

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

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

**COMPLAINT NO. CC006000000192714**

MANGESH TUKARAM SAWANT ...COMPLAINANT  
VS  
SAILEE DEVELOPERS ...RESPONDENT

**MAHARERA PROJECT REGISTRATION NO. P51800018914**

**ORDER**

October 27, 2023

*(Date of hearing – 17.01.2023 matter was reserved for order)*

**Coram: Shri. Ajoy Mehta, Chairperson, MahaRERA**  
Advocate Vaishnavi Mudras present for the Complainant  
Advocate Manish Gala present for the Respondent  
Advocate present for the interveners.

1. The Complainant is a partner in the Respondent partnership firm and the Respondent is a partnership firm who is the Promoter within the meaning of Section 2(zk) of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as the “**said Act**”) of Real Estate Regulatory Authority (hereinafter referred to as the “**RERA**”). The Respondent firm is registered as the Promoter of the Project namely “PRATHAMESH GALAXY” under section 5 of the said Act bearing **MAHARERA Project Registration No. P51800018914** (hereinafter referred to as the “**said Project**”). On the MahaRERA Project registration webpage the proposed date of completion is 30.12.2026.
2. The Complainant is seeking the following reliefs:  
*“That the Registration granted to the Developer under Section 5 of the RERA Act be declared void ab-initio and furthermore, declare void-ab-intio and cancelled, all incidental and further orders passed in furtherance of the registration.”*
3. The complaint was heard on 17.01.2023 wherein the following roznama was recorded by this Authority:

*“Both Parties are present. Intervenor is also present.*

*Advocate for Intervener avers that any deregistration if given will adversely affect his rights as he is seeking relief under Section 18. The Intervener avers that this a SRA Project in which Intimation Of Approval (I.O.A.) was given on 13.10.2003 for which Completion Certificate was given on 09.10.2006. This Project was registered under RERA as it fulfilled the dual criteria of having more than 8 apartments and also of covering more than 500 sq. meters. This Project is therefore validly registered. There is also a suit pending before the Hon’ble Bombay High Court and in 2010 as a result of the Association of the flat buyers efforts a Court Commissioner was appointed to give possession to some of the Allottees. The intervener therefore avers that any cancellation of RERA registration at this stage would render him remediless.*

*The Developer Respondent states that as a result of a source compliant, the Developer was directed to register the Project failing which penalty of Rs. 15 Lakhs and a further penalty of another Rs. 15 Lakhs was to be imposed. Under these circumstances out of the 5 partners, one of the partners namely the Complainant therefore went ahead and registered the Project. The registration was done under protest. The Respondent Developer further states that they received the Commencement Certificate in 2006 whose validity was as per the MRTP Act. The same Commencement Certificate has now lapsed and no further approvals have been received. There are Stay Orders and disputes as a result of which it is almost impossible to commence this Project. The Respondent further cites cases of the Authority and the Tribunal wherein it was held that in the absence of statutory approvals, a registration would not be required. The Respondent further states that the Interveners are also before the Hon’ble High Court and are seeking remedies there and hence to say that deregistration would render them remediless would not be correct.*

*The Complainant is in agreement with what the Respondent says and seeks similar reliefs.*

*The Intervener states that it is the duty of the Developer to keep the registration valid. He further states that he is seeking reliefs under Section 18 of RERA and for that it is important that the registration is not cancelled.*

*Parties are at liberty to file written submissions, if any, by 31.01.2023. Subsequent to which, matter will be reserved for orders.”*

4. Before moving ahead a few dates and events are noteworthy:

SR. NO.	DATES	EVENTS	REMARKS
1.	22.02.2020	The captioned complaint was filed	Reliefs mentioned in para No. 2 hereinabove.
2.	01.04.2020	Final Order passed in the captioned complaint by the Erstwhile Chairperson, MahaRERA	<b>Operative part of the Order:</b> <i>“In view of the above facts, at this stage it would not be appropriate to deem the project registration as void ab initio. The parties are advised to endeavour to resolve the litigation pertaining to the said project at the earliest and complete the project work in the stipulated time.”</i>
3.	16.12.2021	Order in Appeal No. AT00600000052755 filed against order dated	<b>Operative part of the Order:</b> <i>(i) The Appeal is partly allowed.</i>

SR. NO.	DATES	EVENTS	REMARKS
		01.04.2020 by the Hon'ble MahaREAT <sup>1</sup>	(ii) <i>Impugned order dated April 01, 2020 passed by MahaRERA is set aside.</i> (iii) <i>The matter is remanded to MahaRERA to be heard and decided afresh as expeditiously as possible in accordance with law.</i> (iv) <i>All contentions of the parties are kept open.</i> (v) <i>Parties to appear before MahaRERA on January 19, 2022.</i>
4.	29.09.2022	An Intervention application was filed by the allottees in the said Project	Primarily seeks that the intervention application be allowed and the said Project registration should not be revoked as their rights in the said Project would be affected.
5.	17.01.2023	The captioned complaint was heard	The captioned case was heard and reserved for orders.

