

OREAT Appeal No.99/2024

12) 12.03.2025

The appeal is taken up through hybrid mode.

2) Heard Mr. A.Suhail, learned counsel appearing for the appellant and Mr.S.S.Swain, advocate appearing on behalf of Mr. B.P.Tripathy, learned senior counsel for the respondent-Authority.

3) Aggrieved over the order dated 10.07.2024 of the Odisha Real Estate Regulatory Authority, Bhubaneswar (hereinafter referred to as the learned Authority) passed in Sou Motu Complaint Case No.238 of 2024 instituted by it, the appellant who was the respondent-promoter in the said case, has filed this appeal praying to set aside the same in the interest of justice.

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

Finding that the appellant-promoter had published an advertisement through hoarding for sale of flats of the project "Acre Rise AURA" at mouza-Patapur under Tahasil-Barang of Cuttack district without mentioning the registration number obtained from the Authority and its website address therein, the learned Authority initiated Sou Motu Complaint case No.238/2024 against the appellant vide order dtd. 10.4.2024 for violation of Section 11 (2) of the Real Estate (Regulation & Development) Act, 2016 (hereinafter referred to as the RERA Act).

In response to the notice issued, the appellant appeared through its authorized person Aurobindo Das and filed its show cause in writing on 21.5.2024. In the show cause it is submitted that no penalty can be imposed by the respondent as there has been no violation committed by the

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appellant under section 11 (2) of the RERA Act. It is claimed that the appellant being a prudent promoter is conscious of the fact that every advertisement published by it should mandatorily mention the project registration number and the website address of the Authority under the aforesaid provision of the RERA Act. It is further submitted that the appellant launched the project and got it registered with the Authority vide Registration No.RP/07/2023/00855. Registration of the project commenced from 18.01.2023 and as a diligent promoter the appellant being well aware of the fact that the provisions of the RERA Act were to be strictly followed had taken care that every hoarding relating to the project contained registration number of the project and the website address of the Authority. It is further submitted that the notice issued to the appellant on 25.4.2024 by the learned Authority does not mention the exact location of the hoarding wherein the project registration number and the website address of the Authority are not allegedly mentioned. The appellant in his show cause to the complaint has asserted that the project registration number and the website address of the Authority have been prominently mentioned in its hoarding located at Trisulia Square, Cuttack and is also visible to the public with naked eye and as such Section 11 (2) of the RERA Act has never been contravened and consequently no penalty under section 61 of the RERA Act can be imposed on him. With the aforesaid claims and assertions, the appellant prayed for dismissal of the complaint.

On the date of appearance of the appellant i.e. 21.5.2024 itself the complaint case was heard and the impugned order was passed on 10.7.2024 directing the appellant to deposit a penalty of Rs.50,000/- with it within a period of two months making it clear that the order shall be

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enforced as per law in the event of the appellant's failure to comply it.

5) In the hearing of the appeal, the learned counsel for the appellant has stuck to the plea of the appellant in his show cause to the complaint. It is submitted by the learned counsel for the appellant that the appellant has never been provided with basic details like exact place of hoarding at Trisulia and photograph of hoarding and has also not been given the opportunity to know the specific allegations made against him before hearing of the complaint case and therefore the learned Authority has violated the principle of natural justice. The learned counsel for the appellant has asserted that the hoarding at Trisulia square clearly reveals the registration number of the project and the website details of the Authority and therefore the requirements under section 11 (2) of the RERA Act have been fully complied with. Alleging that the impugned order dtd. 10.7.2024 of the learned Authority lacks application of judicial mind and the penalty of Rs.50,000/- has been imposed illegally inspite of mentioning the project registration number and the website address of the Authority in the hoarding in question, the learned counsel has made the prayer as made earlier in paragraph-3.

6) On the other hand, the learned counsel for the respondent-Authority has not filed any written show cause to the memo of appeal but has contended during hearing that the appellant has not relied upon any document in the complaint case to show that the photograph of the hoarding relied upon by him relates to the same project or not. It is further contended that, the photograph of the hoarding relied on by the Enforcement Officer and that relied on by the Appellant are different and this creates a doubt about the genuineness of the claims of the appellant. Claiming that the

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appellant has expressly violated section 11 (2) of the RERA Act by not mentioning the project registration number and website address of the Authority in its hoarding at Trisulia and that the penalty of Rs.50,000/- has been rightly imposed upon him under section 61 of the RERA Act, the learned counsel for the respondent-Authority has prayed to dismiss the appeal for being without merit.

