

**BEFORE THE NATIONAL GREEN TRIBUNAL,**  
**EASTERN ZONE BENCH, KOLKATA**

**O.A No. 92/2023/EZ**

Dr. Ganesh Das & Ors.

....Applicants

Versus

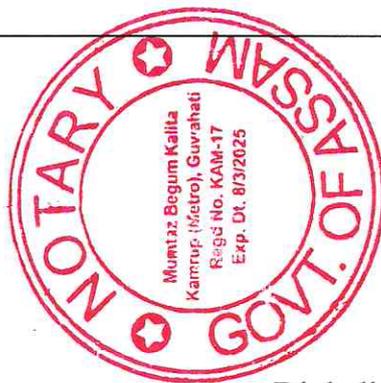
M/s Arya Erectors Pvt. Ltd. & Ors.

....Respondents

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06 MAY 2024



Filed by:

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Kamrup (Metro), Guwahati  
Regd. No. KAM-17

**BEFORE THE NATIONAL GREEN TRIBUNAL,**  
**EASTERN ZONE BENCH, KOLKATA**

O.A No. 92/2023/EZ

**IN THE MATTER OF:**

Dr. Ganesh Das & Ors.

....Applicants

Versus

M/s Arya Erectors Pvt. Ltd. & Ors.

....Respondents

**Rejoinder Affidavit on behalf of the Applicants to the Counter Affidavit of Respondent No. 1 M/s Arya Erectors Pvt. Ltd.**

I, Dr. Ganesh Das, son of Sri. Dijendra Chandra Das, aged around 52 years, resident of Flat No. 5A, Madhabdevpur, Rehabari, Guwahati 781008, Kamrup(M) district, Assam, do hereby solemnly affirm and state as under:

That I am the applicant No. 1 in the above mentioned application, hence I am fully conversant with the facts and circumstances of the case and competent to swear this affidavit.

2. That save and except what has been specifically admitted in this affidavit and what appears from the records, the deponent categorically denies the rest of the statements and submissions made in the Counter Affidavit.
3. That as regard the averments made in Para 1 and 2, the same requires no comment from the deponent. However the deponent do not admit anything which is contrary or inconsistent to the records.



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4. That as regard the averments made in paragraph 3, 4 and 5 of the Counter Affidavit, the deponent hereby refer and rely upon paragraph 1 to 5 and paragraph 6 and 7 of the instant O.A.

The deponent states that this Hon'ble Court vide order dated 24/03/2023 had disposed of the earlier O.A No. 32/2023/EZ preferred by the applicants with a direction to respondent No. 2 SEIAA Assam, to not only consider and decide the two representations dated 06/07/2022 and 20/10/2022 by passing a speaking order but also address the grievances raised in paragraph 9 and its sub-paragraphs of the said O.A No. 32/2023/EZ annexed as Annexure-A in the instant application.

The deponent further states that respondent No. 2 SEIAA Assam, even after finding number of violations and non-compliance of the E.C conditions of the project proponent, not only failed to take any action against such violations and non-compliances, but also failed to address the grievances raised in the above-mentioned paragraph 9 wherein problems of water logging, water pollution, improper sewerage treatment, non-maintaining adequate green belt, energy conservation issues, among various other environmental concerns faced by the applicants/residents of Arya Smart Living project was highlighted.

The issue of non-submission of Compliance Reports from the beginning of the project is a clear violation of the E.C conditions and thereby a violation of the provisions of EIA Notification, 2006, and in turn violation of the provisions of the Environment (Protection) Act, 1986 and the Environment (Protection) Rules, 1986. Furthermore the project is still ongoing without extension and/or any valid E.C.

In *Sandeep Mittal vs. MoEF&CC* O.A No. 837/2018 vide order dated 01.02.2021 this Hon'ble Court observed that –

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***“...compliance of conditions of Environmental Clearance must be monitored on periodical basis, at least one in a quarter.”***

The Tribunal also noted the observations in the Judgments of the Hon’ble Supreme Court in *T.N Godavarman Thirumulpad vs. Union of India & Ors*, (2014) 4 SCC 61 and *Lafarge Umiam Mining Private Limited vs. Union of India*, (2011) 7 SCC 338 that –

***“power of the regulator under Section 3(3) of the Environmental (Protection) Act, 1986 is coupled with duty and there is need for effective monitoring mechanism.”***

At a time when the concerned regulators and authorities have failed to perform their duty under Article 48-A of the Constitution of India and under the Environmental (Protection) Act, 1986 and Rules framed thereunder, among other laws; a fundamental duty is cast upon the applicants under Article 51-A(g) of the Constitution of India to protect and improve the natural environment. Furthermore the applicants along with other residents are suffering due to the violations and non-compliances of the project proponent and due to the non-action of the concerned authorities. Therefore, the applicants are entitled to invoke the jurisdiction of this Hon’ble Court by way of the present application.

The Hon’ble NGT (WZB), Pune in O.A No. 63/2019(WZ) Ajay Jayvantrao Bhosale v. UOI had observed as follows:

***“The NGT Act being a beneficial legislation, the power bestowed upon the Tribunal would not be read narrowly. An interpretation which further the interests of environment must be given a broader reading. (See Kishore Lal v. Chairman, Employees State Insurance Corpn. (2007) 4 SCC 579, para 17). The existence of the Tribunal without its broad restorative***



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*powers under Section 15(1)(c) read with Section 20 of the Act, would render it ineffective and toothless, and shall betray the legislative intent in setting up a specialized Tribunal specifically to address environmental concerns. The Tribunal specifically constituted with Judicial Members as well as with Experts in the field of environment, has a legal obligation to provide for preventive and restorative measures in the interest of the environment.”*

*“The Tribunal has also jurisdiction under Section 15(1)(a) of the Act to provide relief and compensation to the victims of pollution and other environmental damage arising under the enactments specified in Schedule I. Further, under Section 15(1)(b) and 15(1)(c) the Tribunal can provide for restitution of property damaged and for restitution of the environment for such area or areas as the Tribunal may think fit. It is noteworthy that Section 15(1)(b) and (c) have not been made relatable to Schedule I enactments of the Act. Rightly so, this grants a glimpse into the wide range of powers that the Tribunal has been cloaked with respect to restoration of the environment.”*

*“Section 15(1)(c) of the Act is an entire island of power and jurisdiction read with Section 20 of the Act. The principles of sustainable development, precautionary principle and polluter pays, propounded by this Court by way of multiple judicial pronouncements, have now been embedded as a bedrock of environmental jurisprudence under the NGT Act. Therefore, wherever the environment and ecology are being compromised and jeopardized, the Tribunal can apply Section 20 for taking restorative measures in the interest of the environment.”*

5. That as regard the averments made in paragraph 6, 7 and 8 of the Counter Affidavit, the deponent begs to state that the project proponent in order to cover up their failure in complying with the provisions of the E.C, did not submit a single six-monthly compliance report with the concerned authorities since the beginning of the project in 21/01/2014 and the said position is



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clearly reflected in the speaking order dated 09/05/2023 and letter dated 22/05/2023 of respondent No. 2 SEIAA Assam.

The deponent further states that the present application is being filed within the limitation period for the following reasons:

1. Firstly, the instant application has been preferred within a period of six months from the passing of the speaking order dated 09/05/2023 by SEIAA in compliance of this Hon'ble Court's order dated 24/03/2023 passed in O.A No. 32/2023/EZ, thereby complying with section 14 of the NGT Act, 2010.
2. Secondly, it is a 'continuing cause of action' as the project is still an 'ongoing project' for the following reasons among others:
  - a. That the E.C dated 21.01.2014 was granted for a plot area of 38,106 sq.m, which is around 4,10,172.984 sq.ft., i.e., 28.48 Bigha approx. As per the Part Occupancy Certificate dated 21/08/2023 issued by respondent No. 5 GMDA under clause 17(b) of Building Byelaws of 2006, only 64 villas out of 123 villas of the project (part) only is allowed for occupation. Furthermore, it was directed to ensure the terms and conditions of the NOC issued earlier, i.e., 25/05/2013, wherein it is mentioned at Sl.No. (3) Clearance of MOEF has to be furnished before starting construction and conditions laid down therein are strictly complied with. But the project proponent has not complied with many EC conditions nor the project is completed.



Copy of the Part Occupancy Certificate dated 21/08/2023 is annexed as ANEXURE – A/1.

