

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

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

REGULATORY CASE NO. 2 OF 2022

MUKTHAR QAMRUDDIN WADEKAR
(Landowner/Co-Promoter)

... APPLICANT/
COMPLAINANT

VS

1. ITNOA CONSTRUCTION PVT. LTD

Through its

ABDUL KARIM KHAN (Managing Director)

MOHAMMED AZAM SHAIKH (Managing Director)

SHAKEEL SHAIKH (Authorized Signatory)

2. Assistant Director (Town Planning Department)

3. Executive Engineer (Town Planning Department)

...PROMOTER/
RESPONDENT NO. 1 to 3

K K RESIDENCY

... PROJECT NAME

MAHARERA PROJECT REGISTRATION NO. P51700006631

ORDER

May 16, 2024

(Date of virtual hearing -19.12.2022, matter reserved for order)

Coram: Shri. Ajoy Mehta, Chairperson, MahaRERA
Advocate Salman Balbale for Applicant/Complainants
None present for the Respondent Promoter

1. The Promoter herein had registered the project namely "K K RESIDENCY" under section 5 of the Real Estate (Regulation and Development) Act, 2016 ("**said Act**") of Real Estate Regulatory Authority ("**RERA**") bearing MAHARERA **Registration No. P51700006631** (hereinafter referred to as the "**said Project**").
2. On 03.10.2022, a complaint was filed as regulatory complaint before the Authority by the Applicant/Complainant seeking reliefs for revocation of the said Project along with other reliefs mentioned more specifically hereunder:

“(a) That this hon'ble Authority be pleased to issue such directions under section 37 of the RERA Act against the Respondent no. 1 and in the interest of Allottees and other stakeholder of the captioned Project;

(b) That this hon'ble Authority may under its function entrusted under section 34(f) and 34(g) of the RERA Act, ensure compliance of the obligations cast upon the Respondent no. 1 under the RERA Act and MahaRERA Rules;

(c) That this hon'ble Authority be pleased to call for information and conduct investigations against the Respondents as per section 35 of the RERA Act;

(d) That this hon'ble Authority be pleased to impose penalty or interest on the Respondent no. 1 for not complying with the obligations cast upon them as per section 38 of the RERA Act;

(e) That this hon'ble Authority be pleased to make all the directors jointly and severally liable for offence committed by them through the Respondent no. 1 company as per section 69 of the RERA Act;

(f) That this hon'ble Authority may be please to revoke the registration u/s 7(1) and 7(2) of the RERA Act and taken action against the Respondent no. 1 as per section 7(4) of the RERA Act;

(g) That this hon'ble Authority be please to impose such conditions in the interest of allottees u/s 7(3) of the RERA Act on the Respondent no. 1;

(h) That upon grant of prayer (f) as above, the Complainant shall provide all its assistance to this hon'ble Authority for discharging the obligation under section 8 of the RERA Act;

(i) Any other relief that this hon'ble Authority may deem fit and proper in the interest of Allottees and other stakeholder of the captioned project in the interest of justice.”

3. In this regard the captioned case was heard on 19.12.2022 wherein the following Roznama was recorded:

“Advocate for the Land Owners present. The Promoter Company is absent.

The Advocate present brings to the notice that he is the land owner with 4 others and had approached TMC in the year 2016 for permission under MRTTP Act as the Planning Authority for constructing a building therein. Subsequently he appointed an entity through a development agreement executed on 25.01.2017. Prior to this the landowner had received development permissions. Subsequently the landowner received notices from TMC stating that there was construction beyond the sanction plan. It appears that time and again TMC issued notices to correct the violations and bring it in conformity with the sanction plan. The landowner now states that illegal constructions still exists, and occupation has been given without obtaining OC. The landowner now seeks revocation of the MahaRERA registration Number.

