

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

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

COMPLAINT NO: CC006000000251910

URBAN INFRASTRUCTURE TRUSTEES LTD.
& URBAN INFRASTRUCTURE VENTURE CAPITAL FUND ...COMPLAINANTS

VS

MACROTECH DEVELOPERS LTD. ...RESPONDENT NO.1
MONEY MAGNUM NEST PRIVATE LTD. ...RESPONDENT NO. 2

MAHARERA PROJECT REGISTRATION NO. P51900046424

Order

(Wrongly listed)

December 21, 2022

(Date of hearing – 13.12.2022 – matter was reserved for order)

Coram: Shri. Ajoy Mehta, Chairperson, MahaRERA
Advocate Vikramjit Garewal for the Complainant
Advocate Yogendra Singh for the Respondents

The captioned complaint was wrongly listed before this Authority on 13.12.2022 and in view thereof it is clarified that the order dated 05.09.2022 passed by this Authority in the captioned complaint remains valid and subsisting.

AJOY MEHTA Digitally signed by AJOY MEHTA
Date: 2022.12.21 13:41:35 +05'30'
(Ajoy Mehta)
Chairperson, MahaRERA

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

Physical Hearing @3.30pm

COMPLAINT NO: CC006000000251910

URBAN INFRASTRUCTURE TRUSTEES LTD.
& URBAN INFRASTRUCTURE VENTURE CAPITAL FUND ...COMPLAINANTS

VS

MACROTECH DEVELOPERS LTD. ...RESPONDENT NO.1
MONEY MAGNUM NEST PRIVATE LTD. ...RESPONDENT NO. 2

MAHARERA PROJECT REGISTRATION NO. P51900046424

Order

September 05, 2022

(Date of hearing - 22.08.2022 - matter was reserved for order)

Coram: Shri. Ajoy Mehta, Chairperson, MahaRERA

Advocate Mayur Khandaparkar for the Complainant

Advocate Nimay Dave a/w Advocate Alya Khan for the Respondent No. 1

Advocate Archana S. Giri for the Respondent No. 2

1. The Respondent No. 1 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 "LODHA MAHALAKSHMI - SIGNET" under section 5 of the said Act bearing **MAHARERA Project Registration No. P51900046424** (hereinafter referred to as the "**said Project**").
2. The Complainants are seeking the following reliefs:

Quote

- a. *That this Hon'ble Authority be pleased to revoke the registration of Project No. P51900046424 granted to the Respondents.*
- b. *That this Hon'ble Authority be pleased to levy penalty on the Respondents under section 60 of the said Act for making deliberate false and incorrect statements and contravening with section 4 of the said Act.*
- c. *That this Hon'ble Authority be pleased to levy penalty on the Respondents under section 59 of the said Act for contravening the provisions of s. 3 and marketing a nonregistered project.*

- d. *That this Hon'ble Authority be pleased to levy penalty on the Respondents under section 61 of the said Act for making false and incorrect statements in advertisements made by the Respondents made by the Respondents, persons claiming through or under them as well as Real Estate Agents, in contravention to the RERA Registration of Project No. P51900046424.*
- e. *That this Hon'ble Authority be pleased to levy penalty and suo moto take appropriate civil and criminal action on the Respondents, its directors as well as all the persons who are in charge of, responsible to the company for the conduct of, the business of the company in terms of section 69 of the said Act, for giving fraudulent documents to the MahaRERA and getting the RERA Project Registered bearing No. P51900046424, in contravening the provisions of the said Act.*
- f. *That this Hon'ble Authority be pleased to take suo moto action against the various Real Estate Agents advertising the non-registered residential project of the Respondents and the said Project, and penalise them under section 62 of the said Act.*
- g. *That this Hon'ble Authority be pleased to pass an order of permanent injunction restraining the Respondents by themselves as well as persons claiming, through or under them as well as Real Estate Agents from making any advertisements as understood by section 2(b) of the said Act or marketing or creating any third party rights in respect of the said Project, the Residential Project and the said Property.*
- h. *That this Hon'ble Authority be pleased to pass an order directing the Respondents from permanently pulling down and/or withdrawing all advertisements and marketing material made/published by the Respondents, persons claiming through or under them as well as Real Estate Agents engaged by them in respect of the said Residential Project as well as the said Project for which RERA Registration bearing No. P51900046424 has been granted.*
- i. *The Respondent be directed to pay the Costs of this Complaint as well as all ancillary charges including legal expenses, etc.*
- j. *Any further relief be kindly granted, which this Hon'ble Authority deem fit and proper in the facts and circumstances of the case and for such further and consequent reliefs that this Hon'ble Authority deems fit.*

