

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

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

COMPLAINT NO. CC006000000198104

PRADEEP PANIGRAHI & 33 OTHERS

...COMPLAINANTS

VS

1. RAJ DEVELOPER
2. RAJESH PATEL
3. JAMES PHILLIP TUSCANO
4. ANSARI MOHAMMED IRFAN
5. NARENDRA DESHMUKH

...RESPONDENTS

MAHARERA PROJECT REGISTRATION NO. P99000011696

Order

September 25, 2023

(Date of hearing - 18.01.2023 matter was reserved for order)

Coram: Shri. Ajoy Mehta, Chairperson, MahaRERA
Advocate Rakesh Pandey present for the Complainants
Advocate present for the Respondents

1. The Complainants are home buyers and Allottees within the meaning of Section 2(d) 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**") and the Respondent No. 1 is the Promoter within the meaning of Section 2(zk) of the said Act. The Respondent No. 1, a partnership firm is registered as the Promoter of the Project namely "**KRISHNA HORIZON - II**" under section 5 of the said Act bearing **MAHARERA Project Registration No. P99000011696** (hereinafter referred to as the "**said Project**"). The Respondent No. 2 to 4 are partners of the Respondent No. 1 firm and Respondent No. 5 is the authorised signatory of the Respondent No. 1 firm.
2. On the MahaRERA Project registration webpage the proposed date of completion is 31.05.2018, revised date of completion is 31.03.2019 and extended date of completion

is 30.09.2020. There is no extension sought by the Respondents and thus the said Project has lapsed.

3. The Complainants are seeking the following reliefs:

QUOTE

1.The Hon'ble authority shall revoke the registration of respondent from Project and the project be handed over to association of allottees and respondent shall be revoked from the website in relation to the said project. Respondent shall be blacklisted for malpractice.

2.Authority shall facilitate in completion of the remaining project by de-freezing bank accounts of the project and take directions in the interest of the rights of the allottees.

3.To permit the association of allottees to complete the project.

4. The Hon'ble authority shall direct the respondent to pay all the outgoings they have collected from the allottees towards the various outgoings.

5. Respondent shall be liable for the transfer charges of the project to the association of allottees.

6. Respondent shall be directed to not mortgage or create charge on such apartment plots or buildings as there already has been an agreement for sale executed & other reliefs as mentioned in the uploaded document

UNQUOTE

4. The complaint was heard on 18.01.2023 wherein the following roznama was recorded by this Authority:

"The Complainant states that various extensions have been given but the building still remains incomplete. Most of the Allottees have taken bank loans and are now finding it difficult to sustain.

The Respondent Advocate states that her client is attempting settlement talks in the matter.

The Complainant seeks directions and orders in order to ensure that the building is completed early and possession is handed over to the Allottees.

Parties are at liberty to file written submissions, if any, by 30.01.2023. Subsequent to which, the matter will be reserved for orders."

5. The brief facts and submissions of the Complainants are as follows:
- a. The complaint was filed on 26.08.2021.
 - b. Vide registered agreements for sale from the year 2010 to 2016, the Complainants purchased various flats in the said Project.
 - c. That the date of possession was not mentioned in the agreements. However, the Complainants state that the Complainants were promised date of possession as 31.05.2018 which was further extended to 31.05.2019 and thereafter to 30.03.2020.

The Respondents kept on delaying the date of possession unilaterally without informing the purchasers.

- d. That many Complainants have taken loans from the banks to make the payments for the flats purchased by them in the said Project.
 - e. That the Respondents have informed the Complainants that the said Project is not financially viable and they will require further funding for the completion of the said Project. However, the Complainants are already under financial burden and cannot make any additional payments.
 - f. That the Respondents have abandoned the Project and the project is nowhere near completion.
 - g. The Complainants seek revocation of registration of the said Project and have sought to complete the said Project by the Association of Allottees.
6. The brief submissions of the Respondents are as under:
- a. That the Complainants have suppressed material facts.
 - b. That the Complainants themselves delayed various payments as and when demanded by the Respondents.
 - c. That the Respondents faced financial crisis due to demonetisation in 2016 and the Respondents informed the same to the Complainants.
 - d. That one of the Partners, Respondent No.2 of the Respondent No.1 firm passed away in the year 2017 which delayed the completion of the said Project as the Respondent No.2 was responsible for major financial operations.
 - e. That the Respondents had taken loan from bank which they were finding difficult to repay and the bank had also initiated criminal proceeding against the Respondents due to which the Respondents were in the police custody for 2 months.
 - f. Thereafter, due to Covid-19 pandemic, the project was delayed due to scarcity of resources and finances.
 - g. That the Respondents had intimated the above-mentioned difficulties in completion of the said project to the Complainants from time to time and had even called for suggestions from the Complainants to resolve the issues. The

Respondents had also offered alternate accommodations to the Complainants till the completion of the said Project. However, the Complainants did not reply to any of such communications.

