
DOCTRINE OF RELATION BACK WILL NOT APPLY IN CASE APPLICATION FOR OC MADE BEFORE RERA COMING INTO FORCE: ASSAM REAT**1. INTRODUCTION**

- 1.1. Recently, vide its order, Hon'ble Assam Real Estate Appellate Tribunal at Guwahati ("**AREAT**") in the case of RDB Realty & Infrastructure Ltd. ("**Appellant**") Vs. Real Estate Regulatory Authority, Assam ("**RERA Assam**") & Anr.¹ has held that since the Appellant did not obtain an occupancy certificate ("**OC**") on the date of commencement of the Real Estate (Regulation and Development) Act, 2016 ("**Act**") and failed to register the real estate project "Regent Paradise", Appellant has contravened the provisions of Section 3 of the Act, inviting penalty under Section 59 of the Act.

2. BREIF FACTS

- 2.1. RDB Industries Ltd. entered into a joint venture agreement with Assam State Housing Board ("**Housing Board**") on December 29, 2006 for construction of residential/commercial complex on the land belonging to the Housing Board at Borsojai, Guwahati. A No-Objection Certificate ("**NOC**") for construction of building was issued by the Guwahati Metropolitan Development Authority ("**GMDA**") on October 04, 2007 whereafter construction commenced. The allotment of flats was made prior to the year 2015 and the application for OC was made to GMDA on December 17, 2016.
- 2.2. GMDA addressed a letter dated May 11, 2017 highlighting certain shortcomings in the application for OC inter alia absence of signature of the Construction Engineer and Structural Engineer Form Nos. 18 and 19 respectively; non-submission of the licence for use of lifts; non-submission of the NOC from Fire and Emergency Services, Assam, etc. Vide letter dated June 17, 2017 addressed by the Appellant to GMDA, the shortcomings were rectified. However, it was mentioned that the approval from the Chief Electrical Inspector-cum-Adviser as well as the NOC from the Fire and Emergency Services, Assam would be submitted within a short time.
- 2.3. GMDA vide its letter dated February 26, 2021 informed the Appellant that the proposal for OC was approved and the Appellant required to deposit regularisation fees amounting to INR1,26,52,843 (Indian Rupees One Crore Twenty Six Lakh Fifty Two Thousand Eight Hundred and Forty Three only) for excess area measuring 2300.55 sq.m. at certain blocks under the Phase-I construction. Regularisation fees was deposited within the time by Appellant and OC was issued by GMDA on June 22, 2021 under Bye-law 15 (a) of the Guwahati Building Construction (Regulation) Bye-laws, 2014 ("**GBCBL**").
- 2.4. Since the Appellant did not register the project as required under sub-section (1) of Section 3 of the Act, read with sub-rule (1) of Rule 4 of the Assam Real Estate (Regulation and Development) Rules 2017 ("**Rules**"), vide Order dated July 06, 2023, passed by the Hon'ble RERA Assam, in Complaint Case No. RERA/ASSAM/Reg./Notice/2022/03 ("**Impugned Order**"), Appellant was imposed penalty of INR 2,00,000 (Indian Rupees Two Lakh only) as per Section 59 of the Act.

¹ Order dated December 18, 2023 in REAT/ASSAM/APPEAL NO. 12 of 2023.

2.5. The Appellant filed an appeal before Hon'ble AREAT challenging the Impugned Order inter alia on the following grounds:

- (a) Application for OC was made to the GMDA on December 17, 2016 and the Appellant has not received any letter regarding any defect or any inspection of the project within 21 (Twenty One) days from the date of application being made in view of Section 11(b) of Guwahati Building Construction (Regulation) Act, 2010 ("**Building Act, 2010**"). Thus, the OC must be deemed to have been granted.
- (b) Shortcomings pointed out by the GMDA having been rectified and that the proposal for OC having been approved by the authority, as indicated in the GMDA's letter dated February 26, 2021, and the direction to deposit the regularisation fees having been duly complied with within prescribed time, OC dated June 22, 2021 issued in favour of the Appellant must relate back as having taken force with effect from the date of application i.e., December 17, 2016.
- (c) Retrospective application of OC w.e.f. December 17, 2016 would find support from the "Doctrine of Relation Back", which postulates that an act performed at a later time may be deemed to have occurred at previous time. The effect of OC is to be reckoned from December 17, 2016, and the first proviso to sub-section (1) of Section 3 of the Act will have no applicability as far as the Appellant is concerned.
- (d) All transactions relating to the project under Phase-I, including the deemed approval for occupation were prior in time to the date when said Section 3 of the Act was put into force i.e., May 01, 2017, therefore, the Appellant could not have been subjected to or brought within the purview of the Act. Hence, there was no requirement for the Appellant to make application to the RERA Assam for registration of the project, let alone far from being imposed with any penalty.

2.6. The RERA Assam resisted the appeal inter alia on the following grounds:

- (a) Due to apparent shortcomings in the application for OC dated December 17, 2016, Appellant is not entitled to the benefit of deemed approval as per Section 11(b) of Building Act, 2010.
- (b) Referring to said Section 11(b) and, more particularly, "*on receipt of the completion certificate*" - it was contended that the completion certificate ("**CC**") to be submitted by the owner must conform to the manner, method and form in terms of Section 11 (a) and those prescribed in the GBCBL. Referring to Byelaw 14, it was shown that the CC has to be submitted by the owner in Form Nos. 16, 17, 18, 19 and 27. Reference was made to letter dated March 16, 2022 addressed by GMDA, to authority, to show that Form Nos. 18 and 19 were not signed by Construction Engineer and Structural Engineer respectively. Referring to Section 11(b) of Building Act 2010, it was contended that CC submitted on December 17, 2016 cannot be deemed to be CC and, consequently, any deemed approval for occupation cannot be read in favour of the Appellant.
- (c) Application which is incomplete in terms of the particulars required to be furnished, or defective as not being accompanied by the requisite documents, the same cannot give rise to any deemed permission.
- (d) The project was not executed as per the NOC and approved plan, in that, a number of deviations/changes were there which required consideration before issuance of OC and, in fact, the approval for OC was made subject to deposit of regularization fees of INR 1,26,52,843 (Indian Rupees One Crore Twenty Six Lakh Fifty Two Thousand Eight Hundred and Forty Three only).

