court had come to the finding that the completion certificate having been issued prior to 1.5.2017 and submitted before the BDA for issuance of occupancy certificate, the project is completed prior to the said date and it is the aforesaid letter dtd. 7.4.2022 basing on which the learned Regulatory Authority vide order dtd. 30.5.2023 passed in Complaint Case No.55 of 2019 has already held the project to have been completed prior to 1.5.2017 and thus requiring no registration. So in view of the aforesaid order dtd. 30.5.2023 of the learned Regulatory Authority in Complaint Case No.55 of 2019 the project being the same in the said complaint case and present Complaint Case No.344 of 2022, a completely different view dehors the principle of judicial discipline. It is further submitted that the reliance of the learned Regulatory Authority on the order dtd. 15.5.2024 of this Tribunal in OREAT Appeal No.137 of 2023 is erroneous in view of the fact that the facts and dispute involved in OREAT Appeal No.137 of 2023 are different from those in Complaint Case No.344 of 2022. Relying on the decision of Hon'ble Supreme Court of India in the case of Newtech Promoters, the learned counsel for the appellant has submitted that as completion certificate in respect of the project in question has been received prior to the commencement of the RERA Act, the project does not require registration under the Act and thus the complaint is not maintainable. It is further submitted that, the order dtd. 7.4.2022 of the B.D.A. clarifying the completion certificate of the project to have been issued on 17.3.2015 i.e. prior to the commencement of the RERA Act and the appellant-promoter having applied for occupancy certificate on 3.4.2015 and the said order dtd.7.4.2022 of the B.D.A remaining unchallenged, still holds good. It is further

(V)

submitted that as per Section 20 of the ODA Act, 1982 and the B.D.A. (P&BS) Regulations, 2008 an empanelled Architect is competent to issue Completion Certificate which shall be forwarded to the B.D.A. for issuance of Occupancy Certificate. In the present case empanelled Architect Mitul Shukla has issued the Completion Certificate dtd. 17.3.2015 in respect of the project in proper format addressing the same to the Vice Chairman, B.D.A. alongwith challan of Rs.5000/- on 6.4.2015 for obtaining the Occupancy Certificate. Reiterating his claim that the RERA Act is not applicable to the project in question and that the Completion Certificate dtd. 17.3.2015 issued in respect of it by the aforesaid Architect is a completely valid one, the learned counsel for the appellant has made the prayer as already mentioned in paragraph-3.

6) On the other hand, the learned counsel for the respondent no.1 has submitted that the impugned order dtd. 18.6.2024 depicts a clear picture as to how the project in question is an ongoing one at the time of filing of the complaint case. It is further submitted that, the completion certificate dtd. 17.3.2015 in respect of the project is not valid in view of the fact that, the construction was made in deviation to the sanctioned plan and the deviations were regularized vide the revised permission of B.D.A. vide its letter no.26347 dtd. 5.11.2019 i.e. after the commencement of the RERA Act. The project having been not completed as per the approved plan prior to 1.5.2017 is therefore to be treated as an ongoing one. The learned counsel for the respondent no.1 has further submitted that the completion certificate dtd. 17.3.2015 without the required certificates like the NOC from BMC in respect of service facilities and external infrastructure development works and the Fire Safety Certificate is not in accordance with the Regulation 67 (A) of the BDA (Planning &

(VI)

Building Standards) Regulations, 2008. It is further submitted that Fire Safety Certificate in respect of the project having been issued in 2021 only the project was an ongoing one till then. Referring to the order of this Tribunal in OREAT Appeal No.137/2023, the learned counsel for the respondent no.1 has also pointed out that the completion certificate has not been issued by the competent authority as defined under the RERA Act. The learned counsel for the respondent no.1 has contended that the facts and circumstances in Complaint Case No.55/2019 and Complaint Case No.344/2022 are different from each other and therefore, two different views in respect of the same project are possible. Asserting that the appeal filed by the appellant-promoter challenging the impugned order dtd. 18.6.2024 of the learned Regulatory Authority is without any merit and also bad in law, the learned counsel for the respondent no.1 has prayed for its dismissal.

