

**FORE THE ASSAM REAL ESTATE APPELLATE TRIBUNAL  
AT GUWAHATI**

**REAT/ASSAM/APPEAL No. 04 of 2024.**

Sri Shantanu Baruah ... Appellant

-versus-

M/s Dona Builders Pvt. Ltd. & anr ... Respondents

**P R E S E N T**

**HON'BLE MR. JUSTICE (Retd.) MANOJIT BHUYAN, CHAIRPERSON**

For the Appellant : Mr. Kishori Mohan Roy

For the Respondents :

Date of Hearing : 30.04.2024

Date of Judgment & Order : 06.05.2024

**J U D G M E N T A N D O R D E R**

This appeal is directed against the order dated 25.01.2024 of the Real Estate Regulatory Authority, Assam (in short, the RERA), in Complaint Case No. RERA/ASSAM/COM/2022/21. The said complaint was filed by the Appellant Sri Shantanu Baruah in his capacity as a co-owner of a parcel of land located at village Darandha, Mouza Beltola, P.S. Dispur, Guwahati, District Kamrup, upon which the Respondent Builder/Promoter had erected an R.C.C (G+7 Floor) Building housing residential apartments and shops.

**2.** Case projected is that one Sankar Baruah, who was one of the owners of the land in question, on being so authorized to act on behalf of the other co-owners, had entered into a registered Development Agreement with the Respondent Builder/Promoter permitting the latter to develop the real estate project called "Dona Presidency" on the land in question, together with a registered General Power of Attorney, both dated 23.11.2005, attorning the Respondent Builder/Promoter to enter into the project land and commence

construction by obtaining necessary permission from the competent authorities. On record, the necessary No-Objection Certificate for Construction of residential apartments and shops was granted by the Guwahati Municipal Corporation (GMC) on 05.07.2007. It is stated that as per the Allotment Letters the share of the land owners in respect of the built-up area as flats at the “Dona Presidency” was earmarked at 25% of the total area of land. However, on actuals, the built-up area finally made over to the owners was grossly deficient. It is further stated that Shankar Baruah suffered demise in September 2014 and without any fresh Power of Attorney being executed by the co-owners and without first resolving the issue of deficient shares, the Respondent Builder/Promoter have resumed construction of four shops in the commercial unit of the project and have put up a hoarding advertising sale of the said commercial units. Alleging violation on the part of the Respondent Builder/Promoter of the provisions of the *Real Estate (Regulation and Development) Act, 2016* (in short, the Act) for not adhering to the sanctioned plan and project specifications with regard to the commercial unit and for failing to discharge obligations specified in the Allotment Letters, the complaint case was filed on 11.07.2022 by the Appellant in his capacity as a co-owner of the land before the RERA. In the said complaint, claim was made for compensation, including imposition of penalty for delay to the tune of Rs. 3.0 crore or for allotment of proportionate space of the shops in the commercial unit so as to make up for the commitment made in the Allotment Letters.

**3.** On the basis of the pleadings on record contained in (i) the complaint petition, (ii) the written statement of the Respondent Builder/Promoter dated 21.09.2022, (iii) the Inspection Report of the Town Planner, RERA, and (iv) the Inspection Report of the Associate Planner, GMC and Zonal Engineer, GMC, the Regulatory Authority observed that the project in question stood completed prior to enactment of the aforesaid Act and, in fact, the Occupancy Certificate with regard to the project had been obtained on 07.05.2014. Situated thus and in view of the pronouncement of the Hon’ble Supreme Court dated 11.11.2021, at paragraph 54, of *M/s Newtech Promoters and*