- b. That as per clause 17(b) of Building Byelaws of 2006, Part Occupancy Certificate is defined as – *“Upon the request of the holder of the building permission the authority may issue a part*

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*occupancy certificate for a building or part thereof before completion of the entire work as per building permission provided sufficient precautionary measures are taken by the holder of the building permission to ensure public safety and health safety. The part occupancy certificate shall be given by the authority as per the proforma given in Appendix – IV.”*

It is clear from clause 17(b) that Part Occupancy Certificate is issued for a project which is partly completed wherein the owner has to sign an indemnity bond indemnifying GMDA. Be it state that out of 123 villas only 64 villas have been granted Part Occupancy Certificate. Therefore the entire 123 villas in Phase I has not been issued Occupancy Certificate, thereby meaning that the project is not completed and ongoing.

Copy of the relevant portion of the clause 17(b) of Building Byelaws, 2006 and Appendix – IV is annexed as **ANENXURE – B/1** and further crave leave to refer to the entire Building Byelaws, 2006 at the time of hearing.



That as per Judgment and Order dated 18/12/2023 passed by the Assam Real Estate Appellate Tribunal at Guwahati in REAT/ASSAM/APPEAL NO. 12 OF 2023 RDB Realty Infrastructure Ltd. -vs.- RERA, Assam and Anr. it is stated as follows:

*“10. 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”.*

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 Notary Public  
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11. *In strict terms of the above, a real estate project which has not been issued 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.”*

Copy of the aforesaid Judgment and Order dated 18/12/2023 is annexed as ANENXURE – C/1

6. That as regard the averments made in paragraph 9, 10, 11, 12 and 13 of the Counter Affidavit, the deponent refer and relies upon paragraph 5 of the instant O.A. The deponent further states that the project proponent only submitted the contour survey of the internal site area and not that of the external surrounding area as required under the specific conditions at Part-A(I)(i) of the E.C, i.e.,

*“The storm water drainage shall be worked out after analysing the contour levels of the site and the surrounding area and the capacity of storm water drainage.”*

The project proponent in order to save cost on earth filling and raise the internal plot area of the project vis-à-vis its surrounding area did not submit the contour survey of the external site area, thereby violating the E.C conditions and compounding to the problem of floods in the internal areas and therefore environmental damage.

7. That as regard the averments made in paragraph 14, the deponent refers and rely upon the paragraphs herein above for the sake of brevity and repetition.
8. That as regard the averments made in paragraph 15 of the Counter Affidavit, the deponent begs to refer and rely upon paragraph 3 and 4 of the instant O.A.

*Muhammad Begum Kalita*  
 MUMTAZ BEGUM KALITA  
 KARNATAKA METRO, GOWAHATI  
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9. That as regard the averments made in paragraph 16 of the Counter Affidavit, the deponent begs to state that it is clearly stated in Part – B. General Conditions of E.C at Sl.No. 9 as follows:

*“The proponent shall upload the status of compliance of the stipulated EC conditions, including results of monitored data on their websites and shall update the same periodically. It shall simultaneously be sent to the SEIAA and Regional Office, MoEF. The criteria pollutant level namely PM10, PM25, SO2, NO2, etc (ambient levels as well as stack emission critical sectoral parameters, indicated for the project shall be monitored and a record be maintained for the public domain.”*

It is indeed surprising that the project proponent who has not only blatantly violated the EC conditions including non-submission of the compliance report, which should have been submitted with SEIAA/ MOEF Regional Office, and also uploaded in their website for the public domain, has the audacity to ask why the applicants are seeking the compliance reports? This itself highlight that the project proponent in order to hide their violations and non-compliance with various EC conditions among other laws, which is causing environmental damage has not submitted a single compliance report since EC was granted.

10. That as regard the averments made in paragraph 17; 18 and 19 of the Counter Affidavit, the deponent begs to refer to paragraph 6 of the instant affidavit and paragraph 5 of the instant O.A.

11. That as regard the averments made in paragraph 20 of the Counter Affidavit, the deponent begs to state that formation of a Society do not absolve the project proponent from complying with the EC conditions, which is a prerequisite for the construction of the project. In the instant case the Arya Smart Living project is still an ongoing project as highlighted in paragraph 5 herein above, and till ‘Occupancy Certificate’ is issued to all the occupants/buyers/residents by the concerned authorities, the project



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proponent is bound to comply with the provisions of EC including restoration of the damages caused to the environment due to the non-compliance and violations by the project proponent.

12. That as regard the averments made in paragraph 21 and 22 of the Counter Affidavit, the deponent begs to state once more that formation of a Society do not absolve the project proponent from complying with the EC conditions as it is an ongoing project. Furthermore, the formation of the Society by including Directors of the project proponent in the Board of the society and subsequent order of RCS Assam itself is under challenge in W.P(C)/5538/2023 pending before the Hon'ble Gauhati High Court. The deponent further states the allegation of "attempting to extract monetary compensation" against the applicants who are established Doctors, Professionals, Businessmen, etc, having a standing in the society and who have invested their hard earn money to buy villas/flats is absolutely baseless, defamatory and most condemnable. The project proponent has failed to come with a clean hand and has till date not submitted a single compliance report only to cover up all the illegalities, violations and non-compliances in the project, have resorted to such personal attacks only because the applicants are trying to highlight the environmental damage caused by the project proponent before this Hon'ble Court.



Copy of the Order dated 22/09/2023 in W.P(C)/5538/2023 is annexed as ANENXURE – D/1

13. That as regard the averments made in paragraph 23 of the Counter Affidavit, the deponent begs to state that the RERA Assam order dated 13/06/2022 highlight number of violations including not providing complete information while registering the project against NOC issued by GMDA, not registering the project against NOC issued by North Guwahati Town Committee, more particularly representative of GMDA stated that no occupancy certificate has been issued to the promoter due to deviations in the approved plan, which





means there are violations and the project is ongoing and therefore has a bearing with the instant case.

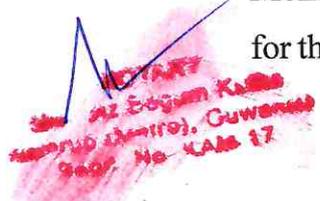
- 14. That as regard the averments made in paragraph 24 of the Counter Affidavit, the deponent begs to refer and rely upon paragraph 5 of the instant affidavit among others for the sake of brevity and repetition. However the deponent states that vide letter dated 12/12/2022 the CEO, GMDA wrote to the Managing Director of Respondent No. 1 regarding number of violations by the project proponent and directed him to carry out a detailed survey and remove all unauthorized structures. The project proponent instead of complying with the said directions of CEO GMDA is trying to put the blame on the buyers. The project is an ongoing project and yet to receive occupancy certificates for the 123 villas and only part occupancy certificate has been issued to around 64 villas. Therefore till such time occupancy certificate is issued to each and every single villas/flats, the project is ongoing and it is the duty of the project proponent to complete the project as per terms conditions of EC, GMDA NOC, etc, and, not the other way around.

Copy of the CEO GMDA letter dated 12/12/2022 is annexed as ANEXURE – E/1

- 15. That as regard the averments made in paragraph 25, 26 and 27 of the Counter Affidavit, the deponent begs to refer and rely paragraph 5 of the instant O.A and forgoing paragraphs of the instant affidavit for the sake brevity and repetition.



- 16. That as regard the averments made in paragraph 28 of the Counter Affidavit, the deponent begs to state that the project proponent received E.C on 21.01.2014 for a period of 5 years, i.e., till around 20.01.2019. In between MoEF vide O.M dated 21.01.2019 automatically extended the EC to 7 years for those projects which had not completed 5 years on the date of notification,



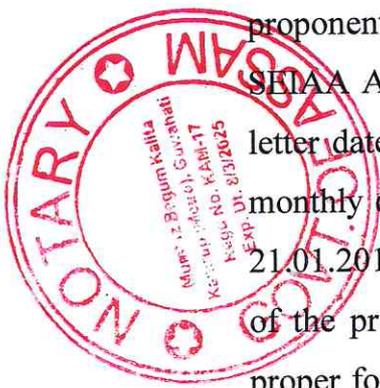


i.e., 29/04/2015. Therefore the EC of project proponent got extended to around 20.01.2021.

