

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

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

COMPLAINT NO. CC006000000193255

1. THE BOMBAY POSTAL C.H.S.L.		
2. ABHINAV C.H.S.L.		... COMPLAINANTS
	VS	
M/S. GAURANG ASSOCIATES		...RESPONDENTS

MAHARERA PROJECT REGISTRATION NO. P51700015176

Order

April 25, 2024

(Date of hearing 27.03.2024)

Coram: Shri. Ajoy Mehta, Chairperson, MahaRERA

Advocate Hrishikesh Gole present for the Complainants

Advocate Akshay Jadhav present for the Respondent

1. The Complainants are the Co-operative Housing Societies under Maharashtra Co-operative Societies Act, 1960 and the owners of the land on which the captioned MahaRERA Project is situated (hereinafter collectively referred to as the "**Complainant Societies**"). within the meaning of Section 2 (d). The common Respondent is the Promoter/Developer firm within the meaning of Section 2 (zk) 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**"). The Respondent has registered a Project namely "SHREE GAURANG" under section 5 of the said Act bearing **MAHARERA Project Registration No. P51700015176** (hereinafter referred to as the "**said Project**").
2. On the MahaRERA Project registration webpage the proposed completion date of the said Project is mentioned as 31.12.2022. Neither Occupancy Certificate nor Form-4 has been uploaded by the Respondent in the said Project. Further, the Respondent

has not applied for extension of the said Project and as such the said Project registration has lapsed since 01.01.2023.

3. The Complainants are seeking the following reliefs:

- a. *The Hon'ble Authority may be pleased to pass suitable order thereby revoking the registration under Section 7 of the Real Estate (Regulation and Development) Act 2016 in respect of the subject property viz. all that piece and parcel of land bearing Survey no.30/A, Hissa no.1, CTS no.19, Tikka no.22 admeasuring about 1188.96 sq. mts. AND Survey no.16, Hissa no.7, CTS no.2, Tikka no.21 admeasuring about 454.85 sq. mts. at Village – Naupada, Taluka and Dist. Thane along with two society buildings – Suyog and Sadhana of Complainant No.1 and Building named Manali of Complainant No.2 which are registered under RERA bearing registration no.P51700015176.*
- b. *The Hon'ble Authority may be pleased to pass suitable order in order to facilitate the redevelopment work of the subject property either by the Complainants themselves (self-redevelopment) or through another suitable Promoter as per the provisions of Section 8 and such other provisions of the Act and may be pleased to pass such further suitable order in favor of the Complainants as the Hon'ble Authority deems fit and proper.*
- c. *The Hon'ble Authority may be pleased to direct the Opponent to pay to the Complainants the compensation to the tune of Rs.3,00,00,000/- (Rupees Three Crores only) as calculated hereinabove for the delay caused in completion of construction of the proposed buildings on the subject property as per Section 18 of the Act.*
- d. *Pending hearing and final disposal of the proceedings, the Opponent may be restrained by an appropriate interim prohibitory order restraining it from substituting/transferring/assigning the rights and benefits under the Development Agreements dated 18th March 2016 and other ancillary documents and from creating third party rights in the subject property or in the said project registered under RERA registration no.P51700015176 and from doing such acts which are prejudicial to the lawful rights of the Complainants in the subject property.*
- e. *Ad-interim ex-parte reliefs in terms of prayer clause no.(d) above may be granted.*
- f. *Costs of the complaint may be provided for any such other order as the Hon'ble Authority may deem fit and proper may be passed in favor of the Complainants.*

4. Captioned complaint was heard by this Authority on 27.03.2024 wherein the following Roznama was recorded:

QUOTE

1. *The Complainant society appears and states that there have been delays and in view of the delays, they are not interested to allow the present developer to continue. Further they have moved into the rental accommodation and for the same the rent has also not been paid by the developer appointed by them. Finally, on 24.11.2021 the developer himself resigned from executing the Project. There are two building of which the permissions are not taken and further the rents have also remain unpaid. Therefore, the society has decided to terminate the Development Agreement (DA) with the current developer and appoint a new developer in his place.*

2. *The Respondent developer states that delays have taken place due to the non-co-operative conduct of the society, and that there was COVID also. The developer is ready to continue with the Project and seeks permission to go ahead. The Respondent further states that subsequent to the demise of the person handling the Project; the new person handling has secured funding for the Project and they are in position to complete the same.*
3. *Parties at liberty to file written submission if any on or before the 05.04.2024, Subsequent to which the matter will be reserved for orders.*