*Developers Pvt. Ltd. v. the State of U.P.*, in Civil Appeal Nos. 6745-6749 of 2021, the RERA held that the project in question do not fall within the ambit of the Act and, therefore, the RERA is without jurisdiction to entertain the complaint case. The RERA also observed that the complainant did not at any earlier point of time approach any forum to register case against the Respondent Builder/Promoter and chose to approach the Regulatory Authority after about 8 (eight) years from the time of completion of the project. Regarding the issues raised that the Respondent Builder/Promoter took up new constructions in the project and resorted to sale of the newly constructed shops in the building as well as taking up unauthorized constructions in the basement of the building, the RERA observed that the Inspection Reports on record revealed that the GMC is seized of the matters and directions have also been made to the Respondent Builder/Promoter to maintain the depth of the ground floor from the plinth marked as 'shop' in the Occupancy Certificate. Lastly, with regard to the grievance of not being given the agreed share of the built-up area to the land owners, the RERA held that it would be open to the complainant to approach the appropriate forum as the RERA is devoid of jurisdiction to entertain the issue.

**4.** After hearing the Appellant/Complainant at length and upon perusal of all materials, as revealed from the records requisitioned from the office of the RERA, this Tribunal is of the opinion that the adjudication of this appeal hinges primarily on the following two issues, which are to be answered at the first instance, before it is deemed expedient to issue notice upon the Respondent Builder/Promoter :

(i) Whether on the admitted facts of the case and law laid down in *M/s Newtech Promoters* (supra), the real estate project called "Dona Presidency" fell within the scope and ambit of the *Real Estate (Regulation and Development) Act, 2016* and consequently whether the complaint case filed before the RERA was maintainable ?

(ii) Notwithstanding the answer to issue (i) above, whether in the particular facts of the case the Appellant/Complainant can be regarded as an aggrieved person competent to file complaint under sub-section (1) of section 31 of the *Real Estate (Regulation and Development) Act, 2016* ?

5. In answering the first issue, recourse is had to paragraph 54 of the judgment of the Hon'ble Supreme Court in *M/s Newtech Promoters* (supra), reported in *2021 SCC Online SC 1044*, which is reproduced hereunder :

“54. From the scheme of the Act 2016, its application is retroactive in character and it can safely be observed that the projects already completed or to which the completion certificate has been granted are not under its fold and therefore, vested or accrued rights, if any, in no manner are affected. At the same time, it will apply after getting the on-going projects and future projects registered under Section 3 to prospectively follow the mandate of the Act 2016.”

6. What can be culled out from paragraph 54 of *M/s Newtech Promoters* (supra) is that although the *Real Estate (Regulation and Development) Act, 2016* has retroactive application to real estate projects, however, it cannot be applied to real estate projects which had been completed and completion certificate also obtained prior to enactment of the said Act and/or prior to enforcement of section 3 of the Act. Apparently, the Act was put into force on 01.05.2016 and section 3 was brought into force on 01.05.2017. In the context of real estate projects falling within the jurisdiction of Guwahati Metropolitan Area and taking note of the expressions “completion certificate” and “competent authority” as defined in sections 2 (q) and 2 (p) of the Act respectively, read with the expression “completion certificate” assigned in section 11 (a) of the *Guwahati Building Construction (Regulation) Act, 2010* and Bye-law 14 of the *Guwahati Building Construction (Regulation) Bye-laws, 2014*, this Tribunal have consistently held in a catena of decisions that **“completion certificate” can only mean an “occupancy certificate”**. For ready reference, resort may be had to paragraphs 9, 10 and 11 of the judgment dated 18.12.2023 in *RDB Realty & Infrastructure Ltd. v. The Real Estate Regulatory Authority, Assam & Anr.* (REAT/ASSAM/APPEAL No. 12 of 2023), reported in *2024 (2) GLT (REAT) 268*, wherein the above view was discussed and answered while discussing the meaning of the expression “ongoing project” under the Act :