But it is clear from RERA Assam order dated 13/06/2022 that no occupancy certificate has been issued to the promoter due to deviations in the approved plan as well as Part Occupancy Certificate dated 21/08/2023 issued by GMDA for 64 villas out of 123 villas, clearly highlight the fact that the project is still ongoing and far from over as REAT Assam judgment and order dated 18/12/2013 in REAT/ASSAM/APPEAL No. 12 of 2023 that real estate project which has not been issued with an Occupancy Certificate must be reckoned to be an ongoing project.

Therefore, the project proponent whose EC which expired around 20/01/2021 is operating without extending the said EC and/or a valid EC from 20/01/2021 in violation of the EIA Notification, 2006, Environment Protection Act and Rules among other laws.

- 17. That as regard the averments made in paragraph 29 and 30 of the Counter Affidavit, the deponent begs to refer and rely upon the forgoing paragraphs of the instant affidavit as well as paragraph 5, 6 and 7 of the instant O.A. Furthermore the deponent begs to state that on the one hand the project proponent claim to have submitted 6 monthly reports on 14/07/2022 whereas SEIAA Assam has clearly stated in Speaking Order dated 09/05/2023 and letter dated 22/05/2023 that the project proponent has failed to submit six monthly compliance report as regard the project in due time. The EC dated 21.01.2014 is absolutely clear in this regard and it was mandatory on the part of the project proponent to submit six monthly compliance report in the proper format right from 2014 onwards, as the project is still ongoing. It is through the compliance reports that the concerned regulators, authorities, and the general public, including the buyers of flats/villas can ascertain whether the environmental laws and norms have been complied with or not. The non-compliance of EC conditions is a violation of the EIA Notification, 2006 and thereby violation of the Environment Protection Acts and Rules.



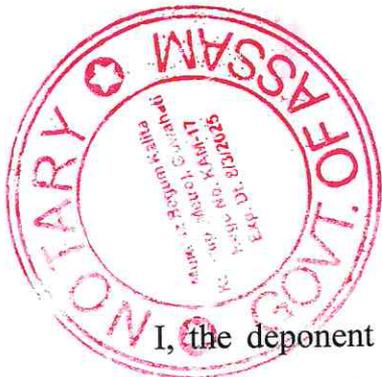
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- 18. That as regard the averments made in paragraph 32 of the Counter Affidavit, the deponent begs to refer and rely upon paragraph 7 of the instant O.A including judgment referred therein among other judgments.
- 19. That as regard the averments made in paragraph 33, 34, 35, 36, 37 and 38 of the Counter Affidavit, the deponent begs to refer and rely upon the forgoing paragraphs of the instant affidavit including that of the instant O.A, and the same is not repeated for sake of brevity and repetition.
- 20. That the statements made in this affidavit and in paragraphs – 1 to 4, 5 (part), 6 to 11, 13, 15 to 20 – are true to the best of my knowledge and belief and those made in paragraph – 5 (part), 12, 14 – being matter of records are true to my information derived there from, which I believe to be true and the rest are my humble submissions before this Hon'ble Court.

And I sign this affidavit on this 6<sup>th</sup> day of May, 2024 at Guwahati.

DEPONENT



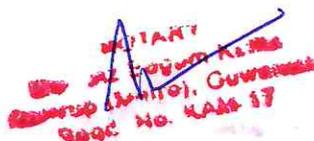
**VERIFICATION:**

I, the deponent above-named, do hereby verify that the contents of the above rejoinder affidavit is true and correct to the best of my knowledge and belief and nothing material has been concealed there from.

Verified at Guwahati, Assam on this 6<sup>th</sup> day of May, 2024.

*Vikram Rajkhera*  
**IDENTIFIED BY**

ADVOCATE, GUWAHATI  
ENRL. 1680 of 2070  
Date 06-05-2024



DEPONENT

**10 6 MAY 2024**

## GUWAHATI METROPOLITAN DEVELOPMENT AUTHORITY

GUWAHATI

504

## PART OCCUPANCY CERTIFICATE

(Under Clause 17 (b) of Building Byelaws of 2006)

No. GMDA/BP/2214/26112012/679

Dated: 21/08/2023

To,  
M/S Arya Erectors India Pvt Ltd.  
Sri Anil Kr Sarma, Managing Director.  
H No. 123, Arya Smart Living, Abhaypur,  
North Guwahati, Dist: Kamrup, Assam, Pin-781031.

Sir/Madam,

This is to certify that the construction of the Residential apartment building project of villas permitted vide NOC. No. GMDA/ BP/2214/26112012/156, dated 25.06.2013 in a Patta no. 198, Dag no. 884, 885, 889, 890 situated at Revenue Village Abhaypur under Mouza- Sila Sinduri Ghopa, has been completed under the supervision of M/S Akar foundation, Guwahati-781007, Assam is hereby permitted to occupy partly completed villas with uses as mentioned below.

- Type-A: Gr+1 (No of villas 5)---Built up area of each villa 444.62 SqM (approx) including parking space for car.
- Type-B: Gr+2 (No of villas 7)----Built up area of each villa 263.72 SqM (approx) including parking space for car.
- Type-C: Gr+2 (No of villas 19)--Built up area of each villa 195.80 SqM (approx) including parking space for car.
- Type-D: Gt+1 (No of villas 33)--Built up area of each villa 152.34 SqM (approx) including parking space for car, based on the following conditions.

1. As per Completion certificates submitted by RTP dated 03.07.2018, as built drawings showing plot and built up areas.
  - Completion Report Form No. 16.
  - Certificate by Architect on record.
  - Certificate by Structural Engineer & Construction Engineer on record.
2. Load Sanctioning Letter issued vide No.CGM (D)/APDCL (LAR)/Arya Erectors India/ 2016-17, dated 28.12.2016, from the Chief General Manager (D), APDCL (LAR), Office of The Assam Power Distribution Company Ltd, Guwahati.
3. NOC. Issued vide no. F&ES/FPW/3362/794/18, dated 11.12.2018 from the Director Fire and Emergency Services, Assam, Guwahati.

It is here by mentioned that the residential 64 villas, as per annexed list, out of 123 villas of project (part) only is allowed for occupation. Further, you are directed to ensure the terms and conditions of the NOC issued earlier. One set of completion plan duly certified is returned herewith.



Yours faithfully

  
(Arbamuthan M.P, IAS)  
Chief Executive Officer

NEW REVISED BUILDING BYELAWS FOR GUWAHATI METROPOLITAN AREA-2006

However, for proposals which are required to be scrutinised by the Committee for approval, the same will be ready for issue within 90 days.

15. **Duration of sanction:-** The sanction once accorded shall remain valid upto one year. Subsequent renewal is permissible for another three years. If however the building is not completed during this period, a fresh permission has to be obtained as per sec 27 of GMDA Act. The owner/applicant has to produce completion certificate within the validity period of permission, failing which the permission is deemed to be cancelled and the Security Deposit will be forfeited.
16. The owner, upon commencement of his work under a building permit, shall give notice to the Authority that he has started his work and the Authority shall cause inspection of the work to be made within 14 days following the receipt of the notice to verify that the building has been located in accordance with the sanctioned plans.
17. **"Completion Certificate":-** The owner through the licensed architect, engineer, structural engineer, as the case may be (RTP) who has supervised the construction, shall give notice to the Authority regarding completion of work described in the building permission. The completion certificate shall be submitted in the prescribed form by four sets of completion plan. One of the sets, duly certified as completion plan shall be returned to the owner along with the issue of full occupancy certificate. The certificate should also be accompanied by necessary NOC's wherever required from other authorities like Director, Fire Service, Pollution Control Board or as per Assam Health Establishment Act 1993 & rules 1995 as the case may be for that particular building.
- (a) **"Occupancy Certificate":-** The Authority, on receipt of the completion certificate, shall inspect the work and sanction or refuse an occupancy certificate within 21 days from the date of receipt of completion certificate, after which period it shall be deemed to have been approved by the Authority for occupation provided the building has been constructed as per the sanctioned plans. Where the occupancy certificate is refused, the various reasons shall be quoted for rejection at the first instance itself.
- (b) **Part Occupancy Certificate:-** Upon the request of the holder of the building permission the Authority may issue a part occupancy certificate for a building or part thereof before completion of the entire work as per building permission provided sufficient precautionary measures are taken by the holder of the building permission to ensure public safety and health safety. The part occupancy certificate shall be given by the Authority subject to the owner indemnifying the Authority as per the proforma given in Appendix-IV.
- 18 (a) **Violation Penalty:-** Any person who contravenes any of the provisions of these Byelaws or any requirements or obligation imposed on him by virtue of these Byelaws or who interferes with or obstruct any person in the discharge of his duties shall be guilty of an offence and upon conviction shall be punished by a fine not exceeding Rs. 1000/- per day and may also be imposed after the day of his first conviction.



