

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

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

**REGULATORY CASE NO. 01 OF 2022**  
(ERSTWHILE SUO-MOTU CASE NO. 218 OF 2022)

TURF ESTATE JOINT VENTURE LLP

... APPLICANT  
(PROMOTER)

1. KESARI REALTY VENTURE LLP,
2. KUBER MALL MANAGEMENT PVT.  
LTD.,
3. ADITYA VIKRAM BAGREE & CHETAN  
RATAN BAGREE,
4. MAHABAL REALTY PVT. LTD. &
5. VAYUPUTRA REALTY PVT. LTD.

...RESPONDENTS

**MAHARERA PROJECT REGISTRATION NO. P51900003617**

**Order**

September 02, 2022

*(Date of virtual hearing – 30.06.2022, matter reserved for order)*

**Coram: Shri. Ajoy Mehta, Chairperson, MahaRERA**

Advocate Sanjay Jain a/w Ms. Rujuta Patil, Mr. Yohaam Shah  
i/b. Negandhi Shah & Himayatullah, Advocates for the Applicant  
Advocate Harshad Bhadbhade for the Respondents

1. Turf Estate JV (“**Old Promoter**”) had registered the project namely “DB TURF VIEW” under section 5 of the Real Estate (Regulation and Development) Act, 2016 (“**said Act**”) of Real Estate Regulatory Authority (“**RERA**”) bearing MAHARERA **Registration No. P51900003617** (hereinafter referred to as the “**said Project**”). On 29.10.2021, an application was made by the Old Promoter with consent of 2/3<sup>rd</sup> Allottees for change of Promoter name under section 15 of the said Act which was approved by this Authority. Thus, Turf Estate Joint Venture LLP i.e. the Applicant herein was approved as the New Promoter/ Promoter of the said Project subject to compliance of the provisions under the

said Act and regulations thereunder (hereinafter referred to as the “**New Promoter / Promoter**”).

2. The Applicant (Promoter) seeks the following:

*“(a) The Project known as “Turf View” bearing Registration No.P51900003617 be de-registered on such terms and conditions as the Authority deems fit;*

*(b) Any further orders as may be necessary in the interest of justice be passed.”*

3. The case was heard on 30.06.2022 wherein the following roznama was passed by this Authority in the captioned matter:

*“The Applicant cites the last Roznama and brings out the facts mentioned therein. The Promoter was changed with 2/3<sup>rd</sup> consents, out of the 27 allottees at that point of time. The power of registration also implies power of de-registration and points to the General Clauses Act and two judgements to that effect. He also points out to the Hon’ble High Court’s order of April, 2022 wherein the plea for restraining RERA on this issue was rejected and the Hon’ble High Court held that RERA has the powers. The Hon’ble High Court also mentioned about RERA formulating orders dealing with regulatory matters.*

*The Clause 14 which deals with termination was not challenged in the Hon’ble High Court and is now sought to be challenged. Clause 14 is not inconsistent with the scheme as laid out by RERA and further these allotments were made before the advent of RERA. The Agreement mentions refunds but does not mention interest. However, the Applicants are also offering interest.*

*De-registration becomes a necessity when certain circumstances frustrate the very continuation of the project for example the sea covering the land or land coming under reservation, in which cases a de-registration would be warranted.*

*The Respondent submits the following:*

- 1. The consent of the cancelled allottees have been taken and not the allottees who remain in the project.*
- 2. Section 3 of the act deals only with what needs to be registered and does not in any way give power to the Authority to either direct registration or otherwise.*
- 3. There are more than 8 apartments and therefore one cannot say that just because there are 8 allottees there will be 8 apartments. There are over 351 car parking and the project land area is above 25,000 sq. metres.*
- 4. It is not the case of the Applicant that circumstances have frustrated his attempts to take the project further. The project is going ahead only the nature is being changed from residential to commercial and the Promoter of the project is being changed.*
- 5. Section 7 and 8 of the Act specially provide for powers and procedures to takeover the project in the event of non-completion or inability to complete. Here the case is that they want to complete the project but express inability.*

