

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

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

COMPLAINT NO. CC006000000198982

D. N. NAGAR SHIVNERI CO-OPERATIVE
HOUSING SOCIETY LIMITED

...COMPLAINANT

VS

SAI SIDDHANT DEVELOPERS (*Partnership*)

...RESPONDENT

MAHARERA PROJECT REGISTRATION NO. P51800004197

Order

October 16, 2023

(Date of hearing 03.01.2023 matter was reserved for order)

Coram: Shri. Ajoy Mehta, Chairperson, MahaRERA
Advocate Jennifer Michael a/w Advocate Nikita Ghungarde
i/by Dhiren Shah for Complainant
Advocate Abir Patel for the Respondents

1. The Complainant is a Society within the meaning of Section 2(zg) 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 is the Promoter/Developer within the meaning of Section 2(zk) of the said Act. The Respondent is registered as the Promoter of the Project namely "D N NAGAR SHIVNERI CHS LTD" under section 5 of the said Act bearing **MAHARERA Project Registration No. P51800004197** (hereinafter referred to as the "**said Project**"). The said Project is a redevelopment project wherein the development rights for redeveloping the said Project were granted to the Respondent by the Complainant Society on 24.12.2010 vide a development agreement.
2. On the MahaRERA Project registration webpage the proposed completion date of the said Project is mentioned as 31.07.2017, revised proposed completion date

is mentioned as 31.03.2019 and extended date of completion is mentioned as 30.03.2023.

3. The Complainant is seeking the following reliefs:

QUOTE

(i) the Registration Certificate bearing No. P51800004197 issued in the name of and/or in favour of the Respondent for the development of the project on the said property i.e. Exhibit A hereto, be revoked and/or cancelled forthwith.

(ii) costs of this application be provided for.

(iii) for such other and further reliefs as this Hon'ble Authority deems fit and proper in the facts and circumstances of the present case.

UNQUOTE

4. On 03.01.2023 the complaint was heard by this Authority wherein the following roznama was recorded:

"The Complainant seeks revocation of the registration number granted to the Respondent developer as a part of the Development Agreement executed in 2010. The Complainant states that the Development Agreement had been signed with the Respondent and since there were breaches the society proceeded to terminate the same. The matter came up before Hon'ble Bombay High Court which directed that the Respondent should vacate the premises and permit the society to proceed with redevelopment on its own. The Complainant cites various court orders to state that any third party rights created by the Respondent/Developer are not binding upon them.

The Respondent avers that the Complainant is seeking relief under Section 7 and the Complainant in this case happens to be a society. The society is not an Allottee and by seeking to revoke the registration of the society, would affect the rights of the Allottees. The Respondent further avers that as per the resolution of the Society submitted to MHADA it is clear that the society is not undertaking self redevelopment but has instead appointed another Developer. The Respondent avers that this action would lead to sidetracking Section 15 of RERA wherein a change in developer requires consent of the Allottees. The Respondent seeks that the Allottees should be heard before a change in Promoter is undertaken. The Respondent further avers that the three important conditions of Section 7 have not been met with. He further states that termination of the Development Agreement as claimed by the Complainant has not yet achieved its finality. This is apparent from the issues framed by the Arbitrator subsequent to the High Court Order. The Respondent also brings to our notice that six allottees have filed petitions before RERA and the same are pending adjudication. Any decision to revoke registration would adversely affect their rights.

The Complainant reiterates that this is self-redevelopment and not through a new developer. Further, the Complainants have full locus standi to file for this revocation as in the first place the registration was obtained subsequent to and because of the development agreement executed by them. The Complainant also states that the Hon'ble

High Court has noted the violations and its Orders as they stand today restrain the erstwhile developer from undertaking any further works and allows the Complainant to move forward with redevelopment. The Complainant reiterates that preventing revocation of registration in effect means that the Respondent is creating impediments in the work of carrying on with the redevelopment. The Complainant avers that the extension date given by RERA for completion is unilateral. The Society is not bound by the same and is instead only bound by the date given in the Development Agreement which has now lapsed.

The Respondent points to an Order of RERA in the RNA case reiterating that registration cannot be revoked prematurely and this revocation would only jeopardize the rights of the Allottees.

Parties at liberty to file Written Submissions, if any, by 16.01.2023. Subsequent to which, the matter will be reserved for order."

5. The brief facts and submissions of the Complainant Society are as follows:
 - a. The captioned complaint was filed on 13.11.2021.
 - b. The Parties entered into a development agreement dated 24.12.2010 for the development of the said Project (hereinafter referred to as the "**said development agreement**"). However, due to breach of the said Development Agreement, the Parties have filed various Arbitration Proceedings before the Hon'ble High Court.
 - c. Details of the various arbitration proceedings filed by the Parties and the subsequent developments are mentioned hereinbelow in a tabular form for the ease of reference:

SR. NO.	DATE	EVENT
1.	24.12.2010	The Complainant and the Respondent entered into the said development agreement.
2.	24.12.2010	The Complainant executed a power of attorney (POA) in favour of the Partners of the Respondent to carry out the development activities.
3.	26.09.2011	The members of the Complainant Society vacated their respective tenements in the old building and handed over possession to the Respondent.
4.	02.04.2015	In a Special General Body Meeting, the Complainant decided to terminate the development rights granted to the Respondent in view of various defaults including delay in completion of the said Project and failure to pay the rent to the members of the Complainant.
5.	06.05.2015	The Complainant, through their Advocate's letter, terminated the said development agreement and the POA.
6.	15.05.2015	The Respondent filed arbitration petition under section 9 of the Arbitration Act bearing No.1568 of 2015 before the Hon'ble Bombay High Court.
7.	30.04.2016	The Complainant filed another arbitration petition under section 9 of the Arbitration Act bearing No.1082 of 2016 before the Hon'ble Bombay High Court.