- (e) It was further contended that first proviso to sub-section (1) of Section 3 of Act clearly postulates that a project will fall into the category of 'ongoing project' where construction is ongoing on the date of commencement of the Act and for which CC has not been issued.
- (f) The project of the Appellant was without an OC on the date of commencement of said Section 3 i.e., May 01, 2017. The OC was obtained by Appellant only on June 22, 2021, which is well after May 01, 2017. Since the Appellant failed to make application before RERA Assam for registration of its ongoing project within the mandatory next 3 (Three) month period, that is by August 01, 2017, as such, the imposition of penalty on the Appellant in terms of Section 59 of the Act is legal and justified.
- (g) As regards Doctrine of Relation Back, it was contended that doctrine has no application in the facts and circumstances of the case, more so, when there is no judicial order to back the said doctrine in favour of the Appellant. It was contended that it is to be kept in mind that the object and purpose for which the doctrine is created, and such legal fiction cannot be extended beyond the scope and language by which it is created, inasmuch as, a deeming provision cannot be pushed to such an extent so as to result in an anomalous or absurd position.

3. ISSUE

- 3.1. Whether the Appellant was obligated to make an application to the RERA Assam to register the project under Section 3 of the Act?

4. Whether the agreed date of possession was June 2020 including grace period of 6 months?

- 4.1. Answering the question in the affirmative, Hon'ble AREAT held that Appellant was obligated to make an application to RERA Assam to register the project under Section 3 of the Act before August 01, 2017 on the following grounds:
 - (a) Hon'ble AREAT referring to definitions of ongoing project, completion certificate, competent authority occupancy certificate, from various acts and rules observed that no scope is provided to any authority, having jurisdiction within the Guwahati Metropolitan Area, to issue CC in respect of a real estate project. CC is not a certificate that can be issued by an "Authority" which, according to Section 2(4) of the Building Act, 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. Hon'ble AREAT observed that it is only an OC 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 GBCBL.
 - (b) Hon'ble AREAT observed that all real estate projects that had commenced construction prior to the enactment of the Act but where construction is ongoing and where OC had not been received by the date of commencement of Section 3 of the Act i.e., May 01, 2017, the said real estate project fell into the category of "ongoing project". Therefore, application has to be made by the promoter to the regulatory authority for registration of the real estate project within the time specified under the Act which was an inescapable legal necessity.
 - (c) In view of the fact that application for OC was made on December 17, 2016 and it was only on June 22, 2021 that OC was issued, Appellant was not issued with OC on or before the date of commencement of Section 3 of the Act i.e., before May 01, 2017, or even within the window of next three months i.e., August 01, 2017.
 - (d) As regards Doctrine of Relation Back, Hon'ble AREAT observed that Section 11(b) obligates the authority concerned to inspect the work of the project upon receipt of the CC from the owner and to grant or refuse the OC within next 21 (Twenty One) days. A presumption is hedged in Section 11(b)

to the effect that in the event the inspection of the work and granting or refusing the OC within 21 (Twenty One) days from the date of receipt of CC do not happen, it shall be deemed that occupation in the building has been approved by the authority, with a rider that the building has been constructed as per the approved plan.

- (e) Hon'ble AREAT noted that facts on record undisputedly shows that mandatory documents were not submitted along with the application for OC and the same remained incomplete and observed that the CC submitted by the owner along with the application for OC on December 17, 2016 cannot be deemed to be in compliance with Section 11(a) of the Act.
- (f) Hon'ble AREAT observed that since the documents enclosed to the application for OC being incomplete in so far as Form Nos. 18 and 19 are concerned and also the application being incomplete and defective as not being accompanied by the requisite documents in Form No. 27, the Appellant cannot derive or claim any benefit of the deemed provision/legal fiction engrafted in Section 11(b) of the Building Act.
- (g) Hon'ble AREAT observed that the 'Doctrine of Relation Back', which is used differently in different areas of law, either to avoid confusion in the justice delivery system or to avoid limitation and restrictions in a case or to reduce chances of mistakes or to be used as a tool by the Judges while deciding a case with fairness, it is equally established that the doctrine cannot be considered as an inviolable principle with universal application and the said doctrine cannot be used as a tool to overturn a statutory provision or its purpose. Hon'ble AREAT held that the ongoing project of the Appellant not having been issued with OC on the date of commencement of the Act and/or the date when Section 3 of the Act was brought into force i.e., May 01, 2017, therefore, the Appellant was statutorily obliged to have made application before RERA Assam for registration of its real estate project "Regent Paradise" within the period of next three months i.e., August 01, 2017 failure of which resulting the Appellant in contravening the provisions of Section 3 of the Act, inviting penalty under Section 59 of the Act.

5. INDUSLAW VIEW

- 5.1. By this order, Hon'ble AREAT has made it clear that in the event OC is not received before the commencement of the Act i.e. May 01, 2017 then it will be considered as an ongoing project and will be liable to be registered under the Act. Mere making an application for OC will not suffice and OC has to be issued by the concerned authority before May 01, 2017 failing which project has to be registered with the RERA authority maximum by August 01, 2017.

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