

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

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

COMPLAINT NO. CC00600000171728

SAI SHAKTI ASSOCIATION

...COMPLAINANT

VS

SHRI MANGESH EKNATH THAKUR

...RESPONDENT

MAHARERA PROJECT REGISTRATION NO. P52000003230

Order

April 17, 2023

(Date of hearing 19.09.2022 -matter was reserved for order)

Coram: Shri. Ajoy Mehta, Chairperson, MahaRERA

Sudam Kuchekar for Complainant

None for the Respondent

1. The Complainant is association of allottees within the meaning of Section 2(zg) of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as the "**said Act**") of Real Estate Regulatory Authority (hereinafter referred to as the "**RERA**") and the Respondent is the Promoter/Developer within the meaning of Section 2 (zk) of the said Act. The Respondent is registered as the Promoter of the Project namely "SAI SHAKTI" under section 5 of the said Act bearing **MAHARERA Project Registration No. P52000003230** (hereinafter referred to as the "**said Project**"). On the MahaRERA Project registration webpage the proposed completion date of the said Project is mentioned as 31.12.2017 and revised completion date is mentioned as 28.02.2018. The said Project is a lapsed project and till date no extension application has been filed by the Respondent.
2. The Complainant is seeking the following reliefs:
"(i)The registration granted to the Respondent under Section 5 of RERA be revoked on account of default by the Respondent in completion of the said project within the date

mentioned in the respective registered agreements of sale and/or within the Revised Proposed Date of Completion in accordance with Section 7 of RERA.

(ii) Mental Distress and Agony: Rs. 5,00,000/-

(iii) Legal Charges: Rs. 1,00,000/-."

3. On 19.09.2022 the complaint was heard by this Authority wherein the following roznama was recorded:

"Complainant brings to the notice of this Authority that the flat was booked in 2012. The Agreement was signed in 2014 – 2015, he was to be given possession in 2015. They have paid around Rs. 44 Lakhs, they have not yet received possession. The Complainant seeks possession together with OC.

Parties are at liberty to file written submissions, if any, by the 30.09.2022. Subsequent to which, the matter will be reserved for orders."

4. The brief facts and submissions of the Complainant is as follows:

a. The captioned complaint was filed on 28.12.2019.

b. The Complainant states that vide the respective registered agreements of sale, the members of the Complainant have been allotted respective flats in the said Project.

c. The said Project is lapsed and no extension has been filed till date.

d. Vide agreements for sale, dates of which range from 2014 to 2016 the members of Complainant Association had purchased flats in the said Project. The date of completion for the said Project was mentioned as December 2018 in the agreements. The Respondent Promoter did not complete the said Project within the promised timelines and thus 5 members of the Complainant Association had filed 5 complaints before MahaRERA seeking reliefs under Section 18 of the said Act. These 5 complaints were disposed of by the Erstwhile Member 1 of MahaRERA, vide an order dated 04.11.2019 wherein the following observations / directions were passed:

"4. The complainants have also stated that the respondent in his written submission has stated that the dispute between the respondent and the owners of the land under the said project is pending before the Panvel Civil Court and the status quo order has been passed in the said matter Pertaining to this project. Hence, he could not complete the said construction work in the said project as per schedule and the project got delayed.

5. In the present case, the MahaRERA has observed that the respondent while registering this project with MahaRERA has given revised completion date for this project as 28-02-2018. However, since then he has not sought extension from MahaRERA, and the project registration validity is over.

Hence, the technical registration wing, MahaRERA, is hereby directed to take necessary action regarding the project on the issue of the extension and/or any other action to complete the project.

6. The complainants/allottees may form an association of the allottees in Respect of the said project and take appropriate action under section -7 of the RERA' The respondent is directed to share relevant information with the allottees for this purpose.

7. The complainants would be at liberty to Approach MahaRERA regarding their claim once the action regarding extension of the Project or any other appropriate action under section- 7 of the RERA is Completed.

8. Consequently, all the above five complaints stand disposed of."

e. Thus, the captioned complained has been filed by the Complainant Association for seeking revocation under Section 7 of the said Act.

5. It is observed that the Respondent was absent and the matter has been proceeded ex-parte. Further, no submissions have been made by the Respondent in spite of time being given by the Authority to file written submissions in the captioned complaint.

6. From the facts as submitted by the Complainant Association, the issue that needs to be considered is *Whether the Complainant Association can seek remedy under Section 7 of the said Act of revocation of the said Project registration and / or any other order?*

7. In order to answer the above issue at **para No.6**, it would be necessary to examine section 7 of the said Act which is reproduced hereinbelow for ready reference:

"7. Revocation of registration – (1) The Authority may, on receipt of a complaint or suo motu in this behalf or on the recommendation of the competent authority, revoke the registration granted under section 5, after being satisfied that –

(a) the promoter makes default in doing anything required by or under this Act or the rules or the regulations made thereunder;

(b) the promoter violates any of the terms or conditions of the approval given by the competent authority;

(c) the promoter is involved in any kind of unfair practice or irregularities.