7) In the petition dated 30.1.2023 challenging the maintainability of Complaint Case No.344/2022, it is contended by the appellant that the project 'Utkal Heights' at Pahal, Bhubaneswar is a completed residential project prior to the date of commencement of the RERA Act and ORERA Rules. Enclosing the copies of the bank challan, completion certificate and acknowledgement of BDA regarding receipt of the completion certificate the appellant has claimed that, the competent authority has issued completion certificate certifying that, the real estate project 'Utkal Heights' has been developed according to the sanctioned plan, lay out plan and specifications and completed on 17.3.2015 and after that the appellant has applied for occupancy certificate before the BDA on 3.4.2015 which is still pending before the BDA for consideration. Asserting that it has never violated any term or condition of the sale agreement between it and the

(VII)

respondent no.1, the appellant has claimed that, the completion certificate in form no. VI having been issued on 17.3.2015 by the registered architect under Section 20 of the O.D.A. Act, 1982 and the same having been accepted by the BDA the project is not coming under the purview of the RERA Act which came into force on 1.5.2017.

On the other hand, in her objection to the petition dated 30.1.2023, the respondent no.1 has contended that, no civil petition can be rejected unless it is hit under Order VII, rule-11 of CPC. It is further submitted that, even though completion certificate in respect of the project has been issued by an empanelled architect of the BDA on 17.3.2015, but other works of the project like sewerage treatment plant, medicine store, ATM counter, Health Court, Cafeteria and other facilities as per the basic agreement are still incomplete. The appellant according to the respondent no.1 has taken a false plea of completion of the project on 17.3.2015 only to avoid registration of the project with the ORERA. It is further submitted by the respondent no.1 in her objection that, even after issuing the completion certificate on 17.3.2015, the BDA has issued revised permission for the project vide its letter no.26347 dated 5.11.2019 as the appellant-promoter had deviated from the approved plan of the project. In the said permission letter it was further instructed that the appellant should provide due parking place, approved means of access, storm water management, plantation, sewerage and some other public utility services. But the appellant has failed to provide these basic utility services and other facilities in terms of the agreement with the allottees till now. Asserting that the complaint petition has been filed under rule 38 (1) of the ORERA Rules for violation of section 11 (4) (d) of the RERA Act by the appellant, the respondent no.1 has claimed that, it

(VIII)

deserves adjudication. Accordingly, the respondent no.1 prayed to reject the petition challenging the maintainability of the complaint case.

As regards the applicability of the RERA Act in the light of the opposing submissions of the appellant and the respondent no.1, Section 3 (1) of it provides that application by the promoter for registration of the projects within three months from the commencement of the Act is necessary which are ongoing on the date of commencement of the Act. Under Section 3 (2) (b) of the Act registration of the real estate project is not required where the promoter has received completion certificate prior to the commencement of the Act. In the case of **M/s Newtech Promoters & Developers Pvt. Ltd. vrs. State of UP and others** decided on 11.11.2021, the Hon'ble Supreme Court of India have made it clear that, projects already completed and to which completion certificate has been granted before the commencement of the Act are not under its fold. At the same time, it will apply after getting the ongoing projects registered u/s 3 to prospectively follow the mandate of the Act, 2016. The Hon'ble Apex Court has further observed in the said case that, all ongoing projects that commenced prior to the Act and in respect to which completion certificate has not been issued are covered under this Act. So, both as per the RERA Act and the decision of the Hon'ble Supreme Court in Newtech Promoters case (supra), it is the issuance of completion certificate which is the deciding factor for applicability of the RERA Act to a project.

