

**BEFORE ODISHA REAL ESTATE REGULATORY AUTHORITY,  
BHUBANESWAR.**

\*\*\*\*\*

**Suo Motu Complaint Case No. 241 of 2018.**

**O R E R A**

... **Complainant**

**- Versus-**

M/S. Aryan Construction Ltd.  
Represented by its Proprietor  
Kare-Nova  
At-Plot No. 79, Budhanagar,  
Bhubaneswar-751006

... **Respondent**

**ORDER**

**Dated 18.03.2021**

This case is initiated suo motu U/s 35 of the Real Estate (Regulation & Development) Act, 2016 read with Section 59 of the said Act against the respondent for violation of Section 3 of the Act.

2. One Sumitra Devi Agrawal filed complaint Case No. 19/2018 seeking some reliefs against the promoter/respondent. In that case the Authority by order dated 24.09.2018 observed that the respondent has not obtained registration certificate relating to his project "J.K. Apartment" promoted by Kare-Nova, M/s Aryan Construction Ltd. The agreement between Sumitra Devi Agrawal and M/S Aryan Construction Ltd. was executed on 30.03.2016. In para-7 of the agreement it is specifically stated that the Vendor undertakes to expeditiously and efficiently carry out the development and construction work of the said

project, subject to timely payments by the purchaser(s) as stated above to be ready for delivery of the flat within a period of six months from the date of this agreement or date of commencement of work with a grace period of 6 months, unless prevented by reasons beyond the control of the vendor. Since the flat was not ready for the purpose of delivery of possession Sumitra Devi filed a case seeking some reliefs against the promoter in Case No. 19/18. On the basis of the direction of the Authority in that case, this Suo Motu Case was initiated against the respondent for realization of penalty as admissible U/s 59 of the Act.

3. The respondent appeared before this Authority and filed a written objection stating that the project was completed on 10.07.2016 as per the certificate issued by the Architect. The Act came into force with effect from 01.05.2017. Therefore there is no reason for the respondent to apply for registration.

4. Section 3 of the Real Estate (Regulation & Development) Act, 2016 provides that "No promoter shall advertise, market, book, sell or offer for sale, or invite persons to purchase in any manner any plot, apartment or building, as the case may be, in any real estate project or part of it, in any planning area, without registering the real estate project with the Real Estate Regulatory Authority established under this Act

Provided that projects that are ongoing on the date of commencement of this Act and for which the completion certificate has not been issued, the promoter shall make an application to the Authority for registration of the said project within a period of three months from the date of commencement of this Act".

In the instant case the project is stated to be a completed one. The respondent relied on Annexure-B which is the completion certificate issued by the Architect. Learned counsel argued that for all

practical purpose the project is complete in all respect and technically certificate from the competent authority is awaited. On the basis of the report of the Architect the competent authority will issue completion certificate.

5. There is no dispute over the fact that the respondent's project is a real estate project within the meaning of Section 2(zn) of the Act. Completion certificate is defined in Section 2(q) of the Act which reads as follows:-

*" 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, layout plan and specifications, as approved by the competent authority under the local laws"*

Completion certificate issued by a competent authority can only be considered as completion certificate. The "competent authority" is defined in Section 2(p) of the Act which reads as follows:-

*"Competent authority" 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".*

It appears that no completion certificate has been issued in the instant case by a competent authority regarding completion of the project. Therefore the project is to be considered as an ongoing project within the meaning of Section 3(i) of the Act. So registration is necessary. The respondent has not admittedly applied for registration. So he is liable for penalty as provided U/s 59 of the Act. Section 59 of the Act specifically states that If any promoter contravenes the provisions of Section 3, he shall be liable to a penalty which may



extend up to ten per cent of the estimated cost of the real estate project as determined by the Authority.

6. The project cost has been assessed by the Technical Team who visited the spot on the direction of this Authority. No objection is raised to the report. The report is based on reasons. So we accept it. The total estimated cost as per report is Rs.4,88,59,288/-. The assessment is made keeping in view the sale price of a 3BHK flat comprising an area of 1600 Sqft @ Rs.3188 per Sqft. The total built up area of the project being 15,326 Sqft, the estimated cost has been assessed as Rs. 4,88,59,288/-. Penalty up to ten per cent of the estimated cost is the mandate of the statute. Discretion is given to the Authority to impose penalty taking into consideration the circumstances of the case. Taking into consideration the circumstances discussed above, we hold that the respondent is liable to pay Rs. 5,00,000/- as penalty within a period of two months from the date of this order for violation of Section 3 of the Act. Hence order:-

### ORDER

The case is allowed on contest against the respondent without cost. The respondent is directed to pay penalty of Rs. 5,00,000/- (Rupees five lakhs) within a period of two months failing which the same shall be realized by enforcing the order as per law.

The penalty shall be deposited with this Authority within the period of two months as directed above.

TRUE COPY

*[Signature]*  
Registrar  
Odisha Real Estate Regulatory Authority

*Set*  
18.3.21  
Member-II  
(Ramanath Panda)

*Set*  
Chairperson.  
(Siddhanta Das).

*964 22.3.21*  
*no*  
*Copy of order dt 18.3.21 forwarded to the*  
*Respondent for information.*

*[Signature]*  
Registrar  
Odisha Real Estate Regulatory Authority