

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

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

REGULATORY CASE NO. 112 OF 2023

SECRETARY OF BALSUNDAR CO-
OPERATIVE HOUSING SOCIETY

... APPLICANT/SOCIETY

VS

SBM DEVELOPERS PVT. LTD.

...RESPONDENT/PROMOTER

SBM CLASSIQUE

...PROJECT NAME

MAHARERA PROJECT REGISTRATION NO. P51700021977

ORDER

May 2, 2024

(Date of virtual hearing -08.04.2024, matter reserved for order)

**Coram: Shri. Ajoy Mehta, Chairperson, MahaRERA
Shri Mahesh Pathak, Hon'ble Member-I, MahaRERA
Shri Ravindra Deshpande, Hon'ble Member-II, MahaRERA**
CA Ashwin Shah present for the Applicant.
None present for the Respondent/Promoter.

1. The Promoter herein had registered the project namely "SBM CLASSIQUE" under section 5 of the Real Estate (Regulation and Development) Act, 2016 ("said Act") of Real Estate Regulatory Authority ("RERA") bearing MAHARERA **Registration No. P51700021977** (hereinafter referred to as the "said Project").
2. On 11.12.2023, an application was made by the Applicant (Society) for revocation of the said Project and for other prayers mentioned more specifically hereunder:
*"5.1. That the present application be allowed,
5.2. That in light of non approved plans in effect and Respondent obtaining project registration under misrepresentation, the project registration granted without valid commencement certificate shall be revoked deregistered as this authority deem fit.
5.3. That this authority may levy penalty on the Respondent u/s 60 and 61 of RERA 2016 for obtaining project registration under misrepresentation and without any valid commencement certificate.*

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5.4. That the Respondent has been involved in unfair trade practice of irregularities by illegally representing the documents to RERA etc and that this authority may initiate appropriate legal proceedings against the Respondent.

5.5. That the Authority may blacklist and prohibit Respondent to be proprietor, partner, director, manager, management developer etc. of any entity engaged in the real estate development,

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

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

3. In this regard the captioned case was heard on several occasion namely 15.01.2024, 13.02.2024, 12.03.2024 and 08.04.2024 wherein the following Roznama are reproduced hereunder for reference:

Sr. No.	DATE OF HEARING	ROZNAMA RECORDED
1.	15.01.2024	"CA Ashwin Shah was present for the Applicant Society. The representative of the applicant Society is present. He avers that a wrong CC has been attached by SBM Developers who was supposed to do the development work. He seeks deregistration of the project on this ground. Matter stands adjourned to 13.02.2024. Notices to be issued to SBM Developer Pvt Ltd., Shram Safalya CHSL and also to representative of Municipal Commissioner of Thane Municipal Corporation."
2.	13.02.2024	"CA Ashwin Shah was present for the Applicant-Society. The Applicant states that the Promoter has attached a Commencement Certificate ("CC") which relates to some other society. The Applicant is seeking correction in the matter. The Representative of Thane Municipal Corporation nor the Promoter is present here today. This matter regarding CC needs to be inquired into. In the first instance, the Authority will direct the Secretary, MahaRERA to enquire in the matter and submit his report to the Authority on or before 29.02.2024. Subsequent to receipt of the report, the matter will be fixed for hearing"
3.	12.03.2024	"CA Ashwin Shah present for the Applicant Society. However, the Respondent-Promoter is absent. The Authority had called for a report from the Secretary, MahaRERA on the issue raised. The Secretary, MahaRERA as Per the directive in the roznama dated 13.02.2024 has now submitted a report dated 28.02.2024 to the Authority. In the first instance the Authority would direct the Registry, MahaRERA to see that a copy of the report is uploaded on the website of MahaRERA and is also given to the Parties in matter. Matter stands adjourned to 08.04.2024. The Secretary of the Applicant Society to also ensure that a copy of the present roznama together with the report of Secretary, MahaRERA is served on the Respondent-Promoter."
4.	08.04.2024	"CA Ashwin Shah present for the Applicant. None for the Promoter. The Applicant Society informs the Authority that they seek deregistration of the

		<p>Project. The Authority also has on record the report of Secretary, MahaRERA regarding the CC. The Applicant once again reiterates that there is a misrepresentation with respect to the CC submitted and seeks to deregister the said Project.</p> <p>The Promoter is given liberty to file written submissions if any by 30.04.2024, subsequent to which the matter is reserved for order."</p>
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4. Pursuant to the Roznama dated 13.02.2024 the Authority directed the Secretary, MahaRERA to enquire in the matter and submit a report. Subsequent Report dated 28.02.2024 was submitted before the Authority. Following is the conclusion of Report dated 28.02.2024 reproduced hereunder:

"In accordance with the Real Estate (Regulation and Development) Act, 2016, "commencement certificate" means the commencement certificate or the building permit or the construction permit, by whatever name called issued by the competent Authority to allow or permit the promoter to begin development works on an immovable property, as per the sanctioned plan. As per Section 4(2)(c), an authenticated copy of the approvals and commencement certificate from the competent Authority obtained in accordance with the laws as may be applicable for the real estate project mentioned in the application. However, the promoter failed to obtain commencement certificate from the competent Authority and uploaded a fraudulent commencement certificate. According to the regulations set forth by RERA, the submission of a duly authenticated commencement certificate is obligatory. Despite this requirement, the respondent promoter submitted a falsified commencement certificate to secure registration for the said project, a critical prerequisite for registration. Consequently, the registration can be deemed invalid due to submission of a fraudulent commencement certificate."

