

**BEFORE THE MAHARASHTRA
REAL ESTATE REGULATORY AUTHORITY, MUMBAI**

Virtual Hearing held through video conference as per
MahaRERA Circular No.: 27/2020

1. COMPLAINT NO. CC006000000195214

HEMA SHANTILAL BHAGAT COMPLAINANT

VS.

SAYED MOHAMED ZAHID ... RESPONDENT

MAHARERA PROJECT REGISTRATION NO. P51900021839

AND

2. COMPLAINT NO. CC006000000198455

SAYED MOHAMED ZAHID COMPLAINANT

VS

HEMA SHANTILAL BHAGAT ... RESPONDENT

MAHARERA PROJECT REGISTRATION NO. P51900030681

Order

May 31, 2022

(Date of hearing - 03.02.2022 - matters were reserved for order)

Coram: Shri. Ajoy Mehta, Chairperson, MahaRERA

Complainant at Sr. NO. 1 and Respondent at Sr. No. 2 -

CA Sunil Naik, Advocate Ranawat

Respondent at Sr. No. 1 and Complainant at Sr. No. 2 -

Advocate Nilesh Borate along-with the Respondent himself

Mr. Abdul Bark Khan, Secretary Mathura Bhavan CHS was present a/w his

Advocate Kunal Maskar and Anil D'souza

1. The Complainant at Sr. No. 1 and Respondent at Sr. No. 2 is the Promoter/Developer within the meaning of Section 2 (zk) of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as the "said

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Act”) of Real Estate Regulatory Authority (hereinafter referred to as the “RERA”) and has registered a project namely “MAAHIR MARINA” under section 5 of the said Act bearing MAHARERA Project Registration No. P51900030681 (hereinafter referred to as the “said Project 1”). Similarly, the Respondent at Sr. No. 1 and Complainant at Sr. No. 2 is the Promoter/ Developer within the meaning of Section 2 (zk) of the said Act and has registered a project namely “HITESH HEIGHTS” under section 5 of the said Act bearing MAHARERA Project Registration No. P51900021839 (hereinafter referred to as the “said Project 2”). The Respondent at Sr. No. 1 has sought registration for the said Project 1 which is prior to the registration sought by Respondent at Sr. No. 2 for the said Project 2 i.e. the said Project 2 is a subsequent registration.

2. The said Project 1 & 2 both are the same re-development project of the same Society namely Mathura Bhuvan Co-operative Housing Society (hereinafter referred to as the “said Society”). The said Project 1 & 2 are the same project having two different project registration numbers taken at different points in time.

3. The Complainants are seeking the following reliefs:

SR. NOS.	COMPLAINT NO.	RELIEFS
1.	CC006000000195214	<i>The RERA registration is void ab initio and is to be cancelled as it is granted on the basis of false documents. Also please note that POA is cancelled on 28/10/2020 (attached for your reference).</i>
2.	CC006000000198455	<p><i>a) The complaint may kindly be allowed with costs.</i></p> <p><i>b) The Project registration bearing No. P51900030681, registered by the Respondent under the name of “Maahir Marina” in respect of the said land, may kindly be revoked.</i></p> <p><i>c) The Respondent or anyone who acts on her behalf, agent, servant, employee, labourers, etc. may kindly be restrained permanently to enter upon the said land and advertising, constructing, booking, selling or alienating the units in respect of Project, namely “Maahir Marina” to the prospective buyers.</i></p> <p><i>d) The Complainant prays MahaRERA Authority to hold the Respondent responsible for indulging in unfair practice and to</i></p>

		<p>compensate the Complainant for the same. e) The Complainant pray to the MahaRERA Authority to impose a penalty on the Respondent for contravening the provisions of RERA Act and Rules;</p> <p>f) Cost of the proceeding of Rs. 1,00,000/- may kindly be ordered to be paid to the Complainant from the Respondent;</p> <p>g) Any other just and equitable order may be passed in favour of the Complainant.</p>
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4. The following rozنامas were passed by this Authority in 3 hearings which are noteworthy:

Virtual Hearing dated 26.10.2021:

"The matters have come up in view of two Project Registration Nos. P51900021839 and P51900030681 issued in the same Project. Heard Mr. Sayed Mohamed Zahid ("Mr. Zahid") & his Advocate Mr. Nilesh Borate.

