

BEFORE THE MAHARASHTRA
REAL ESTATE REGULATORY AUTHORITY, MUMBAI
Virtual Hearing held through video conference as per
MahaRERA Circular No.: 27/2020
REGULATORY CASE NO. 257 OF 2024

RAJENDRA SHANKAR PATIL

... APPLICANT/COMPLAINANT

ARIHANT SUPERSTRUCTURES LIMITED

...PROMOTER/RESPONDENT

MAHARERA PROJECT REGISTRATION NO. P52000045699

ORDER

February 4th, 2025

(Date of virtual hearing -26.07.2024, matter reserved for order)

Coram:

Mahesh Pathak, Member-I, MahaRERA

Ravindra Deshpande, Member-II, MahaRERA

Advocate Chaitanya B. Nikte present for the complainant/applicant

Representative Nimish Shah present for the respondent/promoter

1. The applicant filed an application dated 07.06.2024 in the form of a complaint. The respondent is the promoter within the meaning of section 2(zk) of the Real Estate (Regulation and Development) Act, 2016 ("the Act") and had registered the project namely "ARIHANT ADARSH PHASE I" (erstwhile Arihant Aakarshan Phase II) under section 5 of the Act of the Real Estate Regulatory Authority ("RERA") bearing MAHARERA Registration No. P52000045699 ("the Project"). The promoter in terms of a correction application no. CR52000021942 had changed the name of the Project from "ARIHANT AAKARSHAN PHASE II" to "ARIHANT ADARSH PHASE I".

2. On 07.06.2024, an application was made by the applicant for seeking revocation of the Project. In this regard the application was heard on 26.07.2024 wherein the following roznama was recorded:
*"Advocate Chaitanya B. Nikte present for the Complainant/Applicant
Representative Nimish Shah present for the Respondent/Promoter
The Complainant states that subsequent to the sanction of Planning Authority the NGT revoked the environmental clearance and imposed certain conditions. In view of this the Promoter could not have continued with construction and sales of the units in the Project. However, the Complainant finds that sales of the units is going on which could cause hardships to the buyers. The Complainant seeks revocation and suspension of RERA registration number of this Project and directives to stop sales.*

The Promoter informs the Authority that NGT had indeed issued certain directions regarding a certain distance to be maintained. Based on this direction the Promoter has revised their plan and made it compliant with NGT directions. With these compliant plans they approached the Planning Authority, and the Planning Authority has now granted permissions. The Promoter reiterates that he is fully in compliance with the environmental laws and Planning Authority norms.

In view of the issue involving the Planning Authority, the Authority would direct the Director of Compliance, MahaRERA to call for a report for this Project from Municipal Commissioner, Panvel Municipal Corporation. Subsequent to the report, the Authority will close the matter for order."

3. The applicant has made the following submissions in support of seeking revocation of the Project:
 - a. That the promoter suppressed material facts and made misleading statements pertaining to the Project.
 - b. That the Hon'ble National Green Tribunal's ("NGT") Order dated 21.08.2023 was allowed in Appeal No. 39/2022 and Appeal No. 40/2022 thereby setting aside the environment clearance dated 25.07.2022 for the Project.

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- c. That the Panvel Municipal Corporation ("PMC") has revoked its permission granted for development of the Project in terms of the letter dated 27.06.23.
 - d. That the Maharashtra Pollution Control Board ("MPCB") in terms of its letter dated 17.10.23 has revoked its consent.
 - e. That the applicant has initiated proceedings by filing a Public Interest Litigation bearing Case No. 119 of 2024 before the Hon'ble Bombay High Court, which is presently pending adjudication ("the PIL").
 - f. That the promoter has suppressed the fact that the environment clearance was cancelled in terms of the order passed by the tribunal.
 - g. That the promoter has made misleading statements in terms of its letter dated 10.03.23 stating that they have completely stopped construction work and have intimated the subject matter to the customer.
 - h. That the promoter is marketing the Project in name of "Aadarsh Sports City" and misrepresenting the allottees vide hoardings, posters and brochures and giving false promises of various amenities.
4. The submission of the respondent is as follows:
- a. The respondent states that the NGT indeed had issued directions regarding a certain distance to be maintained and based on these directions the promoter has revised their plans and made it compliant with NGT's directions and with these revised plans have approached the planning authority, and the planning authority has now granted permissions. The respondent further states that they are now fully in compliance with the environmental laws and planning authority norms.
 - b. The respondent states that the lands on which the Project is proposed to developed ("the said lands") were never declared to be falling under a no development zone or buffer zone.
 - c. The respondent further states that the PMC in terms of its commencement certificate ("CC") dated 25.03.2022 granted the permission to commence the work of construction on the said lands.
 - d. That the State Level Environment Impact Assessment Authority ("SEIAA") in terms of their order dated 25.07.22 granted environmental clearance to the respondent and further in terms of their order dated 27.09.22 a Consent To Establish was also granted by the MPCB.
 - e. That the PMC issued a notice dated 15.11.2022 to stop construction on the basis of complaint filed by Talaja Manufactures Association.
 - f. That the PMC vide its revocation order dated 27.06.2023 unilaterally revoked the development permission/CC dated 25.03.2022.
 - g. That the respondent applied for revised development permission with residential buildings outside the 500 meters and further states that the PMC in terms of their letter dated 01.01.24 have granted the revised development permission/commencement certificate.
 - h. That the respondent has applied for an environmental clearance in terms of the application No. SW/153175/2023 dated 04.12.23 to SEIAA and applied for consent to establish in terms of the application No. MPCB-CONSENT-00000210629 dated 27.05.24 to the MPCB.
 - i. That the NGT has set aside the environmental clearance dated 25.07.22 issued in favour of the respondent and that the respondent has filed an appeal before the Hon'ble Bombay High Court against the said order of the NGT in terms of the writ petition No. 5096 of 2024 which is pending.
 - j. That the complainant intentionally hides the important fact that the respondent has got the revised CC dated 01.01.24 and that the complainant made this complaint with malafide intentions and that the complaint may please be dismissed with cost.
5. From the facts and submissions of the complaint the issue that needs to be examined is *Whether the complainant is entitled to seek revocation of the Project under section 7 of the Act?*
6. Before determining the issue at paragraph No.5, the following observations are noteworthy:
- a. It is observed that the promoter has obtained two commencement certificates dated 25.03.2022 and 01.01.2024 and has uploaded the same on the project webpage of the MahaRERA website. It is further observed that commencement certificate dated

