

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

Physical Hearing @3.30pm

RUGULATORY CASE NO. 12 OF 2023

SHIVAM NAKODA BUILDCON
(Partnership firm)

...PROMOTER NAME

VRINDAVAN

...PROJECT NAME

1. SACHIN SARKALE &
2. SHIVTEJ BIBVE

...APPLICANTS

V/S

1. MITESH OSWAL &
2. SAGAR ANVEKAR

...RESPONDENTS

MAHARERA PROJECT REGISTRATION NO. P52100013657

Order

April 10, 2024

(Date of hearing - 26.05.2023 - matter was reserved for order)

**Coram: Shri. Ajoy Mehta, Chairperson, MahaRERA &
Shri. Mahesh Pathak, Member-1, MahaRERA**

Advocate Amit Patil a/w Nilesh Borate for the Applicants

None present for the Respondents

1. The Promoter namely Shivam Nakoda Buildcon is a registered partnership firm who is a Promoter/Developer (hereinafter referred to as the "**said Promoter**") within the meaning of Section 2(zk) of the of Real Estate Regulatory Authority (hereinafter referred to as the "**Said Act**") and has registered the captioned with the Authority under section 5 of the said Act. Sachin Sarkale and Shivtej Bibve are the Applicants who are the retiring partners of the said Promoter firm. The Applicants have filed the captioned regulatory case against the newly admitted Incoming partners of the said Promoter firm namely Mitesh Oswal and Sagar Anvekar i.e. the Respondents herein.

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2. The proposed and revised completion date of the said Project is mentioned as 31.12.2018 and the extended completion date is mentioned as 20.07.2023. The Promoter firm has applied for extension of the said Project to MahaRERA on 10.08.2023 bearing Extension Application No. EXT52100017333 which is pending for payment of penalty and compliance of the office objections.

3. **The Applicants are 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 Opponents i.e. Mr. Mitesh Oswal & Mr. Sagar Anvekar on an urgent basis.*
- c. Hon'ble Authority not to entertain any applications, updates, or representations made by the Opponents or their agents, servants, POA holders, or anyone who acts on their behalf in respect of the said project, since they have no right, title or interest in the project.*
- d. Hon'ble Authority be restrained permanently to the Opponents or their agents, servants, POA holders, and anyone who acts on their behalf to access the MahaRERA Project -Vrindavan Regency for updating or changing any data therein.*
- e. Hon'ble Authority be restrained permanently to the Opponents or their agents, servants, POA holders, and anyone who acts on their behalf to obtain any loan either from financial institutions or Investors against the Project land and or Unsold Inventory of the said project.*
- f. Hon'ble Authority be restrained permanently to the Opponents or their agents, servants, POA holders and anyone who acts on their behalf to enter in to the said project and do the construction activity whatsoever in nature.*
- g. Hon'ble Authority may kindly be taken stringent action against the Opponents for indulging in unfair trade practice.*
- h. Any other just and equitable order may kindly be in favour of the Applicants."*

4. A physical hearing was conducted before the full bench on 26.05.2023 whereby the following roznama was recorded by the Authority:

"Two Partners are present and the other two Partner are absent (details mentioned in appearance section), despite notice.

That vide a notarized partnership deed dated 13.02.2023 the Retiring Partners two replaced by the Incoming Partners (above named) in the Promoter firm who are developing the captioned Project called \Vrindavan under the captioned registration number. However, the condition mentioned in the partnership deed dated 13.02.2023 were not fulfilled by the Incoming Partners therefore the Retiring Partners prays that the username ID used by the Incoming Partners in the captioned project registration

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number may be kept in abeyance till the next date of hearing and till the entries of the Partners as per partnership deed dated 13.02.2023 is decided.

One Weeks' time i.e. till 08.06.2023 is granted to Retiring Partners to file an application along with necessary document (FIR etc.) along with their Written arguments and the prayer for keeping the captioned project in abeyance. An interim order shall be issued after 08.06 2023 once the Retiring Partners file the necessary papers as mentioned above. Next date of hearing shall be intimated in the interim order."

