

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

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

**REGULATORY CASE NO. 68 OF 2023**

LOTUS EMPIRE

... APPLICANT (PROMOTER)

MIDTOWN SQUARE - PHASE II

...PROJECT NAME

**MAHARERA PROJECT REGISTRATION NO. P51700019425**

**Order**

October 31, 2023

(Date of virtual hearing - 10.10.2023, matter reserved for order)

**Coram: Shri. Ajoy Mehta, Chairperson, MahaRERA  
Shri Mahesh Pathak, Hon'ble Member-I, MahaRERA  
CA Vijay Sahita for the Applicant (Promoter)**

1. The Applicant herein had registered the project namely "MIDTOWN SQUARE - 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. P51700019425 (hereinafter referred to as the "said Project").

2. On 11.05.2023, an application was made by the Applicant (Promoter) for seeking deregistration of the said Project. In this regard the captioned case was heard by this Authority on 10.10.2023 wherein the following roznama was passed:

*"The Promoter informs that this is MIDC land on lease. There are two phases. For Phase I, they have done work but for Phase II, they are yet to commence. The Authority notes that there is common Commencement Certificate ("CC") for phase I & Phase II. The Promoter states that Phase II will be only for the purpose of leasing the godowns and do not intend to make any sales. Promoter to ensure that an affidavit is filed on what they intend on doing on the phase II land the CC that is available to them. The party to also ensure that the QPRs for the completed phase are also filed before the Authority.*

*These two compliances to be done on or before 23.10.2023 subsequent to which, matter will be reserved for order."*

*Sahita*

*Aj Mehta*

3. The Applicant (Promoter) has stated the following for seeking deregistration of the said Project:
- a. That the said Project is being developed on the MIDC land.
  - b. That there are two phases of the development with Phase I (having other project registration number) being completed and Phase II, namely the said Project which is yet to commence construction.
  - c. That the Applicant Promoter has stated that the applicant is undertaking development of commercial units/godowns which will not be sold to 3<sup>rd</sup> parties but will only be leased.
  - d. Further it is also submitted that the Applicant (Promoter) has not created any third-party rights in the said Project nor has made any bookings or received any earnest money. Moreover, the Applicant Promoter is not willing to undertake such an exercise.
  - e. The Promoter also clarifies that there is no physical development carried out on the land of the said Project.
  - f. That there is a common commencement certificate for Phase I and Phase II i.e. said Project.
  - g. The Promoter has updated the QPRs (except Form 2A) as directed by the Authority on 10.10.2023.
  - h. It is observed that the Applicant promoter has submitted an affidavit 19.10.2023 in accordance with the Roznama dated 10.10.2023 wherein the Applicant Promoter has mentioned the above-stated facts and has also undertaken to settle disputes/complaints, if any, upon the deregistration of the said Project.
4. Thus, from the submissions of the Applicant (Promoter) it is clear that there are no Allottees in the said Project as the same was never constructed nor developed. It is also observed that the Applicant (Promoter) has stated that the said Project will be constructed only for the purpose of leasing the units (godowns) and that the Applicant Promoter does not intend to make any sales in the said Project.

*Dattatraya*

*H. M. All*



Further, the office of MahaRERA on 19.06.2023 issued notices inviting objections for deregistration of the said Project wherein no such objections were received.

5. Before the Authority decides on the order on deregistration, the section that provides for necessity of registration of a real estate project needs to be examined. Section 3 of the said Act is hereinbelow reproduced for ease of reference:

**Section 3:**

*"(1) No promoter shall advertise, market, book, sell or offer for sale, or invite persons to purchase in any manner any plot, apartment or building, as the case may be, in any real estate project or part of it, in any planning area, without registering the real estate project with the Real Estate Regulatory Authority established under this Act:*

*Provided that projects that are ongoing on the date of commencement of this Act and for which the completion certificate has not been issued, the promoter shall make an application to the Authority for registration of the said project within a period of three months from the date of commencement of this Act:*