Unquote

3. The following roznama was passed by this Authority on 22.08.2022:

"The Complainant begins stating that he has just served an additional affidavit. The Complainant is before this Authority seeking an interim order to restrain the Respondent / Promoter from going further with the project as registered with RERA. The Complainant points out to certain clauses and states that these would qualify for revocation of the registration and till such time a final decision on the same is taken, they should be restrained.

The Respondent / Promoter avers that the Complainant is neither an allottee nor an association of allottees nor another stake holder which would qualify as an aggrieved Party. The Promoter therefore questions the very locus standi of the Complainant and seeks dismissal of the complaint on ground of maintainability.

The Complainant points to section 31 referring to who an aggrieved Party is, further also to section 7 wherein Authority could take up matter suo-moto. The Complainant also points out to the implications of an advertisement. The Complainant states that he is before the Hon'ble High Bombay Court and the matter before the RERA regarding registration could adversely affect the outcome of his matter pending before the Hon'ble High Bombay Court. The Complainant has also brought on records the judgments to show who an aggrieved Party could be.

The Respondent / Promoter avers that to permit interpretation of the definition of advertisement to anyone at large could lead to anyone coming up and seeking redressal for grievances. The Respondent also points to certain orders of the erstwhile Chairman of MahaRERA and also Tamil Nadu RERA stating that RERA does not have jurisdiction to entertain PIL. The orders are also pointed out to indicate who an aggrieved person would be. The Promoter states that the reliefs that is available to the Complainant as far as the money decree is concerned is only with the Hon'ble Bombay High Court and he cannot use that grievance to prevent the third-party sale. The Promoter avers before the Authority that as per the letter dated 14.07.2022, they have already requested the Project No. P51900046424 in this matter be kept in abeyance. They also further aver that they would not be making any sales for gains in this Project registration no.

The mater has not been heard on merits. The matter is reserved for orders only on the specific issue of maintainability."

4. The brief issues of the captioned complaint are as follows:
 - a. The complaint has been filed by the Complainants on 13.07.2022.
 - b. That Complainant No.2 is the trustee of Complainant No. 1 company.
 - c. That the Respondent No. 1 is a builder / developer and a part of Lodha Developers Group and also a group company of Everest Developers/Everest Group (*now known as Terraform*).
 - d. That the Respondent No. 2 is the owner of the property on which the said Project is to be constructed.
 - e. Further, Respondents vide an alleged agreement dated 01.10.2021 agreed to develop the said Project on joint development basis. However, the said Project is registered in the name of Respondent No. 1.
 - f. That (1) Mr. Kishor N. Shah, (2) Mr. Vimal K. Shah and (3) Mr. Nainesh K Shah, the Promoters of the of Everest Group along with the Complainants and other investors formed a company namely Vengas Realtors Pvt. Ltd., a Special Purpose Vehicle (SPV), wherein the Promoters on one hand and the

Complainants plus other investors on the other hand had equal profit-sharing ratio (*i.e.* 50:50).