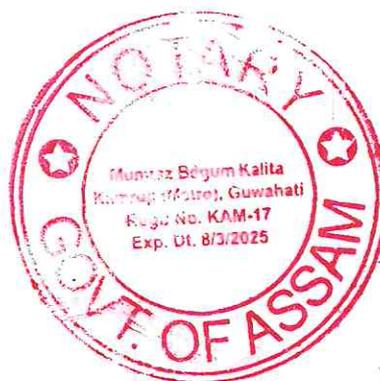
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**NEW REVISED BUILDING BYELAWS FOR GUWAHATI METROPOLITAN AREA-2006**

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- (b) **Existing buildings:-** Nothing in the regulations shall require the removal, alteration or amendment or prevent the continuance of use and occupancy in a lawfully safety of life and property.
- (c) The Authority shall have the power to carry out inspection of the work at various stages to ascertain whether the work is proceeding as per the provisions of rules and sanctioned plan. Section 88 of Guwahati Metropolitan Development Authority Act, 1985 shall apply for the action proposed to be taken for any violation/ deviation of sanctioned plan.
- (d) No correspondence regarding building permission and land sale permission with the applicants will be served in their premises, but will be made available in the reception counter of the Authority and applicants are required to collect the same from the counter. This includes NOC and all objection letters relating to building permission & land sale.



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ANNEXURE - C/507

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

507

**REAT/ASSAM/APPEAL NO. 12 of 2023**

RDB Realty & Infrastructure Ltd. ... Appellant

-versus-

The Real Estate Regulatory Authority, Assam &Anr. ... Respondents

**P R E S E N T**

**HON'BLE MR. JUSTICE (Retd.) MANOJIT BHUYAN, CHAIRPERSON  
SHRI ONKARMAL KEDIA, HON'BLE MEMBER (ADMINISTRATIVE)**

For the Appellant : Mr. Abdus Sattar,  
Mr. Zubair Mukit,  
Mr. Ghufran Imtiaz,

For the Respondents : Mr. B.D. Deka,  
Ms. S. Sarma Hazarika,  
Mr. M. Das,  
Mr. N. Chaudhury,  
Mr. A. Bhatra,  
Mr. A. Deka,

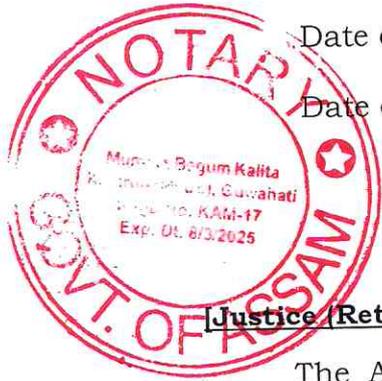
Date of Hearing : 08.11.2023; 17.11.2023; 01.12.2023

Date of Judgment & Order : 18.12.2023

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

**Justice (Retd.) Manojit Bhuyan**

The Appellant herein have preferred this appeal against the order dated 06.07.2023, passed by the Real Estate Regulatory Authority, Assam (in short, the RERA) in Complaint Case No. RERA/ASSAM/Reg./Notice/2022/03. By the said order, the Appellant was imposed with the penalty of Rs.2,00,000/- (Rupees Two Lakhs) in terms of section 59 of the *Real Estate (Regulation and Development) Act, 2016* (in short, the Act) for having failed to register its real estate project called "Regent Paradise", 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* (in short, the Rules).

2. Before delving into the facts and the rival submissions of the parties *in lis*, we deem it relevant to refer to and reproduce certain provisions of law which has a direct bearing on the adjudication of the present appeal :

**The Real Estate (Regulation and Development) Act, 2016**

(i) Section 3(1), First Proviso :

**“3. Prior registration of real estate project with Real Estate Regulatory Authority.-** 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:”

(ii) Section 2(q), 2(zf) and 2(p) :

“(q) “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;”

“(zf) “occupancy certificate” means the occupancy certificate, or such other certificate by whatever name called, issued by the competent authority permitting occupation of any building, as provided under local laws, which has provision or civic infrastructure such as water, sanitation, and electricity;”

“(p) “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;”



**The Real Estate (Regulation and Development) Rules, 2017**

Sub-rule (1) of Rule 4 :

**“4. Disclosure by promoters of ongoing projects.-** (1) Upon the notification for commencement of sub-section (1) of section 3, promoters of all ongoing projects which have not received occupancy certificate shall, within the time specified in the said sub-section, make an application to the Regulatory Authority in the form and manner provided in rule 3.”

**The Guwahati Building Construction (Regulation) Act, 2010**

(i) Section 11(a) and 11(b) :

**“11. Completion and Occupancy Certificate-(a)** “Completion Certificate”.- The owner through the registered architect, engineer, structural engineer, as the case may be, who has supervised the construction, shall give notice to the Authority regarding completion of work described in the Building Permission. The completion certificate shall be submitted in the form as may be prescribed in the building bye-laws in four sets of completion as built plan.”

“(b) “Occupancy Certificate”.- The Authority, on receipt of the completion certificate, shall inspect the work and grant or refuse an occupancy certificate within 21 days from the date of receipt of completion certificate, after which period it shall be deemed to have been approved by the Authority for occupation provided the building has been constructed as per the approved plans. Where the occupancy certificate is refused, the reasons for rejection shall be intimated to the applicant.”

(ii) Section 2, clause (4) :

**“4. “Authority”** means the Guwahati Metropolitan Development Authority, Guwahati Municipal Corporation and other Urban Local Body or Panchayat as the case may be;”

**The Guwahati Building Construction (Regulation) Bye-laws, 2014**

Byelaw 14 and 15 (a) :

**“14. Completion Certificate** – The owner shall submit the Completion Certificate in Form Nos.16, 17, 18, 19 and 27 as the case may be, as per provision of Section 11(a) of the Act.”

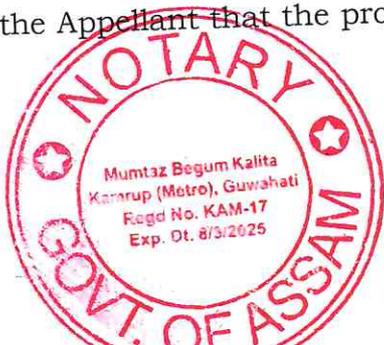


**“15. (a)Occupancy Certificate** – The Authority shall issue Occupancy Certificate on receipt of completion certificate as per Section 11 (b) of the Act.”

We may mention that the various Forms referred to in Bye-law 14 above, are –

- (i) Form No.16 - Completion Report by the Owner
- (ii) Form No.17 - Building Completion Certificate by Architect on Record
- (iii) Form No.18 - Building Completion Certificate by Construction Engineer on Record
- (iv) Form No.19 - Building Completion Certificate by Structural Engineer on Record
- (v) Form No.27 - Detail Report on Construction of Building as per as Built Drawing (To be submitted by Applicant and RTP jointly for Occupancy Certificate), which includes submission of documents, inter alia, like:
  - (a) NOC from Director of Fire Services.
  - (b) Lift Inspector's Report/Certificate.
  - (c) Certificate from Chief Electrical Advisor.

