

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

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

1. REGULATORY CASE NO. 289 OF 2024

PUNE BUILDTECH PRIVATE LIMITED

...APPLICANT (PROMOTER)

DB COMMERCIAL PHASE II

...PROJECT NAME

MAHARERA PROJECT REGISTRATION NO. P52100003455

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2. REGULATORY CASE NO. 290 OF 2024

PUNE BUILDTECH PRIVATE LIMITED

... APPLICANT (PROMOTER)

DB COMMERCIAL PHASE I

...PROJECT NAME

MAHARERA PROJECT REGISTRATION NO. P52100004589

Order

September 19, 2024

(Date of virtual hearing – 13.09.2024, matter reserved for order)

Coram: Shri. Ajoy Mehta, Chairperson, MahaRERA

Shri Mahesh Pathak, Hon'ble Member-I, MahaRERA

Shri Ravindra Deshpande, Hon'ble Member-II, MahaRERA

Advocate Ninad Deshpande for the Promoter/Project Proponent;

Advocate Nilesh Borate present for Complainants Subodh Zende in
complaint no. CC005000000033537 and Complainant Shriya Reddy in

complaint no. CC005000000471344 in Project listed at Sr. No. 2);

Advocate M. B. Deshmukh present for Allottee Sushma and Avinash Gadade
in Project no. P52100004589 (captioned Project at Sr. No. 2).

1. The Applicant (Promoter) herein had registered the following projects under section 5 of the Real Estate (Regulation and Development) Act, 2016 ("said Act") of Real Estate Regulatory Authority ("RERA") bearing the following MAHARERA Registration Numbers (hereinafter referred to as the "said Project No. 1 & 2" respectively and collectively as "Projects"):

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SR. NO.	PROJECT NO.	PROJECT NAME
1.	P52100003455	DB COMMERCIAL PHASE II
2.	P52100004589	DB COMMERCIAL PHASE I

2. On 27.08.2024 & 06.09.2024, applications were made by the Applicant (Promoter) for seeking deregistration of the said Project Nos 1 & 2. In this regard the captioned case was heard on 13.09.2024 wherein the following roznama was recorded by this Authority in the all the captioned matters:

1. "There are two phases to the project. The Advocate for project proponent is present. The Advocate for Project proponent states that there were 213 units in which 77 were booked. 36 have given consents and 38 people have taken refund. There are 4 dissenting allottees. Out of the 4, 2 have accepted and 2 have yet to accept the amounts given.
2. In phase 1 there are 252 units out of which 5 have been booked. 2 have given consents, and other 2 have accepted, however 1 has not accepted.
3. Advocate Nilesch Borate is present on behalf of Shriya Reddy and Subodh Zende. He states that 1 is settled and in another process of settlement is on going. The Advocate says that the case which is in the process of settlement, they have executed the cancellation deed and received the demand draft and has no objection to Deregistration. Advocate for Project proponent informs that cancellation deed has also been executed.
4. One of the allottees namely Sushma and Avinash Gadade through Advocate M. B. Deshmukh. We are informed that the Allottee is not interested in refund and states that they would like to continue with the project and is ready to make further payments. The Advocate further informs us that they are in the civil court and have filed a specific performance petition. In view of the above, the said Allottee does not want deregistration of the project.
5. Advocate for Project proponent informs that all complaints uploaded on the MahaRERA portal shown as pending for adjudication before the Authority have now been settled and either consents terms or withdrawal memos are on record. Further, the Advocate for Sushma Gadade informs that while they may be before the civil court for specific performance they also have the remedy of compensation which has already been offered. One single allottee cannot hold back the decision of the majority and cannot act in a manner which obstructs the progress of the Project. Therefore, the Promoter seeks deregistration of the Project and is willing to compensate the Allottee.
6. Advocate for Project proponent states that as per Order 42 of 2023 of the Authority states that the procedure for taking objections. This procedure has not been followed and no notice of objection sought to be taken has been given. In view of the above, the Allottee cannot today raise an objection and the same cannot be adjudicated upon by the Authority.