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25.03.2022 was granted up to ground + 13 upper floors and the commencement certificate dated 01.01.2024 was granted up to Ground + 36 upper floors.

- b. The promoter while seeking the Project registration vide his application submitted a commencement certificate dated 25.03.2022 as one of the mandatory requisites for seeking project registration under the Act.
- c. It is observed that as per last quarterly progress reports (QPR) uploaded by the promoter on the project MahaRERA website there is no construction activity undertaken by the promoter for the Project.
- d. It is observed that there are 129 allottees in Project as per the MahaRERA project website.
- e. It is observed that promoter has not disclosed the litigation before this Authority related to the Project before the NGT.
- f. It is observed that the project land falls under Central Hazardous Waste Treatment Storage and disposal Facility CHWTSDF¹ buffer zone hence the Talaja Manufacture Association filed NGT case bearing No. 39/2022 & 40/2022.
- g. It is observed that pursuant to this case the PMC in terms of its revocation order dated 27.06.2023 cancelled the commencement certificate dated 25.03.2022 granted to the Project.
- h. It is observed that the NGT by its order dated 21.08.2023 allowed appeal no. 39 of 2022 and appeal no. 40 of 2022 and directed the environmental department to cancel the environment clearance granted. The said order dated 21.08.2023 is reproduced hereinbelow for ease of reference:

"Project Proponent that the project in question is falling within 500 mtrs of the CHWTSDF facility, which was already in existence, which cannot be permitted to be constructed in view of the law laid down by the Hon'ble High Court of Gujarat in the case of Parth Mahila Utkarsh Mandal (N.G.O.) through Mahamantri (supra), on this single count, the Environmental Clearance (EC) dated 25.07.2022 in both these appeals deserves to be set aside and it is accordingly set aside."

- i. It is further observed that the MPCB by letter dated 17.10.2023 has revoked its consent for the Project based on the order passed by the NGT dated 21.08.2023 and further the MPCB has refused to grant revised Consent to Establish vide letter dated 03.05.2024.
- j. As per roznama dated 26.07.2024, the Authority had directed the Director of Compliance MahaRERA to call for a report from the PMC on the status of the Project having commencement certificates dated 25.03.2022 and 01.01.2024 issued to the respondent. The Director of Compliance MahaRERA sought the said report from PMC in terms of its letter dated 12.08.2024 .
- k. The PMC in its report dated 10.10.2024 stated that it has revoked the commencement certificate dated 25.03.2022 granted for the development of the Project and further states that the promoter has suppressed the fact of cancellation of the environmental clearance by the NGT order.
- l. It is observed that the promoter has got revised commencement certificate dated 01.01.2024 from the PMC and accordingly promoter had also filed correction application with MahaRERA and has corrected necessary details such as revised FSI, area etc. on MahaRERA project website. Further, the promoter has also obtained environmental clearance dated 09.10.24 issued by the SEIAA.

7. In view thereof, it is pertinent to examine section 7 of the 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 –

¹ Central Hazardous Waste Treatment Storage and disposal Facility (CHWTSDF)

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(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.”.

8. It is evident from the provisions of Section 7 of the Act that the Authority possesses the statutory power to revoke the registration of a MahaRERA project if the promoter is found to be engaged in any form of unfair practices or contravening the legal provisions governing real estate development. However, upon review of the present matter, it is noted that the promoter has duly obtained a revised commencement certificate from the relevant planning authority. Additionally, the promoter has amended the project plans in accordance with the revised certificate and has secured the requisite environmental clearance from the SEIAA dated 09.10.2024. The promoter has continued the Project without any undue interruption and has adhered to all necessary statutory requirements under the applicable provisions of law. Considering these observations and the interests of the allottees, the Authority does not find that the complainant is entitled to seek the revocation of the Project therefore the issue in paragraph 5 is answered in the negative.
9. It is further pertinent to observe that the commencement certificate, originally issued on 25.03.2022, along with the environmental clearance granted to the respondent was subsequently revoked by the relevant issuing authorities. The fact that the respondent failed to disclose this revocation to the Authority, as well as to the allottees or prospective homebuyers, constitutes a failure to disclose material facts and may be construed as engaging in unfair or deceptive practices. Such non-disclosure undermines the transparency required in the real estate sector and violates the ethical obligations owed to all parties involved. Consequently, in view of the foregoing, this Authority hereby imposes a penalty of ₹1,00,000 (Rupees One Lakh Only) on the respondent the said non-disclosure.

FINAL ORDER

10. In view of the above findings the complaint filed in this matter stands dismissed. However, the penalty imposed on the respondent, as detailed above, shall stand enforced because of their failure to disclose material facts related to the revocation of the commencement certificate and environmental clearance.


(Ravindra Deshpande)
Member-II, MahaRERA


(Mahesh Pathak)
Member-I, MahaRERA