5. The brief facts and submissions of the Complainant is as follows:
- a. The complaint was filed on 22.02.2020.
  - b. The Complainant is a partner of the Respondent Promoter.
  - c. That after Respondent commencing work, the Respondent worked diligently adhering to the RERA Act and/or other statutory and other obligations, contractual and otherwise. However, the said project also has five other promoters on an area sharing basis which is under inter se title dispute and the same is stayed by the various status-quo orders before the Hon'ble Bombay High Court, which is yet pending in the Hon'ble Bombay High Court
  - d. In light of the various interim and/or ad-interim orders passed in the said Suits and Arbitration proceedings restraining the Developers from creating any third-party rights. As such, appointment of the Developers (without divulging the aforesaid facts) amounts to violation of the said orders and is as such a violation of law.
  - e. The registration granted by this Hon'ble Authority under section 5 of the RERA is null and void ab initio and all the consequential directions/orders passed against this Complainant by this Hon'ble Authority are also resultantly null and void.
  - f. That the Complainant is aggrieved by the orders dated 28.11.2018 and 02.08.2019 passed by the Authority in Source Complaint No. SC10000348 wherein the Respondent was directed to register the said project.

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<sup>1</sup> MahaREAT - Maharashtra Real Estate Appellate Tribunal

- g. That the Authority has erred in directing the Respondent in the SC10000348 to register the project as at that time, there was no valid and subsisting IOD and commencement certificate issued for the said Project.
  - h. That the grant of registration to the said Project is incorrect as it is in violation of Section 4 of the said Act which mandates the Promoter to submit layout plans, *sanctioned plans, CC and specifications of the proposed project* sanctioned by the Competent Authority. The registration granted was also in violation of Rule 6 of the MahaRERA Amendment Rules, 2019 which states that the period for which the registration of a project shall be valid shall exclude such period *where actual work could not be carried out by the Promoter as per sanction plan due to specific stay or injunction orders relating to the real estate project from any court of law, tribunal, competent authority, statutory authority, high power committee etc.*
  - i. That the Authority has granted registration to the said Project without considering that the “doctrine of impossibility” is applicable in this case as the said Project cannot obtain necessary sanctioned plans and certification from competent authority due to various stay orders and injunctions of Hon’ble Bombay High Court and Hon’ble Arbitrator.
  - j. The Complainant has relied upon various orders of the Authority and of MahaREAT to support the above-stated arguments.
  - k. The Complainant seeks deregistration of the said Project.
6. By way of an application dated 22.09.2022, 7 allottees in the said Project have sought to intervene in the captioned complaint. The Interveners were heard by this Authority on 17.01.2023. The brief submissions of the interveners are as follows:
- a. That the interveners have filed various complaints (CC006000000209974, CC006000000209708, CC006000000209906, CC006000000209919, CC006000000209944, CC006000000251330 and CC006000000251332) seeking interest for delayed possession of units under Section 18 of the said Act against the present Respondent and the said complaints are pending adjudication before the Authority.

- b. That de-registration of the said Project will adversely affect the rights of the interveners-allottees.
  - c. That the said Project is subject matter of dispute between *Prathamesh Galaxy Welfare Association versus Sailee Developers & Ors.* which is pending before Hon'ble Bombay High Court in Suit No. 2547 of 2010 wherein a number of orders have been passed against the present Complainant directing inter alia completion of the said Project. The Complainant has never challenged such orders of the High Court and has as such accepted its position as the Developer of the said Project. Therefore, the Complainant cannot aprobate and reprobate.
7. The Respondent was present at the time of hearing on 04.10.2022 and 17.01.2023. It is also noted that despite time being given to file written submissions, the Respondent has not filed his submissions with regard the captioned complaint.
8. Thus, in view of the above the Authority observes the following:
  - a. That there are allottees in the said Project who have filed complaints before this Authority which are pending as on date.
  - b. That there are disputes between the present Respondent and the association of allottees in the said Project which are pending adjudication before Hon'ble Bombay High Court.
  - c. That the date of completion of the said Project is yet to arrive i.e. 30.12.2026.
  - d. That the said Project registration has been taken pursuant to a specific direction vide a roznama dated 28.11.2018 of this Authority in a source complaint bearing No. SC10000348.
  - e. Since the said Project registration, the Respondent Promoter herein has created rights in the said Project by selling apartments to home buyers. Out of these 7 allottees have sought to intervene in the captioned complaint.
  - f. Further the Hon'ble Bombay High Court has directed the Promoter herein to complete the said Project.
9. Thus, from the observations it is clear that the said Project is an ongoing project which is pending completion and there are allottees who have an interest in the said Project.