Explanation. – For the purposes of this clause, the term "unfair practice means" a practice which, for the purpose of promoting the sale or development of any real estate project adopts any unfair method or unfair or deceptive practice including any of the following practices, namely: –

(A) the practice of making any statement, whether in writing or by visible representation which, –

- (i) falsely represents that the services are of a particular standard or grade;*
- (ii) represents that the promoter has approval or affiliation which such promoter does not have;*
- (iii) makes a false or misleading representation concerning the services;*
- (B) the promoter permits the publication of any advertisement or prospectus whether in any newspaper or otherwise of services that are not intended to be offered;*
- (d) the promoter indulges in any fraudulent practices.*

(2) The registration granted to the promoter under section 5 shall not be revoked unless the Authority has given to the promoter not less than thirty days notice, in writing, stating the grounds on which it is proposed to revoke the registration, and has considered any cause shown by the promoter within the period of that notice against the proposed revocation.

(3) The Authority may, instead of revoking the registration under sub-section (1), permit it to remain in force subject to such further terms and conditions as it thinks fit to impose in the interest of the allottees, and any such terms and conditions so imposed shall be binding upon the promoter.

(4) The Authority, upon the revocation of the registration, –

- (a) shall debar the promoter from accessing its website in relation to that project and specify his name in the list of defaulters and display his photograph on its website and also inform the other Real Estate Regulatory Authority in other States and Union territories about such revocation or registration;*
- (b) shall facilitate the remaining development works to be carried out in accordance with the provisions of section 8;*
- (c) shall direct the bank holding the project bank account, specified under sub-clause (D) of clause (l) of sub-section (2) of section 4, to freeze the account, and thereafter take such further necessary actions, including consequent de-freezing of the said account, towards facilitating the remaining development works in accordance with the provisions of section 8;*
- (d) may, to protect the interest of allottees or in the public interest, issue such directions as it may deem necessary."*

From the plain reading of the above section, it is clear that this Authority may, on receipt of a complaint, revoke the registration granted under section 5, only after being satisfied that:

- (a) the Promoter (Respondent herein) makes default in doing anything required by or under this Act or the rules or the regulations made thereunder;*
- (b) the Promoter (Respondent herein) violates any of the terms or conditions of the approval given by the competent authority;*

(c) the Promoter (*Respondent herein*) is involved in any kind of unfair practice or irregularities;

(d) the Promoter (*Respondent herein*) indulges in any fraudulent practices and in case the project has lapsed then the Authority, may consult the appropriate Government to take such action including the carrying out of the remaining development works by competent authority or by the Association of Allottees or in any other manner.

8. In the present case the Respondent has clearly defaulted in completing the said Project within the timelines i.e. 28.02.2018 mentioned by him while seeking the said Project registration. Further the Respondent has also not sought for any extension since then nor has he replied to the notices sent by MahaRERA with regard the same. The said Project has lapsed and the construction work is incomplete since March 2018. However, the Authority notes from the submissions of the members of the Complainant Association made during the hearing before the Erstwhile Member 1, MahaRERA reproduced in para No.4(d) hereinabove that on account of disputes between the Respondent herein and the owners of the land upon which the said Project is constructed is pending before the Panvel Civil Court and that there is a status quo order passed in the said matter, so the Respondent could not complete the said construction work of the said Project as per schedule and the said Project got delayed.
9. Before moving ahead, it is to be understood here that the act of revocation of registration has far reaching implications. It is because of this that the said Act has laid out specific reasons and circumstances under which the Authority can exercise these powers. This power has to be exercised only after the Authority is satisfied about the non-performance of the Developer / Promoter (*Respondent herein*) with regard to the obligations as mentioned in Section 7. This would require putting the claims and stated grievances of the Complainant Association to strict test. In view thereof, this Authority shall lay down the following road map which the Complainant Association of the said Project shall follow so that a way forward can be ascertained:

- a. To submit a list of items pending completion to the Respondent and the Authority in the said Project within 30 days from the date of this order;
 - b. To submit all orders of the various court proceedings pending till date in the matters between the Respondent Promoter herein, the land owners of the said Project or any Party such as financial lenders if any with regard to the said Project within 30 days from the date of this order;
 - c. To submit a proposed plan indicating the way forward to the Authority with a copy to the Respondent.
 - d. In order to facilitate the above-mentioned steps, the Authority shall appoint Mr. Sanjay Deshmukh, IAS (*Rtd.*) from MahaRERA (*Chief Consultant, Stressed Projects*) to ensure that the steps are taken in a time bound manner and any hurdle in taking such steps may be dealt by seeking proper guidance from the Authority.
10. Further since the said Project is lapsed and the Respondent has taken no steps till date to seek any extension, this Authority shall keep the said Project registration in **abeyance** and the Respondent shall not advertise, market, book, sell or offer for sale, or invite person/s to purchase in any manner any apartment in the said Project till they obtain extension from MahaRERA.

FINAL ORDER

- A. The way forward enumerated in para No.9 shall be complied within the timelines as stipulated.
- B. The Secretary, MahaRERA to put the said Project registration number in **abeyance**.
- C. The Respondent herein is 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, till such time.
- D. The Secretary MahaRERA is hereby directed to block access to the said Project registration number, take a stock of and review all returns filed till date and ensure that the same are in safe custody. Further on the website pertaining to the

said Project registration number the operative part of this order should be displayed.

E. No order as to costs.

(Ajoy Mehta)
Chairperson, MahaRERA