

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

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

1. COMPLAINT NO. CC006000000195214

HEMA SHANTILAL BHAGAT COMPLAINANT

VS.

SAYED MOHAMED ZAHID ... RESPONDENT

MAHARERA PROJECT REGISTRATION NO. P51900021839

AND

2. COMPLAINT NO. CC006000000198455

SAYED MOHAMED ZAHID COMPLAINANT

VS

HEMA SHANTILAL BHAGAT ... RESPONDENT

MAHARERA PROJECT REGISTRATION NO. P51900030681

Order

May 31, 2022

(Date of hearing - 03.02.2022 - matters were reserved for order)

Coram: Shri. Ajoy Mehta, Chairperson, MahaRERA

Complainant at Sr. NO. 1 and Respondent at Sr. No. 2 -

CA Sunil Naik, Advocate Ranawat

Respondent at Sr. No. 1 and Complainant at Sr. No. 2 -

Advocate Nilesh Borate along-with the Respondent himself

Mr. Abdul Bark Khan, Secretary Mathura Bhavan CHS was present a/w his

Advocate Kunal Maskar and Anil D'souza

1. The Complainant at Sr. No. 1 and Respondent at Sr. No. 2 is the Promoter/Developer within the meaning of Section 2 (zk) of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as the "said

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Act”) of Real Estate Regulatory Authority (hereinafter referred to as the “RERA”) and has registered a project namely “MAAHIR MARINA” under section 5 of the said Act bearing MAHARERA Project Registration No. P51900030681 (hereinafter referred to as the “said Project 1”). Similarly, the Respondent at Sr. No. 1 and Complainant at Sr. No. 2 is the Promoter/ Developer within the meaning of Section 2 (zk) of the said Act and has registered a project namely “HITESH HEIGHTS” under section 5 of the said Act bearing MAHARERA Project Registration No. P51900021839 (hereinafter referred to as the “said Project 2”). The Respondent at Sr. No. 1 has sought registration for the said Project 1 which is prior to the registration sought by Respondent at Sr. No. 2 for the said Project 2 i.e. the said Project 2 is a subsequent registration.

2. The said Project 1 & 2 both are the same re-development project of the same Society namely Mathura Bhuvan Co-operative Housing Society (hereinafter referred to as the “said Society”). The said Project 1 & 2 are the same project having two different project registration numbers taken at different points in time.

3. The Complainants are seeking the following reliefs:

SR. NOS.	COMPLAINT NO.	RELIEFS
1.	CC006000000195214	<i>The RERA registration is void ab initio and is to be cancelled as it is granted on the basis of false documents. Also please note that POA is cancelled on 28/10/2020 (attached for your reference).</i>
2.	CC006000000198455	<p><i>a) The complaint may kindly be allowed with costs.</i></p> <p><i>b) The Project registration bearing No. P51900030681, registered by the Respondent under the name of “Maahir Marina” in respect of the said land, may kindly be revoked.</i></p> <p><i>c) The Respondent or anyone who acts on her behalf, agent, servant, employee, labourers, etc. may kindly be restrained permanently to enter upon the said land and advertising, constructing, booking, selling or alienating the units in respect of Project, namely “Maahir Marina” to the prospective buyers.</i></p> <p><i>d) The Complainant prays MahaRERA Authority to hold the Respondent responsible for indulging in unfair practice and to</i></p>

		<p>compensate the Complainant for the same. e) The Complainant pray to the MahaRERA Authority to impose a penalty on the Respondent for contravening the provisions of RERA Act and Rules;</p> <p>f) Cost of the proceeding of Rs. 1,00,000/- may kindly be ordered to be paid to the Complainant from the Respondent;</p> <p>g) Any other just and equitable order may be passed in favour of the Complainant.</p>
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4. The following rozنامas were passed by this Authority in 3 hearings which are noteworthy:

Virtual Hearing dated 26.10.2021:

"The matters have come up in view of two Project Registration Nos. P51900021839 and P51900030681 issued in the same Project. Heard Mr. Sayed Mohamed Zahid ("Mr. Zahid") & his Advocate Mr. Nilesh Borate.

The Advocate for Mr. Zahid brings to the notice of this Authority that this is a 33(7) re-development Project of the MCGM. A society of the residents namely Mathura Bhavan Co-operative Housing Society ("Mathura Bhavan") passed a resolution for undertaking redevelopment and appointed M/s. U. H. Pandya & Associates ("UHPA") as Constituted Power of Attorney holder for executing the redevelopment of the Project. The said UHPA has on date only one surviving partner Ms. Hema Shantilal Bhagat ("Ms. Hema").

