

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

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

REGULATORY CASE NO. 66 OF 2023

ASHWA PLATINUM

...PROJECT NAME

ASHWAMEDH BUILDERS AND DEVELOPERS

... PROMOTER
(Partnership Firm)

MRS. DARSHANA NILESH SAWANT

... APPLICANT

Versus

1. MR. SANJAY RAMDAS THAKKAR
2. MR. MILIND MADHUKAR MORE
3. MR. PRADEEP HARI SALVI
4. MR. RAVIDRA ARUN JADHAV
5. MR. JATIN LAKSHMIKANT NATHWANI
6. MR. NILESH MAHENDRA THAKKAR
7. MR. KAMAL GOBINDRAM SANGTANI
8. MR. HIREN CHUNILAL NAGARIYA
9. MR. JATIN SHAH
10. MRS. NARENDRA SHAH/JITENDRA MEHTA
11. MR. ATUL SEJPAL / SUNIL JAJU/ BIPIN SHAH
12. MRS. SHEETAL VINIT MANE
13. MR. ROSHAN J. JAIN
14. MR. TANAJI MAHADIK/ MRS. POOJA
MAHADIK/ MR. SUNIL NARAYN SAW/ MR.
RUPLAL NARAYAN SAW

RESPONDENTS

MAHARERA PROJECT REGISTRATION NO. P51800005636

ORDER

December 04, 2023

(Date of virtual hearing - 25.10.2023, matter reserved for order)

Coram: Shri. Ajoy Mehta, Chairperson, MahaRERA
Shri Mahesh Pathak, Hon'ble Member-1, MahaRERA
CA Ashwin Shah for the Applicant
Advocate Jatin Lalwani for Respondent No.1

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Ajith

Hiren Nagaria- Respondent No.8 was present in person.

1. The Applicant is a partner in the Promoter firm which had registered the project namely "ASHWA PLATINUM" under section 5 of the Real Estate (Regulation and Development) Act, 2016 ("said Act") of Real Estate Regulatory Authority ("RERA") bearing MAHARERA Registration No. P51800005636 (hereinafter referred to as the "said Project"). Respondent No. 1 is another partner in the Promoter partnership firm.

2. On 28.08.2023, an application was made by the Applicant for seeking following reliefs:

"5.1 That the present application be allowed.

5.2 That the Respondent No. 1 be restrained further from carrying out any such unlawful activities;

5.3. That the transaction carried out by the Respondent No.1 with Respondent Nos.2 to 7 be declared null and void in the interest of project completion of Wing B;

5.4 That Ld. Authority may set aside the subsequent sale of the apartments/ flats/ units as invalid/ null/ void and may declare the first sale as valid sale before this Ld. Authority;

5.5 That the Ld. Authority may declare Respondent Nos. 2 to 7 as not the Allottees as defined under Section 2(d) of the said Act;

5.6. That the necessary directions/ instructions may be issued to the concerned Sub Registrar to take appropriate steps towards cancellation of all the illegal agreement for sale between the Respondent No.1 with Respondent Nos. 2 to 7;

5.7. That the Ld. Authority may direct Respondent Nos. 2 to 7 to not to carry out transaction with Respondent No.1 and further Respondent Nos. 2 to 7 may also be directed to not to create any 3rd party rights on the apartment flat unit for which agreement to sell is executive and registered by Respondent No. 1;

5.8 That the Ld. Authority may direct Respondent No.1 not to further make any adjustment to loan creditors account by issuing any receipt to the new purchaser and not to handover the possession of the apartment to Respondent Nos. 2 to 7;

5.9. That the Ld. Authority may permit opening of new designated bank account without signature of the Respondent No.1 to avoid any misuse of the operation of the said bank account by Respondent No.1;

5.10 That the Ld. Authority may permit Applicant to collect balance receivable from Respondent Nos. 8 to 14, if any, and execute and register the Agreement to Sell with Respondent Nos. 8 to 10 and 12 to 14;

5.11 That the Ld. Authority may permit Applicant to handover lawful possession of the apartment to Respondent Nos. 8 to 10 and may permit Applicant to handover lawful possession of the apartment to Respondent Nos. 12 to 14 upon receipt of full occupation certificate;

5.12 That the Ld. Authority may direct Respondent No.2 not to create any hinderance in the possession of the Respondent No. 11;

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H. Nagaria

5.13 That the Ld. Authority may blacklist and prohibit Respondent No.1 to be proprietor, partner, director, manager, management developer etc. of any entity engaged in the real estate development;

5.14 That the Applicant be not made liable for any act of the Respondent No.1;

5.15 That the Respondent No.1 be levied heavy penalty in lieu of unfair trade practice and various illegality committed further Respondent No.1 be levied penalty under Section 61 of the Real Estate (Regulation and Development) Act, 2016 to the extent of his share in the said partnership form for the illegal acts committed;

5.16 That Applicant should also be paid the cost for the legal expense to the tune of Rs, 1,00,000/- which they have incurred in filing the application.