7. From the facts and the submissions made by the Parties hereinabove, the issue that needs to be considered is *Whether a case is made out for taking action under section 7 of the said Act?*
8. In order to answer the above issue the following observations are noteworthy:
 - a. In order to decide this, it would be necessary to examine section 7 of the said Act which is reproduced hereinbelow for ready reference:

“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 bank account, specified under sub-clause (D) of clause (l) of sub-section (2) of section 4, to freeze the account, and thereafter take such 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.

- b. From the plain reading of the above sections, it is clear that this Authority may, on receipt of a complaint, revoke the registration granted under section 5, only after being satisfied that the essential ingredients of revocation are (a) the Promoters (*Respondents herein*) makes default in doing anything required by or under this Act or the rules or the regulations made thereunder; (b) the Promoters (*Respondents herein*) violates any of the terms or conditions of the approval given by the competent authority; (c) the Promoters (*Respondents herein*) is involved in any kind of unfair practice or irregularities; (d) the Promoters (*Respondents herein*) indulges in any fraudulent practices and in case the project has lapsed then the Authority, may consult the appropriate Government to take such action including the carrying out of the remaining development works by competent authority or by the Association of Allottees or in any other manner.
- c. It is also pertinent to note that as much as the scheme of the said Act is to safeguard the interest of an Allottee against the Promoter at the same time the said Act also bestows upon the Authority the responsibility to safeguard the Promoter against unreasonable demands and to create an ecosystem that ensures completion of the project in a time bound manner.
- d. Further on one hand the Complainants have admitted that there was no promise date under the agreements for sale and on the other the Respondents have accepted the delay in handover of possession. Keeping this in mind it is to be understood here that the act of revocation of registration has far reaching

implications. It is because of this that the said Act has laid out specific reasons and circumstances under which the Authority can exercise these powers. This power has to be exercised only after the Authority is satisfied about the non-performance of the Developer / Promoter (*Respondents herein*) with regard to the obligations as mentioned in Section 7.

- e. In the present case it is an admitted position that the said Project is not yet completed and the same is evident from the documents uploaded by the Respondents on the said Project registration webpage. Hence, there is a delay on part of the Respondents with regard to the handover of possession with Occupation Certificate (OC).
- f. It is also seen that while perusing the MahaRERA Project registration webpage the said Project is lapsed, and the Respondents have taken no steps to seek extension of the same till date. The Respondents have violated the provisions of the said Act and hence is liable to pay penalty under section 61 of the said Act to MahaRERA office.
- g. Further, the Authority notes that the Complainants are seeking possession of their flats purchased in the said Project. Thus, the issue of completion of the said Project becomes critical. However, the Authority notes with concern that in spite of the Respondents appearing before the Authority, the Respondents have not taken any steps to seek extension of the said Project registration till date. This leaves the Authority with a critical question as to how will the said Project reach completion?
- h. In this regard the Authority lays down the following road map which the Allottees of the said Project including the Complainants herein shall follow so that the said Project attains completion:
 - a. To form an Association of Allottees (AOA) within a period of 30 days from the date of this order;
 - b. To submit a list of items pending completion to the Respondents and the Authority in the said Project within 30 days of the formation of the AOA;
 - c. To submit a proposed plan to the Authority with a copy to the Respondents to ensure the completion of the list of pending items in the said Project within 30 days of submitting the list of items pending completion.

- d. In order to facilitate the above-mentioned steps, the Authority shall appoint Mr. Sanjay Deshmukh, IAS (*Rtd.*) from MahaRERA (*Chief Consultant, Stressed Projects*) to ensure that the steps are taken in a time bound manner and any hurdle in taking such steps may be dealt by seeking proper guidance from the Authority.
- e. The AOA to render all co-operation to ensure an early completion of the said Project. Hence the answer to the **issue at para No. 7** is answered **accordingly**.
9. In view of the above the captioned complaint is **disposed of**. Further since the said Project is lapsed and the Respondents have taken no steps till date to seek any extension, this Authority shall keep the said Project registration in **abeyance** and the Respondents 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 till they obtain extension from MahaRERA. The Secretary, MahaRERA to put the said Project registration number in **abeyance**. The Respondents herein is directed to not advertise, market, book or create any third-party rights by offer for sale, enter into agreement for sale for any apartment in the said Project, till such time. The Secretary MahaRERA is hereby directed to block access to the said Project registration number, take a stock of and review all returns filed till date and ensure that the same are in safe custody. Further on the website pertaining to the said Project registration this order should be displayed. No order as to costs.

(Ajoy Mehta)
Chairperson, MahaRERA