UHPA further appointed Mr. Zahid partner of Ms/. Rose Constructions to undertake the redevelopment work of the said Project. Based on this the UHPA approached MCGM & MHADA for necessary approvals. After seeking approvals, the construction work was started. During the course of construction Mr. Zahid realized that Ms. Hema of UHPA had applied to MahaRERA and sought a fresh Project Registration No. P51900030681. This was done while the Project Registration No. P51900021839 was subsisting.

The Advocate for Mr. Zahid brings to the notice of this Authority that Ms. Hema partner of UHPA filed a complaint before MahaRERA for revocation of Project Registration No. P51900021839. This revocation application was taken up for hearing before Member 1, MahaRERA and was heard on 14.07.2021, 04.08.2021, 08.09.2021.

Mr. Zahid further brings to the notice of this Authority that while the matter was being heard for revocation of Project Registration No. P51900021839, Ms. Hema vide an application dated 22.07.2021 sought fresh registration of the Project. While seeking fresh registration Ms. Hema has not brought to notice of this Authority the fact that there is an existing Project Registration No. P51900021839 for the said Project and that hearings have taken place for deciding the fate of Project Registration No. P51900021839. Mr. Zahid further states that keeping the Authority in dark Ms. Hema has obtained fresh Project Registration dated 08.09.2021 bearing No. P51900030681.

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The Advocate for Mr. Zahid seeks interim orders to be passed restraining Ms. Hema from selling further flats or premises and using this Project Registration No P51900021839 obtained by her for any further transactions.

This Authority finds that Ms. Hema is not present today for the hearing nor has she been represented by any Advocate. However, one Mr. Amit Bhagat, her son who is present for the hearing today assures the Authority that she or her representative would remain present on the next date.

The matters are part heard and adjourned to 11.11.2021, @3.30 pm (physical hearing) at MahaRERA Churchgate office.

Issue notices to all Parties and also to the Secretary of Mathura Bhavan."

Virtual Hearing dated 11.11.2021:

"Mr. Abdul Bark Khan, secretary Mathura Bhavan CHS was Present a/w his Advocate Anwar Landge.

All Parties are present.

In the last roznama dated 26.10.2021, on page No. 3, in the first para therein, the project Registration No. P51900021839 has been inadvertently mentioned instead of P519000310681. The same is hereby corrected.

*After hearing all the Parties, it appears that various resolutions came to be passed by Mathura Bhavan CHS ("**said Society**"). The said Society submits that certain documents being produced by the other Parties are either a fraud or have been translated into English in a manner to suit the vested interest. The Respondent, Mr. Sayed Mohamed Zahid, in complaint No. CC006000000195214 states that the complainant Ms. Hema Bhagat in the same complaint has obtained a second registration without even awaiting the revocation of the first registration. The Respondent in the same complaint counters by saying that waiting long would have meant that the Respondent could have created third Party rights which could be detrimental to their interest.*

The said Society also submits that both registration numbers have been obtained by misrepresentation and the construction that has come up does not have their consent.

It is also seen that various complaints in the matter and litigations are pending before the police Authorities and the Civil Courts including the Hon'ble High Court. In view of the various issues involved and the multiplicity of complaints cross complaints and litigations it would be important to first put in abeyance both the registration numbers so that the Allottees and other bonafide stake holders do not suffer. None of the Parties shall use any of the registration numbers till further orders for any purpose as example sale of flats or any other act that may prejudice the rights of bonafide stake holders stake holders.

The Parties are hereby directed to independently submit a chronology of events leading upto the Allotment of registration numbers. The Parties are also directed to serve the said

chronology of events on each other on or before 03.12.2021, subsequent to which the Parties would be at liberty to file any rejoinders or replies to the chronology of events by 28.12.2021. The complaints shall be fixed for hearing on 03.02.2022."

Virtual Hearing dated 03.02.2022:

"Appearances are as Per above mentioned serial number.

All the Parties are present.

The Complainant submits that having received rights from the society they engaged "Rose Constructions". The previous number that was obtained was by fraud and now as the promoter, the complainant has taken new registration number and they have clear rights. They also point to the Power of Attorney to state that this POA gave no registration rights to "Rose Constructions". The Advocate for the Complainant during the hearing has submitted the order of MHADA.

The Respondent states that relief being sought are ab initio void and should be taken up with the civil court and the revocation can be done only by the association of allottees. They also state that Complainant has herself given POA to Mr. Sayed Zahid after confirming with the housing society. It is also claimed that the POA was not limited in nature but was much wider to enable development. The POA also contains a resolution passed by Hema Bhagat which clearly gives it to Mr. Zahid.