5. The Applicant (Society) has stated the following factual details for seeking deregistration of the said Project:

1.	-	Plot numbers mentioned in the Project Registration have been occupied by members of Applicant ("said land"). No CC is issued by Competent Authority for the said land.
2.	-	Plot Number/ Survey Number as per MahaRERA Project registration webpage - 60A, 64, 70, 71 B, 74 A/2, Thane
3.	16.04.2018	CC "commencement certificate" issued by Thane Municipal Corporation in favour of Promoter herein and one Shram Safalya CHS for development on area constituting S. No. 187 (pt) and 209(pt), situated at Village Majiwade in Thane.
4.	27.07.2018	Applicant Society entered into Development Agreement with Respondent Promoter ("said DA").

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		Applicant did not give consent to Respondent to register Project with RERA
5.	25.08.2019	Project was registered with MahaRERA by Respondent. Respondent submitted plans and CC of some other Project to register the captioned Project.
6.	16.01.2021	Show Cause Notice issued by Applicant to Respondent
7.	12.01.2022	Notice of Termination of said DA issued by Applicant to the Respondent.
8.	29.12.2022	Principal District Judge, Thane, while interim order in Civil MA No. 461/2022 in Application filed by Applicant under Section 9 of Arbitration Act has granted ad interim relief restricting the Respondent from creating any third-party rights in the said land.

6. The Promoter (Respondent) remained absent throughout the hearing being conducted. Despite opportunity being given to file submission before the Authority, the Promoter filed no submissions. The Promoter (Respondent) has failed to provide for any reply/submission in the captioned case.
7. That captioned case is taken up by MahaRERA against the Promoter (Respondent) pursuant to the allegation of submitting a falsified commencement certificate (CC) dated 16.04.2018 bearing certificate No. 3766 in the said Project.
8. The only issue now remains to be determined by the Authority is *whether the said Project should be revoked in view of the Secretary, MahaRERA report dated 28.02.2024?*
9. The following observations and provisions of the said Act are noteworthy in the present case:
 - a. As per section 4 of the said Act every Promoter who seeks registration of his real estate project is mandated to make an application to this Authority in such form, manner, within such time and accompanied by such fee as specified by the regulations made therein and also enclose the documents such as a brief details of the enterprise of the Promoter, a brief detail of the projects launched by him (in the past five years, whether already completed or being developed), **an authenticated copy of the approvals and commencement certificate from the competent authority obtained in**

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accordance with the laws as may be applicable for the real estate project, the sanctioned plan, layout plan and specifications of the proposed project, etc.

- b. Hence, the Promoter (Respondent) while seeking the Project registration have to submit with their applications the above-mentioned CC as one of the mandatory requisites for seeking Project registration under the said Act.
- c. Further, vide report dated 28.02.2024 submitted by the Secretary, MahaRERA. it appears that the above-mentioned CC being submitted by the Promoter (Respondent) is a falsified CC. Consequently, the registration can be deemed invalid due to submission of a fraudulent/ falsified commencement certificate by the Promoter (Respondent) to secure registration for the said Project, which is a critical prerequisite for registration.
- d. In view thereof, it is pertinent to examine section 7 of the said Act that empowers this Authority to revoke / cancel registration granted under section 5 of the said Act:
- "7. (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."*


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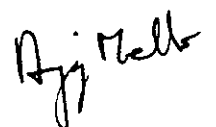
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- e. From the plain reading of section 7 it is clear that this Authority has powers u/s 7 of the said Act with regard the revocation of registration of MahaRERA Projects for the Promoter indulging in any kind of unfair practices. In the present case the Promoter (Respondent) submitted a falsified CC and misrepresented to this Authority as well as any likely allottees / home buyers.
- f. Hence, in terms of this conduct of the Promoter report of the Secretary, MahaRERA with regard to CC clearly submitted is falsified. Thus, this Authority thinks it a fit case to revoke / cancel the said Project registration inorder to safeguard the interest of the prospective Allotees and any existing Allotees from investing / engaging any further in these Projects. That it is observed from the MahaRERA Website that there are no Allotees in the said Project. Further, it is also observed that there are no complaints filed before the Authority in the said Project.
- g. Further, the Promoter (Respondent) shall be barred / restrained forthwith from advertising, marketing, booking, selling or offering for sale, or inviting persons to purchase in any manner any apartment or building, as the case may be, in said Project or part of it, in any planning area, of the said Project.
- h. Further the Secretary, MahaRERA shall ensure that all the designated bank accounts of the said Project are frozen by informing banks so as restrain any further misuse of funds collected under the said Project so as to protect the interest of Allotees / home buyers (if any) of the said Project.
- i. Further it is observed that the Applicant (Society) vide termination notice dated 12.01.2022 has terminated the Development Agreement between the Promoter (Respondent) and Applicant (Society).

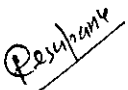
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FINAL ORDER

- A. Thus, in view of the above observations and the provisions of the said Act, this Authority revokes / cancels the registration of the said **MahaRERA Project bearing no. P51700021977**.
- B. Further the Secretary, MahaRERA shall ensure that the designated bank accounts of the said Projects are frozen till further orders.
- C. Further, the above-mentioned Promoter (Respondent) is restrained to not 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 the said Projects or part of it.


(Ravindra Deshpande)
Member-II, MahaRERA


(Mahesh Pathak)
Member-I, MahaRERA


(Ajoy Mehta)
Chairperson, MahaRERA