The Advocate for Mr. Zahid brings to the notice of this Authority that this is a 33(7) re-development Project of the MCGM. A society of the residents namely Mathura Bhavan Co-operative Housing Society ("Mathura Bhavan") passed a resolution for undertaking redevelopment and appointed M/s. U. H. Pandya & Associates ("UHPA") as Constituted Power of Attorney holder for executing the redevelopment of the Project. The said UHPA has on date only one surviving partner Ms. Hema Shantilal Bhagat ("Ms. Hema").

UHPA further appointed Mr. Zahid partner of Ms/. Rose Constructions to undertake the redevelopment work of the said Project. Based on this the UHPA approached MCGM & MHADA for necessary approvals. After seeking approvals, the construction work was started. During the course of construction Mr. Zahid realized that Ms. Hema of UHPA had applied to MahaRERA and sought a fresh Project Registration No. P51900030681. This was done while the Project Registration No. P51900021839 was subsisting.

The Advocate for Mr. Zahid brings to the notice of this Authority that Ms. Hema partner of UHPA filed a complaint before MahaRERA for revocation of Project Registration No. P51900021839. This revocation application was taken up for hearing before Member 1, MahaRERA and was heard on 14.07.2021, 04.08.2021, 08.09.2021.

Mr. Zahid further brings to the notice of this Authority that while the matter was being heard for revocation of Project Registration No. P51900021839, Ms. Hema vide an application dated 22.07.2021 sought fresh registration of the Project. While seeking fresh registration Ms. Hema has not brought to notice of this Authority the fact that there is an existing Project Registration No. P51900021839 for the said Project and that hearings have taken place for deciding the fate of Project Registration No. P51900021839. Mr. Zahid further states that keeping the Authority in dark Ms. Hema has obtained fresh Project Registration dated 08.09.2021 bearing No. P51900030681.

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The Advocate for Mr. Zahid seeks interim orders to be passed restraining Ms. Hema from selling further flats or premises and using this Project Registration No P51900021839 obtained by her for any further transactions.

This Authority finds that Ms. Hema is not present today for the hearing nor has she been represented by any Advocate. However, one Mr. Amit Bhagat, her son who is present for the hearing today assures the Authority that she or her representative would remain present on the next date.

The matters are part heard and adjourned to 11.11.2021, @3.30 pm (physical hearing) at MahaRERA Churchgate office.

Issue notices to all Parties and also to the Secretary of Mathura Bhavan."

Virtual Hearing dated 11.11.2021:

"Mr. Abdul Bark Khan, secretary Mathura Bhavan CHS was Present a/w his Advocate Anwar Landge.

All Parties are present.

In the last roznama dated 26.10.2021, on page No. 3, in the first para therein, the project Registration No. P51900021839 has been inadvertently mentioned instead of P519000310681. The same is hereby corrected.

*After hearing all the Parties, it appears that various resolutions came to be passed by Mathura Bhavan CHS ("**said Society**"). The said Society submits that certain documents being produced by the other Parties are either a fraud or have been translated into English in a manner to suit the vested interest. The Respondent, Mr. Sayed Mohamed Zahid, in complaint No. CC006000000195214 states that the complainant Ms. Hema Bhagat in the same complaint has obtained a second registration without even awaiting the revocation of the first registration. The Respondent in the same complaint counters by saying that waiting long would have meant that the Respondent could have created third Party rights which could be detrimental to their interest.*

The said Society also submits that both registration numbers have been obtained by misrepresentation and the construction that has come up does not have their consent.

It is also seen that various complaints in the matter and litigations are pending before the police Authorities and the Civil Courts including the Hon'ble High Court. In view of the various issues involved and the multiplicity of complaints cross complaints and litigations it would be important to first put in abeyance both the registration numbers so that the Allottees and other bonafide stake holders do not suffer. None of the Parties shall use any of the registration numbers till further orders for any purpose as example sale of flats or any other act that may prejudice the rights of bonafide stake holders stake holders.

The Parties are hereby directed to independently submit a chronology of events leading upto the Allotment of registration numbers. The Parties are also directed to serve the said

chronology of events on each other on or before 03.12.2021, subsequent to which the Parties would be at liberty to file any rejoinders or replies to the chronology of events by 28.12.2021. The complaints shall be fixed for hearing on 03.02.2022."

Virtual Hearing dated 03.02.2022:

"Appearances are as Per above mentioned serial number.