5.17 Any other orders or directions as Ld. Authority deems fit in the interest of justice."

3. In this regard the captioned case was heard by this Authority on 25.10.2023 wherein the following roznama was passed:

"The Applicant states that Respondent No.1 is a Promoter and partner. Seven units in the Project being units from 8 to 14 were allotted however the same have been transferred together with the loan creditors. As a result of this, the Applicant had approached the RERA for freezing their account and accordingly, the account was frozen. The Applicant has approached bank directly for defreezing the account. The Applicant now seeks orders from RERA to defreeze the account with only him as a single signatory for the operation of the bank account so that he can complete the project and handover the possession.

The Respondent No.1 states that there is a partnership dispute and the matter is undergoing arbitration and the outcome of that should resolve the issues. Further, the freezing of the account from the bank was sought by the applicant himself. The Respondent No.1 opposes the defreezing of the account and seeks that order be given for both partners to sign the account.

Parties are at liberty to file written submissions, if any, on or before 20.11.2023 subsequent to which, the matter will be reserved for order.."

4. The Applicant (Promoter) has stated the following for seeking reliefs under the said Application:

- a. That the Promoter firm is a partnership as per the Partnership Deed dated 13.04.2009 between 4 partners being the Applicant, the Respondent No.1, Nilesh Dattaram Sawant HUF and one Mrs. Rekha Sanjay Thakkar.
- b. That the said Project is being developed as an SRA project consisting of 2 sale buildings being Wing A (Ground + 22 floors) and Wing B (Ground + 7 floors).
- c. That the Promoter firm availed loans from various lenders to complete the said Project and the Applicant as well as the Respondent No.1 were aware of the same.

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- d. The Applicant states that the Respondent Nos. 2 to 7 are unsecured creditors and Respondent Nos. 8 to 14 are allottees under section 2(d) of the said Act.
- e. That the Promoter firm has allotted following flats to the Respondent Nos. 8 to 14 from the year 2010 to 2018 (hereinafter referred to as the "said flats"). Details of the units allotted with respective dates of agreements and other details are mentioned hereunder in tabulated form for ease of reference:

FLATS ALLOTTED	RESPONDENT NOS.	DATE OF AL ¹ / AFS ²	TOTAL CONSIDERATION (RS.)	AMOUNTS RECEIVED (RS.)
A- 2002	8	Not mentioned	1,05,84,000	1,05,84,000
A-302	9	26.06.2010 (AL)	30,00,000	2,00,000
A- 501	10	Not mentioned	70,00,000	15,00,000
A- 203	11	31.03.2023 (AFS)	1,34,67,700	1,34,67,700
B- 203	12	11.02.2015 (AL)	45,00,000	24,00,000
B- 502	13	30.09.2014 (AL)	42,55,000	7,50,000
B- 204	14	17.01.2018 (AL)	50,25,000	14,50,000

- f. That the above-mentioned details of booking were duly disclosed by the Promoter firm to MahaRERA under the sold-unsold inventory compliance in the year 2022.
- g. That the Promoter firm has received extension to the said Project registration under section 7 (3) of the said Act with the consent of more than 51 % allottees including some of the Respondent Nos. 8 to 14.
- h. That the Respondent No.1, in spite of knowledge of the above-mentioned facts, has illegally and fraudulently executed Agreements for Sale with other persons being Respondent Nos. 2 to 7 (new purchasers) for same flats which were earlier allotted to the Respondent Nos. 8 to 14. Further, the Respondent No. 1 has also adjusted the unsecured loan creditors monies towards consideration payable by the new purchasers.
- i. Details of the units allotted to new purchasers by Respondent No. 1 are mentioned hereunder in tabulated form for ease of reference:

FLATS ALLOTTED	(NEW PURCHASERS) RESPONDENT NOS.	DATE OF ATS ³	TOTAL CONSIDERATION (RS.)	UNSECURED LOAN ADJUSTED (RS.)
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¹ AL- Allotment Letter

² AFS- Agreement for Sale

³ ATS- Agreement to Sell

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A- 2002	2	11.04.2023	<i>Not mentioned</i>	38,00,000
A-302	3	19.04.2023	36,00,000	31,00,000
A- 501	4	<i>Not mentioned</i>	41,00,000	36,00,000
A- 203	2	27.04.2023	95,00,000	13,00,000
B- 203	5	09.05.2023	52,00,000	2,00,000
B- 502	6	09.05.2023	40,00,000	25,00,000
B- 204	7	10.05.2023	<i>Not mentioned</i>	20,00,000