8.	19.08.2016	Parties entered into Consent Terms in both the arbitration proceedings wherein, one of the important promises by the Respondent was to complete the construction before 31.12.2017.
9.	22.08.2016	Arbitration No. 1568 of 2015 and 1082 of 2016 were disposed off in terms of consent terms revising the completion date to before March 2019.
10.	-	The Complainants, through their Advocate's letter, terminated the development rights of the Respondent due to breach of Consent Terms dated 19.08.2016 (<i>copy of letter not uploaded</i>).
11.	25.04.2017	Complainant filed commercial arbitration petition No.315 of 2017 before the Hon'ble Bombay High Court.
12.	12.10.2017	Consent Terms were signed by the Parties and order was passed by Hon'ble Bombay High Court disposing Commercial Arbitration Petition No.315 of 2017. As per the Consent Terms, it was stated that in case the Respondent fails to complete the construction as agreed upon, the said development agreement shall automatically stand terminated.
13.	13.01.2020	In spite of repeated reminders and requested the Respondent again failed to abide by the terms of the Consent terms dated 12.10.2017. Complainant through its advocate terminated the said development agreement and POA granted to Respondent.
14.	18.03.2020	The Complainant then filed another commercial arbitration petition (L) No. 388 of 2020 before the Hon'ble Bombay High Court.
15.	30.07.2020	The Hon'ble Bombay High Court granted interim reliefs to the Complainant in commercial arbitration petition (L) No. 388 of 2020 and also appointed an Arbitrator to adjudicate the dispute between the Parties.
16.	09.09.2020	Respondent filed commercial appeal (L) No. 3033 of 2020 in commercial arbitration petition (L) No. 388 of 2020 challenging order dated 30.07.2020 before the division bench of the Hon'ble Bombay High Court.
17.	25.08.2021	The Commercial Appeal (L) No. 3033 of 2020 was dismissed.
18.	13.11.2021	Complainant filed the present complaint before the Authority seeking above-mentioned reliefs.
19.	14.06.2022	The present complaint was heard for urgent hearing.
20.	15.11.2022	The Authority passed an interim order allowing the matter to be heard on urgent basis.
21.	03.01.2023	The present complaint was heard by the Authority and reserved for orders.
22.	14.09.2023	An award has been passed by the Ld. Arbitrator in the pending arbitration proceedings

- d. That as per the said development agreement, the Respondent agreed to complete the construction within a period of 24 months with 6 months grace period from the date of all members of the Complainant Society vacating their respective flats and permitting the Respondent to enter upon the property before 26.03.2014.
- e. The Complainant states that as per the consent terms dated 12.10.2017 and subsequent letter dated 13.01.2020 and as confirmed by the Interim Order dated 30.07.2020 passed by the Hon'ble Bombay High Court, the development rights of the Respondent have been terminated and in view

thereof, the Complainant Society seeks revocation of the registration of the said Project.

6. The brief submissions of the Respondent are as follows:
 - a. That apart from the present complaint, 10 other complaints are filed in the said Project. Revocation of registration will affect the rights of those Complainants.
 - b. That the Complainant is a Society and has appointed the Respondent as the Developer. Therefore, the Complainant is not an allottee as per the provisions of the said Act.
 - c. That the complaint is premature as the termination of development rights of the Respondent are a subjudice in the arbitration proceedings pending before the Ld. Arbitrator.
 - d. There are 35 allottees in the said Project who have not been made a party to this complaint and their rights will be hampered if the present complaint is admitted.
 - e. Moreover, the decision to terminate the services of the Respondent were taken by the members of the Complainant Society without consulting the 35 allottees of the said project.
 - f. That the motives of the Complainant are questionable as the Complainant had stated that the Complainant has decided on self-redevelopment. However, in reality, the Complainant seems to be appointing another developer. Therefore, the Complainant has suppressed material facts and has tried to mislead the Authority.
 - g. The actions of the Complainant are in contravention of the provisions of the Section 15 of the said Act which pertain protecting rights of allottees in case of change in Promoter.
7. From the submissions of the Parties, it is clear that there is a dispute between the Complainant Society and the Respondent Promoter herein with regard to the said development agreement and the same has been concluded before the Ld.

