

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

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

PROMOTER NAME MARINE DRIVE HOSPITALITY AND
REALTY PRIVATE LIMITED

1. REGULATORY CASE NO. 64 OF 2023
PROJECT NAME OCEAN TOWERS - PHASE I

PROJECT REGISTRATION NO. P51900015638

a/w
2. REGULATORY CASE NO. 65 OF 2023
PROJECT NAME OCEAN TOWERS - PHASE II

PROJECT REGISTRATION NO. P51900015653

ORDER

November 28, 2023

(Date of virtual hearing – 08.11.2023, matters reserved for order)

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

Advocate Pankaj Rajmachikar was present for the Applicant Promoter in Sr.
Nos. 1 & 2.

Advocate Abhisharan Singh was present for new Developer, Prestige Projects
Private Limited in Sr. Nos. 1 & 2.

1. The Applicant herein had registered the projects namely "OCEAN TOWERS - PHASE I" and "OCEAN TOWERS - PHASE II" under section 5 of the Real Estate (Regulation and Development) Act, 2016 ("said Act") of Real Estate Regulatory Authority ("RERA") bearing MAHARERA Registration No. P51900015638 and P51900015653 respectively (hereinafter referred to as the "said Projects" collectively and "Phase I" and "Phase II" respectively).
2. On 24.02.2023, applications were made by the Applicant (Promoter) for seeking deregistration of the said Projects. In this regard the captioned cases were heard

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on 08.09.2023 wherein the following roznama was passed by this Authority in the captioned matters:

REGULATORY CASE NO.	ROZNAMA RECORDED
64 of 2023	<p>"Promoter informs the Authority that there were 18 allottees out of which 17 have been settled through various payments. In one case as no payment was made by the allottee, a cancellation deed was executed and it is on record. The Promoter has given the same on affidavit. All QPRs are completed upto the last date of taking the allottees. The Promoter now seeks deregistration as the original project was envisaged as a joint venture and presently it is being executed by a third party.</p> <p>The Consultant Shri Sanjay Deshmukh to call the Promoter or his representative to his office for verification of the documents. Date to be given by Shri Sanjay Deshmukh. The matter will be taken by the Authority subsequent to the report of Shri Sanjay Deshmukh."</p>
65 of 2023	<p>"Promoter informs the Authority that there were 2 allottees and both have been settled through various payments and it is on record. The Promoter has given the same on affidavit. All QPRs are completed upto the last date of taking the allottees. The Promoter now seeks deregistration as the original project was envisaged as the joint venture and presently it is being executed by a third party.</p> <p>The Consultant Shri Sanjay Deshmukh to call the Promoter or his representative to his office for verification of the documents. Date to be given by Shri Sanjay Deshmukh. The matter will be taken by the Authority subsequent to the report of Shri Sanjay Deshmukh."</p>

3. Thereafter, the captioned matters were listed before Shri Sanjay Deshmukh IAS (Rtd.), Consultant, MahaRERA and accordingly reports dated 01.11.2023 were submitted by Shri Sanjay Deshmukh in the captioned matters. The relevant observations of the said reports are as follows:

REGULATORY CASE NO.	OBSERVATIONS IN THE REPORT
64 of 2023	<p>"Advocate for Promoter had submitted ledger entries having shown the amount paid to the Allottees at Sr. No. 1 & 2 at Page No. 10 of Annexure A. However, details of bank account to which money is transferred is not available. Email address provided at Serial No. 1 & 2 by the applicant is atul@panchshil.com which does not belong to the Allottees. This Email ID belongs to Atul Chordia as shown at page 7 of Annexure A."</p>
65 of 2023	<p>"Documents submitted by the applicant promoter reveals that Allottees at Sr. No. 1,2,3 and 4 at page number 10 of Annexure A have accepted that they have received the refund amount. Allottees at S. No. 8 at page number 10 of Annexure A agreed to receiving refund amount during the virtual meeting dated 20.09.2023. Shri Mogha has neither received the cheque nor has deposited it into the bank. He has raised objections to the de-registration of the project. Advocate for Promoter had submitted ledger entries having shown the amount paid to Allottees at Sr. No. 6,7,9,10,12,13,14,15,16 at page number 10 of Annexure A. However, details of the bank account to which money is transferred is not available. Email address provided at Serial No. 9,10,11,12,13,14 and 16 by the applicant is atul@panchshil.com which does not belong to the Allottees. This Email ID belongs to Atul Chordia as shown at page 3 of Annexure A."</p>