Completion certificate and occupancy certificate are also referred to in the Orissa Development Authorities Act, 1982 and Bhubaneswar Development Authority (Planning & Building Standards) Regulations, 2008. Completion certificate

(IX)

under the ODA Act is submitted under section 20 by a registered Architect or an Engineer or a person approved by the Authority in the forms prescribed by regulations. As per Section 20A of the Act, on receipt of completion certificate under section 20, the Authority shall consider for grant of occupancy certificate in such form for authorizing occupation of the building or the premises in part or full, on payment of such fees and on such terms and conditions as may be prescribed. Section 124 of the ODA Act, 1982 empowers the Authority to frame regulations with consultation with the state government. Regulation 15 of the Bhubaneswar Development Authority (Planning & Building Standards) Regulations, 2008 provides that the Authority shall permit an empanelled Architect/Engineer to certify completion of residential buildings on a plot size upto 500 sq. meters. Regulation 15 further provides that, the empanelled Architect/Engineer will serve a notice of completion certificate in form VI (part I and Part II) to the Authority that the building has been completed in all respects as per the approved plan. Regulation 67 provides that in submitting the notice in form VI (Part I & Part II) regarding completion of multi-storied buildings to the Authority, the following documents shall accompany it:

- A. Three copies of plan of the completed building.
- B. A fee of Rs.5000/-.
- C. Record of Rights (ROR) relating to ownership.
- D. Evidence to the effect of all public utility services, and in particular sewerage, drainage, water supply and electricity have been linked to the main public utility system.
- E. No Objection Certificate from the Fire Prevention Officer.

Regulation 68(1) provides that the Authority on receipt of notice of completion alongwith all the required documents, shall take a decision to either issue or refuse occupancy

(X)

certificate in Form X within sixty days from the date of receipt of such notice which shall be published in the notice board of the Authority and in the Government website. Regulation 68 (2) provides that if the occupancy certificate is not issued by the authority within sixty days from the receipt of notice, the owner shall draw the attention of the Vice Chairman of the Authority in this regard in the Form XIII. If within the further period of two months, the Authority does not communicate its decision either granting or refusing Occupancy Certificate, such issue of occupancy certificate shall be deemed to be granted to the owner on the date following the date of expiry of said two months.

8) The learned counsel for the respondent no.1 has contended that the completion certificate dtd.17.3.2015 issued for the project is not valid. As already mentioned earlier, Regulation 67 requires that the notice in form VI (Part I and Part II) regarding completion of the construction of multi-storied building to the Authority shall accompany the documents as mentioned in respect of A, B, C, D and E. On perusal of the completion certificate dtd.17.3.2015 it is seen that BDA registered Architect Mitul Shukla has sent it in Form VI to the Vice-Chairman, Bhubaneswar Development Authority, Bhubaneswar with a list of enclosures mentioned below the notice, which also bears acknowledgement of the recipient on 6.4.2015. The list includes a copy of fire NOC, but the Fire Safety Certificate is found to be issued on 19.08.2021 by the Chief Fire Officer, Fire Prevention Wing, Directorate of Fire Services, Odisha, Cuttack in Form-V under Rule 13 (3) of the Odisha Fire Prevention and Fire Safety Rules, 2017. So when the Fire Safety Certificate in respect of the project has been issued on 19.08.2021, the endorsement of the Completion Certificate dtd. 17.3.20215 by the Architect Mitul

(XI)

Shukla showing a copy of fire NOC as one of the enclosures to it is certainly false. Even in their joint inspection report dtd.24.7.2019 submitted pursuant to the direction of the Hon'ble State Consumer Redressal Commission in respect of the project, Sri Patitapaban Dash, structural Engineer and Sri Abhay Kumar Samal, Advocate (Convener) have remarked that though Fire fighting equipments, Landing Valves, Sprinkler Line etc. were available inside the premises of the project, but no Fire Clearance Certificate had been obtained. So when the completion certificate has been submitted without the required 'No Objection Certificate' from Fire Prevention Officer, it cannot be said to be in accordance with Regulation 67 of the BDA (Planning & Building Standard) Regulations, 2008. The completion certificate is not accompanied with a very important and necessary document i.e the Fire Prevention Certificate even though it is shown to have been submitted along with it. No explanation has also been offered by the appellant with regard to this false endorsement and as to why occupancy certificate has not been issued by the BDA till date in spite of receipt of the Completion Certificate by it on 6.4.2015. It has also not been explained as to why the attention of the vice-Chairman of the Authority has not been drawn in this regard in Form no.XIII as provided in regulation 68. So the Completion Certificate issued on 17.3.2015 without the required "No Objection Certificate" from the Fire Prevention Officer can not be said to be in accordance with regulation 67 of the BDA (P &BS) Regulations, 2008.