Arbitrator appointed by the Hon'ble Bombay High Court vide an award dated 14.09.2023 (hereinafter referred to as the "said arbitration award"). The operative part of the said arbitration award is reproduced herein below:

"169. Accordingly, I pass the following award:

i. The Development Agreement dated December 24, 2010 and the Power of Attorney dated December 24, 2010 have been validly terminated by the Claimant.

ii. The Respondent does not have any share, right, title and/or interest in the said property or any part thereof as more particularly described in the schedule at Exhibit "A" of the Statement of Claim.

iii. The Claimant shall receive, and the Respondent is directed to pay the following sums:
a) Rs. 1,95,84,000/- towards the unpaid monthly rents for the period of September 2018 to January 2020;

b) Rs. 92,16,000/- towards rent for the period of February 2020 to September 2020 to the Claimant and;

c) Half of Rs. 51,34,675/-, towards outstanding property tax dues ('Award Sums') to the MCGM.

d) The Respondent is liable to furnish an undertaking to MCGM, to pay the balance property tax as outstanding till the date of termination of the Agreement and Consent Tenna as and when the same becomes payable.

e) The Award Sums and Costs shall carry simple interest at the rate of 8% per annum from the date of filing of the Statement of Claim, i.e. September 19,2020 till the date of actual payment by the Respondent.

f) Costs of Rs. 41,38,800/- is awarded in favour of the Claimant and the Respondent is directed to pay the same.

g) The Award Sums and Costs shall be paid by the Respondent within a period of 90 days from today.

h) The counter claim is rejected."

8. Thus, in view of the above the Authority observes the following:

a. That the termination of the said development agreement between the Parties herein has been held as lawful by the Ld. Arbitrator.

b. That the Respondent Promoter has no right, title and interest in the property on which the said Project is to be constructed.

c. That the Complainant Society shall not be responsible for any third-party rights created by the Respondent Promoter.

9. From the observations it is clear that the said development agreement has been lawfully terminated by the Complainant Society. Further it is also clear that the said Project be handed over to the Complainant Society for completion and that any liabilities arising out of the rights created by the Respondent Promoter under

the said development agreement shall be the sole responsibility of the Respondent Promoter only and the Complainant Society has been absolved of the same by the Ld. Arbitrator under the said arbitration award.

10. Thus, the issue that needs to be considered is *Whether a case is made out for taking action under section 7 of the said Act?* In this context 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.

From the plain reading of the above section, 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 Promoter (*Respondent herein*) makes default in doing anything required by or under this Act or the rules or the regulations made thereunder; (b) the Promoter (*Respondent herein*) violates any of the terms or conditions of the approval given by the competent authority; (c) the Promoter (*Respondent herein*) is involved in any kind of unfair practice or irregularities; (d) the Promoter (*Respondent 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.

11. Further, 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.
12. Further on one hand the Complainant Society has lawfully terminated the said development agreement and on the other the Respondent created certain liabilities under the said development agreement i.e. in the saleable component of the said Project. 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 conditions 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 (*Respondent herein*) with regard to the obligations as mentioned in Section 7.

13. 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 Respondent on the said Project registration webpage. Hence, there is a delay on part of the Respondent with regard to the handover of possession with Occupation Certificate (OC). It is also seen that while perusing the MahaRERA Project registration webpage the said Project is lapsed, and the Respondent has taken no steps to seek extension of the same till date.
14. Further, the Authority notes that the Complainant Society is primarily seeking revocation of the said Project together with a direction to complete the construction of the said Project either by themselves or by appointment of a new Developer. The Authority also notes that the said arbitration award has absolved the Complainant Society of the liabilities created by the Respondent herein in the said Project.
15. Further, the said arbitration award has also confirmed the claims of the Society and upheld the termination of the said development agreement between the Parties. Thus, there are substantial and sufficient reasons to conclude that the registration number given to the Promoter needs to be revoked. However, the extreme step of revocation on the plea of the Complainant Society could adversely jeopardise the rights of the allottees. The allottees in this Project have also filed complaints before this Authority. Further, the Authority still does not have the visibility on how the Complainant Society intends to complete the work and engage with the allottees once the revocation takes place. In such circumstances the balance of convenience lies in putting the registration number in abeyance. The Complainant Society would need to submit a detailed plan of

action in keeping with the said Act as to how they intend to complete the said Project. Besides, while the Complainant Society has been absolved of the liabilities towards the allottees as created by the Respondent, the Authority cannot overlook the fact that there could be liabilities that needs to be dealt with.

16. The complaint is **disposed of** with the above observations and the MahaRERA Project registration of the said Project be put in **abeyance**.
17. The Complainant Society is given liberty to approach this Authority under the relevant provisions of the said Act with a proposal on the roadmap ahead in order to ensure completion of the said Project.
18. Further this Authority shall keep the said Project registration in **abeyance** and the Complainant Society, or any other party 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. The designated account of the said Project shall stand frozen till further orders to protect the interest of the allottees.
19. The Secretary, MahaRERA to put the said Project registration number in **abeyance**. 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. The Secretary, MahaRERA shall also issue instructions for freezing the designated bank account of the said Project. Further on the website pertaining to the said Project registration this order should be displayed.

(Ajoy Mehta)
Chairperson, MahaRERA