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4. In furtherance to the report, the captioned cases were heard on 08.11.2023 wherein the following roznama was recorded by this Authority:

REGULATORY CASE NO.	RONAMA RECORDED
64 of 2023	<p>"The Applicant Promoter avers that they had sought MahaRERA registration in March 2018 and the same was registered in two phases. In the Phase-I, there were 18 allottees. A development manager had been appointed namely Panchshil Group of Pune. Subsequently the Parties decided to terminate their agreement and settle the allottees. Accordingly, between the two parties, all allottees were settled and 17 of the 18 allottees were refunded the money either with the interest or just the principal amount. For one allottee, as no money was paid, there was no issue of any refund. The Applicant Promoter avers that they have ledger entries indicating the same and substantiating the payments made.</p> <p>Further in May 2023, the Applicant Promoter also issued a public notice inviting objections to which no objections were received. One allottee had however appeared stating that he does not recall having received the cheque. The Applicant Promoter avers that they have prepared a pay order against his claims. The advocate for Applicant Promoter avers that the pay order was sent to the advocate of the allottee who did not accept the same and it was returned. The advocate for Applicant Promoter states that they are open to convert it into a FD and hold it for the allottee concern.</p> <p>The Applicant Promoter has conveyed this property to Prestige Developers. Advocate for the new Developer avers that they have not made any sales in the said Project.</p> <p>Parties are at liberty to file written submissions, if any, by 24.11.2023 subsequent to which the matter will be reserved for orders."</p>
65 of 2023	<p>"Facts remain the same as Sr. No.1.</p> <p>This is Phase-II of the said Project located on the same parcel of land on which phase-I stands. In this project there were 2 allottees and the same have been settled. Refunds have been made and there have been no objections received as of now. Money has also been paid with interest. In this case also, advocate for new Developer avers that they have not made any sales.</p> <p>In both the cases, the advocate of new Developer avers that they have applied for a new registration number. However, while applying for the same, they have made a disclosure to MahaRERA stating that an earlier registration number exists on which deregistration has been sought.</p> <p>The advocate of new Developer also confirm that no sales have been made on this project by them.</p> <p>Parties are at liberty to file written submissions, if any, by 24.11.2023 subsequent to which the matter will be reserved for orders."</p>

5. The Applicant (Promoter) has stated the following reasons for seeking deregistration of the said Projects:

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- a. The Applicant (Promoter) had appointed a development manager namely P-One Infrastructure Private Limited (Panchashil Group) (hereinafter referred to as the "said Development Manager").
 - b. That the Applicant Promoter and the said Development Manager decided to terminate their agreement as they were unable to proceed with the further development of the said Projects.
 - c. At the time of the said decision of termination, there were 18 allottees in the Phase I and 2 allottees in the Phase II of the said Project.
 - d. In order to ensure that the allottees are refunded and there are no further claims, the Applicant (Promoter) had issued a public notice dated 20.05.2023 in the newspapers namely 'Free Press Journal' and 'Nav Shakti'. None of the allottees contacted the Applicant (Promoter) after the public notice.
 - e. The Applicant (Promoter) has updated the QPRs.
 - f. The Applicant (Promoter) and the said Development Manager together refunded the amounts received by the allottees. Therefore, there are no further allottees left in the said Projects. However, one of the allottees namely Shri Deepankar Mogha appeared before Shri Sanjay Deshmukh, IAS (Rtd), Consultant, MahaRERA and stated that he has not received the cheque from the Applicant (Promoter). The Promoter also submits that this cheque that was sent has not been encashed by the allottee, Shri Deepankar Mogha.
 - g. That the Applicant (Promoter) has already conveyed the land of the said Projects to Prestige Developers (new Developer) vide a deed of conveyance dated 18.04.2023 wherein one of the conditions was to deregister the said Projects.
 - h. That there is no sale made in the said Projects by the new Developer. Further the new Developer has applied for fresh registration numbers before MahaRERA.
6. Thus, from the submissions of the Applicant (Promoter) and upon perusal of the Report dated 01.11.2023 submitted by Shri Sanjay Deshmukh, IAS (Rtd), Consultant, MahaRERA, it is clear that there are no Allottees in said Projects and