9) As already mentioned earlier, the learned counsel for the appellant has contended that, as per section 20 of the ODA Act, 1982 and the B.D.A (P&BS) Regulations, 2008, a registered Architect or an Engineer or any person approved by the Authority is entitled to issue the completion certificate in

(XII)

the prescribed form for its forwarding to the BDA for issuance of occupancy certificate and therefore the completion certificate dtd. 17.3.2015 issued by the registered Architect of the Bhubaneswar Development Authority is in no way invalid.

On the other hand, the learned counsel for the respondent no.1 has referred to this tribunal's order dated 15.5.2024 passed in OREAT Appeal No. 137 of 2023 in claiming that the empanelled architect of the BDA is not the competent authority entitled to issue completion certificate for the project.

In view of the above rival contentions, the meaning of completion certificate and competent authority as per the RERA Act needs an analysis. As per Section 2 (q) of the RERA Act **completion certificate** means the completion certificate or such other certificate by whatever name called, issued by the competent authority certifying that the real estate project has been developed according to the sanctioned plan, lay out plan and specifications as approved by the competent authority under the local laws.

Competent Authority as per Section 2 (p) of the RERA Act means the local authority or any authority created or established under any law for the time being in force by the appropriate government which exercises authority over land under its jurisdiction and has powers to give permission for development of such immovable property.

Thus as per the RERA Act the completion certificate must be issued by the particular category of authority having the particular power as provided under it. If the validity of completion certificate issued prior to the commencement of the RERA Act is to be analysed as per Section 2(P) and (q) of the Act, then considering the fact that the project in question is within the development area of Bhubaneswar, only a

(XIII)

member of the Authority under section 3 (5) of the ODA Act, 1982 exercising authority over the land under his jurisdiction and having entitlement to give permission for development of such immovable property would have been the competent Authority under Section 2(P) of the Act to issue the completion certificate in respect of the project. However, as per Section 20 of the ODA Act, 1982 and Regulation 67 of the BDA (P & BS) Regulations, 2008, the Authority can permit a registered architect or an engineer to issue completion certificate and as such the B.D.A. registered Architect Sri Mitul Shukla is entitled to issue Completion Certificate in respect of the project even though he has no entitlement to exercise authority over the project land or to give permission for its development and as such is not the kind of authority as contemplated under section 2 (p) of the Act. Unless the empowerment of registered architects or engineers by the B.D.A. to issue completion certificates under section 20 of the ODA Act, 1982 in respect of projects claimed to have been completed prior to the commencement of the RERA Act is declared invalid by a competent forum, it cannot be conclusively held at this stage that only the competent authority as per Section 2(P) of the RERA Act is entitled to issue the Completion Certificate dtd. 17.3.2015 of the project.

As regards the order dtd.15.5.2024 of this Tribunal passed in OREAT Appeal No.137/2023, which has been referred to by the respondent no.1 in her objection to the appeal memo and also by the learned Regulatory Authority in the impugned order, it is to be noted that, in analyzing the applicability of the RERA Act to the project in question in para-8 this Tribunal has discussed section 3 of the RERA Act, the observation of the Hon'ble Supreme Court of India on the same in the case of M/s. Newtech Promoters and Developers

(XIV)