3. Mr. Abdus Sattar, learned counsel representing the Appellant, submits that RDB Industries Ltd. had entered into a Joint Venture Agreement with the Assam State Housing Board (a Government of Assam undertaking) on 29.12.2006 with regard to development and construction of residential/commercial complex on the land belonging to the said Housing Board, measuring more or less 22 Bighas at Borsojai, Guwahati. It is stated that in course of time the No-Objection Certificate for construction of building was issued by the Guwahati Metropolitan Development Authority (in short, the GMDA) on 04.10.2007 whereafter construction commenced. The bookings and allotment of apartments started in the year 2008 and as per the building plan construction was in respect of 404 Flats in 10 Blocks. It is submitted that allotment of flats were made prior to the year 2015 and the application for Occupancy Certificate was made to GMDA on 17.12.2016, which application was received at the end of GMDA on 06.01.2017. Further, that GMDA vide its letter dated 26.02.2021 informed the Appellant that the proposal for Occupancy Certificate was approved and



the Appellant was made required to deposit regularisation fees amounting to Rs.1,26,52,843/- (Rupees One Crore Twenty-Six Lakhs Fifty-Two Thousand Eight Hundred Forty-Three) for excess area measuring 2300.55 sq.m at certain Blocks under the Phase-I construction. It is contended that the regularisation fees was deposited within the time mentioned in the said letter and, eventually, Occupancy Certificate under Bye-law 15 (a), as above, was issued by GMDA on 22.06.2021. Referring to the GMDA's letter dated 16.03.2022 (page 181 of the appeal memo), Mr. Sattar submits that GMDA had initially addressed a letter dated 11.05.2017 highlighting certain shortcomings in the application for Occupancy Certificate. It is submitted that the shortcomings were in respect of absence of signature of the Construction Engineer on Record as well as of the Structural Engineer on Record in the Form Nos.18 and 19 respectively; non-submission of the licence for use of lifts; non-submission of the No-Objection Certificate (NOC) from Fire and Emergency Services, Assam, and non-submission of charging approval from the Chief Electrical Inspector-cum-Adviser, Assam. Drawing attention to the letter dated 17.06.2017 (page 172 of the appeal memo), addressed by the Appellant to GMDA, it is contended that the shortcomings were rectified, including putting signatures on the Form Nos.18 and 19. In the said letter it was, however, mentioned that the approval from the Chief Electrical Inspector-cum-Adviser as well as the No-Objection Certificate from the Fire and Emergency Services, Assam would be submitted within a short time.

4. On the above facts, Mr. Sattar submits that the application for Occupancy Certificate having been made to GMDA on 17.12.2016 and neither any letter regarding any defect in the application nor any inspection of the project having been carried out within the next 21 days from the date of application, as such, by virtue of the aforesaid section 11(b) of the Building Act, 2010, the Occupancy Certificate must be deemed to have been granted. It is further submitted by Mr. Sattar that the shortcomings pointed out by GMDA having been rectified, coupled with the fact that the proposal for Occupancy Certificate having been approved by the authority, as

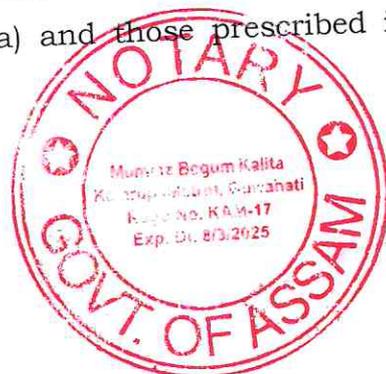


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indicated in the GMDA's letter dated 26.02.2021 (page 93 of the appeal memo) and the direction to deposit the regularisation fees having been duly complied with within the period prescribed, as such, the Occupancy Certificate dated 22.06.2021 issued in favour of the Appellant must relate back as having taken force with effect from the date of application i.e. 17.12.2016. Mr. Sattar submits that retrospective application of the Occupancy Certificate with effect from 17.12.2016 would find support from the doctrine called the "Doctrine of Relation Back", which postulates that an act performed at a later time may be deemed to have occurred at previous time. It is submitted that by application of the said doctrine, the effect of the Occupancy Certificate is to be reckoned from 17.12.2016, and positioned thus, the first *proviso* to sub-section (1) of Section 3 will have no applicability in so far as the appellant is concerned. Contention advanced is that all transactions relating to the project under Phase-I, including the deemed approval for occupation being prior in time to the date when said section 3 was put into force i.e. 01.05.2017, therefore, the Appellant could not have been subjected to or brought within the purview of the *Real Estate (Regulation and Development) Act 2016*. As a necessary corollary, there was no requirement on the part of the Appellant to make application to RERA for registration of the project, far from being imposed with any penalty. Mr. Sattar submits that in the facts and circumstances, the impugned order of RERA is wholly illegal and not sustainable in law.

5. Per contra, Mr. B.D. Deka, learned counsel for Respondent No.2, opens his argument to say that due to apparent shortcomings in the application for Occupancy Certificate dated 17.12.20216, the Appellant is not entitled to the benefit of deemed approval/permission as under section 11 (b) of the afore-mentioned Building Construction Act, 2010. Referring to said section 11 (b) and, more particularly, to the expression employed therein - "on receipt of the completion certificate"- Mr. Deka submits that the said expression means that the completion certificate 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 aforementioned Building Bye-



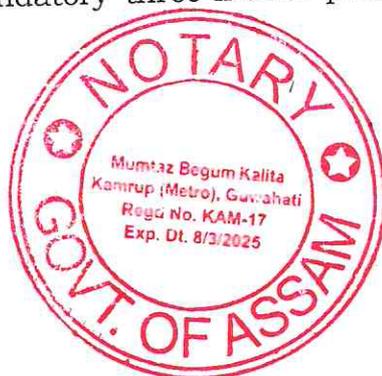
laws, 2014. Referring to Byelaw 14, it is shown that the Completion Certificate has to be submitted by the owner in Form Nos.16, 17, 18, 19 and 27. Attention is drawn to the letter dated 16.03.2022 of the GMDA, addressed to the RERA, Assam (page 181 of the appeal memo) to show that Form No.18 was not signed by the Construction Engineer on Record and the Form No.19 was also not signed by the Structural Engineer on Record. Additionally, three other documents which are required to be enclosed with Form No.27 i.e. the NOC from the Director of Fire Services, the Report/Certificate of the Lift Inspector and the Certificate from the Chief Electrical Advisor were also not submitted. Submission made is that the Completion Certificate submitted on 17.12.2016 cannot be deemed to be Completion Certificate in the eye of law and, consequently, any deemed approval for occupation cannot be read in favour of the Appellant. In this respect, reliance is placed in the case of *P.A. Belliappa vs. State of Karnataka*, reported in 1996 (0) Supreme (Kar) 664 for the proposition that before a presumption can arise, it must conclusively be established that an application is not only filed to the competent authority but also that the same is accompanied by the prescribed documents. Further, that an 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. Mr. Deka further submits that any deemed approval/permission, as contemplated in section 11 (b) above, is wholly subject to the rider mentioned therein that the building has been constructed as per the approved plan. Drawing attention to the views of GMDA again, it is shown that the project in question was not executed as per the No-Objection Certificate and approved plan, in that, a number of deviations/changes were there which required consideration before issuance of Occupancy Certificate and, in fact, the approval for Occupancy Certificate was made subject to deposit of regularization fees of Rs.1,26,52,843/- (Rupees One Crore Twenty-Six Lakhs Fifty-Two Thousand Eight Hundred Forty-Three) for excess area, as indicated in the aforementioned GMDA's letter dated 26.02.2021. Submission made is that in this context also, the Appellant cannot claim



benefit of deemed approval/permission for occupation as under section 11(b) of the aforesaid Building Act, 2010.

6. Further submission of Mr. Deka is that the first *proviso* to sub-section(1) of section 3 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 Completion Certificate has not been issued. Referring to the written statement filed by the Appellant on 22.06.2020 before the RERA, which forms part of the record in the tagged appeal i.e. REAT/ASSAM/APPEAL No.13 of 2023 and enclosed as Annexure-5 thereof, it is shown that by the very admission of the Appellant, work remained incomplete in respect of the Community Hall as well as the Facility Block (Club House). It is also shown from the said written statement that the Appellant has admitted to the effect that completion of the project got delayed. Contention advanced is that the project of the Appellant is an ongoing project and falls well within the ambit of the Act, 2016.