“9. We have given our consideration to the rival submissions of the parties. We may first address on the issue as to the meaning of the expression “ongoing

project” in the spirit of the Act and the Rules. Apparently, the expression ‘ongoing project’ is not defined under the Act. However, its meaning can be gathered from the first *proviso* to sub-section (1) of section 3 of the Act to mean the real estate projects that were going on/underway on the date of commencement of the Act and for which the completion certificate of the said real estate project had not been issued. In that event, the promoter of the real estate project was mandatorily required to have made application to the concerned Real Estate Regulatory Authority for registration of the said ongoing project within a period of three months next from the date of commencement of the Act. What is “completion certificate” is defined in section 2(q) of the Act, which is reproduced above, to mean a certificate, by whatever name called, which is issued by the competent authority certifying that the real estate project has been developed according to the sanctioned plan, layout plan, specifications, as approved by the competent authority under the local laws. Turning to the definition of “competent authority”, as given in section 2(p) of the Act and which is also reproduced above, it 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. The expression “ongoing project” can also be gathered from the provision of sub-rule (1) of Rule 4 of the Rules, which has also been reproduced above, to mean all ongoing projects which had not received “occupancy certificate” on the date of issue of the Notification for commencement of sub-section (1) of section 3 of the Act. Relevant to note, section 3 of the Act was notified to come into force with effect from 01.05.2017 vide State Notification No. S.O.1216 (E) dated 19.04.2017. It would also be relevant to understand the definition of “occupancy certificate”, as provided in section 2(zf) of the Act and which has also been as reproduced above. It means a certificate, by whatever named called, issued by the competent authority permitting occupation of any building, as provided under local laws, having provision for civic infrastructure such as water, sanitation and electricity.

10. In the context of the expression “completion certificate” employed in the first *proviso* to sub-section (1) of section 3 of the Act, it would be paramount to take note of two State legislations, namely, (i) the *Guwahati Building Construction (Regulation) Act, 2010* and (ii) the *Guwahati Building Construction (Regulation) Bye-laws, 2014*. A perusal of the said Building Act and the Building Bye-laws leave no room for doubt that no scope is provided to any authority, having jurisdiction within the Guwahati Metropolitan Area, to issue completion certificate in respect of a real estate project. To be precise, in so far as “completion certificate”, as defined under section 11(a) of the Building Act, read with Byelaw 14 of the Building Bye-laws (both provisions being reproduced above) is concerned, the said certificate is a certificate which can only be furnished by the owner of the real estate project, through the registered Architect, Engineer, Structural Engineer in prescribed Form Nos.16, 17, 18, 19 and 27 appended to the Building Bye-laws. It is not a certificate that can be issued by an “Authority” which, according to section 2(4) of the Building Act and as reproduced above, means the Guwahati

Metropolitan Development Authority (GMDA) or the Guwahati Municipal Corporation (GMC) or other Urban Local Body or Panchayat, as the case may be. This being the clear position emanating from the provisions of law mentioned above, it is only an “occupancy certificate” that can be issued by the “Authority” in exercise of powers under section 11 (b) of the Building Act, read with Byelaw 15 (a) of the Building Byelaws, both being reproduced above. Therefore, in so far as the Guwahati Metropolitan Area is concerned, the “completion certificate” mentioned in the first *proviso* to sub-section (1) of section 3 of the Act can only mean an “occupancy certificate”.

11. In strict terms of the above, a real estate project which has not been issued with an Occupancy Certificate by the date when section 3 of the Act was put into force i.e. 01.05.2017, it must be reckoned to be an ongoing project. Situated thus, the promoter of the real estate project was statutorily required to have made application to the concerned Real Estate Regulatory Authority for registration of the project within a period of three months next, which would mean by and before 01.08.2017. The conclusion that can be drawn is that all real estate projects that had commenced construction prior to the enactment of the Act but where construction is ongoing and where the occupancy certificate had not been received by the date of commencement of section 3 of the Act i.e. 01.05.2017, the said real estate project fell into the category of “ongoing project”. In such a situation, the making of an application by the promoter to the Regulatory Authority for registration of the real estate project within the time specified under the Act was an inescapable legal necessity.”