- g. That it was agreed between the Complainants and the Promoters of Everest Group that Vengas Realtors Pvt. Ltd. would jointly develop the said Property with one Everest Fincap Pvt. Ltd. (*which is now known as Money Magnum Nest Pvt. Ltd.; i.e. the Respondent No. 2 herein*), a company wholly owned and controlled by the Promoters of Everest Group.
 - h. That disputes and differences arose between the Promoters of Everest Group and the Complainants along with other investors against which the Complainants filed arbitration proceedings against the Promoters of the Respondent No. 2 and award was also passed dated 30.06.2022.
 - i. That the Respondent No. 1 has hidden material facts and provided false and incorrect statements and/or suppressed various other critical information on the MahaRERA project registration webpage while seeking registration.
 - j. That the Complainants fall within the ambit of section 31 as the section is inclusive and not exhaustive. The Complainants are "*aggrieved persons*" in relation to the registration of the said Project, as the said Project is the subject matter of execution proceedings filed by the Complainants before the Hon'ble Bombay High Court for the award dated 30.06.2022.
 - k. That the provisions of section 7 of RERA provides that this Authority on receipt of a complaint or suo moto revoke the registration of a real estate project for violating and providing false advisements.
5. The brief submissions of the Respondent No. 1 are as follows:
- a. That the captioned complaint in its entirety and its maintainability, does not have cause of action and locus standi.
 - b. The Respondent No. 1 submits that the Complainants are neither "*association of allottees*" nor a "*voluntary consumer association*" nor are they consumers.
 - c. That while applying for registration of the said Project, there was a data mix-up between two different projects of Respondent No. 1, and it was a clerical error which occurred due to upgradation in MahaRERA website. However,

The Respondent No. 1 suo moto when realized, address a letter dated 14.07.2022 to keep the registration in abeyance.

- d. The Respondent No. 1 submits that since the registration has been kept in abeyance the Respondent No. 1 has not accepted any bookings in relation to the said Project.
 - e. That the Complainants have certain disputes/claims against the shareholders of the Respondent No. 2 in relation to 13 different properties and that Respondent No. 1 is not connected with the said dispute and hence is not getting into any details regarding the same.
 - f. That the Complainants have made false, baseless and malafide allegations.
 - g. That the Complainants are not "*aggrieved persons*" under section 31 of the said Act as they are neither "*association of allottees*" nor "*voluntary consumer association*" nor are they consumers. Moreover, the purpose and object of the said Act is "*to protect the interest of the consumers in the real estate project.*"
 - h. That the Complainants have failed to represent as to how they can be considered as consumers or association of allottees or voluntary consumer association by any stretch of imagination and hence the captioned complaint be dismissed the Complainants have no locus standi in the said Project.
6. That the Respondent No.2 has not filed any submissions till date but was represented by a lawyer on the hearing dated 22.08.2022.
 7. From the above facts and submissions, the preliminary issue that requires consideration is *Whether the Complainants have any locus in the present complaint and thus, whether the complaint is maintainable?*
 8. In answer to the issue above, the following observations are noteworthy for the complaint mentioned herein:
 - a. It is pertinent to note that this order is related to the limited issue of maintainability and the merits of the case are not dealt with. The preliminary

issue that needs to be ascertained is whether the complaints fall under the definition of aggrieved person.

- b. Thus, in this regard it would be necessary to quote the relevant section 31 and section 2(zg) of the RERA:

“Section 31 Filing of complaints with the Authority or the adjudicating office:
(1) Any aggrieved person may file a complaint with the Authority or the adjudicating officer, as the case may be, for any violation or contravention of the provisions of this Act or the rules and regulations made thereunder, against any promoter, allottee or real estate agent, as the case may be.

Explanation – For the purpose of this sub-section “person” shall include the association of allottees or any voluntary consumer association registered under any law for the time being in force.

(2) The form, manner and fees for filing complaint under sub-section (1) shall be such as may be prescribed.”

