

ODISHA REAL ESTATE APPELLATE TRIBUNAL
BHUBANESWAR

Received GREAT APPEAL/I.A./E.P./R.P. File bearing Filing No. 287 /20 23

From Criticon Engineers Ltd. - vs -

Date: 5/8/2023

The Secy., NRETA.


Received

IN THE ODISHA REAL ESTATE APPELLATE TRIBUNAL, BHUBANESWAR.

OREAT APPEAL No. 287 / 2023

Citicon Engineers Limited

.....Appellant

A N D

The Secretary,
Odisha Real Estate Regulatory Authority

.....Respondent

I N D E X

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Bhubaneswar
Date: 04.08.2023.

By the Appellant through



(Sidheswar Rath)
Advocate

IN THE ODISHA REAL ESTATE APPELLATE TRIBUNAL, BHUBANESWAR.

OREAT APPEAL No. 287 / 2023

BETWEEN:

M/s. Citicon Engineers Limited,
having its Regd. office at: 540,
Sahid Nagar, P.O./P.S.: -Sahid Nagar,
Bhubaneswar-751007, Dist:-Khurda,
represented by it's Chairman-cum-
Managing Director, Sri Antaryami Badu,
aged 49 years, S/o. Late Baishnab Charan Badu.

.....Appellant

A N D

The Secretary,
Odisha Real Estate Regulatory Authority,
Block No.-A/1, Third Floor, Toshali Bhawan,
Satya Nagar, P.O.: -Sahid Nagar,
P.S.: -Kharavela Nagar, Bhubaneswar-751007.

.....Respondent

Antaryami Badu.

DETAILS OF APPEAL

1. i. Particulars of the Appellant : M/s. Citicon Engineers Limited, having it's Regd. office at: 540, Sahid Nagar, P.O./P.S.: -Sahid Nagar, Bhubaneswar-751007, represented by it's Chairman-cum-Managing Director, Sri Antaryami Badu, aged 49 years, S/o. Late Baishnab Charan Badu.
- ii. Address of the existing office/residence of the Appellant. : Plot No.-540, Sahid Nagar, P.O./P.S.: -Sahid Nagar, Bhubaneswar-751007.

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- iii. Address for service of all notices : As above.
- iv. Contact details (Phone Number, e-mail, Fax Number, etc.) : Cell Phone No.-7008398175.
e-mail: citicon engineer @ yahoo.co.in
2. Particulars of the Respondents : The Secretary,
Odisha Real Estate Regulatory Authority,
Bhubaneswar.
- i. Name of the Respondent.
- ii. Office address of the Respondent : Block No.-A/1, Third Floor,
Toshali Bhawan, Satya Nagar, P.O.: -Sahid Nagar,
P.S.: -Kharavela Nagar,
Bhubaneswar-751007.
- iii. Address for service of all notices : As above.
- iv. Contact details : Not known.

3. Jurisdiction of the Appellate Tribunal:

The Appellant declares that, the subject matter of the appeal falls within the jurisdiction of the Appellate Tribunal.

4. Limitation:-

The Appellant declares that, the appeal has been filed under section 44(2) of the Real Estate (Regulation and Development) Act, 2016 and there is a delay of 175 days in preferring appeal.

5. Facts of the Case:

- (a.) The Appellant has preferred this appeal challenging the order dated 10.11.2022 passed by the learned Odisha Real Estate Regulatory Authority, Bhubaneswar in a suo motu Complaint Case No.-245 of 2022 under

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section 35 read with section 59 of the Real Estate (Regulation and Development) Act, 2016 hereinafter called as the said Act in as much as directing the Appellant for payment of penalty of Rs.20,00,000/- (Rupees Twenty Lakhs) only within a period of two months failing which the order shall be enforced and the penalty shall be realized as per Law.

(b.) That, the facts in brief leading to the present appeal are that, the Respondent being the Complainant had initiated a proceeding under Section 35 read with Sec.59 of the Act alleging therein that the Appellant being the Promoter had violated Sec.3(1) of the Real Estate Regulation and Development Act which was registered as suo motu Complaint Case No.-245 of 2022. It is alleged that, the Appellant being the Promoter is undertaking a project near Munduli in the district Cuttack and has sold apartment without obtaining Registration Certificate from the learned Authority which amounts to violation of Section 3(1) of the Act and so liable for punishment under Section 59 of the Act setting the Respondent ex-parte.

(c.) That, as per the direction of the learned Authority, the Enforcement Officer and empanelled Engineer inspected the project site near Munduli developed by the Appellant and submitted report assessing the cost

Antaryami Badu.

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of the project is Rs.42,47,10,000/-. The learned Authority assessing the said report assuming the gospel of truth imposed penalty of Rs.20,00,000/- and directed the Appellant for payment within two months failing which the order shall be enforced and penalty shall be realized.