- j. That the Applicant has already filed a police complaint to report the fraud, cheating and fraudulent transactions by the Respondent No. 1 and has also issued notices to Respondent Nos. 2 to 7 (unsecured creditors) and Respondent Nos. 8 to 14 (original allottees) of the same.
5. The submissions of the Respondent No.1 are as follows:
- a. That the Respondent No. 1 was not aware of the sale/allotment of the said flats by the Promoter firm to the Respondent Nos. 8 to 14 neither was the Respondent No.1 aware about any receipt of amounts for the said flats.
 - b. That the records submitted by the Applicant to MahaRERA and adduced herein for substantiating their claims cannot be relied upon as the Respondent Nos. 8 to 14 are not actual allottees in the said Project. The Applicant has misrepresented the same to the Authority and the said submissions are questionable. The same is evident from the fact that the Applicant only chose to upload the details of the purported allottees on the RERA project registration website only in the year 2022.
 - c. That the present dispute pertains to matters between the partners of the Promoter firm and the same is beyond the purview of the Authority.
 - d. That the Applicant has also filed an Arbitration Application before the Hon'ble Bombay High Court bearing No. 233 of 2023 and on her own accord had instructed the bank to freeze the bank account of the said Project. However, now the Applicant is attempting to misguide the Authority in order to defreeze the said bank account with Authorization to operate being with the Applicant only to gain sole control of the bank account.

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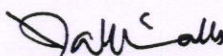
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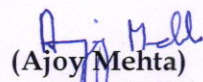
6. Before framing the issues, it is pertinent to note that the Applicant has not adduced any evidence such as agreement for sale copies / allotment letters to show the allottees / unsecured creditors in the said Project. Keeping the aforesaid in mind and from the submissions of the Parties the preliminary issue that needs to be examined is *whether the Applicant is entitled to any reliefs under RERA?*
7. It is observed that the Applicant had approached the banks and had sought freezing of the bank accounts of the Promoter firm. It is not clear nor is there any document to show as to why the Applicant is now approaching a different Authority for once again activating the Promoter firm bank account. To complicate matters further it is not on record as why in the first place the account was sought to be frozen. Further it is also not on record to show the reasons that led to freezing of the Promoter firm bank account and whether the same has now been addressed. The Applicant does not also state what led him to approach RERA for such a matter. The Applicant further fails to point out the legal provisions that would permit the Authority to activate an account frozen by a bank. It is also on record that there is an arbitration proceeding bearing No. 233 of 2023 pending before the Hon'ble Bombay High Court between the Applicant and the Respondent No. 1 herein. It is not on record to indicate the matters on which determination has been sought through the process of arbitration. The status / outcome of the arbitration proceedings is also not known nor the same is on record before this Authority.
8. Both the Partners of the Promoter firm herein namely the Applicant and the Respondent No. 1 have alleged sale of flats without the knowledge of the other. Infact the Applicant has alleged that certain flats have been sold by Respondent No.1 for second time even when the first set of allottees were on record. None of the Parties have brought any evidence on record to indicate how the sales in the said Project are proceeding.

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9. With the above circumstances on record the Authority can only conclude that the affairs of the said Project are being conducted in a manner that would not inspire confidence in the allottees or the Authority. The conduct of both the Parties namely the Applicant and the Respondent No. 1 appear to be opaque and not in the best interest of the said Project. In view of the above the Authority can reasonably conclude that allowing the said Project to proceed with the prevailing set of affairs would only jeopardise the interest of allottees therein.
10. In view of the above and the circumstances as enumerated hereinabove the Authority concludes that the balance of connivence in the present context would be in denying the Applicant any remedy under the said Act. The **issue at para No. 6** is answered in **negative**.
11. The Authority however expresses concern at the manner in which the Partners of the Promoters are conducting themselves. The Authority is mandated to protect the rights of the allottees and hence must take certain conclusive steps to ensure that their rights are not jeopardised and the monies paid by them for the flats in the said Project are protected. In view of this mandate the Authority hereby directs that the said Project registration to be kept in **abeyance** till further orders of the Authority. The partners of the Promoter firm are directed never to advertise, market, book, sell or offer for sale, or invite person/s to purchase in any manner any apartment / unit in the said Project.
12. The Authority shall however give liberty to the allottees of the said Project to approach the Authority in case of any grievances. No order as to cost.


(Mahesh Pathak)
Member-I, MahaRERA


(Ajoy Mehta)
Chairperson, MahaRERA