UNQUOTE

5. The brief facts and submissions of the Complainants are as follows:
 - a. The captioned complaint was filed on 31.05.2020.
 - b. That Complainant No.1 is the landowner the of land bearing two buildings namely Suyog & Sadhana and Complainant No.2 is the landowner the of land bearing one building named Manali. As these three buildings were in dilapidated condition the Complainant Societies decided to amalgamate the two properties and invited joint-re-development plans.
 - c. That a Development Agreement ("DA") along with Power of Attorney ("POA") dated 18.03.2016 and an additional Supplementary Agreement ("SA") dated 12.12.2018 were executed between the Complainant Societies with the Respondent for the re-development of the said Project.
 - d. Respondent has failed to comply with their duties under the said Act and did not apply for extension of the said Project registration.
 - e. Respondent has already obtained development permission certificate granted by the planning authority dated 22.11.2017. However, still, after a long span, the Respondent has failed to construct the said Project, obtain further permissions and has thereby failed to honour the DA.
 - f. DA was terminated by the Complainant Societies on 26.01.2020.
 - g. Respondent has also expressly written on a stamp paper dated 24.11.2021 stating his inability to undertake the said Project further.
 - h. In view of this voluntary resignation of the Respondent which being accepted by the Complainant Societies pray under Section 8 of the Act a change in Developer from M/s Gaurang Associated to M/s. Dream Infra, a General Body Meeting Resolution dated 20.12.2023 is also passed by the Complainant Societies to this effect.

- i. As instructed by Chief Consultant, MahaRERA; SGMs were conducted by the Complainant Societies on 20.12.2023 and new offers presented by M/s. Gaurang Associates were rejected & offer presented by M/s Dreams Infra was accepted and the same was informed to the Authority.
 - j. Despite the above, the Respondent had approached the Complainant Societies with yet new offers on 20.01.2024 & 30.09.2023, which were rejected.
 - k. The Respondent owes the Complainant Societies approximately a sum of Rs. 400,00,000/- towards unpaid rent & Rs. 50,00,000/- which were paid by the Complainant Societies for obtaining initial IOD. Complainant Societies and M/s Dreams Infra agree to accommodate the new genuine third party allottees.
 - l. Existing members of Complainant Societies who shall be other allottees of new premises; have consented for appointment of M/s Dreams Infra as new developer.
 - m. Therefore, the Complainant Societies seeks revocation of Project registration and handover of the said Project to the new Promoter.
6. The relevant common submissions of the Respondents are as follows:
- a. That the said Project was delayed due to reasons beyond the control of the Respondent such as the demise of Mr. Deepak Sane on 12.07.2023 who was the active partner of the Respondent firm.
 - b. On 26.01.2020 the Complainant Societies held a Joint General Body Meeting and passed a suo-moto resolution to terminate the DA consequently terminating the POA & SA which was then informed to the Respondent on 02.03.2020. It is important to note that these executed documents had no termination clause.
 - c. Another reason for delay in completion of the Project and further impending consequences of the said delay was that the Respondent is one of the directors in a sister concern namely Gaurang Properties Pvt. Ltd. Which is under CIRP proceedings in NCLT, Mumbai Bench & since 08.09.2023 a moratorium had been imposed under the same. This company petition was withdrawn on 30.10.2023.
 - d. Due to financial disabilities, the Respondent had offered to the Complainant Societies for formation of a Joint Venture for completing the said Project.

Complainant Societies are the co-promoter of the Project as more specifically declared by Hon'ble Bombay High Court in Second Appeal (ST) No. 21842 of 2023.

- e. Respondent, being free from abovementioned litigation is willing to complete the Project, comply with all duties with regards to the Project & to protect the interest of all the allottees of the Project.
 - f. The Respondent has presented multiple plans to the Complainant Societies which are efficient than the plans presented by the proposed new promoter which they refused to even acknowledge and rejected.
 - g. By far the Respondent has invested an amount of Rs. 6,68,02,522/- in the said Project and prays refund at interest of 12%p.a. for the loss of income incurred, in the event that the Authority decides to grant the appointment of a new developer.
7. From the facts and the submissions made by the Parties hereinabove, the issue that needs to be considered at the outset is *Whether the Complainants can seek remedy under section 7 of the said Act?*
8. In order to answer the above issue, 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 sections, 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 Promoters (*Respondents herein*) makes default in doing anything required by or under this Act or the rules or the regulations made thereunder; (b) the Promoters (*Respondents herein*) violates any of the terms or conditions of the approval given by the competent authority; (c) the Promoters (*Respondents herein*) is involved in any kind of unfair practice or irregularities; (d) the Promoters (*Respondents 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.