**7.** Applying the above to the salient facts of the instant case, it is seen from the materials on record that the Guwahati Municipal Corporation had granted the No-Objection Certificate (NOC) for construction of the G+7 RCC Building for use as “Residential & Shop” on the project land vide No. GPL/54/1/06/76/276 dated 05.07.2007. On record, the construction of the said building, as permitted vide the aforesaid NOC, having been completed, the Guwahati Municipal Corporation issued the Occupancy Certificate under Bye-law 17 (a) of the *Guwahati Building Construction (Regulation) Bye-laws, 2014* vide No. GPL/54/1/06/54/37 dated 07.05.2014. It may be worthwhile to mention that ‘occupancy certificate’ is a certificate issued by the competent authority permitting occupation of a building which has provision for civic infrastructure such as water, sanitation and electricity. Thus, having regard to the fact that construction of the G+7 RCC Building called “Dona Presidency” already being completed and Occupancy Certificate also obtained prior to the date of enactment of the Act (01.05.2016) and/or prior to date of

enforcement of section 3 of the Act (01.05.2017), as such, in strict terms of the pronouncement of the Hon'ble Supreme Court at paragraph 54 of *M/s Newtech Promoters* (supra), the provisions of the *Real Estate (Regulation and Development) Act, 2016* cannot be held to have retroactive application or operation to the already completed real estate project called "Dona Presidency". The said project, apparently, is not an ongoing project. Consequently, the complaint case filed under the said Act of 2016 was not maintainable. The order of RERA holding that it is without jurisdiction to try the complaint case and that it is open to the complainant to approach any other appropriate forum to agitate on the issue regarding non-providing of built-up share by the Respondent Builder/Promoter to the land owners as per the Allotment Letters, the same is upheld as legal and proper. This answers the first issue.

**8.** On the second issue as to whether, in the particular facts of the case, the Appellant/Complainant can be regarded as an aggrieved person competent to file complaint under sub-section (1) of section 31 of the Act, notwithstanding the answer to the first issue and even if an extreme view is taken that the Act is applicable to the real estate project in question, it would be apposite to reproduce the said provision of law, which reads as follows :

"31. Filing of complaints with the Authority or the adjudicating officer-

(1) Any aggrieved person may file a complaint with the Authority or the adjudicating officer, as the case may be, for any violation or contravention of the provisions of this Act or the rules and regulations made thereunder against any promoter, allottee or real estate agent, as the case may be."

**9.** On a perusal of the provisions of sub-section (1) of Section 31 of the Act it is clear that "Any aggrieved person" who can file a complaint before the designated forum i.e. the Real Estate Regulatory Authority, must be a person who is aggrieved on account of any violation or contravention of the provisions of the Act or Rules or Regulations made thereunder against any of the three entities mentioned therein. The Rules and Regulations, in the present context, would mean the *Assam Real Estate (Regulation and Development) Rules 2017* and the *Assam Real Estate Appellate Tribunal Regulations, 2021* respectively.

A conspectus of the Act and the Rules would go to show that violation or contravention alleged against a Promoter, Allottee or Real Estate Agent would necessarily involve violation of the statutory provisions in the following situations :

Where violation or contravention are primarily in respect of :

(i) Section 3 and 4 of the Act, which mandates the requirement on the part of the Promoter to register the real estate project with the concerned Real Estate Regulatory Authority and the making of necessary application in that regard.

(ii) Section 9 of the Act, governing the mandatory registration of Real Estate Agents by making application to the concerned Real Estate Regulatory Authority.

(iii) Section 10 of the Act, which provides for the duties and functions of Real Estate Agents.

(iv) Section 11 of the Act, which details the all-important functions and duties on the part of the Promoter.

(v) Section 12 of the Act, which creates statutory obligations on the Promoter with regard to the veracity of the advertisement or prospectus and the consequences on failing thereof.

(vi) Section 13 of the Act, which prohibits the Promoter from taking any deposit or advance from a person without first entering into a registered written Agreement for Sale, drawn in the prescribed format by giving specific particulars as indicated in sub-section (2) thereof.