5. Brief facts of the case are as follows:

- a. The captioned case initiated on the application dated 21.03.2023 filed by the Applicants herein (who are the **Retiring Partners**) against the newly admitted (**Incoming Partners**) of the said Promoter's Partnership Firm, i.e. the Respondents herein.
- b. The Applicants are seeking appropriate regulatory action and certain restraining orders against the Respondents (Incoming Partners) on account of internal dispute between them with respect to breach of the terms and conditions of the Deed of Admission of New Partner and Retirement of Old Partner dated 13.02.2023 bearing notarial registration Sr. No. 200/2023.
- c. The Promoter's partnership firm was constituted and registered with the Registrar of partnership firm, Pune on 10.05.2012. At the time of formation of the said partnership firm there were total 4 partners namely Mitesh Oswal (Respondent No. 1 herein), Sagar Anvekar (Respondent No. 2 herein), Mr. Santosh Dhumal and Mr. Vivek Pawar.
- d. Thereafter by way of an admission deed dated 29.04.2017, one of the partners namely Vishal Kamate was inducted in the partnership firm.
- e. After commencement of the said Act, the partnership firm has registered the said Project with the Authority as an ongoing project on the date of commencement of the said Act. At the time of registration of the said Project with the Authority, the Promoter firm had shown total 3 partners on the webpage namely Vivek Pawar, Sagar Anvekar (Respondent No. 2) and Mitesh Oswal (Respondent No. 1 and authorized signatory).
- f. Thereafter, by virtue of the Deed of Admission of New Partners and Retirement of Old Partners dated 02.02.2018, out of those 5 partners, 3

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Partners namely Mitesh Oswal (Respondent No. 1), Anjal Dhumal (*added as wife of Late Mr. Santosh Dhumal as per revised Partnership Letter dated 22.12.2014*) and Maa Pranam Consultancy sought reinterment from the partnership firm and accordingly, 2 Partners namely Sagar Anvekar (Respondent No. 2) and Vishal Kamate remained as the Partners of the partnership firm.

- g. On 09.09.2021, the partnership firm again entered into Deed of Admission of New Partners and Retirement of Old Partners. By virtue of the said Deed, Sagar Anvekar and Vishal Kamate retired from the partnership firm and Sachin Sarkale and Shivtej Bibve (Applicants herein) were admitted as new partners in the partnership firm qua a Deed of Admission of New Partner and Retirement of Old Partner dated 09/09/2021 bearing notarial Sr. No. 3383/2021.
- h. Accordingly, the name of the names of the Applicants herein namely Sachin Sarkale and Shivtej Bibve have been added as partners of the partnership firm on the record of Registrar of Partnership Firm Pune. Further, by virtue of the said Deed dated 09.09.2021, the Planning Authority i.e. Pune Municipal Corporation (PMC) had issued commencement certificates under Nos. CC/2757/22 dated 16-01-2022 and CC/3312/22 dated 16-03-2023 in the name of the Applicants herein, being partners of the partnership firm.
- i. Subsequently, the Respondents entered into a Deed of Admission of New Partner and Retirement of Old Partner dated 13/02/2023 bearing notarial Sr. No. 200/ 2023 with the Applicants subject to terms & conditions mentioned therein.
- j. Accordingly, the Respondent were bound to pay an amount of Rs.1,27,21,671/- as consideration for admission / repayment of invested Capital to the Applicants within 3 months from 13.02.2023 whereby, the Respondents were to handover a cheque of the same amount with immediate effect in the name of "Swarit Enterprises".

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- k. However, the Applicants alleges that no such cheque has been handed over to them by the Respondents till date and as such, the process of retirement and admission of partners is not yet completed in its entirety.
- l. The Applicants further contended that thereafter, the Respondents changed the MahaRERA Project registration webpage Log-in ID and Password of the said Project without the consent of the Applicants whereby, the Respondents deleted the names of the Applicants and incorporated the name of only one of the admitted Partner namely Sagar Subhash Anvekar in their place.
- m. The Applicants have contended that they have not informed or submitted an application with the Registrar of the Firm for changing the name of partners of the said Firm. Whereas, the name of the Applicants still appears as a Partners of the said firm with the registrar of firms to date.
- n. Hence, the Applicants have no right, title or interest in the said Project and to access the MahaRERA Project registration webpage for such illegal updation and disclosure of data.
- o. It is apprehended by the Applicants that there is a high possibility of changing the designated Bank Account by the Respondents for accepting funds from the respective buyers/investors or mortgaging the said the Project land / unsold inventory of the said Project to any institutions so as to obtain funds from financial institutions.
- p. Therefore, in the light of the aforementioned facts and circumstances of the case, the Applicants pray that the application be allowed, and reliefs prayed therein be granted in the interest of justice and for the betterment of the said Project.

6. Pursuant to the aforesaid directions issued by the Authority, the Applicants have submitted their written submissions on record of the Authority on 07.06.2023 and further written submissions on 06.03.2024 (in hard copies through dispatch). The Respondent No. 2 namely Sagar Anvekar has also filed his written say vide an email dated 04.03.2024 (from the email address i.e.

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"sagarsiddhi9@gmail.com"). However, the Respondent No. 1 has not submitted any reply to this complaint till date. The submissions filed by the Parties are taken on record and the same is perused by the Authority.