6. *There are flaws in the disclosures made on the website and there are non-compliance issues and the Respondents intends to file complaints on the same.*
7. *The act of seeking de-registration is only to avoid penalties that may follow due to non-compliances.*
8. *Once a permission under Section 14 or 15 is sought for changing the Promoter, there is no case to state that the project is being abandoned.*
9. *There is no provision in the Act and the same is not designed to allow exit with liabilities further to understand this one would have to read the Act in consonance with the object and reasons.*

*Applicant states that it is not the case that they have abandoned without returning the monies, they have offered to return the monies with interest, however they were returned and they have now deposited in Fixed Deposit.*

1. *The first application for change of promoter was made in November, 2021 when there were 27 allottees and consents of 2/3<sup>rd</sup> namely more than 18 were sought and are on record. The Respondent became aware of this fact in January, 2022 that the Authority has granted permission for change of Promoter but the Respondent choose not to make any complaint then.*
2. *Section 3 should be understood with these parameters.*
3. *The Authority does allow filing of complaints even in non-registered projects and the Respondent would have that remedy available in the event the project was de-registered.*
4. *The project as was contemplated is not being implemented however, the new project would be implemented.*

*The Respondent points to section 14 (2) (1) wherein his personal consent rather than consent of the group would be required.*

*Parties are at liberty to file written submission, if any, by the 15.07.2022, subsequent to which matter shall be reserved for orders."*

4. Before this Authority moves ahead to deal with the issues involved in the present case, it is pertinent to note that the captioned matter has been freshly heard again pursuant to the directions vide an order dated 29.03.2022 of the Hon'ble Bombay High Court in the writ petition Nos. (L) 8713 to 8717 of 2022. The erstwhile case was numbered as Suo-Motu case No. 218 of 2022 which is merged with the present regulatory case.
5. The replies, rejoinders and written submissions of the Parties are taken on record and the brief submissions are already recorded by this Authority in the above roznamas, hence the same are not repeated for sake of brevity.

6. The following dates and events below are relevant for consideration of issues framed hereunder:

DATES	EVENTS
05.03.2007	Letter of Allotments issued to all the 5 Respondents named herein above by the Old Promoter.
06.08.2017	The said Project was registered as an on-going Project with MahaRERA.
27.07.2021	Vide an email, the Old Promoter made an application for change of Promoter name under section 15 of the said Act on the ground of conversion of Turf Estate JV to Turf Estate Joint Venture LLP. This application also enclosed letters dated 15.03.2021 of more than 2/3 <sup>rd</sup> Allottees ( <i>out of total 27 Allottees</i> ) of the said Project consenting to the change of Promoter and also to change of plans of the said Project.
29.10.2021	MahaRERA approved change of Promoter name under section 15 of the said Act subject to compliance of the provisions thereunder.
31.01.2022	Vide an email, the Applicant herein made an application attaching a letter dated 29.01.2022 for de-registration of the said Project on the ground that out of 27, 21 Allottees' allotments have been cancelled and refund of their amounts have been given to them with 9% interest p.a. However, one Allottee had not paid so a simpliciter cancellation of the allotment was done and the remaining 5 Allottees i.e. all 5 Respondents herein were sent cheques of the refund amounts with 9% interest.
10/11.02.2022	All 5 Respondents herein filed Suits bearing Nos. (L) 3934, 4110, 4119, 3931 & 3938 of 2022 respectively challenging the termination of the allotments.
15.02.2022	The Applicant herein informed MahaRERA that the 5 Allottees i.e. all 5 Respondents herein returned the cheques of the refund amounts along with a legal notice dated 02.02.2022 refusing termination of the allotments made to them in the said Project.
17.03.2022	All 5 Respondents herein have filed writ petitions Nos. (L) 8716, 8715, 8717, 8714 & 8713 of 2022 respectively seeking prohibiting and restraining orders in terms of exercising jurisdiction and / or taking steps and / or proceedings in the hearing of any application pertaining to de-registration of the said Project.
29.03.2022	Vide an order the Hon'ble Bombay High Court in the writ petition Nos. (L) 8713 to 8717 of 2022 directed this Authority to take up the present refiled application with the old application sent by email being retained on record.
20.07.2022	Subsequent to hearing dated 30.06.2022, 5 complaints have been filed before this Authority bearing complaint Nos. CC006000000261997, CC006000000261990, CC006000000261995, CC006000000262007 & CC006000000262002 respectively.
11.08.2022	The above complaint Nos. CC006000000261997, CC006000000261990, CC006000000261995, CC006000000262007 & CC006000000262002 were heard by this Authority.
02.09.2022	The complaint Nos. CC006000000261997, CC006000000261990, CC006000000261995, CC006000000262007 & CC006000000262002 were disposed of by this Authority.