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7. *The Advocate of Allottee states that booking was made in 2014 and on 04.09.2024 they received a notice and based on which they appeared before the Authority for hearing. **Matter stands closed for orders.***"
3. The Applicant (Promoter) has stated the following submissions for seeking deregistration of the said Projects:
- A. That Applicant (Promoter) states that they seek de-registration of the said Projects Nos. 1 & 2 as there is No development activity which has taken place in respect of the project at Sr. No. 1 herein and the same is stalled since the year 2015. Further with respect to the Project at Sr. No. 2 herein the promoter states that the Project is at a standstill for the past 6 -7 years and no further development has taken place.
- B. With regard to the claims related to the said Projects at Sr. No 1 the Promoter states that there were Five Allottees, out of which 2 have been settled by the Promoter and other 2 Allottees have provided consent for the proposed deregistration and remaining 1 Allottee is proposed to be settled. Further, with regard to the claims to the said project at Sr. No. 2 the Promoter states that there were Seventy-Seven Allottees out of which 41 have been settled by the Promoter and remaining 36 Allottees have provided their consent for the proposed deregistration.
- C. Therefore, the Applicant (Promoter) prays that the de-registration application be allowed.
4. In view of the above the only issue that needs to be adjudicated upon is *whether the deregistration application should be allowed and the said Projects at Sr. Nos. 1 & 2 be deregistered?*
5. Before moving ahead to adjudicate upon the issue framed herein in para No. 4 the following observations are noteworthy:
- A. It is pertinent to note that the notice of the virtual hearing dated 13.09.2024 was sent to the Promoters as well as all the Allottees of both the

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Projects. However, it is seen that Advocate Advocate Nilesh Borate remained present for Complainant Subodh Zende in complaint no. CC005000000033537 and Complainant Shriya Reddy in complaint no. CC0050000000471344 in Project listed at Sr. No. 2 and Advocate M. B. Deshmukh remained present for Allottee Sushma and Avinash Gadade in Project no. P52100004589 - captioned Project at Sr. No. 2 and no other Allottee raised any objection before the Authority.

- B. As per the records, the Authority observes that with respect to project at Sr. No. 1, one complaint bearing complaint no. CC005000000177890 is pending for adjudication before the Authority. However, it is also pertinent to note that Advocate appearing for Promoter submitted during the course of hearing that the complaint no. CC005000000177890 filed in Project herein at Sr. No. 1 - DB Commercial Phase 2 is settled and assignment deed has been executed with the Complainant. Further, one other complaint no. CC005000000023069 is disposed vide order dated 10.07.2023.
- C. With respect to project at Sr. No. 2 the Project had total 5 complaints out of which 3 has been disposed of vide Final Orders dated, 28.03.2022, 28.03.2022 & 03.06.2023. One complaint bearing no. CC005000000259000 is directed to be listed as per seniority and remaining one complaint no. CC0050000000471344 is pending to be scheduled for first hearing before the Bench of Hon. Member 2, MahaRERA. From the records of the Authority it is found that in complaint no. CC005000000259000 the Complainant therein has filed a withdrawal application which is uploaded in the complaint login on MahaRERA Portal on 09.09.2024. Further, in the hearing dated 13.09.2024 the Advocate appearing on behalf of Complainant in complaint no. CC0050000000471344 stated that the matter is settled and cancellation deed has also been executed between the Complainant and the Promoter. Thus, resultantly the Authority finds that the 2 complaints pending before the Authority in Project at Sr. No. 2 - DB

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Commercial Phase 1 have no scope of becoming any hindrance in granting deregistration to this Project as they stand settled as on today.

- D. With respect to the Projects herein at Sr. No. 1 & 2, the Applicant (Promoter) has submitted notarized declaration - cum - undertaking dated 26.08.2024 & 06.09.2024 stating that, with regard to all the claims related to the said Projects at Sr. Nos 1 the promoter states that there were five Allottees out of which 2 have been settled by the Promoter and other 2 Allottees have provided consent for the proposed deregistration and remaining 1 Allottee is proposed to be settled. Further, with regard to the claims to the said project at Sr. Nos. 2 the Promoter states that there were Seventy Seven Allottees out of which 41 have been settled by the Promoter and remaining 36 Allottees have provided their consent for the proposed deregistration.
- E. It is observed that as per the claim of promoter in its declaration cum undertaking dated 26.08.2024 one Allottee namely one Manish Narendra Ramsinghani out of the total 5 Allottees in the Project herein at Sr. No. 1 - DB Commercial Phase 2 remains to be settled. In Project at Sr. No. 2 - DB Commercial Phase 1 only one Allottee namely Sushma Gadade out of the total 77 Allottees remains to be settled. As Sushma Gadade and Avinash Gadade opposes deregistration and insists on handing over the possession of the flat booked inspite of the Promoter/Applicant offering refund of the amount paid along with compensation. It is also noted that, whilst Sushma Gadade and Avinash Gadade are objecting the deregistration of the said Project before the Authority, simultaneously they have also filed a Petition seeking relief for specific performance of the contract under the Specific Relief Act, 1963 which is pending before the District Court. It is a fundamental rule of law that, when a matter having same cause of action and relating to the same issue is pending its finality before an appropriate court of law, one cannot approach another

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forum simultaneously seeking identical reliefs having similar cause of action.