The case is referred to Secretary MahaRERA to examine the following:

- 1. Whether at the time of giving RERA registration the landowner/Promoter was compliant with all RERA rules and regulations to obtain the registration?*
- 2. Whether as things stand today landowner/Promoter still complies with RERA regulations so as to enable the registration to continue?*

3. *Whether MahaRERA should issue necessary instructions to TMC to file criminal and civil cases against the entity holding permissions under the MRTTP Act?*

Secretary, MahaRERA to submit his report within 15 days from the date of this roznama."

4. Pursuant to the Roznama dated 19.12.2022 the Authority directed the Secretary, MahaRERA to enquire in the matter and submit a report. Subsequently Report dated 30.04.2024 was submitted before the Authority. Following is the conclusion of Report dated 30.04.2024 reproduced hereunder:

"As the project is registered with the MahaRERA Authority, the Promoter must reveal if any apartments within the unauthorised construction of the building have been booked.

Therefore, for the same,

- *The Promoter should be directed to upload the order of the Assistant Director, Town Planning Department, TMC bearing no. 4847 dated 17.03.2022 and the compliances directed by ADTP. If the said compliances as above are not submitted in certain time period, then the MahaRERA Authority should inform TMC to take necessary action in accordance with the MRTTP Act.*
- *Further, the Promoter should file an affidavit on record mentioning that there's been no unauthorized construction and that all the unauthorized construction has been regularised."*

5. Following are the submissions of the Applicant/Complainant stated in brief as follows:

- a. The Complainant along with Mr Bilal Ahmed Abdul Aziz Khan, Mr Mohd. Ajaz Mohd. Ismail Chaudhary, Mr Mohd. Hussain Siratullah Chaudhary and Mr Pandharinath Changdev Thakur are the owners of the said Project land ("**owners**").
- b. The owners obtained commencement certificate (CC) bearing no. V.P. No. 11/ 0101/15/TMC/TDD / 1371 / 15 dated 10.03.2015 for construction of Building B1 (Stilt+ 2Floors), Building B2 & B3 (Stilt+7Floors).
- c. That the owners executed and registered the Development Agreement dated 25.01.2017 with Respondent No. 1 granting them development rights for construction of the said Project. Pursuant to which the said Project was registered with Authority.

- d. That on 01.07.2017, the Town Planning Department, Thane Municipal Corporation (TMC) issued notice bearing no. 1442, u/s 52 and 53(1) of the Maharashtra Regional and Town Planning Act, 1966 (hereinafter referred to as the “MRTP Act”), stating that an inspection on the said Project Land was carried out on 09.06.2017 by the officer of the Town Planning Department and based on his report it is satisfied that unauthorized/illegal construction is carried out on the said Project land which is against the approved plan. And that the unauthorized/illegal construction should be stopped immediately and same should be removed within 30 days.
- e. That the Complainant approached the Respondent No.1 and sought to remove the unauthorized/illegal construction. Further the Complainant filed letter dated 04.08.2017 before the Town Planning Department, TMC and stated that the unauthorized/illegal construction is removed and informed that the 22 columns of RCC constructed for the unauthorized/illegal third floor will be cut which will take a period of one month. The Respondent no. 3 being the Executive Engineer, Town Planning Department, agreed to grant 15 days to cut the 22 columns of RCC constructed.
- f. On 10.03.2021, the Town Planning Department, TMC issued a fresh notice bearing no. 3369, u/s 52 and 53(1) of the MRTP Act, stating that as per CC building B1 is approved for Stilt+2 upper floors however there is unauthorized/illegal construction of third, fourth and fifth floor in building B1. In in regard pursuant to a hearing on 17.03.2022 the Respondent No. 2 pronounced an order bearing no. 4872, operative part of the same is reproduced hereunder for ready reference:

"Pursuant to the notice issued by the department regarding unauthorized construction, the disclosure filed by the architect and the structural consultant did not contain any information about the addition construction, considering the fact that the construction on the site is as per the approved plans and the addition is proposed as per the Integrated Development Control and Promotion Rules of the Government, the architect certified the proposal. The certificate should be submitted and regarding the stability of the constructed building, the architect

should obtain the Stability Certificate through IIT or VIJTI and the department should take further necessary action in the case accordingly."