7) The appellant has been slapped with a penalty of Rs.50,000/- by the learned Authority for allegedly violating section 11 (2) of the RERA Act and this provision is as follows:

The advertisement or prospectus issued or published by the promoter shall mention prominently the website address of the Authority, wherein all details of the registered project have been entered and include the registration number obtained from the Authority and such other matters incidental thereto.

The fact of publishing the advertisement in respect of the project in question through display of hoarding has not been disputed by the appellant. The Sou Motu complaint case was instituted against the appellant basing on the inspection report of Sri D.K.Satapathy, Enforcement Officer, ORERA after his verification on 19.3.2024 of the hoarding displayed by the appellant-promoter. The inspection report of the Enforcement Officer reveals that, pursuant to the orders of the Authority for reporting on the display of hoardings on the road side to ascertain violations under section 11 (2) of the RERA Act, he on his way to inspect project 'Trishna Towers' noticed a hoarding of real estate project 'AURA' beside Kathajodi bridge near Trisulia square being developed by the Acre Rise Reality LLP, Bhubaneswar and the hoarding was found to have been displayed in violation of the aforesaid provision of the RERA Act. The inspection report of the Enforcement Officer further

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reveals that the project having been registered under the ORERA vide No.RP/07/2023/00855, the promoter is liable to action for the violation. However, except mentioning that the hoarding was found to be displayed in violation of Section 11 (2) of the RERA Act, the Enforcement Officer in his report has no where mentioned the particulars of the alleged violation. It is only from the order dtd. 10.4.2024 of the learned Authority initiating the Suo Motu Complaint case it is understood that the appellant is proceeded against for not mentioning the ORERA registration number and its website address in its advertisement for sale of houses displayed through the hoarding in question. The Enforcement Officer has not mentioned in his report to have examined the appellant-promoter or any of its representative before he was convinced about the alleged violation. The Enforcement Officer has enclosed the copy of the hoarding showing the alleged violation and that of the registration certificate of the project issued by the ORERA. Going through the coloured copy of the alleged hoarding, it is found that the photograph of the hoarding published by the appellant-promoter has been taken from such an angle that some writings on the bottom portion of the extreme left of the advertisement are not at all legible. This is the main document which has been relied upon by the learned Authority for initiating the sou motu complaint case, but the photograph of the hoarding having been not taken appropriately and the writings on the extreme left bottom portion of the hoarding being not clear as mentioned above, the conclusion of the learned Authority that the advertisement floated by the appellant-promoter beside the Kathajodi bridge near Trisulia square did not contain the registration number of the project obtained from ORERA and the ORERA website number at the time of visit of the

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Enforcement Officer on 19.3.2024 is not convincing. The record of the complaint case does not disclose the service of a copy of the inspection report dtd.21.3.2024 of the Enforcement Officer and the copy of the alleged hoarding on the appellant-promoter or his representative at any time and hearing of the complaint case was taken up on the very day of appearance of the person authorized by the appellant. This is certainly a violation of the principle of fair adjudication. On the other hand, even though not relied on in the complaint case, the appellant has produced a black & white copy of the advertisement of the project similar to the one furnished by the Enforcement Officer with his inspection report (Annexure-7 of the appeal memo) and this copy of the photograph of the hoarding which appears to have taken from the exact front of the hoarding reveals the ORERA registration number of Phase-I and Phase-II of the project and also the website address of the Authority in small fonts at the bottom of the extreme left.

For the reasons discussed above, the finding of the learned Authority on comparison of the copy of the hoarding furnished by the Enforcement Officer and that furnished by the appellant in the complaint case that, no registration number of ORERA and no website address of it are there in the photograph of the hoarding submitted by the Enforcement Officer, is not acceptable.

8) So, when the copy of the hoarding furnished by the Enforcement Officer with his report dtd. 21.3.2024 is not clear regarding the writings on its extreme left bottom portion, the institution of the Sou Motu Complaint Case No.238/2024 against the appellant for allegedly violating section 11 (2) of the RERA Act by omitting to mention the ORERA registration number and website address in its said hoarding, is

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erroneous. The imposition of penalty of Rs.50,000/- on the appellant is also not justifiable for the reason that the learned Authority in the impugned order has not at all discussed about the cost of the project. Consequently, the impugned order dtd.10.7.2024 of the learned Authority in the aforesaid Sou Motu complaint case is hereby set aside.

Accordingly, the appeal is allowed on contest against the respondent. The pending I.A. is disposed of accordingly.

The statutory amount alongwith the accrued interest thereon be refunded to the appellant on proper identification.

Apart from uploading this order in the official website of the OREAT, today itself, office is directed to 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)