7. Before dealing with the merits of the case, it is pertinent to note that the case before this Authority is not a complaint filed by an aggrieved person under section 31 of the said Act. It is an application made for de-registration of the said

Project by the New Promoter wherein it was brought to the notice of this Authority that 5 (*Respondents herein*) out of the 27 Allottees have refused to accept the refund of the amounts paid by them on allotments of the apartments booked in the said Project.

8. In-order to deal with the application it would in the first instance be necessary to examine the said Act with respect to the functions and duties of this Authority. The functions of this Authority are laid out in section 34 of the said Act which is reproduced herein below for ease of reference:

**Section 34 - Functions of Authority:**

*"The functions of the Authority shall include –*

*(a) to register and regulate real estate projects and real estate agents registered under this Act;*

*(b) to publish and maintain a website of records, for public viewing, of all real estate projects for which registration has been given, with such details as may be prescribed, including information provided in the application for which registration has been granted;*

*(c) to maintain a database, on its website, for public viewing, and enter the names and photographs of promoters as defaulters including the project details, registration for which has been revoked or have been penalised under this Act, with reasons therefor, for access to the general public;*

*(d) to maintain a database, on its website, for public viewing, and enter the names and photographs of real estate agents who have applied and registered under this Act, with such details as may be prescribed, including those whose registration has been rejected or revoked;*

*(e) to fix through regulations for each areas under its jurisdiction the standard fees to be levied on the allottees or the promoter or the real estate agent, as the case may be;*

*(f) to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder;*

*(g) to ensure compliance of its regulations or orders or directions made in exercise of its powers under this Act;*

*(h) to perform such other functions as may be entrusted to the Authority by the appropriate Government as may be necessary to carry out the provisions of this Act."*

MahaRERA is a Regulatory Authority for the real estate industry in Maharashtra. As a Regulator, it performs myriad functions which can be broadly classified as under:

- i) Adjudicatory functions under Section 31;
- ii) Advisory functions;
- iii) Promoting the interest and welfare of stakeholders and

iv) Regulatory functions under the said Act.

**i) Adjudicatory procedural framework:**

For adjudicating complaints submitted to MahaRERA under Section 31 of the said Act, procedure has been laid down under the Maharashtra Real Estate Regulatory Authority (General) Regulations, 2017. These Regulations came into force on 24.04.2017 and separately provide for the procedural matrix for adjudicating matters by MahaRERA which are complaints by aggrieved persons. The cause list / hearing board (*listing of items for adjudication*) is prepared and generated automatically upon scheduling of the complaints for hearing and is available in the public domain. Together with above a digital platform is also available for filing complaints against non-registered projects.

**ii) Advisory functions:**

The said Act also provides for the State Government to obtain an opinion from MahaRERA under section 33 of the said Act. This role of RERA is advisory in nature.

**iii) Promoting the interest and welfare of stakeholders:**

The functions to be performed by MahaRERA for promoting the real estate sector are enumerated in section 32 of the said Act.

**iv) Regulatory functions under the Act:**

Section 34 of the said Act deals with the regulatory functions of MahaRERA. These include registration of Projects and real estate Agents, maintaining a website, maintaining a database and inter alia ensure compliance of regulations, orders and directions etc. In its regulatory role, MahaRERA performs a wide range of functions. These include change of name of promoters, corrections in error in registrations due to dual registration obtained by Promoters, veracity of advertisement for proposed Projects, expiry of registration certificate and similar regulatory issues. The procedure in respect of these matters has been recently stipulated vide a MahaRERA circular / order No. 29 of 2022 dated 25.04.2022. These matters are fundamentally non adversial in nature. At times in certain regulatory

matters in the interest of natural justice and transparency a hearing is required to be given. MahaRERA in such cases issues notices to other Parties on its own and such matters have borne the nomenclature of “*suo motu*” or like in the present case of “*regulatory case*”. In some of these matters, MahaRERA also invites various stakeholders for ascertaining their views, interest and /or submissions. In this, it is guided by the principles of natural justice.