Being aggrieved by the order dated 10.11.2022 passed by the learned ORERA in suo motu Complaint Case No.-245 / 2022 the Appellant named above beg to prefers this appeal on the following amongst other:

GROUND S

- (a.) For that, the findings of the Forum below in order dated 10.11.2022 in suo motu complaint case is ex-facie illegal and has acted with materials irregularities in exercise of jurisdiction under section 35 read with Section 59 of the Real Estate (Regulation and Development) Act, 2016 without having any base therefore the order is to be set-aside.
- (b.) For that, the order impugned is completely silent when direction was given to the Enforcement Officer of ORERA for inspection of the project and when he visited the project along with the empanelled Engineer. The Enforcement Officer before making inspection in pursuance of direction had never instructed the

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Appellant to remain present on the spot at the time of inspection nor a copy of the inspection report was provided to the Appellant for filing of any objection before taking the inspection report to the record. The learned Forum below assume the report submitted by the Enforcement Officer to be the gospel of truth and arbitrarily calculated penalty on the cost estimated by the Enforcement Officer. The inspection as well as the report of the Enforcement Officer is perfunctory and without any basis therefore, the entire proceeding is liable to be set-aside as it is not in accordance with Law.

- (c.) For that, the Appellant before making any developmental work had filed application before the Cuttack Development Authority, Cuttack for grant of permission under section-16 of the Odisha Development Authorities Act, 1982 for approval of proposed residential layout plan of the project. The C.D.A. vide letter No.-1718 / BP/ CDA, Cuttack dated 22.02.2003 accorded permission for carving out sub-plots making provision for internal roads, open space and civic amenities viz water supply, electricity, sewerage disposal system and planting of tree etc. within a period of three years from the date of granting permission. This order amply shows that, prior to according permission by the C.D.A., Cuttack no sub-plots in existence and so question of advertisement and distribution of leaflets as alleged does

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not arise. In pursuance of Clause No.-5 of the said approval letter, the Appellant submitted application before the learned ORERA for approval of the project and therefore the order impugned is liable to be set-aside and liable to be quashed.

- (d.) For that, the learned Forum below before accepting the inspection report as well as valuation of the project, without inviting any objection or affording any opportunity of hearing accepted the inspection report and arbitrarily imposed penalty of Rs.20,00,000/- on the estimated cost of the project of Rs.42,47,10,000/- and no justifiable reasons have been assigned while passing the impugned order and therefore the order suffers from legal infirmities and liable to be set-aside.
- (e.) For that, the impugned order is illegal for the reason that, the proposed project "Trishna Nagar" near Munduli has not seen the day of light. The Appellant empathetically submitted that, before granting of permission by the CDA, no advertisement had been made nor also distributed any leaflets for sale of sub-plot(s) in the proposed project. The layout plan of sub-plot(s) is not in existence. Further the impugned order also conspicuously silent about the date and nature of the advertisement and distribution of leaflets and therefore the order dated 10.11.2022 is liable to be set-aside.
- (f.) For that, the learned Forum below fell in error in as much as adopting the risky method of "cut & print" and thereby

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hold and reflected in Para- 2 of the order impugned that, " x x x x The promoter has already sold the apartment without obtaining Registration Certificate from this authority which amounts to violation of Section 3(1) of the Act punishable under Section 59 of the said Act". As such it is crystal clear that the learned Forum could not apply the judicious mind while initiating a suo motto proceeding against the Appellant when facts remain true that the proposed Project has not yet been commenced nor approved by the C.D.A., Cuttack, and therefore the question of construction of apartment and or alienation thereto as reflected in the order impugned does not hold good and/or arise as such the order dated 10.11.2022 is cryptic and perverse with material irregularities and liable to the set-aside.

- (d.) For that, the impugned order dated 10.11.2022 has caused complete failure of justice and is otherwise illegal, erroneous and bad in law as such liable to be set-aside.

6. Relief (s) Sought:

In view of the facts mentioned in Paragraph No.-5 above the Appellant prays for the following relief (s):-

- i) To set-aside the order dated 10.11.2022 passed by the learned Odisha Real Estate Regulatory Authority in suo motu Complaint Case No.-245 of 2022 and to allow the appeal in the interest of justice.

Antaryami Baudu.

- ii) To pass any other order/order(s) as the Hon'ble Tribunal deems fit and proper in the interest of justice.

7. Interim relief if prayed for:

Pending final decision on the appeal the Appellant seeks issue of following interim order.

To stay operation of the order dated 10.11.2022 in suo motu Complaint Case No.-245 of 2022 till final disposal of the appeal.