9. In this case the Society has sought the action of revocation as laid out in Section 7, The said Section 7 vests with the Authority the power to revoke registration of a Project on receipt of a complaint or Suo motu. In this case, it is the Complainant Societies which are the landowners and the entities which have initiated redevelopment and have now sought revocation. Thus, the Authority would have to take cognisance of this complaint and examine if violations have taken place to warrant a revocation.
10. The proposed date of completion of the said Project, as per the RERA registration was 31.12.2022. The Planning Authority had given the development permission certificate to the said Project on 22.11.2017. It is an admitted fact that the said Project still remains incomplete. It is also seen from the registration details of MahaRERA that the said Project registration lapsed on 01.01.2023. Since then, the Respondent Promoter has not initiated action for extension of the registration. The Complainant Societies, on observing slow progress of the work terminated the DA on 26.01.2020. The Promoter himself resigned from the work of development on 24.11.2021. It appears that the Promoter had given new offers to the Complainant Societies but the same were also rejected. Based on the above facts, the Complainant Societies have now sought revocation of the said Project registration.
11. The Promoter on the other hand has stated that there was a death in the family because of which the work of the said Project slowed down. Further, the Promoter contends that he is one of the directors in the sister concern which went under CIRP proceedings in NCLT. There was a moratorium imposed and this led to delays. The moratorium has now been lifted and the company petition stands withdrawn and hence the Respondent Promoter will be in a position to complete the work. Based on the above the Respondent Promoter seeks that the registration of the said Project may not be revoked and that he be allowed to continue with the work.
12. It is very clear from the above that there have been defaults with respect to the actions that were to be taken by the Respondent Promoter. The Promoter, under section 11 of the said Act, is required to file Quarterly Progress Reports (QPRs) in the manner

as prescribed by the Authority. In this case, clearly, the Respondent Promoter has failed to file the same. Further, the said Project registration had lapsed and the Promoter has not taken any action to extend the registration of the said Project. Under section 3 of the said Act, a promoter is required to follow the due process and take registration so that he remains compliant with the requirements of RERA. It is also an admitted fact the Respondent Promoter has not been able to complete the said Project on the date as registered with RERA. These are violations which are serious in nature. The filing of compliances and seeking extensions are a mechanism for the Authority to exercise oversight over a real estate project. Non-filing of the same leads to a situation where the Authority is unable to exercise any oversight which can jeopardise the interest of the allottees.

13. It is also an admitted fact the DA has been terminated and at one point of time the Respondent Promoter had himself resigned from the said Project. These events clearly indicate the complete breakdown of trust that has taken place between the Parties herein. The Promoter on the other hand has given reasons for the delay. These reasons, under no circumstances, fall under the purview of force majeure events. The events stated by the Respondent Promoter are normal risks in any real estate project and it is expected that a promoter will take measures to mitigate the same. Delays and losses due to such risks cannot be appropriated on to the allottees by the promoter.
14. The Respondent Promoter also cites Covid-19 pandemic as a reason for the delay. However, the Respondent Promoter has neither sought extension of the said Project nor has he sought any condonation for delays due to Covid.
15. In view of the above, the Authority cannot but help conclude that the Respondent Promoter is in default and it warrants revocation of the said Project registration. In view of the above, the captioned complaint is **allowed** and the issue at **para No.7** is answered in **affirmative**.

16. The Authority has passed certain orders in complaints bearing Nos. CC006000000209365, CC006000000209360, CC006000000209374 & CC006000000209387. The Authority also observes that in the abovementioned complaints, the Complainants therein have also consented along the lines of the Complainant Societies, to change the Promoter of the said Project in view of various grievances. The Complainant Societies while terminating the present Respondent Promoter & appointing a new promoter will ensure that the rights of the existing allottees will be protected. Further, the Complainant Societies will ensure that all obligations created towards the Complainants in the abovementioned complaints bearing Nos. CC006000000209365, CC006000000209360, CC006000000209374 & CC006000000209387 are honoured. The Complainant Societies shall stand in a fiduciary position with respect to the allottee-complainants in the above-mentioned complaints.

FINAL ORDER

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

- A. The captioned complaint is **allowed** and the Authority **revokes** the MahaRERA Project Registration of the said Project.
- B. Further the Secretary, MahaRERA shall ensure that the designated bank accounts of the said Project is frozen till further orders.
- C. The Respondent Promoter is restrained not to advertise, market, book, sell or offer for sale, or invite persons to purchase in any manner apartment or building, as the case may be, in both the said Project or part of it.
- D. The Complainant Societies shall ensure protection of the rights of the allottees in complaints bearing Nos. CC006000000209365, CC006000000209360, CC006000000209374 & CC006000000209387.
- E. No order as to costs.

(Ajoy Mehta)
Chairperson, MahaRERA