9. From the facts and the submissions made by the Parties, the issue that needs to be decided is as to *Whether MahaRERA on the request of a Promoter can de-register a real estate project?* While the above is the primary issue, the process of answering this would raise certain supplementary questions which would also be necessary to answer. The supplementary issues to be examined are articulated hereinbelow:
  - a. *Whether the grant of real estate Project registration by MahaRERA is a grant in eternity?*
  - b. *What is the remedy available to the Respondents against the Applicant Promoter who seeks to de-register a real estate project without completing, in spite of having paid part consideration?*
  
10. In order to proceed to find answers to the above issues it would be important to note certain relevant sections of the said Act and its statement of objects and reasons:
  - a. **Statement and Objects and / or the Preamble 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.”*
  - b. **Section 2 (d) – Allottee:**  
*“Allottee in relation to a real estate project, means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold*

or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent;"

c. **Section 19 – Rights and duties of allottees:**

*"(1) The allottee shall be entitled to obtain the information relating to sanctioned plans, layout plans along with the specifications, approved by the competent authority and such other information as provided in this Act or the rules and regulations made thereunder or the agreement for sale signed with the promoter.*

*(2) The allottee shall be entitled to know stage-wise time schedule of completion of the project, including the provisions for water, sanitation, electricity and other amenities and services as agreed to between the promoter and the allottee in accordance with the terms and conditions of the agreement for sale.*

*(3) The allottee shall be entitled to claim the possession of apartment, plot or building, as the case may be, and the association of allottees shall be entitled to claim the possession of the common areas, as per the declaration given by the promoter under sub-clause (C) of clause (I) of sub-section (2) of section 4.*

*(4) The allottee shall be entitled to claim the refund of amount paid along with interest at such rate as may be prescribed and compensation in the manner as provided under this Act, from the promoter, if the promoter fails to comply or is unable to give possession of the apartment, plot or building, as the case may be, in accordance with the terms of agreement for sale or due to discontinuance of his business as a developer on account of suspension or revocation of his registration under the provisions of this Act or the rules or regulations made thereunder.*

*(5) The allottee shall be entitled to have the necessary documents and plans, including that of common areas, after handing over the physical possession of the apartment or plot or building as the case may be, by the promoter.*

*(6) Every allottee, who has entered into an agreement for sale to take an apartment, plot or building as the case may be, under section 13, shall be responsible to make necessary payments in the manner and within the time as specified in the said agreement for sale and shall pay at the proper time and place, the share of the registration charges, municipal taxes, water and electricity charges, maintenance charges, ground rent, and other charges, if any.*

*(7) The allottee shall be liable to pay interest, at such rate as may be prescribed, for any delay in payment towards any amount or charges to be paid under sub-section (6).*

*(8) The obligations of the allottee under sub-section (6) and the liability towards interest under sub-section (7) may be reduced when mutually agreed to between the promoter and such allottee.*

*(9) Every allottee of the apartment, plot or building as the case may be, shall participate towards the formation of an association or society or cooperative society of the allottees, or a federation of the same.*

*(10) Every allottee shall take physical possession of the apartment, plot or building as the case may be, within a period of two months of the occupancy certificate issued for the said apartment, plot or building, as the case may be.*

*(11) Every allottee shall participate towards registration of the conveyance deed of the apartment, plot or building, as the case may be, as provided under sub-section (1) of section 17 of this Act."*



d. **Section 31 - Filing of complaints with the Authority or the adjudicating officer:**

*“(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 specified by regulations.”*

e. **Section 37 - Powers of Authority to issue directions:**

*“The Authority may, for the purpose of discharging its functions under the provisions of this Act or rules or regulations made thereunder, issue such directions from time to time, to the promoters or allottees or real estate agents, as the case may be, as it may consider necessary and such directions shall be binding on all concerned.”*

11. On perusal of the submissions of the Parties, examination of the facts of the said Project and in light of the provisions of the said Act reproduced hereinabove this Authority observes as follows:

- a. On the issue No.9(a) namely, the grant of Project registration. It is observed that this is given under section 5 of the said Act wherein the Promoter is granted registration which shall be valid for a period declared by the Promoter under section 4(2)(1)(C) for completion of the Project or phase thereof, as the case may be. This clearly shows that the Project registration has an expiry date as well. This Authority has noted situations where the Project registration has lapsed for various reasons while the Project remained incomplete. There are also situations of revocation of Project registration wherein the Promoter has either failed to deliver or is in violation or has abandoned the Project. In all such cases this Authority within the mandate of the said Act then strives to find a way forward with basic objective of completing the Project to ensure that home buyers get what was promised to them. From all of the above instances and occasions it can be reasonably inferred that real estate Project registration does account for circumstances where the registration has lapsed but the Project still remains incomplete.

Thus, a registration number once given does not remain for all times to come and there do exist circumstances where it does lapses or stands revoked. Hence, the issue at para No.9(a) is answered in **negative**, i.e. a real estate Project registration is not granted in eternity.

- b. In the background of the above elaboration, it is important to appreciate that a real estate Project is a commercial business venture and like any other such venture, real estate is also exposed to issues such as regulatory uncertainties and risks common to commercial activity. In such an ecosystem this Authority as a Regulator exercises oversight to protect the interest of both the Parties i.e the Allottee (Home Buyer) and the Promoter (Developer) to enable the growth of a robust real estate sector. A real estate Project thus, from inception to completion not only witnesses a change in business environment with its attendant commercial risks, but also along its life various other stake holders, like bankers and financial institutions become stake holders by imposing caveats to protect their interests. While this is natural in a free economy, the role of this Authority as a Regulator is to ensure that the interest of the Allottee (Home Buyer) is protected without jeopardising the Project and its stake holders in any way thus, ensuring the viability of the real estate sector which is an important component of the economy. To conclude the issue at para No. 9(a) it would suffice to say that registration is an event that is time and circumstance dependant and has an expiry date subject to a condition precedent and can also be revoked in certain events. Thus, the legislation has recognised the mortal nature of Project registration and has laid out situations wherein the registration can as well end. What now remains to be answered is *did the legislature envisage a situation where the Promoter on his own volition wants to terminate registration?* In this case it is clear that the Promoter has made it amply clear and expressed his inability to deliver possession in accordance with the terms and conditions of the letter of allotment and has thus voluntarily sought deregistration.

- c. Before the issue at para No. 9(b) is taken up it would be important to address and answer the primary issue namely *whether MahaRERA on the request of a Promoter can deregister a Project?* In order to answer this, one would have to examine sections 3, 4 and 5 which deals with issues relating to registration of a real estate Project. In this regard sections 3, 4 and 5 are reproduced hereinbelow for ease of reference:

**Section 3 - Prior registration of real estate project with Real Estate Regulatory Authority:**

*“(1) No promoter shall advertise, market, book, sell or offer for sale, or invite persons to purchase in any manner any plot, apartment or building, as the case may be, in any real estate project or part of it, in any planning area, without registering the real estate project with the Real Estate Regulatory Authority established under this Act: Provided that projects that are ongoing on the date of commencement of this Act and for which the completion certificate has not been issued, the promoter shall make an application to the Authority for registration of the said project within a period of three months from the date of commencement of this Act:*

*Provided further that if the Authority thinks necessary, in the interest of allottees, for projects which are developed beyond the planning area but with the requisite permission of the local authority, it may, by order, direct the promoter of such project to register with the Authority, and the provisions of this Act or the rules and regulations made thereunder, shall apply to such projects from that stage of registration.*

*(2) Notwithstanding anything contained in sub-section (1), no registration of the real estate project shall be required –*

*(a) where the area of land proposed to be developed does not exceed five hundred square meters or the number of apartments proposed to be developed does not exceed eight inclusive of all phases: Provided that, if the appropriate Government considers it necessary, it may, reduce the threshold below five hundred square meters or eight apartments, as the case may be, inclusive of all phases, for exemption from registration under this Act;*

*(b) where the promoter has received completion certificate for a real estate project prior to commencement of this Act;*

*(c) for the purpose of renovation or repair or re-development which does not involve marketing, advertising selling or new allotment of any apartment, plot or building, as the case may be, under the real estate project.*