*Provided further that if the Authority thinks necessary, in the interest of allottees, for projects which are developed beyond the planning area but with the requisite permission of the local authority, it may, by order, direct the promoter of such project to register with the Authority, and the provisions of this Act or the rules and regulations made thereunder, shall apply to such projects from that stage of registration.*

*(2) Notwithstanding anything contained in sub-section (1), no registration of the real estate project shall be required –*

*(a) where the area of land proposed to be developed does not exceed five hundred square meters or the number of apartments proposed to be developed does not exceed eight inclusive of all phases:*

*Provided that, if the appropriate Government considers it necessary, it may, reduce the threshold below five hundred square meters or eight apartments, as the case may be, inclusive of all phases, for exemption from registration under this Act;*

*(b) where the promoter has received completion certificate for a real estate project prior to commencement of this Act;*

*(c) for the purpose of renovation or repair or re-development which does not involve marketing, advertising selling or new allotment of any apartment, plot or building, as the case may be, under the real estate project.*

*Explanation. – For the purpose of this section, where the real estate project is to be developed in phases, every such phase shall be considered a standalone real estate project, and the promoter shall obtain registration under this Act for each*

*Dalke*

*Rj Nell*

phase

separately."

6. On perusal of section 3 it is clear that a project registration is granted pursuant to the Promoter / Developer seeking a grant of registration and for enabling a Promoter to advertise, market, book, sell or offer for sale any portion/unit of the real estate project. Hence, there is a primary premise that a Promoter of a real estate project wanted to offer for sale a portion of their real estate project for a specific consideration. Thus, the critical ingredient of section 3, is the intension to advertise, market, book, sell or offer for sale. A registration number has been provided so as to ensure that a real estate project remains compliant and the consumer i.e. the interest of the home buyer / allottee is safeguarded which intent is clearly spelt out in the preamble of the said Act reproduced hereinbelow for ease of reference:

*"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."*

7. 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. 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 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 tangible premises get delivered to the home buyers / allottees. The grant of a project registration

Dalish

Ajmal



number is not a hypothetical exercise for complying with certain statistical purpose. Therefore, in cases where there is no intention to advertise, market, book, sell or offer for sale a portion of a real estate project, there is no possibility of any consumers/ home buys being engaged with such project and hence, there appears no necessity for the Authority to undertake the exercise the oversight regarding the compliance of such a project. The said Act is a beneficial legislation to safeguard and protect the interest of allottees and Promoters and for promotion and regulation of real estate sector. Hence, in the absence of a key ingredient namely, the allottees, the Authority has no jurisdiction to overlook the compliance of the said real estate project and monitor the same vide the unique Project registration number.

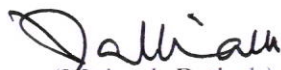
8. It can thus be concluded that in the event the Authority finds that a project registration number which has been granted to a project is not likely to create interests of allottees in the said Project, the Authority is bound to take cognizance of the same and take such actions as may be necessary to bring the project to a conclusion. As the Authority is mandated to exercise oversight once a project registration number is given till the date it is successfully completed it is also for the Authority to take a call when it becomes apparent that the purpose of such a project registration is left infructuous.
9. There could be various reasons for the same. The Authority has no reason nor a mandate to delve into why the intent to sell/ offer for sale in the said Project has evaporated. The Authority has however to ensure that while there is no intent to create interest of allottees the same is not driven by an intent to short change home buyers / allottees if any. 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.
10. 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


*Darshan*

*H. M. S.*

obligations have been fulfilled by the Promoter or where there is no intent to advertise, market, book, sell or offer for sale or invite person/s to purchase. The Authority is very clear that 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 and there is no intent to invite any allottees. Hence, no logic to continue with the said Project registration number and hence the same needs to be deregistered.

11. Thus, the said Project registration is **deregistered** and the 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 Project.

  
(Mahesh Pathak)  
Member-I, MahaRERA

  
(Ajay Mehta)  
Chairperson, MahaRERA