

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

\*\*\*\*\*

Present:-

**Sidhhant Das, Chairperson.**

**Ramanath Panda, Member-II**

**Suo Motu Complaint Case No. 242 of 2018.**

**O R E R A**

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**Complainant**

**- Versus-**

M/s Panchadeep Construction Ltd,  
At-BMC-Panchadeep Market Complex,  
Unit-4 Market, Bhubaneswar.

...

**Respondent**

**ORDER**

**Dated 30.03.2021**

This is a case initiated U/s 35 of the Real Estate (Regulation & Development) Act, 2016 for inflicting penalty on the respondent/promoter U/s 59 of the Act for violation of Section 3 of the Act.

2. From the order dated 24.09.2018 passed in CC.No. 196 of 2018 the Authority came to know that the respondent/promoter is developing a project in the name and style "BMC Panchadeep Market Complex" at Unit-4, Bhubaneswar. The promoter has not applied for

registration of the project which makes out a prima facie case for violation of Section-3 of the Act punishable U/s 59 of Real Estate (Regulation & Development) Act, 2016. Accordingly this Suo Motu case was initiated against the promoter for levy of penalty for non-registration of his project.

3. The respondent appeared and filed a show-cause stating that The Real Estate Regulation Act came into force in the year, 2017. But the project was commenced prior to year 2016. Due to some unavoidable circumstances, the promoter could not complete the project in time. The respondent has completed construction in the year 2014 and requested the B.M.C for executing G.P.A in its favour so that the company can execute lease deed in favour of allottee. In fact agreement was executed between BMC and Panchadeep Construction Ltd on 05.02.1999 for developing the land and to construct commercial and shopping complex. Annexure-1 is the said agreement. On the basis of this agreement the complex was to be completed within four years from the date of delivery of vacant possession. The builder has right over 65.35 % of the total built up area and the Municipal Corporation in lieu of land value will get 34.65% of the total built up area. The lease is a permanent lease extended for a period of 99 years. In the year, 2012 the BDA issued permission for construction. Some areas were encroached by Fish vendors. On being persuaded BMC agreed to remove encroachment and to give vacant possession of the land to the promoter. The promoter has invested huge amount of money and could not execute deed of conveyance in the form of a lease deed in favour of allottees due to delay caused by the Municipal Authority to execute GPA in favour of the promoter. The fact is intimated to the Commissioner BMC vide Annexure-2. Therefore the promoter is not at all fault and the actual delay is due to non-execution of G.P.A in favour of the promoter by the BMC. The

construction having been completed in the year, 2014, the promoter is not required to obtain registration certificate from this Authority.

4. It appears from Annexure-2 that the promoter made an application on 16.08.2017 requesting BMC to execute GPA in his favour. By this time Real Estate (Regulation & Development) Act, 2016 was in force. Whatever may be the reason of delay, the promoter is required to obtain registration certificate in case his project is considered as an ongoing project. In absence of any completion certificate received from competent authority, the project is to be considered as an ongoing project.

5. On the basis of a direction from the Authority the Enforcement Officer visited the place and reported the following:-

"The Manager M/s Panchadeep Construction Ltd has not submitted proposal/documents for registration of the project "BMC-Panchadeep Market Complex" with this Authority. On verification from the Agreement executed between M/s Panchadeep Construction Ltd and Sri D.K.Jain, Bolangir it is found that the building plan was approved by the BDA for construction of building over 1,30,000 Sqft. The consideration amount for Shop/Office space having built up area of 1650 Sqft is Rs. 57,75,000/-. Total built up area of the project "BMC Panchadeep Market Complex" is 1,30,000 Sqft and the cost of the project is Rs. 45,50,00,000/-.

6. Section 59(1) of Real Estate (Regulation & Development) Act, 2016 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. In the instant case the Enforcement Officer submitted a report stating about the approximate cost of the project. He has provided reasons for the aforesaid assessment of cost. The approximate cost of the project as calculated by the Enforcement



Officer is Rs. 45,50,00,000/-. In absence of any other materials provided by the respondent, we are of the considered opinion that the project cost as estimated by the Enforcement Officer is correct. Penalty up to 10 % is the mandate of the statute. So discretion is given to the Authority to impose penalty considering the facts and circumstances of the case. In the instant case the promoter appears to be negligent. However, in the mean time the promoter has sought for permission from this Authority to get his project registered. Taking into consideration the circumstances of the case and as the promoter has sought for permission from this Authority to get his project registered under this Authority; we take a lenient view while considering the quantum of penalty. Hence the respondent is directed to pay Rs. 1,00,000/- as penalty for obtaining permission to apply for registration and 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. 1,00,000/- (Rupees one lakh) within a period of two months failing which the order shall be enforced and the penalty shall be realized as per law.

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

**TRUE COPY**

**Registrar**  
Odisha Real Estate Regulatory Authority

*Sd/-*  
30.3.2021  
**Member-II**

**(Ramanath Panda)**

*Sd/-*  
**Chairperson.**  
**(Siddhanta Das).**

no 1141 Ab-4-21  
Copy of final order forwarded to the Respondent  
for information.

*Sd/-*  
06/04/2021  
**Registrar**  
Odisha Real Estate Regulatory Authority