*Explanation – For the purpose of this section, where the real estate project is to be developed in phases, every such phase shall be considered a stand alone real estate project, and the promoter shall obtain registration under this Act for each phase separately.*

**Section 4 - Application for registration of real estate projects:**

*“(1) Every promoter shall make an application to the Authority for registration of the real estate project in such form, manner, within such time and accompanied by such fee as may be specified by the regulations made by the Authority.*

(2) The promoter shall enclose the following documents along with the application referred to in sub-section (1), namely: –

(a) a brief details of his enterprise including its name, registered address, type of enterprise (proprietorship, societies, partnership, companies, competent authority), and the particulars of registration, and the names and photographs of the promoter;

(b) a brief detail of the projects launched by him, in the past five years, whether already completed or being developed, as the case may be, including the current status of the said projects, any delay in its completion, details of cases pending, details of type of land and payments pending;

(c) an authenticated copy of the approvals and commencement certificate from the competent authority obtained in accordance with the laws as may be applicable for the real estate project mentioned in the application, and where the project is proposed to be developed in phases, an authenticated copy of the approvals and commencement certificate from the competent authority for each of such phases;

(d) the sanctioned plan, layout plan and specifications of the proposed project or the phase thereof, and the whole project as sanctioned by the competent authority;

(e) the plan of development works to be executed in the proposed project and the proposed facilities to be provided thereof including firefighting facilities, drinking water facilities, emergency evacuation services, use of renewable energy;

(f) the location details of the project, with clear demarcation of land dedicated for the project along with its boundaries including the latitude and longitude of the end points of the project;

(g) proforma of the allotment letter, agreement for sale, and the conveyance deed proposed to be signed with the allottees;

(h) the number, type and the carpet area of apartments for sale in the project along with the area of the exclusive balcony or verandah areas and the exclusive open terrace areas apartment with the apartment, if any;

(i) the number and areas of garage for sale in the project;

(j) the names and addresses of his real estate agents, if any, for the proposed project;

(k) the names and addresses of the contractors, architect, structural engineer, if any and other persons concerned with the development of the proposed project;

(l) a declaration, supported by an affidavit, which shall be signed by the promoter or any person authorised by the promoter, stating: –

(A) that he has a legal title to the land on which the development is proposed along with legally valid documents with authentication of such title, if such land is owned by another person;

(B) that the land is free from all encumbrances, or as the case may be details of the encumbrances on such land including any rights, title, interest or name of any party in or over such land along with details;

(C) the time period within which he undertakes to complete the project or phase thereof, as the case may be;

(D) that seventy per cent. of the amounts realised for the real estate project from the allottees, from time to time, shall be deposited in a separate account to be maintained in a scheduled bank to cover the cost of construction and the land cost and shall be used only for that purpose:

Provided that the promoter shall withdraw the amounts from the separate account, to cover the cost of the project, in proportion to the percentage of completion of the project:

*Provided further that the amounts from the separate account shall be withdrawn by the promoter after it is certified by an engineer, an architect and a chartered accountant in practice that the withdrawal is in proportion to the percentage of completion of the project:*

*Provided also that the promoter shall get his accounts audited within six months after the end of every financial year by a chartered accountant in practice, and shall produce a statement of accounts duly certified and signed by such chartered accountant and it shall be verified during the audit that the amounts collected for a particular project have been utilised for the project and the withdrawal has been in compliance with the proportion to the percentage of completion of the project.*

*Explanation – For the purpose of this clause, the term "schedule bank" means a bank included in the Second Scheduled to the Reserve Bank of India Act, 1934;*

*(E) that he shall take all the pending approvals on time, from the competent authorities.*

*(F) that he has furnished such other documents as may be prescribed by the rules or regulations made under this Act; and (m) such other information and documents as may be prescribed.*

*(3) The Authority shall operationalise a web based online system for submitting applications for registration of projects within a period of one year from the date of its establishment."*

#### **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 essence of granting registration to a real estate Project are fundamentally threefold:

- (i) to ensure that what has been promised is documented and the Promoter is held liable to provide the same;
- (ii) to ensure that issues and aspects that are critical from the point of view of completing the Project are scrutinised by a Regulator before giving clearances and the same is put in public domain for the Buyer (Allottee) to make an informed decision;
- (iii) to ensure that regulatory oversight is exercised over the Project during its life to ensure the protection of the rights of the Buyer (Allottee).