Regarding the reference of "completion certificate" in the first *proviso*, Mr. Deka have taken us to the judgment rendered by this Tribunal in *M/s Saraighat Builders Pvt. Ltd. vs. Real Estate Regulatory Authority, Assam* (REAT/ASSAM/APPEAL No.09 of 2022), reported in 2023 (4) GLT (REAT) 444, wherein this Tribunal by making reference to the *Guwahati Building Construction (Regulation) Act 2010* and the *Guwahati Building Construction (Regulation) Bye-laws 2014* held that in so far as Guwahati Metropolitan Area is concerned, the "completion certificate" mentioned in the first *proviso* to sub-section (1) of section 3 of the Act would mean "occupancy certificate". Situated thus, it is contended that the project of the Appellant was without an Occupancy Certificate on the date of commencement of said section 3 i.e. 01.05.2017. It is submitted that the Occupancy Certificate, in fact, was obtained by the Appellant only on 22.06.2021, which is well after 01.05.2017. Mr. Deka submits that as the Appellant failed to make application before the RERA, Assam for registration of its ongoing project within the mandatory three-month period next, that is by 01.08.2017, as



such, the imposition of penalty on the Appellant in terms of section 59 of the Act is legal and justified.

7. On the 'Doctrine of Relation Back', relied upon by the Appellant to date back the effect of the Occupancy Certificate issued on 22.06.2021 to an earlier date, that is, 17.12.2016 when application had been made to GMDA for Occupancy Certificate, Mr. Deka submits that the said 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. Mr. Deka further submits that in construing a legal fiction like the one emanating from the said doctrine and from the deeming provision in section 11(b) of the 2010 Act, it is important to keep in mind the object and purpose for which it 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. Reliance in this respect is made to the case in *Maruti Udyog Ltd. vs. Ram Lal and Others*, reported in (2005) 2 SCC 638.

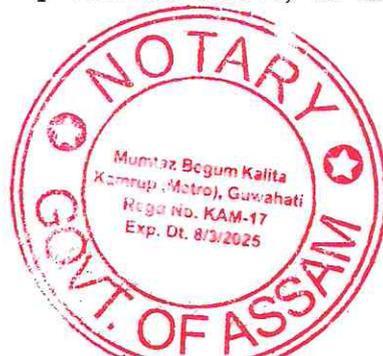
8. In his reply, Mr. Sattar submits that the Appellant's real estate project cannot in any manner be construed as an ongoing project. Referring to the Notice dated 27.03.2015 (page 216 of the appeal memo), Mr. Sattar submits that by the said Notice the Appellant had informed all the flat owners to collect their respective Guwahati Municipal Corporation (GMC) Holding Number Receipt and to pay their property tax to the said authority, with further information that the Appellant had already paid property taxes for all the flats for the year 2015-2016 and 2016-2017. Submission made is that the payment of property tax for all flats is indicative of the fact that the flats had been duly assessed by GMC and the construction of the building stood completed by the year 2015-2016. In this respect, Mr. Sattar have placed reliance in the case of *State of U.P. vs. Hari Ram*, reported in 2013 (2) S.C.R. 301, particularly to paragraph 17 thereof, for the proposition that while interpreting a provision in a statute creating a legal fiction/deeming provision, the court is to ascertain for what purpose the fiction is created and after ascertaining the purpose, the court is to assume all those facts



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and consequences which are incidental or inevitable corollaries giving effect to the fiction. Further, that what can be deemed to exist under legal fiction are only facts. Applying the same to the present case, Mr. Sattar submits that the fact of payment of property tax of the flats would give rise to the presumption that not only the assessment of the flats by GMC was complete but also the construction of the project in question by 2015-2016, that is, well before the date of enactment of the Act and/or the date when section 3 of the Act was put into force. Mr. Sattar submits that in view of clear facts suggesting the completion of the project by 2015-2016, therefore, it cannot be said that the legal fiction of deemed approval for occupation has been stretched by the Appellant to the point of absurdity. It is, thus, contended that reliance placed by the respondent No.2 in the case of *Maruti Udyog Ltd.* (supra) is wholly out of context.

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

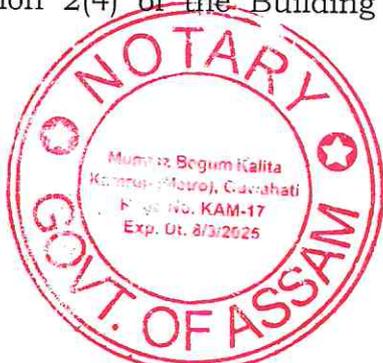


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authority created or established under any law for the time being in force by the appropriate Government which exercises authority over land under its jurisdiction, and has powers to give permission for development of such immovable property. The expression “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,



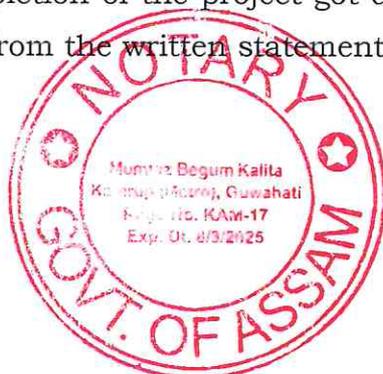
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means the Guwahati Metropolitan Development Authority (GMDA) or the Guwahati Municipal Corporation (GMC) or other Urban Local Body or Panchayat, as the case may be. This being the clear position emanating from the provisions of law mentioned above, 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”.

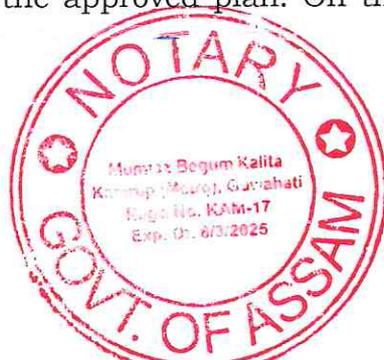
**11.** In strict terms of the above, a real estate project which has not been issued with an Occupancy Certificate by the date when section 3 of the Act was put into force i.e. 01.05.2017, it must be reckoned to be an ongoing project. Situated thus, the promoter of the real estate project was statutorily 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.

**12.** Applying the mandate above to the basic facts of the case, it is seen that although construction of the real estate project called “Regent Paradise” commenced much prior to the enactment of the Act, however, on the very admission of the Appellant itself, work remained incomplete in respect of the Community Hall and the Facility Block (Club House). The Appellant has also admitted that completion of the project got delayed and the said admission of fact can be had from the written statement that was filed by the Appellant

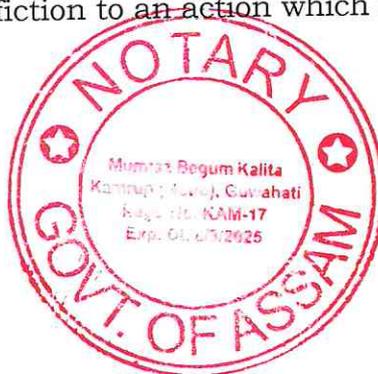


and which forms part of the records of the tagged Appeal i.e. REAT/ASSAM/APPEAL No.13 of 2023, arising out of the connected Complaint Case No. ASSAM/RERA/2017/310 (*Regent Paradise Owners' Welfare Society vs. RDB Realty & Infrastructure Ltd. and others*). Further, it is borne out of records that the Appellant had made application for Occupancy Certificate to GMDA on 17.12.2016 and it was only on 22.06.2021 that Occupancy Certificate was issued in favour of the Appellant. Factually, therefore, the Appellant was not issued with an Occupancy Certificate on or before the date of commencement of section 3 of the Act i.e. before 01.05.2017, or even within the window of three months next i.e. 01.08.2017, by which time application was required to have been made to the Regulatory Authority for registration of the real estate project. Without going into the legal submissions at the moment regarding the effect of the legal fiction provided in section 11(b) of the Building Act and on the 'Doctrine of Relation Back', which issues will be discussed and answered in the course of this judgment, the inevitable factual position is that the real estate project called "Regent Paradise" was an ongoing project on the date of commencement of section 3 of the Act. Failure to have made application for registration of "Regent Paradise" before the Regulatory Authority within the three-month window i.e. by 01.08.2017, squarely invited penal consequences in terms of section 59 of the Act.