All the Parties are present.

The Complainant submits that having received rights from the society they engaged "Rose Constructions". The previous number that was obtained was by fraud and now as the promoter, the complainant has taken new registration number and they have clear rights. They also point to the Power of Attorney to state that this POA gave no registration rights to "Rose Constructions". The Advocate for the Complainant during the hearing has submitted the order of MHADA.

The Respondent states that relief being sought are ab initio void and should be taken up with the civil court and the revocation can be done only by the association of allottees. They also state that Complainant has herself given POA to Mr. Sayed Zahid after confirming with the housing society. It is also claimed that the POA was not limited in nature but was much wider to enable development. The POA also contains a resolution passed by Hema Bhagat which clearly gives it to Mr. Zahid.

The Society pleads that both registration numbers must be revoked. They also plead that U. H. Pandya have filed without the society's permission. The society's resolution of 1989 and executed in 1991 agrees to give it to U. H. Pandya and & not Hema Bhagat. There is also a difference in the architect employed. The Development Agreement is for 4 shops and the plan shows 5 shops. Presently the society has cancelled this Development Agreement and the same is not challenged. On inquiry the society states that they have passed the resolution to appoint a completely new developer and the same is also not challenged.

During the course of hearing, it also becomes evident that there are multiple litigations pending before the Civil Court and the Hon'ble High Court some of which may be overlapping with the issues being adjudicated by the Authority. The Parties to submit the status of all litigations pending in different forums including the Hon'ble High Court before the 24.02.2022. The parties are also at liberty to file their written submissions if any, before the 24.02.2022, subsequent to which the matter will be Reserved for orders."

5. Before the submissions of the Parties are dealt with, the preliminary objection of clubbing of the two complaints herein and the transfer of the complaint at Sr. No.1 from Member 1, MahaRERA to Chairperson, MahaRERA without any intimation are raised by the Complainant at Sr. No.1 herein. In this regard, the following observations are noteworthy:

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- a. The said Project 1 & 2 are same real estate Projects registered by two different Promoters having two registration numbers i.e. both the Complainants herein having different project names but the same redevelopment of the said Society.
- b. Thus, the said Project 1 & 2 are two different project registration numbers obtained by two different Promoters i.e. both the Complainants herein for redevelopment of the said Society.
- c. These two project registration numbers are sought at different points in time on account of various issues and disputes between the two Complainants herein amongst each other.
- d. MahaRERA vide its circular No. 34 dated 21.06.2021 had clarified that “(c) Where complaints in respect of same project are clubbed together for hearing, then in that event seniority of the clubbed complaints shall be the date of filing / registration of the complaint filed first in point of time from amongst the clubbed complaints.”.
- e. Thus, from the above, it is clear when that the complaints pertaining to same projects are clubbed together which means the project is the same and not necessarily having the same project number. It also means that a real estate project may have different project registration numbers in projects which are developed in a phase wise manner and / or multiple registration numbers as sought by Complainants herein at different point in time, all of which can be clubbed together and taken up for hearing together. This is necessary for uniformity of decisions and in the interest of the project as a whole. Thus, the complaint at Sr. No.1 herein was transferred from Member 1, MahaRERA and clubbed with the complaint before the Chairperson, MahaRERA i.e. complaint at Sr. No.2 herein.
- f. Further it is also pertinent to note that the complaints have been taken up for urgent hearing on account of two project registration numbers generated for one real estate project by two different Promoters which is a serious issue. This can cause confusion and misrepresentation among various stake holders, and jeopardise the rights of the home buyers / allottees.

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f. Hence the preliminary objection is thus, overruled and the complaints are proceeded further for adjudication on merits.

6. The Parties have filed rejoinder and replies as directed by this Authority which are taken on record. The Parties have also filed the status of all litigations pending in different forums including the Hon'ble High Court as directed by this Authority which is also taken on record.