7. The relevant submissions of the Applicants in brief are as follows:

- a. In the year 2021 i.e. on 09.09.2021 the earlier partner namely Sagar Subhash Anvekar and Vishal Balasaheb Kamthe had retired from the partnership firm and the Applicants herein were admitted as new partners in the said Promoter's Firm by way of 'Deed of Admission of New Partner and Retirement of Old Partner'.
- b. Since then, the Applicants are looking after the day-to-day affairs of the said Promoter's Firm. They have also informed the change of partners in the partnership firm to the registrar of firms.
- c. However, in the month of February 2023, the Applicants and Respondents entered into an impugned notarized 'Deed of Admission of New Partner and Retirement of Old Partner' dated 13.02.2023 with the mutual consent of the Applicants.
- d. According to the said Deed dated 13.02.2023, the Respondents have agreed to pay an amount of Rs. 1,27,21,671/- within 3 months from 13.02.2023 to the Applicants and for justifying the same, the Respondents were to handover cheque with immediate effect.
- e. That no such cheques were handed over by the Respondent No. 1 namely Mitesh Fulchand Oswal to the Applicants herein till date.
- f. After execution and notarization of the said Deed of Admission of new partner and Retirement of Old Partner' dated 13.02.2023 the Respondent No. 1 namely Mitesh Oswal started contacting those people who are connected with the said Promoter's Firm.
- g. After discovery of such incident by the Applicants, they sent an email dated 20.02.2023 to the Respondents and other persons connected with the Promoter firm intimating them as under:

"Mr. Mitesh Fulchand Oswal & Mr. Sagar Subhash Anvekar Or any person other than the Firm's Partners have not so ever any Rights to authorise, appoint, or claim

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on any kind of firms properties and DATA without prior consent of the Current Partners of the firm as mentioned hereinabove."

- h. The Applicants further stated that they came to know that the Respondents had changed the project Log-in and Password of the said Project without their consent and accordingly have removed their names as partners of the said firm. Whereby they incorporated only one of the Partners namely Sagar Subhash Anvekar in their place.
- i. Further, by taking undue advantage of the Deed the Respondents are doing changes in the MahaRERA project profile of the said Project without prior consent of the Applicants.
- j. The Respondents have not informed or submitted any application with the Registrar of Firms for changing the name of partners of the partnership firm. Moreover, the names of the Applicants still appear as partners of the partnership firm with the registrar of firms to date.
- k. Despite having knowledge about the present complaint had entered into an alleged agreement to sale dated 26.05.2023 with Bharat Kantilal Sonigra and sold an office bearing nos. 201 and 210 in Wing 'C', 2nd floor in the said Project for total consideration of Rs.2,57,72,670/- without their consent.
- l. That the Respondent No.2 has also entered into another alleged agreement to sale dated 15.07.2023 with Dhruv Rajesh Shah in respect of flat No. A-802 for total consideration of Rs. 63,00,000/-
- m. Hence the Respondents have no right, title or interest in the said project and access to the MahaRERA project for such alleged updation.
- n. The Applicants have filed various police complaints against them with the concerned Police stations at Pune which are subjudice and also filed complaint with Jt. District Registrar Class-1 & Collector of Stamps, Pune on 06.11.2023 as well as filed supplementary complaint on 20.11.2023.
- o. Further, there are chances that the Respondents may change the RERA declared bank account for accepting funds from the respective buyers/investors or mortgaging in the project land/unsold inventory of

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the said Project to any financial institutions and obtaining funds from the said financial institutions.

- p. The Applicants had taken all appropriate steps to move forward in the said Project and are ready and willing to complete the said Project as per law.
- q. The Applicants revalidated the existing sanction plan vide commencement certificate on 16.01.2023 and applied for revision of sanction plan as per UDCPR guidelines as well as the relevant provisions of RERA and obtained the revised sanction plan vide commencement certificate on 16.03.2023 and are also in the process of getting completion certificate in respect of Building A and B of the said Project.
- r. Applicants are unable to update the said Project as per the notice of the MahaRERA on 16.01.2023. After receipt of the said notice, they have started getting appropriate certificates from the respective professionals but unable to get certificate of Form 5 (CA) because the previous partners of the partnership firm i.e. the Respondents i.e. Sagar Subhash Anvekar & Vishal Balasaheb Kamthe have not filed ITR of the said firm since assessment year of 2015-16 till date.
- s. Therefore, in the interest of justice and to protect the interest of the allottees of the said project, the Respondents be restrained permanently to access the project log-in and password of the said Project for updating or changing any date therein.

8. The relevant submissions of the Respondent No. 2 in brief are as follows:

- a. That the Respondent No. 2 along with the Respondent No. 1 namely Mitesh Phulchand Oswal, Mr. Santosh Dhumal and Vivek Suresh Pawar have together by way of Partnership formed a Residential and Commercial Project through Shivam Nakoda Buildcon on 10.05.2012.
- b. The building construction plans were revised on 23.02.2015 and the construction of Commercial Building No. C began in which, Shri. Vishal Balasaheb Kamte became a new partner on 01.07.2017.