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the same is already conveyed to a new Developer. Further, it is also observed that office of MahaRERA on 02.06.2023 and 19.06.2023 issued notices inviting objections for deregistration of the said Projects wherein no such objections were received. One allottee namely Shri Deepankar Mogha however appeared before the Shri Sanjay Deshmukh, IAS (Rtd), Consultant, MahaRERA and stated that he has not received the cheque. He has also taken objection to the deregistration process. There is however nothing on record to show the reason for his objection to the deregistration process. Further the Shri Deepankar Mogha has neither filed any written submission, nor did he appear before the Authority during the hearing dated 08.11.2023.

7. It is observed by the Authority that the Applicant Promoter who has approached for deregistration has already conveyed the land on which the said Projects were to be constructed. The new Developer has now appeared before the Authority. The new Developer has submitted that they have not created any third-party rights in the said land and they do not object to the plea of the Applicant for the deregistration of the said Projects.
8. Before the Authority decides on the order on deregistration, the section that provides for grant of registration needs to be examined. Section 5 of the said Act is hereinbelow reproduced for ease of refence:

"Section 5 - grant of registration:

(1) On receipt of the application under sub-section (1) of section 4, the Authority shall within a period of thirty days. (a) grant registration subject to the provisions of this Act and the rules and regulations made thereunder, and provide a registration number, including a Login Id and password to the applicant for accessing the website of the Authority and to create his web page and to fill therein the details of the proposed project; or (b) reject the application for reasons to be recorded in writing, if such application does not conform to the provisions of this Act or the rules or regulations made thereunder: Provided that no application shall be rejected unless the applicant has been given an opportunity of being heard in the matter.

(2) If the Authority fails to grant the registration or reject the application, as the case may be, as provided under sub-section (1), the project shall be deemed to have been registered, and the Authority shall within a period of seven days of the expiry of the said period of thirty days specified under sub-section (1), provide a registration number and a Login Id and password to the promoter for accessing the website of the Authority and to create his web page and to fill therein the details of the proposed project.

(3) The registration granted under this section shall be valid for a period declared by the promoter under sub-clause (C) of clause (1) of sub-section (2) of section 4 for completion of the project or phase thereof, as the case may be."

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9. On perusal of section 5 it is clear that a project registration is granted pursuant to the Promoter / Developer seeking a grant of registration. A grant for registration when sought under section 5 is an acknowledgment of the intent of the Promoter / Developer to start and complete a project wherein premises as described under the said Act would be handed over to the Allottees. Thus, the critical ingredient of section 5 is the intent of the Promoter to complete the project as registered. A registration number has been provided so as to ensure that from the point the project starts namely on receipt of commencement certificate to the point when the project concludes namely on receipt of occupation / completion certification the project remains compliant. This is the intent of RERA and this intent is clearly brought about in the preamble of the said Act which is reproduced hereinbelow:

"An Act to establish the Real Estate Regulatory Authority for regulation and promotion of the real estate sector and to ensure sale of plot, apartment or building, as the case may be, or sale of real estate project, in an efficient and transparent manner and to protect the interest of consumers in the real estate sector and to establish an adjudicating mechanism for speedy dispute redressal and also to establish the Appellate Tribunal to hear appeals from the decisions, directions or orders of the Real Estate Regulatory Authority and the adjudicating officer and for matters connected therewith or incidental thereto."

