

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

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

REGULATORY CASE NO. 77 OF 2023

1. KANCHAN KUMAR
2. MR. OMPRAKASH NAGENDRA AKLU SAH
3. MRS. SUDEEPA OMPRAKASH GUPTA
4. MR. VAIBHAV SHANKAR BENDRE
5. MR. SANDEEP KSHIRSAGAR
6. MRS. SINDHU DASHRATH KSHIRSAGAR ... APPLICANTS
7. MRS. GEETA AMOL DHAWAN (ALLOTEES)

VS

SHRI SAI ASSOCIATES ...RESPONDENT NO.1
(PROMOTER)

IN MAHARERA PROJECT REGISTRATION NO. P52100011749

AND

VS

INTERCONTINENTAL INFRASTRUCTURE LIMITED ...RESPONDENT NO.2
(PROMOTER)

IN MAHARERA PROJECT REGISTRATION NO. P52100048342

ORDER

December 01, 2023

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

**Coram: Shri. Ajoy Mehta, Chairperson, MahaRERA
Shri Mahesh Pathak, Hon'ble Member-I, MahaRERA**

Advocate Nilesh Borate for the Applicants
Advocate Parth Chande for the Respondent No.1
Advocate Janak Lunkad for the Respondent No.2.

1. The Respondent No. 1 herein had registered the project namely "PHASE III - J1 BUILDING" under section 5 of the Real Estate (Regulation and Development) Act, 2016 ("said Act") of Real Estate Regulatory Authority ("RERA") bearing MAHARERA Registration No. P52100011749 (hereinafter referred to as the "said Project No.1"). The Respondent No. 2 herein had registered the project

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namely "THE URBANA" under said Act bearing MAHARERA Registration No. **P52100048342** (hereinafter referred to as the "said Project No.2").

2. On 02.09.2023, an application was made by the Applicants (Allottees) seeking the following reliefs:

*"a. The Application of the Applicants may kindly be allowed for betterment of the said project.
b. Appropriate action is very much needed against the Respondent No. 1 & 2 on an urgent basis.
c. Hon'ble Authority may not entertain any applications, updates, or representations made by the Respondents or their agents, servants, POA holders, or anyone who acts on their behalf in respect of the both the project registration No. P52100011749 & P52100048342.
d. The both the project registration No. P52100011749 & P52100048342 may kindly be kept in abeyance till final disposal of the present application.
e. The Respondent No. 2 or their agents, servants, POA holders, and anyone who acts on their behalf be restrained temporarily to 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 registration No. P52100048342, till final disposal of the present application.
f. The Respondent No. 2 or their agents, servants, POA holders, and anyone who acts on their behalf be restrained temporarily to obtain any loan either from financial institutions or Investors against the Project land and or Unsold Inventory of the said new project.
g. The Respondent No. 2 or their agents, servants, POA holders, and anyone who acts on their behalf be restrained permanently to enter into the said project and do the construction activity whatsoever in nature.
h. Hon'ble Authority may kindly be taken stringent action against the Respondents for indulging in unfair trade practice.
i. Any other just and equitable order may kindly be in favour of the Applicants."*

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

"Applicant states that there are allottees and they now find that one building has got two registration numbers. The Applicant states that the Respondent No.2 is the new Promoter, and the new Promoter has gone ahead to seek a fresh registration number by using documents of the old project and old registration number without taking their permission. This was an ongoing project, and a new registration number is necessary which should have been taken only subsequent to the consent of the allottees. The Applicant further avers and seeks orders directing both the project registration numbers to be kept in abeyance and no sale to take place or customers being solicited till the outcome of this matter.

Respondent No.1 points out to the various orders of the Authority stating that this is a regulatory matter and not an adversarial matter which is dealt separately by RERA. The

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Applicant here is buyer and if he has grievance, he should come before the Authority under relevant sections of RERA rather than approaching RERA on this matter as a regulatory complaint. On this count itself, the matter does not stand.

Respondent No.1 further states that these very applicants had approached the Adjudicating Officer and certain orders were passed which are under challenge before the Tribunal. The order of the Collector is also under challenge before the High Court. Respondent No.1 further contends that all actions taken by them have been done subsequent to consents of all the concerned allottees. He has not taken any action in any way which jeopardises or compromises the rights of the allottees in the Project. Respondent No.2 is present and adopts the submissions of Respondent No.1.