- g. Pursuant to this order, Respondent No. 1 continued construction and started selling the units. Further, on inspection it was found that not only unauthorized/illegal construction is carried out in but also the Respondent no. 1 has let the Allottees occupy the units without obtaining Occupancy Certificate (OC) for the said Project. Moreover, two of the directors of the Respondent no. 1 company themselves are occupying the units in the said Project. That this was reported to the TMC vide letter dated 21.07.2022 and 27.09.2022.
 - h. Therefore, due to the illegal activities of the Respondent No.1, the Complainant being the landowner of the said Project land has approached the Authority in the interest of justice and equity against the Respondent No. 1.
6. The Promoter (Respondent) remained absent during the hearing being conducted. The Promoter (Respondent) has not filed any reply/submission in the captioned case.
 7. Following factual details and observations recorded in the captioned case:

SR. NO.	DATE	EVENT
1.	01.07.2017	Notice to Stop illegal construction by TMC to the Complainant.
2.	12.10.2017	Reply to the notice of the Complainant by the TMC granting time to remove the illegal construction.
3.	10.03.2021	Second Notice by TMC to stop illegal construction to the Complainant.
4.	17.03.2022	Order by the Assistant Director (<i>Town Planning Department</i>)/ Respondent no. 2. The same is translated in English and reproduced in para no. 5(f)
5.	21.07.2022	Copy of complaint filed by the Complainant before TMC against the Respondent No. 1 for illegal construction and occupancy of the allottees with OC.
6.	23.09.2022	Copy of second complaint filed by the Complainant before Assistant Director & Executive Engineer (<i>Town Planning Department</i>)/ Respondent No. 2 & 3 against the Respondent No.

		1/Promoter as no action was taken on the first complaint made to the TMC.
7.	03.10.2022	Regulatory complaint filed by the Applicant/Complainant.
8.	19.12.2022	Hearing conducted before the Authority wherein Secretary, MahaRERA was directed to submit report within 15 days from the date of this order.
9.	20.12.2022	On office note the captioned case was transferred to legal advisor, MahaRERA
10.	21.12.2022	Legal advisor, MahaRERA transferred the captioned case to Technical Officer 1, MahaRERA for submitting report within 3 days.
11.	-	<p>Technical Officer and CPO , MahaRERA Repot observations:</p> <p>a) Proposal is submitted as ongoing proposal with revised date of completion of project as 30.12.2021. Proposed date of extension is extended to 30.12.2022 (Total one year Extension is allowed due to COVID Pandemic circulars of GOM.).</p> <p>b) Proposal is for registration of 3 buildings- Building B1 comprising of G+2 floors, Building B2 and B3 comprising of G+7 floors, however same could not be verified in absence of sanctioned layout/building plans.</p> <p>c) Copy of legal title report is seen uploaded.</p> <p>d) From the site it appears that proposal is lastly modified on 21.08.2021.</p> <p>e) On viewing the uploaded documents-No sanctioned layout plan and building plans are seen uploaded in the respective tab.</p> <p>f) At the time of application, No CC is seen uploaded.</p> <p>g) CC is seen uploaded dated 10.03.2015 for building B1, B2 and B3-In encumbrance tab.</p> <p>h) Subsequently, two plinth Completion Certificates are seen uploaded in CC tab.</p> <p>i) For B1 building dt 21.03.2016,</p> <p>ii) For B2 and B3 building dt. 26.11.2015.</p> <p>i) In Task/activity table it seen that work of B1 building is completed to 100% upto slab level and building B2, B3 are completed to 100%.</p> <p>j) Proposal is not seen updated of required documents till date.</p> <p>k) No proposal of Correction or Extension seen uploaded till date.</p> <p>Sr. No. 3) Pertains to Legal department.</p>
12.	-	<p>Legal report submitted by Legal Advisor, MahaRERA:</p> <p>Point No. 3 as recorded in the Roznama dated 19.12.2022 is referred for remarks on the legal aspect as posed therein. The said point is reproduced herein for ready reference:</p> <p>"3 Whether MahaRERA should issue necessary instructions to TMC to file criminal & civil cases against the entity holding permission under the MRTP Act?"</p> <p>Remarks on the above:</p> <p>In the case under reference it is seen that the entity holding the permissions are the land owners one of whom i.e. Mukhtar Qamruddin Wadekar, is the complainant who has filed the above referred case. The land owners are added as promoters in the project, under the field "Promoter (Land Owner/Investor) Details".</p> <p>The promoter Itnoa Construction Pvt Ltd are developing the project site under a Development Agreement executed by the land owners in their favour.</p>