Pvt. Ltd. Vrs. State of UP and others decided on 11.11.2021, the meaning of 'completion certificate' u/sec. 2 (q) and 'competent authority' u/s 2 (p) of the RERA Act, section 20 of the ODA Act, 1982, Regulation 67 of the Bhubaneswar Development Authority (Planning & Building Standards) Regulations, 2008 and a number of facts on record in finally coming to the conclusion that, the completion certificate dtd. 19.1.2013 and the occupancy certificate dtd. 25.3.2013 are not valid and consequently, the phase-I of the project was not complete on the date of commencement of the RERA Act. In the discussion made in para-8, this Tribunal has held that only the BDA is entitled to issue the completion certificate in respect of Phase-I of the project and registered BDA empanelled architect Durga Dutta Dhalasamant, who has issued the completion certificate, is not the kind of authority as contemplated under section 2 (p) of the RERA Act. However, the aforesaid observation of this Tribunal was only with reference to the section 2 (p) and 2 (q) of the RERA Act as in the very next paragraph the competency of the registered architect to issue completion certificate under section 20 of the ODA Act, 1982 has been discussed. It is reiterated here that, the completion certificate issued in respect of the phase-I of the project in the case under OREAT Appeal no.137/2023 has been held to be invalid on the date of commencement of RERA Act after taking into account the provisions u/sec. 3 (1), section 2 (p), section 2 (q) of the RERA Act, the Newtech decision of the Hon'ble Supreme Court, Section 20 of the ODA Act, 1982 together with Regulation 67 of the BDA (P&BS) Regulations, 2008 and a number of facts on record, but not solely on the basis Section 2 (p) and 2 (q) of the RERA Act.

(XV)

So, the contention that as per order dated 15.5.2024 of this Tribunal in OREAT Appeal No.137 of 2023, a registered architect of the B.D.A. is not entitled to issue completion certificate of the project, which has been claimed to have been completed on 17.3.2015, is misconceived.

The Completion Certificates issued by registered architects or engineers as permitted by the Development Authority as per Section 20 of the ODA Act, 1982 in respect of the projects claimed to have been completed prior to the commencement of the RERA Act will not be invalid as this will render all the projects in Odisha, which have received completion certificates from the registered architects or engineers, ongoing, on the date of the commencement of the RERA Act and require their registration under Section 3 of the said Act.

10) It seems the learned counsel for the appellant has heavily relied upon the order dtd.7.04.2022 passed by the Secretary, BDA. In the said order, the Secretary, B.D.A. has observed that, as per the official records the developer has completed the structures, sold out the flats and submitted the completion certificate before the B.D.A. prior to the commencement of the Real Estate (Regulation & Development) Act, 2016 and the revised plan dtd.5.11.2019 was issued by the B.D.A. only to regularize the deviations but not to alter or modify the existing structures thereby. However, the Secretary, B.D.A. has not explained as to how the project can be said to have been completed prior to the commencement of the RERA Act when the completion certificate issued on 17.3.2015 was without the Fire Prevention Certificate, as required under regulation 67 and how the flats were sold out without issuance of the occupancy certificate by the B.D.A. The completion certificate referred to

(XVI)

in Section 20 of the ODA Act, 1982 in respect of a multi-storied building certainly implies a lawful certificate in accordance with regulation 67 of the BDA (P &BS) Regulations 2008 and therefore in absence of the Fire Prevention Certificate required under the said provision, the Completion Certificate dtd.17.3.2015 inspite of being issued by a competent BDA registered architect is not a valid one. The Fire Prevention Certificate having been issued on 19.08.2021, the project was certainly not completed on the date of commencement of the RERA Act i.e. 1.5.2017 and hence is to be held as an on-going one. The contention of the learned counsel for the appellant that, basing on the order dated 7.4.2022 of the Secretary, BDA, the learned Regulatory Authority vide order dtd. 30.5.2023 has held the project in C.C. No.55 of 2019, which is also the same in the present case, to be a completed one prior to 1.5.2017 and hence the contrary view in the impugned order is against the principle of judicial discipline, is not acceptable as the order dated 30.5.2023 of the learned Regulatory Authority dismissing the C.C. No. 55 of 2019 has been set aside by this tribunal vide order dated 27.9.2024 passed in OREAT Appeal No. 97 of 2023.

11) Thus taking into account the entire discussions made in paragraphs 7 to 10, we are of the considered opinion that, the completion certificate dtd. 17.3.2015 being not valid as per law, the appellant-project is not a completed one as on the date of the commencement of the RERA Act i.e. 1.05.2017 and hence is within its fold. Resultantly, the impugned order dtd. 18.6.2024 of the learned Regulatory Authority rejecting the petition challenging the maintainability Complainant Case No.344/2022, is hereby confirmed.

(XVII)

The appeal is accordingly dismissed on contest against the respondents.

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

Justice P.Patnaik
Chairperson

Shri S.K.Rajguru
(Judicial Member)

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

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