**13.** Turning to the emphasis laid by the Appellant on the legal fiction provided in section 11(b) of the Building Act and on the 'Doctrine of Relation Back', we take note that said section 11(b) obligates the Authority concerned to inspect the work of the project upon receipt of the completion certificate from the owner and to grant or refuse the occupancy certificate within 21 days next. 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 occupancy certificate within 21 days from the date of receipt of completion certificate 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. On the applicability of the deeming

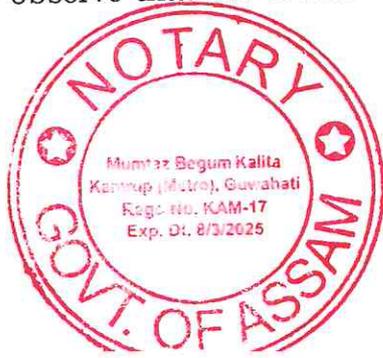


provision in section 11(b) to the pleaded case of the Appellant, we also take note of the submission of Mr. Sattar who contends that the application for occupancy certificate having been made to the competent authority on 17.12.2016 and neither any inspection having been carried out nor any action having been taken with regard to granting or refusing an occupancy certificate within the next 21 days from the date of receipt of the application, therefore, the occupancy certificate must be deemed to have been granted by virtue of the legal fiction engrafted in section 11(b) of the Building Act. On this, we may observe that although the submission of Mr. Sattar on the applicability of the deeming provision in section 11(b) appears to have force at first blush, however, facts borne on record undisputedly shows that mandatory documents were not submitted along with the application for occupancy certificate and the same remained incomplete, in that, the completion certificate in Form No.18 did not bear the signature of the Construction Engineer on Record and also the completion certificate in Form No.19 was not signed by the Structural Engineer on Record. In so far as the documents which are required to be enclosed with Form No.27 is concerned, records go to show that atleast three documents i.e. the No-objection Certificate from the Director of Fire Services; the Report/Certificate of the Lift Inspector, and the Certificate from the Chief Electrical Advisor were not enclosed with Form No.27. On this, we are in agreement with the submission made on behalf of the Respondent No.2 that the completion certificate submitted by the owner along with the application for occupancy certificate on 17.12.2016 cannot be deemed to be in compliance with section 11(a) of the Act. We are also in agreement that the documents enclosed to the application for occupancy certificate being incomplete in so far as Form No.18 and 19 are concerned and also the application being incomplete and defective as not being accompanied by the requisite documents in so far as Form No.27 is concerned, we are of the view that the Appellant cannot derive or claim any benefit of the deemed provision/legal fiction engrafted in section 11(b) of the Building Act. Law will not support vesting of benefit of a deeming provision/legal fiction to an action which is bad at its inception.



14. A bare reading of the provision of section 11(b) shows that the deemed approval for occupation is made subject to the rider that the building has been constructed as per the approved plan. Turning to the facts as borne on record, particularly to the views expressed by GMDA before the RERA, a number of deviations/changes and the project not having been executed as per the approved plan has been noted therein. The letter of GMDA dated 26.02.2021, addressed to the Appellant, shows that approval for occupancy certificate was made subject to deposit of regularization fees of Rs.1,26,52,843/- for excess area measuring 2300.55 sq.m at Blocks 1A, 1B, 1C, 1D, 1E, 2A, 2B, 3A, 3B and 3C, which are under Phase-I construction of the project. This being the clear position and having regard to the provision under section 11(b) of the Act that deemed approval for occupation is made subject to construction of the building as per approved plan, we unhesitatingly hold that on the uncontroverted views expressed by GMDA before the RERA, it would be a travesty of justice if the Appellant is allowed to claim benefit of deemed approval/permission by virtue of the legal fiction engrafted in section 11(b) of the Building Act.

15. On the emphasis laid by the Appellant on the 'Doctrine of Relation Back', we take note of the submission of Mr. Sattar who contended that consequent upon rectification of the shortcoming in the application for occupancy certificate, the payment of regularization fees for excess area within the permitted time limit and finally the occupancy certificate having been issued on 22.06.2021, the effect of the said occupancy certificate must date back to the date of application for occupancy certificate i.e. 17.12.2016 on the touchstone of a legal doctrine called the 'Doctrine of Relation Back'. Mr. Sattar have contended that as by application of the said doctrine the Occupancy Certificate must be reckoned to have taken effect from 17.12.2016, therefore, the first proviso to sub-section (1) of section 3 of the Act will have no applicability in so far as the Appellant is concerned. According to Mr. Sattar, the imposition of penalty is thus wholly illegal and unjustified. With respect, we totally disagree and differ with the submission of Mr. Sattar. We may observe 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. The said doctrine cannot be used as a tool to overturn a statutory provision or its purpose. Turning to the clear prescription of law in the first *proviso* to sub-section (1) of section 3 of the Act, read with Rule 4 of the Rules as to the requirement of an occupancy certificate on the date of commencement of the Act, which may be read as on 01.05.2017 when section 3 of the Act was brought into force, if by applying the doctrine the reversal or turning back of the clock is allowed by dating back the effect of the occupancy certificate issued on 22.06.2021 to an earlier date when application for occupancy certificate was made i.e. 17.12.2016, the same would tantamount to overturning or making otiose the statutory time-line given in the first *proviso* to sub-section (1) of section 3 of the Act. On the face of it, this cannot be permitted in law. In our considered opinion, the doctrine has no application in the facts and circumstances of the present case. We hold that the ongoing project of the Appellant not having been issued with occupancy certificate on the date of commencement of the Act and/or the date when section 3 of the Act was brought into force i.e. 01.05.2017, therefore, the Appellant was statutorily obliged to have made application before the RERA, Assam for registration of its real estate project "Regent Paradise" within the period of three months next i.e. 01.08.2017. The same not having been done, the Appellant have contravened the provisions of section 3 of the Act, inviting penalty under section 59 of the Act.

16. Pitted against the clear facts and the provisions of law discussed above, we do not find it relevant to go into the other submission of Mr. Sattar who contended that the mere fact of payment of property tax of all the flats for the year 2015-2016 is itself indicative that the construction of the project had stood completed by 2015-2016, which is a period prior to the commencement of the Act and/or the commencement of bringing into effect



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X

the provision of section 3 of the Act. To reiterate, the real estate project in question was not issued with the occupancy certificate in terms of the first proviso to sub-section (1) of section 3 of the Act and this being the clear position, any issue of payment of property tax or assessment of the flats will have no relevance or bearing to the adjudication of the present Appeal. Reliance placed by Mr. Sattar in the case of *State of U.P. vs. Hari Ram* (supra) is not relevant for consideration in the present facts and circumstances of the case.

17. For all the reasons and discussions above, we find no merit in the Appeal. The imposition of penalty by RERA, Assam does not warrant any interference. Resultantly, the present Appeal stands dismissed, however, without any order as to cost.

18. The Appellant having deposited with this Tribunal an amount of Rs.60,000/- (Rupees Sixty Thousand) in terms of the proviso to sub-section (5) of section 43 of the Act, we now direct the Appellant to deposit the balance amount of Rs.1,40,000/- (Rupees One Lakh Forty Thousand). in the form of Demand Draft, in favour of the "Secretary, Real Estate Regulatory Authority, Assam" within an outer limit of period of 3 (three) weeks from today. In so far as the deposit of Rs.60,000/- (Rupees Sixty Thousand) made with this Tribunal is concerned, the Registry shall take necessary steps to transfer the said amount into the bank account of RERA, Assam.

Office to return the case records to the office of the RERA, Assam forthwith. Copy of this judgment and order be furnished to the counsel for the parties as well as to RERA, Assam

**MEMBER (ADMINISTRATIVE)**

**CHAIRPERSON**



GAHC010213142023



**THE GAUHATI HIGH COURT  
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)**

**Case No. : WP(C)/5538/2023**

RAVI DEY AND 4 ORS.  
R/O- ARYA SMART LIVING, NORTH GUWAHATI, DIST. KAMRUP, ASSAM  
AND MEMBERS OF ARYA SMART LIVING GROUP HOUSING CO-OP  
SOCIETY LTD.

2: RITU PARNA SHARMA  
R/O- ARYA SMART LIVING  
NORTH GUWAHATI  
DIST. KAMRUP  
ASSAM AND MEMBERS OF ARYA SMART LIVING GROUP HOUSING CO-OP  
SOCIETY LTD.

3: GANESH DAS  
R/O- ARYA SMART LIVING  
NORTH GUWAHATI  
DIST. KAMRUP  
ASSAM AND MEMBERS OF ARYA SMART LIVING GROUP HOUSING CO-OP  
SOCIETY LTD.

4: MRINMOY BORKATAKI  
R/O- ARYA SMART LIVING  
NORTH GUWAHATI  
DIST. KAMRUP  
ASSAM AND MEMBERS OF ARYA SMART LIVING GROUP HOUSING CO-OP  
SOCIETY LTD.