7. From the submissions made by the Complainants and Respondents herein, the following facts and chronology are noteworthy:

a. The real estate Project being said Project 1 & 2 is situate at C S No. 86, Mumbai City, Mumbai 400014.

b. The Complainant at Sr. No.1 relies mainly upon the following documents:

- i. Power of Attorney ("POA") dated 18.12.2014 to M/s. Rose Constructions (*Partnership firm*);
- ii. Declaration dated 28.10.2020 cancelling the POA dated 18.12.2014;
- iii. A Public notice dated 05.03.2020 giving warning to public not to deal with Respondent at Sr. No. 1 herein.

c. The Complainant at Sr. No.2 relies mainly upon the following documents:

- i. POA dated 18.12.2014;
- ii. Declaration dated 28.10.2020 cancelling the POA dated 18.12.2014;
- iii. MahaRERA Registration certificates issued in favour of Complainant at Sr. No. 1 bearing No. P51900030681 and issued in favour of Complainant at Sr. No. 2 bearing No. P51900021839.

d. The said Society relies mainly upon the following documents:

- i. Development agreement dated 08.08.1991;
- ii. Termination letter dated 10.10.2018;
- iii. Supplementary agreement dated 21.11.2014 and many more.

e. Thus, there are two Project Registration Certificates issued to two different Promoters for the very same Project site. In view thereof this Authority sought the intervention of the said Society vide its roznama dated 26.10.2021 mentioned hereinabove. The said Society appeared before this Authority and has submitted its reply and submissions which are taken on record. The said

Society submits that both the MahaRERA Project registrations i.e. said Project 1 & 2 must be revoked.

- f. The following brief submissions of the Parties are put together in chronology:
 - i. That the said Society entered into a development agreement dated 08.08.1991 (hereinafter referred to as the “said development agreement”) with U. H. Pandya & Associates (*Partnership*) for redevelopment and the same was registered on 15.07.2010 along with the deed of confirmation.
 - ii. That the Hon’ble City Civil Court vide an order dated 07.12.2004, directed U. H. Pandya & Associates to fulfil promises under the said development agreement and provide transit accommodation to tenants in transit camp and also to complete the project in 24 months.
 - iii. That on 16.02.2005, part occupation certificate (OC) was received for C & D wing and the tenants were given possession in rehab however, the area of the flats differed.
 - iv. That on 21.11.2014 an unregistered supplementary agreement was entered between the said Society and U.H. Pandya & Associates for completing the pending redevelopment work.
 - v. That in November 2014, U. H. Pandya & Associates executed a POA with Rose Constructions through its Partner the Complainant at Sr. No.2 herein above.
 - vi. On 04.03.2016 the said Society was registered under the Co-operative Societies Act.
 - vii. That on 10.10.2018 the said Society terminated the said development agreement and other incidental documents therein and the same has not been challenged till date.
 - viii. On 01.08.2019 the Complainant at Sr. No.2 obtained registration of the said Project 2 in individual capacity.
 - ix. That on 08.02.2019, the said Society passed a resolution in its general body meeting for appointment of the new Developer to complete the process of redevelopment.



- x. On 08.09.2021 the Complainant at Sr. No.1 obtained registration of the said Project 1 in individual capacity.
- xi. That as per the said Society the details such as undertaking of the Society, title certificate uploaded, pending cases filed against the project and name of the original Architect is either not shown or are wrongly mentioned on the project registration webpage by the Respondents at Sr. Nos. 1 & 2.
- xii. That the Complainant at Sr. No.1 is in contempt of the direction passed by this Authority in its roznama dated 11.11.2021 as she is carrying out construction activity at the site till date.
- g. This Authority has also observed that there are many pending litigations filed by the Parties and the said Society herein against each other which are noted herein below:

Litigations filed by the said Society:

- i. A writ petition No. 2979 of 2021 filed before the Hon'ble Bombay High Court by the said Society against U. H. Pandya & Associates, Rose Construction & Ors. seeking setting aside of the IOD dated 20.06.2018 and no further grant of permissions in lieu of the termination of the said development agreement.
- ii. A civil suit No. 2386 of 2019 filed before the Hon'ble City Civil Court Mumbai against U. H. Pandya & Associates, Rose Construction & Ors. for declaring the said development agreement, POA and the supplementary agreement null and void and also to declare the IOD and CC null and void.

Litigations filed by the M/s. Rose Construction:

- iii. A civil suit No. 101971 of 2021 filed before the Hon'ble City Civil Court against Complainant at Sr. No. 1 of U. H. Pandya & Associates for setting aside the cancellation of the POA and the deed of confirmation and seeking injunction for carrying of redevelopment work in the said Project 1 & 2.
- iv. An arbitration petition No. (L) 2986 of 2021 filed before the Hon'ble Bombay High Court by Complainant at Sr. No. 2 against Complainant at

Sr. No. 1 for seeking injunction from creation of third-party rights, transfer or deal in any manner the said Project.