The matter has now come up before the Authority pursuant to the order dated 16.12.2021 passed by the Hon'ble MahaREAT. The Hon'ble MahaREAT remanded the captioned complaint back to MahaRERA to decide it afresh. This order of the Hon'ble MahaREAT was passed as a consequence of setting aside the order dated 01.04.2020 of the Erstwhile Chairperson, MahaRERA. The order dated 01.04.2020 passed by the Erstwhile Chairperson, MahaRERA upheld the registration of the said Project and advised the Parties to resolve the litigation pertaining to the said Project. The said Project registration was granted by MahaRERA on 12.12.2018. On perusal of the matter, it is clear that the grant of this registration was done subsequent to the direction of the Authority vide a roznama dated 28.11.2018 in source complaint No. SC10000348. The issue that arises today is whether all documentation required to be completed to seek registration were complied with at the time of grant of registration. The Authority before examining whether compliances have been met before grant of the registration would have to consider the fact that the registration was granted subsequent to directive of the Authority in source complaint No.SC10000348.

10. In this regard it would be pertinent here to examine the provisions of grant of registration under Section 5 of the said Act which is reproduced hereinbelow 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."*

The grant of registration by the Authority is subject to provisions of the act, rules and regulations. The Authority is required to examine these at the time of granting the registration for any given real estate project. Subsequent to this examination and due diligence the Authority under section 5 can either grant the registration or reject the application by recording the reasons for the same in writing. The said Act and the relevant provision do not provide for any event where subsequently it comes to the notice of the Authority that the registration granted does not comply with the provisions laid out for grant of registration. The registration once granted remains valid for period declared by the Promoter as per section 5(3) of the said Act.

11. Thus, the Promoter having been given a registration number subsequent to the directive of the Authority went ahead and took bookings in the said Project. This has therefore led to a situation where there are now Allottees who have paid a part of the consideration and now have rights and interests in the said Project. The situation that has now arisen is that on one hand there is a need to examine the grounds and the documents based on which the registration of the said Project was granted while on the other hand the said Act does not provide for revisiting a registration once granted and investigate the ground of its grant. To compound matters the Promoter has gone ahead and also taken bookings in the said Project. The Authority cannot overlook the fact that it has been mandated with the duty to not only protect the Allottees but also ensure that the said Project is completed in an efficient and time bound manner. This is the very essence of the said Act (RERA) and also as clearly laid out in its preamble.
12. In such a circumstance, the Authority would seek to examine section 7 which deals with revocation of the registration namely Section 7(3) of the said Act which is reproduced hereinbelow for ease of reference:

*"Section 7 (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."*

Here the paramount objective of the Authority is to protect the interest of the Allottees, and the cancellation of the said Project registration will not be in the interest of the Allottees at this juncture as they would be rendered remediless in terms of the reliefs and remedies provided under the said Act. It is also further observed that a number of matters relating to the said Project and its various stake holders are pending adjudication before the Hon'ble Bombay High Court. It is also observed that the Hon'ble Bombay High court has directed the Promoter to complete the said Project. At this juncture the Authority would have to rule in manner that it not only protects the interest of Allottees but also does not tread the areas which are pending resolution before the Hon'ble Bombay High Court. This twin aim would have to be achieved by issuing such directives and terms and conditions which protect the interest of the Allottees.

13. Thus, in view of the above the Authority is constrained to put the said Project registration number in **abeyance** till such time that the grievances of the Allottees pending before the Authority are settled and also the various litigation before the Hon'ble Bombay High Court reach determination. The Respondent Promoter shall not be entitled to advertise, market, book, sell or offer for sale, or invite person/s to purchase in any manner any apartment in the said Project.
14. The Secretary, MahaRERA to put the said Project registration number in **abeyance**. The Secretary MahaRERA is hereby directed to take a stock of and review all returns filed till date and ensure that the same are in safe custody. All complaints in the said Project pending adjudication before the Authority be tagged together and fixed for hearing. Further on the website pertaining to the said Project registration this order should be displayed.

**(Ajoy Mehta)**  
**Chairperson, MahaRERA**