- A. There is a situation herein where the Project in itself as was planned is now sought to be abandoned. This in effect means that there will be no Project available for allotting premises as was promised. In such a situation one has to look for a legislative remedy to force the hand of a Promoter to complete a Project which he wants to abandon. Unfortunately, there is no provision in the said Act which provides a path for forcing a Promoter to complete a project which the Promoter has voluntarily come forward to say that he is unable to complete the Project in the present form. Further it is not the case of any of the Respondents that the Applicant Promoter is unable to complete the said Project due to a financial fraud or misappropriation of the monies provided by the Allottees (*Respondents herein*). Thus, this Authority sees no mechanism to force the hand of a Developer where a case of fraud or misappropriation is not made out. Travelling further into the world of commercial reality, the question that arises is can a Regulator force a commercial entity to complete a Project that is not financially or otherwise viable especially when the money of the Investors stands protected. Thus, on both the tests of commercial viability and the availability of a legislative mandate the answer is that the Promoter cannot be forced to complete the Project.
- B. The interest of the Allottee (*5 Respondents herein*) in this case is sought to be protected by refunding the monies paid by them together with

interest. The question arises as to how this harmonises with provisions of section 18. Section 18 is reproduced hereinbelow for ease of reference:

**Section 18 – Return of amount and compensation:**

*“(1) If the promoter fails to complete or is unable to give possession of an apartment, plot or building, –*

*(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or*

*(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,*

*he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:*

*Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed.*

*(2) The promoter shall compensate the allottees in case of any loss caused to him due to defective title of the land, on which the project is being developed or has been developed, in the manner as provided under this Act, and the claim for compensation under this subsection shall not be barred by limitation provided under any law for the time being in force.*

*(3) If the promoter fails to discharge any other obligations imposed on him under this Act or the rules or regulations made thereunder or in accordance with the terms and conditions of the agreement for sale, he shall be liable to pay such compensation to the allottees, in the manner as provided under this Act.”*

It is but natural to say that section 18 allows for refund only on the request of the Allottee and not the Promoter. Thus, a Promoter will be prevented from voluntarily taking the steps of refund not requested by the Allottee. Thus, *would this imply that section 18 can be used by the Allottee to force the hand of the Promoter to complete the Project only when a small minority desires so?*

- C. The question that now begs an answer is *why did section 18 provide for a refund only when the Allottee desires and not vice a versa?* The reason is apparently clear when we examine the intent of the legislation. The very foundation and intent of this legislation is to protect the interest of the Buyer (Allottee) as the Project proceeds. The very intent of this section 18 is to ensure that the Promoter does not select and choose Allottee/s which he intends to evict. The aim is that the choice to exit from the

Project should be in the hand of the Allottees and not the Promoter. In this case, it is clear and not disputed that the Promoter has chosen to terminate the Allotment of all the 27 Allottees and not a select few. Thus, there seems to be no malafide on part of the Applicant Promoter while terminating the allotments. This Authority has to now look for an answer within the legislative framework as to what process is to be followed if the Promoter is not in a position to complete a Project as envisaged and desires to terminate all the Allottees without any malafide towards a particular Allottee. The said Act has not prescribed a procedure for this situation wherein this Authority on request of a Promoter can cancel the registration of the Project. In order to deal with a situation wherein the law is silent but a question impacting the industry has arisen, this Authority will have to lean on other provisions to understand the action that would be within the boundaries set by the said Act. Needless to repeat that the present situation is a situation where no wrong doing has been alleged. *Would it therefore mean that in the absence of a legislative provision this Authority shall remain a mute witness to a helpless situation just because a process has not been prescribed?* In such a circumstance this Authority would have to take recourse to the intent of the legislation by perusing the statements of objects and reasons (*preamble*) of the said Act. The preamble of the said Act provides 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. Two notes clearly ring out, one that of promotion and second that of protection. Both these notes have been set in a harmonious tone and any one note without the other is nothing but meaningless noise. Thus, if protection and promotion have to play together harmoniously this Authority cannot remain a mute spectator to the non-prescription of a procedure in the said Act which



converts this progressive legislation into a graveyard of Projects that cannot proceed because of the adamancy of one or the other Party. This Authority therefore while protecting the stakeholders will also have to ensure promotion of the real estate sector. Protection thus cannot be taken to the illogical limit of killing the Protectee itself.