8. Matter not pending with any other Court, etc.:

The Appellant further declares that, the matter regarding which the appeal has been made is not pending before any Court of Law or any other authority or any other Tribunal(s).

9. Particular(s) of (Demand Draft or online payment) in respect of the fee in terms of sub-rule (1) or rule-25:

- i. Amount : Rs.5,000/-
- ii. Name of the Bank on : State Bank of India,
which drawn
- iii. Demand Draft No. / : D.D. No.- 542745
online payment /
Transaction No.

10. List of Enclosures:

1. Certified copy of the order dated 10.11.2022 passed by the ORERA.


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2. Letter No.-1718 BP/CDA, Cuttack dated 22.02.2023 according permission under section 16 of the ODA Act approving the layout plan of the proposed project.
3. And any other documents at the time of hearing.

Antaryami Badu
Signature of the Appellant

VERIFICATION

I, ANTARYAMI BADU, aged 49 years, S/o. Late Baishnab Charan Badu, Chairman-cum-Managing Director, M/s. Citicon Engineers Limited, having its Regd. office at: 540, Sahid Nagar, P.O./P.S.: -Sahid Nagar, Bhubaneswar-751007, Dist:-Khurda, do hereby verify and states that, the contents of paragraphs (1 to 10) are true to personal my knowledge and belief and that I have not suppressed any material facts.

Place: Bhubaneswar
Date: 04.08.2023.

Antaryami Badu
Signature of the Appellant

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Adv.

IN THE ODISHA REAL ESTATE APPELLATE TRIBUNAL, BHUBANESWAR.

I. A. No. 289 / 2023

(Arising out of OREAT APPEAL No. _____ / 2023)

In the matter of:-

An application for stay operation of order dated 10.11.2022 passed by the learned Odisha Real Estate Regulatory Authority in suo motu Complaint Case No.-245 of 2022.

A N D

In the matter of:-

M/s. Citicon Engineers Limited,
having its Regd. office at: 540,
Sahid Nagar, P.O./P.S.: -Sahid Nagar,
Bhubaneswar-751007, Dist:-Khurda,
represented by it's Chairman-cum-
Managing Director, Sri Antaryami Badu,
aged 49 years, S/o. Late Baishnab Charan Badu.

.....Petitioner-Appellant

A N D

The Secretary,
Odisha Real Estate Regulatory Authority,
Block No.-A/1, Third Floor, Toshali Bhawan,
Satya Nagar, P.O.: -Sahid Nagar,
P.S.: -Kharavela Nagar, Bhubaneswar-751007.
.....Opp. Party-Respondent

Antaryami Badu.



The humble petition of the
Petitioner above named,

MOST RESPECTFULLY SHEWETH:-

1. That, the Petitioner-Appellant has preferred this appeal challenging the order dated 10.11.2022 passed by the learned Odisha Real Estate Regulatory, Authority in suo motu Complaint Case No.-245 of 2022 imposing penalty of Rs.20,00,000/- by improper exercise of power under section 35 read with section 59 of the Real Estate (Regulation and Development) Act, 2016.
2. That, to avoid the risk of repetition and for brevity of the application, the averments made in the Memorandum of Appeal may kindly be considered as part and parcel of this Interim Application for better appreciation and passing of appropriate direction.
3. That, the Petitioner has fair chance of success in the appeal and during the pendency of the appeal if the operation of the order dated 10.11.2022 shall not be stayed the Petitioner shall sustain irreparable loss and injury and there shall be miscarriage of justice.
4. That, this application for stay is bonafide.

PRAYER

It is therefore prayed that, this Hon'ble Court may graciously be pleased to pass order for stay operation of the impugned order dated 10.11.2022 passed by the learned Real Estate Regulatory

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Authority in suo motu complaint case No.-245 of 2022 pending disposal of the present appeal for the ends of justice;

And for this act of kindness, the Petitioner shall ever pray.

Bhubaneswar
Date: 04.08.2023.

By the Petitioner through



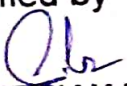
(SIDHESWAR RATH.)
Advocate

AFFIDAVIT

I, ANTARYAMI BADU, aged 49 years, S/o. Late Baishnab Charan Badu, at present Chairman-cum-Managing Director, M/s. Citicon Engineers Limited, having its Regd. office at: 540, Sahid Nagar, P.O./P.S.: -Sahid Nagar, Bhubaneswar-751007, Dist:- Khurda, do hereby solemnly affirm and state as follows:-

1. That, I am the Chairman-cum-Managing Director of the Appellant Company and competent to swear affidavit on behalf of the Company.
2. That, the facts stated in the above paragraphs are true to the best of my knowledge.

Identified by


(SIDHESWAR RATH)
Advocate

Antaryami Badu.
DEPONENT