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 brief submissions of the Applicants are as follows:
- a. That Respondent No. 1 is the promoter and developer who has undertaken to develop a project 'Swapnanagari' under different phases and one of them is "Phase-III-I1 and J1 Building" and the said Project No. 1 has been registered with the MahaRERA.
 - b. That Applicants are allottee who has purchased flat bearing Nos, JI-307 J1-502, J1-706 J1-607 and K1-508.
 - c. That the Respondent No. 2 is the Promoter who has registered the said Project No.2 with the MahaRERA.
 - d. That the Respondent No. 1 while registering the said Project No.1, had shown 2 Independent buildings 'Phase-III I1 Building' and 'Phase III J1 Building of which the respective Flats of the Applicants are situated in "Phase III J1 Building'.
 - e. That the Respondent No. 1 made changes by dividing 1 building namely "Phase III J1 Building" in two parts (i.e Phase III - 1st to 7th floors & Phase III - 8th to 11th floors) in the said Project No.1 without knowledge and without obtaining requisite consent from the Applicants and other allottees of the said Project No.1.
 - f. That the Respondent No. 2 now has registered the said Project No.2 with the MahaRERA Authority wherein the Respondent No. 1 is shown as i.e.

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Promoter (landowner/Investor) and has shown only one building namely "Building I1".

- g. That the Respondent No. 2 has uploaded all the requisite documents of Respondent No. 1's Project for obtaining registration number for MahaRERA Authority.
 - h. That the Respondent No. 2 has failed to upload revalidated Commencement Certificate/building plans pursuant to any change of plans while registering the said Project No.2.
 - i. That the Respondent No. 2 if at all have to register new Project due to change in plans then in that case the Respondent No. 2 first had to de-register the said Project No. 1 with prior consent of the Applicants which the Respondent No. 2 has failed to do.
 - j. That the Respondent No. 1 & 2 are hand in glove with each and other and have played fraud not only upon the Authority but also the Applicants and other allottees in the said Project Nos 1 & 2.
 - k. The Applicants therefore pray that in the interest of all the allottees, both the Projects may kindly be kept in abeyance till final disposal. Further the Respondent No. 2 may be restrained temporarily to 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 No.2.
5. The brief submissions of the Respondent No. 1 are as follows:
- a. That the Respondent No. 1 has obtained sanctioned plan on land of more than 40 acres. That the Respondent No. 1 envisioned a township project consisting of approximately 42 building to be developed in phases. That the gat Nos. 401,460,461,462,463,471,469,470 & 474 form part of the said larger land and their details of total area acquired has been more specifically dealt in the table provided in the submission.
 - b. That below are the details of each phase being developed on the larger land of the said Project Nos.1 & 2:

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SR. NO.	PHASE	TOTAL NO. OF BUILDINGS	BUILDINGS FOR WHICH RERA REGISTRATION WAS REQUIRED & WAS REGISTERED	RERA REGISTRATION NO.
1.	Phase-1	26	6 (21 buildings completed in Pre-RERA period)	P52100010202
2.	Phase-2	5	3	P52100010800
3.	Phase-3	3	2	P52100011749
4.	Phase-4	3	2	P52100010801
5.	Phase-5	2	1	P52100011910
6.	Phase-6	3	2	P52100012061

- c. That the regulatory complaint is not maintainable in view of the order/ circular issued by the MahaRERA. As the regulatory complaint means applications filed by the Promoter towards the compliance of the project such as extension, de-registration, change in promoter etc which require hearing and the Authority has the power to conduct hearing. In case if the allottees desire to file complaint then the same can only be done under section 31 of the said Act.
- d. Therefore, the regulatory complaint to be dismissed as it has not been filed under proper provisions of the said Act and lack jurisdiction.
- e. That Project No. 2 (i.e Building I1) was handed over to the Respondent No. 2 by the Respondent No.1 vide development agreement dated 30.05.2022 (hereinafter referred to as the "said agreement").
- f. Further it is pertinent to note that only Building I1 rights were transferred for development to the Respondent No. 2 and the building J1 is being developed by Respondent No.1. Pursuant to this transfer the Respondent No.2 opted for new Project registration number.
- g. The Applicants namely at Sr. No. 1, 2, 4 & 5 had filed frivolous complaint against the Promoter (*details of which are mentioned in the table below*). The order dated 26.08.2019 was passed by the Adjudicating officer, MahaRERA in which the Respondent No. 1 had file appeal. The said appeals in all the four complaints have been dismissed on account of technical issues i.e non-submission of hardcopies. However, the Appellant i.e. Respondent No. 1 herein is filing a restoration application for restoration of the said appeals.

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SR. NO.	APPELLANT DETAILS	COMPLAINT NO.	APPEAL NO.
1.	KANCHAN KUMAR	CC05000000011867	AT005000000144245
2.	OMPRAKASH NAGENDRA AKLU SAH	CC05000000011482	AT005000000144247
3.	VAIBHAV SHANKAR BENDRE	CC05000000011701	AT005000000144248
4.	SANDEEP KSHIRSAGAR	CC05000000011868	AT005000000052086