The Society pleads that both registration numbers must be revoked. They also plead that U. H. Pandya have filed without the society's permission. The society's resolution of 1989 and executed in 1991 agrees to give it to U. H. Pandya and & not Hema Bhagat. There is also a difference in the architect employed. The Development Agreement is for 4 shops and the plan shows 5 shops. Presently the society has cancelled this Development Agreement and the same is not challenged. On inquiry the society states that they have passed the resolution to appoint a completely new developer and the same is also not challenged.

During the course of hearing, it also becomes evident that there are multiple litigations pending before the Civil Court and the Hon'ble High Court some of which may be overlapping with the issues being adjudicated by the Authority. The Parties to submit the status of all litigations pending in different forums including the Hon'ble High Court before the 24.02.2022. The parties are also at liberty to file their written submissions if any, before the 24.02.2022, subsequent to which the matter will be Reserved for orders."

5. Before the submissions of the Parties are dealt with, the preliminary objection of clubbing of the two complaints herein and the transfer of the complaint at Sr. No.1 from Member 1, MahaRERA to Chairperson, MahaRERA without any intimation are raised by the Complainant at Sr. No.1 herein. In this regard, the following observations are noteworthy:

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- a. The said Project 1 & 2 are same real estate Projects registered by two different Promoters having two registration numbers i.e. both the Complainants herein having different project names but the same redevelopment of the said Society.
- b. Thus, the said Project 1 & 2 are two different project registration numbers obtained by two different Promoters i.e. both the Complainants herein for redevelopment of the said Society.
- c. These two project registration numbers are sought at different points in time on account of various issues and disputes between the two Complainants herein amongst each other.
- d. MahaRERA vide its circular No. 34 dated 21.06.2021 had clarified that “(c) Where complaints in respect of same project are clubbed together for hearing, then in that event seniority of the clubbed complaints shall be the date of filing / registration of the complaint filed first in point of time from amongst the clubbed complaints.”.
- e. Thus, from the above, it is clear when that the complaints pertaining to same projects are clubbed together which means the project is the same and not necessarily having the same project number. It also means that a real estate project may have different project registration numbers in projects which are developed in a phase wise manner and / or multiple registration numbers as sought by Complainants herein at different point in time, all of which can be clubbed together and taken up for hearing together. This is necessary for uniformity of decisions and in the interest of the project as a whole. Thus, the complaint at Sr. No.1 herein was transferred from Member 1, MahaRERA and clubbed with the complaint before the Chairperson, MahaRERA i.e. complaint at Sr. No.2 herein.
- f. Further it is also pertinent to note that the complaints have been taken up for urgent hearing on account of two project registration numbers generated for one real estate project by two different Promoters which is a serious issue. This can cause confusion and misrepresentation among various stake holders, and jeopardise the rights of the home buyers / allottees.

f. Hence the preliminary objection is thus, overruled and the complaints are proceeded further for adjudication on merits.

6. The Parties have filed rejoinder and replies as directed by this Authority which are taken on record. The Parties have also filed the status of all litigations pending in different forums including the Hon'ble High Court as directed by this Authority which is also taken on record.

7. From the submissions made by the Complainants and Respondents herein, the following facts and chronology are noteworthy:

a. The real estate Project being said Project 1 & 2 is situate at C S No. 86, Mumbai City, Mumbai 400014.

b. The Complainant at Sr. No.1 relies mainly upon the following documents:

- i. Power of Attorney ("POA") dated 18.12.2014 to M/s. Rose Constructions (*Partnership firm*);
- ii. Declaration dated 28.10.2020 cancelling the POA dated 18.12.2014;
- iii. A Public notice dated 05.03.2020 giving warning to public not to deal with Respondent at Sr. No. 1 herein.

c. The Complainant at Sr. No.2 relies mainly upon the following documents:

- i. POA dated 18.12.2014;
- ii. Declaration dated 28.10.2020 cancelling the POA dated 18.12.2014;
- iii. MahaRERA Registration certificates issued in favour of Complainant at Sr. No. 1 bearing No. P51900030681 and issued in favour of Complainant at Sr. No. 2 bearing No. P51900021839.

d. The said Society relies mainly upon the following documents:

- i. Development agreement dated 08.08.1991;
- ii. Termination letter dated 10.10.2018;
- iii. Supplementary agreement dated 21.11.2014 and many more.

e. Thus, there are two Project Registration Certificates issued to two different Promoters for the very same Project site. In view thereof this Authority sought the intervention of the said Society vide its roznama dated 26.10.2021 mentioned hereinabove. The said Society appeared before this Authority and has submitted its reply and submissions which are taken on record. The said