		<p><i>Under the provisions of the MRTTP Act, land owners are liable for any construction work undertaken by any party who is/are developing land without permission or when the development is not in accordance or is in contravention of the permission granted. The concerned Planning Authority in such cases when action is taken, issue notice not only to the person undertaking the construction activity but also against the land owners.</i></p> <p><i>In view of the above it may not be necessary for the Authority to issue instruction to TMC to file criminal and civil cases against the land owner which is the entity holding the necessary permissions.</i></p> <p><u>Additional remarks in the case under reference:</u></p> <p><i>KK Residency, is the project being implemented by promoter, Itnoa Construction Pvt Ltd. This project is registered with MahaRERA under No. P51700006631. Promoter Itnos Construction Pvt Ltd have on 29.04.2023, applied for extension of the date of completion of the said project with 53% consent of allottees. In view of the consent of allottees being submitted, the date of completion of the project has been extended to 31.12.2025. The previous completion date was 31.12.2021 and with Covid 19 extension the said period was extended to 31.12.2022.</i></p> <p><i>The compliance wing, MahaRERA had on 29.05.2023 issued notice to promoter Itnos Construction Pvt Ltd for non submission of quarterly/yearly/regular updates. The undersigned has been informed that though the promoter has not replied to the said notice, further action has not been taken in view of the extension to complete the project having been approved upto 31.12.2025.</i></p> <p><i>The quarterly/annual/regular updates have been uploaded on the project webpage. The updates, however for the last quarter of the financial year 2022-2023 and the first quarter of the financial year 2023-2024 has not been updated. It appears on perusal of MahaRERA promoter webpage that construction work of 2 buildings out of 3 buildings in the project is substantially completed.</i></p>
13.	30.04.2024	Secretary Report after perusing the legal and technical report, the conclusion of which is re-produced in above para no.4

8. From the above report and facts/submissions it is clear that the only issue now remains to be determined by the Authority is
 - A. *Whether there is a fit case to revoke/ put in abeyance the registration of the said Project?*
 - B. *Whether any directives should be issued by the Authority under Section 37 of the said Act?*
9. At the outset it must be understood that the Authority as established under the said Act has a mandate which is different from the Planning Authority as envisaged under the MRTTP Act. It is the Planning Authority which is mandated with the responsibility of sanctioning building plans and then ensuring that all constructions remain compliant with the building plans. It is the Planning

Authority which through its machinery ensures that violations do not take place and in the event, there are violations, the Planning Authority then sets in motion a procedure for ensuring that the offending portions of construction are removed and buildings are restored to comply with the position as in the building plan. On the other hand, the Authority under RERA is mandated with the powers to ensure disclosures of the sanctioned plan so that purchasers make informed decisions.