- h. That the execution proceeding was preferred by the Appellants and the execution order was issued and the collector on the execution order took steps. However, the steps of collector were unlawful in view therefore writ petition No. 7850 of 2023 was filed by the Respondent No. 1 before the Hon'ble Bombay High Court.
- i. That the Respondent No. 1 is the performing Promoter and has also obtained part OC dated 23.10.2023 for J1 building which includes the flats of the Applicants and shall obtain full OC within a period of 6 to 9 months. Therefore, any adverse order against the Respondent No. 1 shall affect the Project and the other Allotees in the said Project No. 1.
- j. That the Respondent No.1 under section 15 of the said Act could not register Respondent No. 2 as the Promoter as the whole Project was registered under the said Project No.1 and only a part of the said Project was transferred to the Respondent No.2. Therefore, the Respondent registered I1 separately.
- k. That consent of all the 13 allottees in I1 building regarding the change of promoter was taken by the Respondents. And that the consent of J1 allottees was not required as already part OC was obtained.
- l. That the said agreement including the constructions of building I1 and M1 and the buildings of the Applicants are out of the scope of the present complaint.
- m. That an inadvertent error has occurred by the Respondent No. 1 and steps are taken vide application and payment receipt dated 11.11.2023 for deletion of building I1 from Phase-11 of the said Project No.1.
- n. The Respondent No.1 prays that deletion of I1 building should be allowed and both the RERA registration numbers should survive and the same is arisen

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out of inadvertent mistake and the Respondent shall be given the opportunity to rectify the same.

6. That the Respondent No. 2 was present on the date of hearing 08.11.2023. However, it is observed that despite time being given to the Parties to file written submissions the Respondent No. 2 has failed to file any replies, affidavits or submissions. Further, the Applicant & the Respondent No. 1 have filed submissions which the Authority has perused and the same are taken on record.
7. The following observations are made by the Authority:


1.	28.02.2013	Commencement Certificate.
2.	03.08.2017	Date of registration applied for Project No.1. The following is the extension applied in the said Project No. 1: <ul style="list-style-type: none">• 31.08.2017 to 31.12.2019 - sought at the time of application.• 31.12.2019 to 30.12.2020 - sought under section 6 of the Act for one year.• 30.12.2020 to 30.03.2021 - covid-19 extension of three months granted by the Authority.• 30.03.2021 to 30.06.2021 - covid-19 extension of three months granted by the Authority.• 30.06.2021 to 30.12.2021 - covid-19 extension of six months granted by the Authority.• 30.12.2021 to 31.03.2026 - application pending due to compliance of documents to be submitted by the Promoter.
3.	28.08.2019	Order passed by the Adjudicating officer, MahaRERA.
4.	03.02.2021	Order passed by the Adjudicating officer, MahaRERA for recovery under section 40 of the Act.
5.	30.05.2022	Development agreement executed between the Respondent No. 1 & 2 and the landowners.
6.	22.11.2022	Date of registration applied for Project No.2.
7.	26.12.2022	Registration certificate for Project No. 2 was issued by the Authority for period 26.12.2022 to 31.03.2026
8.	17.03.2023	Writ Petition No.(st) 7850 of 2023 was filed by the Respondent No. 1 before the Hon'ble Bombay High Court.
9.	10.04.2023	All the four appeals have been dismissed on account of technical issues.
10.	24.05.2023	Extension application pending before desk 2 wherein the Respondent has sought extension of Project No.1 till 31.03.2026.
11.	21.06.2023	Correction Application applied by the Respondent No.2 in Project No.2 for Project name change from "Intercontinental Swapna Nagari" to "The Urban" due to typographical error.
12.	30.06.2023	Corrected Registration issued by the Authority for Project No.2 for Project name change.
13.	23.10.2023	Part occupancy certificate issued by Chakan Municipal Council for building J1 (parking+stilt+6 floors).

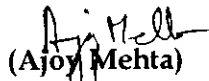
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14.	11.11.2023	Correction Application applied by the Respondent No.1 in said Project No.1 for deletion of building I1 from Phase-11 of the said Project No.1.
15.	22.11.2023	Corrected registration certificate issued by the Authority for Project No.1.

8. From the submissions of the Parties herein the issue that needs to be examined is *whether the Applicant (Allottees) are entitled to seek any reliefs with respect to the said Project Nos. P52100011749 & P52100048342 under the said Act?* The details of the reliefs sought have been enumerated above.
9. On perusal of the documents, it is observed that there had been an inadvertent error in including one of the buildings namely I1 while issuing the first said Project No. 1 i.e. P52100011749. The captioned case was heard on 25.10.2023 subsequent to which the correction application was made by the Respondent No. 1 with regard the inadvertent error mentioned hereinabove. The correction application was allowed and a correction registration certificate for the said Project No. 1 was issued on 22.11.2023. Thus, the issue raised by the Applicant herein does not survive in view of the correction registration certificate for the said Project No. 1 dated 22.11.2023.
10. In view of the above the Authority sees no merits in granting any relief to the Applicant herein pertaining to the said Project registration numbers. Further the said Project No. 1 & 2 shall remain valid and subsisting. The captioned case disposed of. No order as to cost.


(Mahesh Pathak)
Member-I, MahaRERA


(Ajoy Mehta)
Chairperson, MahaRERA