6. To adjudicate on the issue of 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 reference:

"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."

7. 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 by the Authority of the intent of the Promoter / Developer to start and complete a project wherein premises for which registration is sought would be handed over to the Allottees. In short with registration, begins the process of regulatory oversight which then lasts till the premises are handed over to the allottee together with OC. 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

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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."

8. 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 when a project registration number is 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 should get delivered to the home buyers / allottees as was promised. The grant of a project registration number is not a hypothetical exercise for complying with some statistical documentation.
9. 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.

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10. In the present case the intent to complete the projects in the present form is not there anymore. There could be various reasons for the same. The Authority has no reason nor a mandate to delve into why the intent to progress as planned earlier has evaporated. The Authority has however to ensure that while there is no intent to progress further 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.
11. Here, it is pertinent to note that in both the captioned projects the Promoter has dealt with all the allottees by either obtaining their consent by accommodating them in some other Projects or by offering refund of the amount paid along with compensation for deregistration by settlement or by giving them the agreed refund. However, one Allottee in each of the captioned project have objection to the deregistration. The Authority observes that as the Promoter has settled all the allottees except one in each project and owing to various reasons the Promoter is unwilling to proceed with the development of the Project. The ones objecting the deregistration for whatsoever reasons are a miniscule minority, whose objection cannot act as an obstruction or impediment for taking further action. Here it would be preposterous to expect that a developer would develop or construct a building for only one allottee. Once the developer sees no viability and has no intent to complete the work, it is but logical to see that the Project will not be completed. In such a circumstance the balance of convenience lies in allowing the deregistration so that the land can be put to some other use, in an efficient manner. However, while deregistration the Authority would have to ensure that the interest of the allottee is protected. Allowing a registration to continue and resultantly block the development of the land in a different manner would serve no purpose. Therefore, the Authority is of the opinion that the captioned application for deregistration be allowed and the objection of one Allottee in each of the captioned project is liable to be disregarded for the reason that it would be unfair on the part of the

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Authority to overlook the majority of consenting and settled Allottees and shall cause grave prejudice to the Promoter/Applicant if deregistration of the said Projects is not permitted.

12. 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 exercise of 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. There is no intent to complete the said Project in the present form and hence there is no logic to continue with the said Project registration number. In view thereof, the Authority concludes that the captioned Projects be de-registered subsequent to compliance of certain necessary conditions by the Promoter which are mentioned hereunder. Hence, the issue framed at **Para No. 4** is answered in **affirmative**.
13. The Promoter is directed to file Affidavit of indemnity/Indemnity Bond within 30 days from the date of this order thereby indemnifying to make good any claims and rights that may accrue to the allottees from any proceedings in a court of law, or any forum constituted to adjudicate upon the same.

FINAL ORDER


14. Therefore, after considering the aforementioned observations and provisions of the Act, the materials placed on record, the facts of the case and submissions made by the Parties, the Authority passes the following order:
- A. The Promoter is directed to **file Affidavit of indemnity/Indemnity Bond** as more specifically mentioned in para no. 13 herein above, with the Director of Compliance, MahaRERA **within 30 days from the date of this order**.

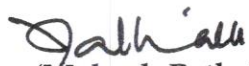
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- D. Subsequent to compliance of the conditions/directions as mentioned by the Promoter. Director of Compliance, MahaRERA to verify the documents and upon satisfactory fulfilment of the conditions as mentioned herein above, **the captioned Projects be deregistered after 30 days from the date of this order.**
- E. 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 captioned Projects.
- F. **In the event of Non-Compliance** of any of the directives/ conditions mentioned. hereinabove, within 30 days from the date of this order, **this order shall stand revoked.**


(Ravindra Deshpande)
Member-II, MahaRERA


(Mahesh Pathak)
Member-I, MahaRERA


(Ajoy Mehta)
Chairperson, MahaRERA