10. The Developer under Section 4 of the said Act has to make an application to the Authority for registration of a real estate Project enclosing certain specified documents along with the application. In this case, the relevant documents would be as laid out in Section 4(2)(d) and section 4(2)(e) which sections are reproduced below for ease of reference:

“4. (2) The promoter shall enclose the following documents along with the application referred to in sub-section (1), namely: –

*(d) the **sanctioned plan, layout plan** and specifications of the proposed project or the phase thereof, and the whole project as sanctioned by the competent authority;*

*(e) the **plan of development works** to be executed in the proposed project and the proposed facilities to be provided thereof including fire fighting facilities, drinking water facilities, emergency evacuation services, use of renewable energy;”*

11. On perusal of the above it is very clear that the Promoter has to provide the sanctioned plans and a plan of the development works to be executed in the proposed project. This disclosure ensures and enables the allottee to verify that the premises being offered for sale are in keeping with the plans as sanctioned by the Planning Authority. In this particular case on perusal of the technical report submitted by Chief Planning Officer and Technical Officer as a part of the report of the legal officer, it is observed that no sanctioned layout plan and building plans have been uploaded in the respective tab. The Promoter had sought registration on 31.07.2017 and at that point of time, no sanctioned layout plans or building plans have been uploaded. Subsequently also there are no sanctioned plans available for perusal. This is a serious lapse. In the absence of these layout plans, it is impossible for an allottee to verify the legality of the premises that he intends to purchase. Besides, this lapse is clear violation of the provisions of Section 4(2) of the said Act.

12. It is also seen from the notices issued by the Planning Authority namely Thane Municipal Corporation, that they have been seized about the matter of illegal construction in this structure. However, the illegal construction, its extent and its removal does not fall within the purview of this Authority. The Authority would have to limit itself to ensuring that the sanctioned plans as approved by the Planning Authority are put in the public domain. It will be for the Planning Authority to ensure that the structure remains compliant.
13. In this case, it is clear that sanctioned plans have not been uploaded and simultaneously the Planning Authority is pursuing action with regard to certain purported illegal construction in the said building. With this being the situation, it now becomes imperative for the Authority to step in to protect the interest of the allottee.
14. Section 7 of the said Act deals with revocation of registration by the Authority in receipt of complaint or suo motu. In this regard, Section 7(1)(a) of the said Act is reproduced herein:

*"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;"*

Section 7(1)(a), clearly mandates that the Authority can move to revoke the registration granted under Section 5 of the said Act, after being satisfied that the Promoter makes default in doing anything required by or under the said Act. In this case, it is clear that the Promoter has not submitted sanctioned plans and the same are not available on record. This is a serious default which compromises the transparency of the affairs of the Project jeopardising the interest of the allottee. Non-disclosure of the sanctioned plan leads to a situation where the allottee is not sure as to the legality of the premises that he intends to purchase. In such a case, the said Act empowers the Authority to revoke the registration.

However, section 7(2) of the said Act clearly states that the registration granted to the Promoter under section 5 shall not be revoked unless the Authority has given to the Promoter an opportunity to show cause for the same. In this case, the Authority had issued notices to the Promoter and the Promoter chose to remain absent. The Promoter has also not given any written submissions to this effect.

15. In view of the above situation, where a sanctioned plan is not in public domain and there are ongoing proceedings regarding purported illegal constructions, it becomes imperative to step in to prevent jeopardising the interest of the allottees.
16. In view of the above observations, the issue at **para No.8A** is answered in **affirmative**. The Authority is constrained to put the registration number of the said Project in abeyance. Thus, the said Project registration be kept in **abeyance** and the Promoter herein is directed not 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.
17. In view of issue at **para No.8B**, the Authority would issue certain directives to the Promoter in this matter to ensure compliance:
 - A. The Promoter must upload a copy of the sanctioned plan within 30 days from the date of this order.
 - B. The Promoter must clearly indicate the units sold and the remaining unsold inventory.
 - C. The Promoter must indicate whether any of the sold units are undergoing proceedings under the MRTP act.
 - D. The Promoter must file QPRs as mandated under the said Act and its rules.
18. The Authority gives liberty to the Promoter to approach the Authority for restoration of its registration number subsequent to his complying with the

directive as above. The matter stands **disposed** with directive as given above,
No order as to costs.

(Ajoy Mehta)
Chairperson, MahaRERA