“Section 2 (zg) “Person” includes, –

(i) an individual;

(ii) a Hindu undivided family;

(iii) a company;

(iv) a firm under the Indian Partnership Act, 1932 (9 of 1932) or the Limited Liability Partnership Act, 2008 (6 of 2009), as the case may be;

(v) a competent authority;

(vi) an association of persons or a body of individuals whether incorporated or not;

(vii) a co-operative society registered under any law relating to co-operative societies;

(viii) any such other entity as the appropriate Government may, by notification, specify in this behalf;”

- c. The issue that needs to be dealt with to decide maintainability would thus be the interpretation of the word “**aggrieved person**” as mentioned in section 31 of the said Act. Section 31 while enumerating the category of persons who could file a complaint has specifically stated the term “**aggrieved person**”. If the intent of the legislation was to make available the option of making a complaint open to all and everyone then section 31 of the said Act would have used only the term “**person**” and not “**aggrieved person**”. Here prefixing the word **aggrieved** which is an adjective to the word **person** which is a common noun has clearly limited the pool of persons who have the privilege of filing a complaint before MahaRERA. Clearly thus, the term “**aggrieved**” is important

and is the essence of section 31. Hence to file a complaint the person has to be aggrieved and must have a grievance for which he seeks reliefs before RERA.

- d. The grievance must be such that it falls within the grievances which are enumerated in the said Act and for which the said Act provides reliefs as well. While it is admitted that a person could have many grievances however this Act has been specifically drafted for dealing with grievances relating to the interest of consumers of the real estate projects. The said Act specifically provides for an adjudicatory mechanism for speedy dispute redressal in the interest of consumers. It would be important here to examine the statement of objects and reasons of the said Act. The statement of objects and reasons of the said Act are reproduced hereinbelow for ease of reference:

Statement and Objects of the said Act:

“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.”

The plain reading of the same makes it clear that one has to be aggrieved about an issue relating to the project for which a remedy has been made available in the said Act and thus, it is only an **aggrieved person** who can make a complaint before this Authority.

- e. In this particular case the Complainants admittedly have a grievance. However, on perusal of the grievance it is fundamentally related to the specific performance of a contract between the Complainants and one of the Respondents. This contract over which the Complainants have grievance is by no stretch of imagination be said to have created the relationship of a buyer and seller of a real estate project. The Complainants here are not allottees nor have they pleaded so. The grievance of the Complainants is being settled in civil courts in view of its nature and does not fall within the jurisdiction of RERA. This Authority is constrained to observe that the Complainants have

tried to camouflage and dress the complaint up so as to make it fall within the purview of RERA. This Authority observes that the Complainants are neither Allottees nor an association of persons and nor are they able to prove in any manner as to how they are aggrieved for which reliefs are available under the said Act.

- f. Further, section 2(zg) which defines the term “**person**” cannot be seen in isolation. The word **aggrieved** and **person** are shrunk packed and one word cannot be read in isolation of the other and a convenient interpretation cannot be drawn. The said Act has been formulated fundamentally to provide reliefs to individuals basically the home buyers who invest their life savings. The said Act is definitely not a vehicle for arm chair public interest litigations. Thus, the **issue at para No.7** herein above is answered in **negative**.
9. In view of the above observations the captioned complaint is **dismissed** on the preliminary issue dealt hereinabove. The Complainants have no locus standi and thus the complaint is not maintainable under RERA.
10. Having dismissed the complaint on the issue of maintainability this Authority views that the issues raised by the Complainants warrants a fresh look at the registration. The registration granted needs to be reviewed in view of the issues raised in this complaint. This process of review will be conducted as a suo motu exercise as a part of the regulatory oversight function of this Authority. It is hereby directed that the Secretary, MahaRERA will call for all documents relating to the registration and examine the same afresh. This will be done as a suo motu regulatory exercise. The Secretary shall submit a report on the compliances that have been done or not done for obtaining the said Project registration. The Secretary, MahaRERA shall also suggest remedies and the way forward if any. The report of the Secretary, MahaRERA shall be submitted to this Authority within 30 days from the date of this order. Till the final decision of this report of the Secretary, MahaRERA is not given by this Authority the said Project

registration shall be kept in **abeyance** and the Respondent shall not advertise, market, book, sell or offer for sale, or invite person/s to purchase in any manner any apartment in the said Project. No order as to cost.

AJOY MEHTA Digitally signed by AJOY MEHTA
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(Ajoy Mehta)
Chairperson, MahaRERA