Litigations filed by the members of the said Society:

- v. A writ petition No.(L) 1883 of 2019 filed before the Hon'ble Bombay High Court;
- vi. A complaint filed at Bhoiwada Police station by the member of the said Society for illegal sale of the Society office.

Litigations filed by the third party:

- vii. An FIR No.555/2020 filed at Parksite Police station against Complainant at Sr. No. 2 for cheating wherein the Complainant at Sr. No. 2 is on bail.
- h. Thus, from the above it is amply clear that all critical documents important for this Authority to come to a conclusion regarding the reliability of the completion of the Project are now under litigation. Further this Authority has no jurisdiction to adjudicate on the veracity or applicability of the documents relied upon by the Parties herein. It is also clear that the Complainant have sought the said Project 1 & 2 registrations in individual capacity which is not envisaged in any of the agreements relied upon by the Parties.
- i. This Authority is cast with the responsibility of protecting the interest of home buyers. With two registration numbers for the same Project a very unwarranted situation has arisen which can lead to confusion amongst the home buyers resulting in jeopardising their rights. Thus, this Authority shall restrain both the Complainants to not advertise, market, book or create any third-party rights by offer for sale, enter into agreement for sale for any apartment in the said Project 1 & 2, till such time that the pending litigations are over and final orders are passed therein and that both the Complainants then shall once again approach this Authority within two weeks from the final orders so passed to seek final directions with regard the registration of the said Project 1 & 2.

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- j. However, if either of the Complainants fails to adhere to the aforesaid directions and shall advertise, market, book or create any third-party rights by offer for sale, enter into agreement for sale for any apartment in the said Project 1 & 2, till such time that this Authority finally adjudicates on the revival of both the registration numbers, a penalty under section 63 of the said Act of Rs.1,00,000/- shall be payable to MahaRERA for each such violation. In this regard it is also noted that the Complainant at Sr. No.1 herein is carrying out construction activity in the said Project. This Authority takes a very serious view of this situation and makes it clear that no advertisement, marketing, booking or creation of any third-party rights by offer for sale, entering into any agreement for sale for any apartment in the said Project 1 & 2 shall be done.
- k. Thus, the said Project 1 & 2 are both put in abeyance and the same shall be revived only upon either of the Complainants filing the necessary proceedings for seeking revival of the said Project 1 & 2 and this Authority while dealing with the proceedings then shall also deal with the issue of revocation of one of the said Project registration numbers i.e. said Project 1 & 2.


FINAL ORDER

In view of the observations hereinabove, the following order is passed:

- A. The preliminary objection of clubbing of the two complaints herein and the transfer of the complaint at Sr. No. 1 from Member 1, MahaRERA to Chairperson, MahaRERA without any intimation is overruled in view of the observations mentioned in para No.4 hereinabove.
- B. The said Project 1 & 2 with their respective registration numbers are put in **abeyance** and the same shall only be revived upon either of the Complainants filing the necessary proceedings for seeking revival of the said Project 1 & 2. Further, this Authority while dealing with the proceedings then shall also deal with the issue of revocation of one of the said Project registration numbers i.e. said Project 1 & 2.

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- C. Both the Complainants herein are directed to not advertise, market, book or create any third-party rights by offer for sale, enter into agreement for sale for any apartment in the said Project 1 & 2, till such time that the pending litigations are over and final orders are passed therein. However, if either of the Complainants fails to adhere to the aforesaid directions and advertise, market, book or create any third-party rights by offer for sale, enter into agreement for sale for any apartment in the said Project 1 & 2, a penalty of Rs.1,00,000/- shall be payable to MahaRERA for each violation.
- D. The Secretary MahaRERA is hereby directed to block access to both the registration numbers (*P51900021839 & P51900030681*), take a stock of and review all returns filed till date against each of the registration numbers and ensure that the same are in safe custody. Further on the website pertaining to these two MahaRERA project registration numbers the operative part of this order should be displayed.
- E. Both the Complainants are at liberty to approach this Authority immediately from the date of the final orders so passed to seek final directions with regard the registration of the said Project 1 & 2.
- F. No order as to cost.


(Ajoy Mehta)
Chairperson, MahaRERA