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- c. Thereafter, on 09.09.2021 vide Notary No. 3383 / 2021 the Respondent No. 2 and Vishal Balasaheb Kamte resigned from the partnership firm and Mr. Shivtej Ramdas Bibwe and Shri. Sachin Balkrishna Sarkale joined as New Partners.
 - d. However, on 13-02-2023 vide Notary No. 200 /2023 the process of entering into partnership as well as resigning from partnership is not yet completed.
 - e. During this period, Shri. Sunny Kulyashray Bajaj has illegally changed the User ID and password of the MahaRERA online relating to the said project without his consent and any authority on his part.
 - f. He has further shown the inventory which was already sold by the Respondent No. 2 as unsold inventory in the said Project on MahaRERA web page by fabricating false documents, stamp papers and forging his signature thereon.
 - g. On the basis of these false documents, they have been trying to re-sell the already sold units to other buyers.
 - h. Moreover, in connivance with the office of sub registrar, police, banks they have tried to re-sell the property and have earned huge amounts as well as availed huge amounts of loan.
 - i. The Incoming Partners (Respondents herein) and the original owners have approached the Registrar's Office as well as to the Police Authority by filing complaints, but no action has been taken against them.
9. From the aforesaid submissions and the from the recorded roznama dated 26.05.2023, the issue that comes up before this Authority is regarding the prayer for putting the said Project in abeyance. The Authority had recorded in roznama that an Interim Order shall be issued on the prayer of keeping the said Project registration in abeyance.
10. The issue that hence needs to be considered is *whether the prayer seeking to keep the said Project registration in abeyance is maintainable or not?*

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11. The said Act does not have any provisions regarding keeping the registration of a MahaRERA registered project in abeyance. However, the said Act provides for revocation of registration under section 7 of the said Act. Section 7 of the said Act is reproduced hereinbelow for ease of reference:

Section 7 – Revocation of registration:

“(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;*
- (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.

(2) The registration granted to the promoter under section 5 shall not be revoked unless the Authority has given to the promoter not less than thirty days' notice, in writing, stating the grounds on which it is proposed to revoke the registration, and has considered any cause shown by the promoter within the period of that notice against the proposed revocation.

(3) The Authority may, instead of revoking the registration under sub-section (1), permit it to remain in force subject to such further terms and conditions as it thinks fit to impose in the interest of the allottees, and any such terms and conditions so imposed shall be binding upon the promoter.

(4) The Authority, upon the revocation of the registration, –

- (a) shall debar the promoter from accessing its website in relation to that project and specify his name in the list of defaulters and display his photograph on its website and also inform the other Real Estate Regulatory Authority in other States and Union territories about such revocation or registration;*
- (b) shall facilitate the remaining development works to be carried out in accordance with the provisions of section 8;*
- (c) shall direct the bank holding the project back account, specified under subclause (D) of clause (I) of sub-section (2) of section 4, to freeze the account, and thereafter take such*

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further necessary actions, including consequent de-freezing of the said account, towards facilitating the remaining development works in accordance with the provisions of section 8;

(d) may, to protect the interest of allottees or in the public interest, issue such directions as it may deem necessary."


Further section 7(3) deals with the power of the Authority to take certain actions instead of revoking the registration. Upon perusal of the above the section 7 of the said Act clearly lays out the condition precedent which should have taken place before the Authority takes action for revocation. All these conditions relate to either a default on the behalf of the promoter or a violation on behalf of promoter for unfair practises and irregularities involving the Promoter. None of the conditions anywhere deal with dispute between partners becoming a cause for taking action of revocation of registration.


12. The Authority notes that there are disputes between the partners and these disputes are being used as a reason to seek the relief of putting the said Project in abeyance. The aggrieved party has completely failed to bring anything on record which satisfies the ingredients required for the Authority to proceed with revocation. This is clearly a case wherein the aggrieved party is attempting to misuse the forum of RERA for settling inter se disputes. The Authority cannot fall prey to such machinations and hence sees no reasons to continue the captioned case and would dismiss the same.
13. While the Authority is not mandated to adjudicate upon the inter se disputes of partners it however carries the onerous duty of protecting the interest of the allottees. To this extent the Compliance Cell of MahaRERA shall specifically examine that the Promoter has complied with all the mandated requirements of the said Act. In case there are non-compliances the Compliance Cell of MahaRERA shall take such necessary action so as to ensure that the Promoter complies with the provisions of the said Act.

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14. In view of the above the captioned case is **dismissed** as not maintainable. No order as to cost.


(Mahesh Pathak)
Member-1/MahaRERA


(Ajoy Mehta)
Chairperson, MahaRERA