(vii) Section 14 of the Act, which binds the Promoter to develop and complete the real estate project by strictly adhering to the sanctioned plans, layout plans and specifications as approved by competent authorities, with exception in certain cases as specified therein.

(viii) Section 15 of the Act, which obligates the Promoter to comply with the specified formalities in case of transfer of the real estate project to a third party.

(ix) Section 16 of the Act, which cast obligation on a Promoter regarding insurance of the real estate project until such time the project stands transferred to the association of the allottees.

(x) Section 17 of the Act, which makes the Promoter statutorily responsible to execute registered Conveyance Deed in favour of the



allottee, along with execution of Conveyance Deed with regard to the undivided proportionate title in the common areas in favour of the association of allottees, as well as to hand over physical possession of the plot, apartment or building, as the case may be, to the allottees within the period specified therein.

(xi) Section 18 of the Act, which mandates a Promoter to return to the allottees such amount and compensation if he fails to complete or is unable to give possession of an apartment, plot or building, in terms of the Agreement for Sale.

(xii) Section 19 of the Act, which provides for the rights, duties and liabilities of allottees, who have entered into Agreement for Sale to take an apartment, plot or building in the concerned real estate project.

**10.** Apparently, a “Person”, as defined in section 2 (zg) of the Act, which also includes an ‘individual’, if desirous to file complaint by invoking sub-section (1) of Section 31 of the Act, must necessarily satisfy that any of the above provisions has been violated or contravened by the Promoter or the Allottee or the Real Estate Agent and he/she is directly aggrieved of such violation/contravention. Failing to specify violation of any of the provisions above would go to the root of the *locus standi* of the person who seeks to invoke sub-section (1) of Section 31 of the Act. Applying the above ratio, it is seen that in the complaint case what is primarily alleged by the Appellant/Complainant is that although as per the Allotment Letters the share of the land owners in respect of the built-up area as flats at the “Dona Presidency” was earmarked at 25% of the total area of land, however contrary to the same, the percentage of built-up area finally made over to the owners were grossly deficient. Besides the claim for compensation, which ordinarily can only be decided by the Adjudicating Officer under the Act, prayer made in the complaint was for allotment of proportionate space of the shops in the commercial unit so as to make up for the commitment made in the Allotment Letters. There is no Agreement for Sale between the parties, as is contemplated in the spirit of the Act, which generally is the instrument of contract entered by and between a Promoter on the one hand and an Allottee on the other in terms of the provisions of the Act. It is clear from the pleadings that dispute raised by the Appellant/Complainant against the Respondent

Builder/Promoter centers round alleged contravention of the built-up share promised in the Allotment Letters. No dispute is raised by the Appellant/Complainant emanating from any agreement drawn up between the parties in terms of the spirit of the Act. There is no Agreement for Sale between the parties to establish that the Appellant/Complainant is an “allottee” within the meaning of section 2 (d) of the aforesaid Act.

**11.** The conditions precedent for invoking sub-section (1) of Section 31 of the Act by the Appellant/Complainant being singularly absent, as such, the Appellant/Complainant was without *locus* to invoke the jurisdiction of the Real Estate Regulatory Authority, Assam under sub-section (1) of Section 31 of the Act, that too, for seeking remedy in respect of grievances which do not constitute any act of violation or contravention on the part of the Respondent Builder/Promoter of the Act or the Rules or the Regulations, as the case may be. The case projected by the Appellant/Complainant, otherwise, does not fall within the ambit of sub-section (1) of Section 31 of the Act. This answers the second issue.

**12.** In view of the answers to the two issues above, held unfavourable to the Appellant/Complainant, this Tribunal finds it inexpedient to issue notice on the Respondent Builder/Promoter for any further consideration of the appeal.

**13.** For all the foregoing discussions and findings, there is no merit in the appeal. Accordingly, the same stands dismissed, however, without any order as to cost.

Registry to return the case records to the office of the RERA, Assam.

Copy of this judgment and order be furnished to the Appellant as well as to RERA, Assam.

**C H A I R P E R S O N**