10. On perusal of the preamble, it is evident that the intent is to ensure the sale of plot, apartment, etc. in an efficient and transparent manner and to protect the interest of the consumers. The intent thus mandates the Authority to ensure that the project remains compliant and the home buyers / allottees receive their premises as promised. Hence the legislation is to ensure delivery of the premises to the home buyers / allottees. This is a beneficial legislation where a tangible asset needs to move from the Promoter / Developer to the home buyer / allottee in a manner as laid out under the said Act. The legislation is not for just providing project registration numbers which do not lead to home buyers / allottees receiving tangible assets. The Authority needs to make it clear here that a project registration number once given to a project, the project must then proceed and take a course as defined in the said Act and finally a tangible premises get delivered to the home buyers / allottees. The grant of a project registration number is not a hypothetical exercise for complying with certain statistical purpose.

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11. It can thus be concluded that in the event the Authority finds that a project registration number which has been granted to a project is not likely to be completed the Authority is bound to take cognizance of the same and take such actions as may be necessary to bring the project to a conclusion. The Authority is mandated to exercise oversight once a project registration number is given till the date it is successfully completed thus it is also for the Authority to take a call when it becomes apparent that the project is not likely to move further.
12. In the present case the intent to complete the project itself is not there anymore and it is evident from the fact that the said Projects land is now conveyed to a new Developer and the new Developer has made no sales in the said Projects. There could be various reasons for the same. The Authority has no reason nor a mandate to delve into why the intent to complete has evaporated. The Authority has however to ensure that while there is no intent to complete, the same is not driven by an intent to short change home buyers / allottees. Where allottees have been taken care of and their interest are not jeopardised anymore the Authority sees no reason to deny a deregistration when sought for. Further, the land underneath the said Projects are already conveyed to a new Developer and the same is duly taken on record. Further, the new Developer has not created any third-party rights, nor does he object/differ from the plea of the Applicant (Promoter) to deregister.
13. Having said the above the Authority cannot overlook the submissions of one of the Allottee namely Shri Deepankar Mogha who appeared before the Shri Sanjay Deshmukh, IAS (Rtd), Consultant, MahaRERA. Shri Deepankar Mogha has objected to the deregistration process without assigning any reasons and has also stated that he has not received the refund amounts from the Promoter herein. It is imperative that every allottee receives protection of the Authority. The Authority will have to ensure that the right of even a single allottee is not jeopardised in the process of deregistration.


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14. The Authority will therefore have to strike a balance between enabling efficiency in the sector and protecting the rights of the allottees. In this case it is apparent that deregistration would be the only method available to enable a fresh project to begin. It is an admitted fact that the existing Promoter has entered into an agreement to convey the piece of land to a new Developer who now intends to develop the said Projects. One of the impediments to developing the project afresh would be deregistration. This deregistration once granted would enable a developer to seek a new registration incorporating the fresh and revised proposal for development. However, while doing this the right of the lone allottee needs to be protected. Even though the allottee has not come forward to assign reasons for his objection to deregistration it would be necessary to ensure that his interest is not compromised. In view of the above the Promoter herein is directed to take out a fixed deposit (FD) of the amount together with interest if any accrued and deposit the same in a fixed deposit account of a schedule bank. This FD should be dischargeable to the said Allottee.
15. Thus, the Authority sees no logic on maintaining a project registration number where either there are no allottees or where there are allottees but whose legal obligations have been fulfilled by the Promoter. The Authority is very clear that the grant of project registration number, the oversight over a project having a registration number and maintenance of records of such projects is not a theoretical exercise. This exercise is clearly for the specific purpose of delivery of the premises. In the present case it is evident that there are no allottees. The land of the said Projects is already conveyed to a new Developer. Hence there is no logic to continue with the said Projects registration numbers and hence the same need to be deregistered.
16. The evidence of fixed deposit (FD) being opened in the name of the allottee namely Shri Deepankar Mogha be filed with the Secretary, MahaRERA within seven (7) days of the date of this order. Subsequent to filing of the same the said Projects registration be **deregistered**, and the Applicant Promoter herein is

directed never to advertise, market, book, sell or offer for sale, or invite person/s to purchase in any manner any apartment / unit in the said Projects.


(Mahesh Pathak)
Member-I, MahaRERA


(Ajay Mehta)
Chairperson, MahaRERA