5: SANJAY BARUAH  
R/O- ARYA SMART LIVING  
NORTH GUWAHATI  
DIST. KAMRUP  
ASSAM AND MEMBERS OF ARYA SMART LIVING GROUP HOUSING CO-OP  
SOCIETY LTD

VERSUS



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THE STATE OF ASSAM AND 7 ORS  
 REPRESENTED BY THE SECRETARY TO THE GOVERNMENT OF ASSAM,  
 CO-OPERATIVE DEPARTMENT, DISPUR, GUWAHATI-6.

2:THE REGISTRAR

CO-OPERATIVE SOCIETIES  
 ASSAM  
 KHANAPARA  
 GUWAHATI-28  
 DIST. KAMRUP(M)  
 ASSAM

3:THE ASSISTANT REGISTRAR

CO-OPERATIVE SOCIETIES  
 ASSAM  
 BHANGAGARH  
 GUWAHATI-05  
 DIST. KAMRUP(M)  
 ASSAM

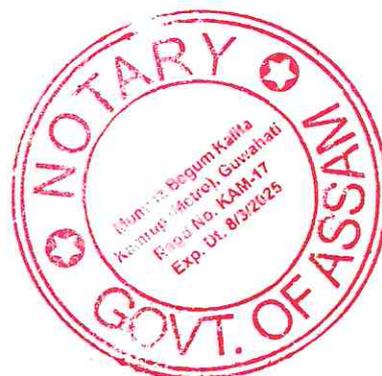
4:M/S ARYA ERECTORS INDIA PVT. LTD.

REGISTERED OFFICE- HOUSE NO. 123  
 ARYA SMART LIVING  
 ABHAYPUR  
 DIST.- KAMRUP  
 ASSAM  
 REPRESENTED BY ITS MANAGING DIRECTOR  
 SRI ANIL GOSWAMI.

5:BIJOYA GOSWAMI  
 DIRECTOR

M/S ARYA ERECTORS INDIA PVT. LTD.  
 REGISTERED OFFICE- HOUSE NO. 123  
 ARYA SMART LIVING  
 ABHAYPUR  
 IN THE DISTRICT OF KAMRUP  
 ASSAM AND DIRECTOR OF SMART LIVING GROUP HOUSING CO-OP  
 SOCIETY LTD.

6:RAM KRISHNA PRADHAN  
 CHIEF EXECUTIVE OFFICER  
 M/S. ARYA ERECTORS INDIA PVT. LTD.  
 REGISTERED OFFICE HOUSE NO. 123  
 ARYA SMART LIVING



ABHAYPUR  
IN THE DISTRICT OF KAMRUP  
ASSAM AND PRESIDENT OF ARYA SMART LIVING GROUP HOUSING CO-  
OP SOCIETY LTD.

7:TAPAN JYOTI DUTTA  
SHARE HOLDER  
M/S. ARYA ERECTORS INDIA PVT. LTD.  
REGISTERED OFFICE HOUSE NO. 123  
ARYA SMART LIVING  
ABHAYPUR  
IN THE DISTRICT OF KAMRUP  
ASSAM AND PRESIDENT OF ARYA SMART LIVING GROUP HOUSING CO-  
OP SOCIETY LTD.

8:BINODE CHETIA  
VICE PRESIDENT AND DIRECTOR  
ARYA SMART LIVING GROUP HOUSING CO-OP SOCIETY LTD.  
ARYA SMART LIVING ABHAYPUR  
DIST. KAMRUP  
ASSA

**Advocate for the Petitioner** : MR. S CHAKRABORTY

**Advocate for the Respondent** : SC, CO OP

**BEFORE**  
**HONOURABLE MR. JUSTICE SUMAN SHYAM**

**ORDER**

**Date** : 22-09-2023

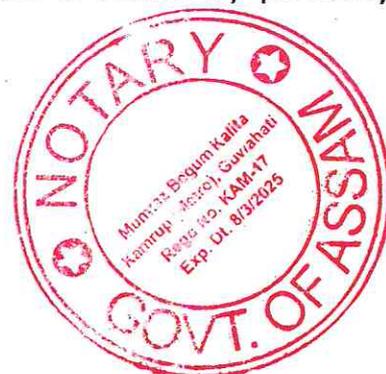
Heard Mr. S. Chakraborty, learned counsel for the writ petitioners.

Perused the averments made in the writ petition.

Aggrieved by the order dated 25-04-2023 issued by the appellate authority, *i.e.* the Registrar of Cooperative Society rejecting the appeal preferred by the petitioners, the instant writ petition has been filed.

Mr. Chakraborty submits that the impugned order is vitiated by perversity and complete non-application of mind.

Issue notice of motion returnable in 06 weeks.



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Since Mr. S.K. Talukdar, learned standing counsel, Cooperation Department, Assam has appeared and accepted notice on behalf of respondent Nos. 1 to 3, no formal notice is required to be sent to the said respondents.

Extra copies of the writ petition, requisite in numbers, be furnished to the learned departmental counsel so as to enable him to obtain instruction.

Petitioner to take steps for service of notice upon the remaining the respondents by registered post with A/D.

Steps within a week from today.

Heard on the prayer of interim relief.

The said prayer will be considered on the returnable date.

**JUDGE**

GS

**Comparing Assistant**



ANNEXURE E/1

**OFFICE OF THE GUWAHATI METROPOLITAN DEVELOPMENT AUTHORITY**  
**STAFFED BUILDING, BHANGAGARH, GUWAHATI-781008**

Website: [www.gmda.assam.gov.in](http://www.gmda.assam.gov.in)  
 E-mail: [ce@gmdaahy@gmail.com](mailto:ce@gmdaahy@gmail.com)

Tel: 0361-2529850,  
 0361-2529824  
 Fax: 0361-2529991

No. GMDA/BP/2214/26112012/597

Dated: 12.12.2022

To: Sri Anil Kr Sarma, Managing Director  
 M/S Arya Erectors India (P) Ltd.  
 503, KP Enclave, Suhagpur, Rehabari,  
 Guwahati - 781008

Sub: Regarding issue of occupancy certificate.

Ref: I. Order of this Authority vide no GMDA/BP/2214/26112012/489, Dated 16.09.2022  
 II. Your reply received on dated 14.10.2022, 19.10.2022, 03.11.2022, & 16.11.2022 with modified OC proposal and revised as built drawing.

In response to our order dated 16.09.2022, a fresh occupancy certificate proposal (part) is submitted subsequent to issue of revised occupancy certificate of club house etc by North Guwahati Municipal Board cancelling the earlier occupancy certificate issued from their end. A joint site verification was done in response of your letter submitted with modified as built drawings on dated 03.11.2022 for consideration of the occupancy certificate proposal and following observations are found:-

- The brick wall at triangle garden was demolished but road is not constructed till now as shown in the as built drawing.
- There are about 54 nos of villas which have encroached the gap at the backside between the two blocks by constructing some A T structures enclosed with half brick wall and iron grill at Gr level. Further about 35 nos of those villas are also found to have unauthorized construction at terraces by constructing some AT/ RCC structure which were not shown in revised as built drawing submitted from your end. Due to non-accessibility inside the occupied houses, many of villas which are under lock & key during the time of verification, the exact figure and nature of construction on terraces and in the balconies could not be ascertained in actual. Photographs of some of those villas are enclosed herewith which are taken at the time of joint site inspection for your reference and needful actions.

You are therefore requested to carry out a detailed survey and remove all unauthorized structure as mentioned above and furnish a recasted occupancy certificate proposal along with a compliance report as deemed fit within 15 (fifteen) days from receiving of this communication for further consideration of the occupancy certificate proposal.

Encl : As stated .

*Sdt*  
 (Sri. Kausar J. Hillaly, ACS)  
 Chief Executive Officer  
 Guwahati Metroloitan Dev. Authority  
 Bhangagarh: Guwahati-5

Dated : 12.12.2022.

Memo No. GMDA/BP/2214/26112012/597(A)

Copy forwarded to :

1. The Secretary, RERA. This has reference to order No. Assam/RERA/2017/64/170, dated 28.11.2022, (with all attachment as above)
2. Office file.

Chief Executive Officer  
 Guwahati Metropolitan Dev. Authority  
 Bhangagarh, Guwahati-5.  
 Chief Executive Officer  
 Guwahati Metropolitan Dev. Authority