- d. While this Authority is very well aware the process of de-registration is not prescribed in the said Act however its inevitability in the present case is obvious. This Authority while allowing the inevitable to happen has to ensure that the same takes place in a transparent manner with the interest of the Allottees duly protected. The test of transparency is satisfied by the fact that 2/3<sup>rd</sup> of the total Allottees have agreed to exit in view of the change in nature / plan of the said Project. In fact, the test of transparency has also served the purpose of being a test for ensuring that there is no malafide in the action being taken. The condition of protecting the interest of the Allottees (including Respondents herein) is met by ensuring that the money paid by the Allottees (including Respondents herein) is refunded with interest as prescribed under Rule 18 of the *Maharashtra Real Estate (Regulation and Development) (Registration of Real Estate Projects, Registration of Real Estate Agents, Rate of Interest and Disclosures on Website) Rules 2017*.
- e. Thus, from the statement of objects and reasons mentioned hereinabove, the key words which should weigh on the mind of this Authority while exercising its role as a Regulator is that the said Act has been promulgated for regulation and promotion of the real estate sector in an efficient and a transparent manner. Further the said Act has been put in place for providing an adjudicating mechanism for speedy dispute redressal. This clearly does not leave this Authority with the option of remaining a mute witness to a situation where the Project cannot be carried forward to a logical conclusion as was envisaged and on the other hand the Allottee does not want to exit the said Project.

- f. In order to, find a way out of this grid lock this Authority would have to examine the overall construction of this legislation. This Authority is well aware that it has no powers to legislate or pencil legislation where none exist. This Authority has to decide within the boundaries and the four walls of the legislation. In essence the said Act would have to be perused to find what remedies are provided for when what was promised cannot be delivered due to certain circumstances. On perusing the said Act, section 14 and section 15 are seen to provide remedies for situations wherein what was planned or promised cannot be delivered. Section 14 is reproduced hereinbelow for ease of reference:

**Section 14 - Adherence to sanctioned plans and project specifications by the promoter:**

*“(1) The proposed project shall be developed and completed by the promoter in accordance with the sanctioned plans, layout plans and specifications as approved by the competent authorities.*

*(2) Notwithstanding anything contained in any law, contract or agreement, after the sanctioned plans, layout plans and specifications and the nature of the fixtures, fittings, amenities and common areas, of the apartment, plot or building, as the case may be, as approved by the competent authority, are disclosed or furnished to the person who agree to take one or more of the said apartment, plot or building, as the case may be, the promoter shall not make – (i) any additions and alterations in the sanctioned plans, layout plans and specifications and the nature of fixtures, fittings and amenities described therein in respect of the apartment, plot or building, as the case may be, which are agreed to be taken, without the previous consent of that person: Provided that the promoter may make such minor additions or alterations as may be required by the allottee, or such minor changes or alterations as may be necessary due to architectural and structural reasons duly recommended and verified by an authorised Architect or Engineer after proper declaration and intimation to the allottee.*

*Explanation – For the purpose of this clause, "minor additions or alterations" excludes structural change including an addition to the area or change in height, or the removal of part of a building, or any change to the structure, such as the construction or removal or cutting into of any wall or a part of a wall, partition, column, beam, joist, floor including a mezzanine floor or other support, or a change to or closing of any required means of access ingress or egress or a change to the fixtures or equipment, etc. (ii) any other alterations or additions in the sanctioned plans, layout plans and specifications of the buildings or the common areas within the project without the previous written consent of at least two-thirds of the allottees, other than the promoter, who have agreed to take apartments in such building.*

*Explanation – For the purpose of this clause, the allottees, irrespective of the number of apartments or plots, as the case may be, booked by him or booked in the name of his family, or in the case of other persons such as companies or firms or any association of individuals, etc., by whatever name called, booked in its name or booked in the name of its associated entities or related enterprises, shall be considered as one allottee only.*

*(3) In case any structural defect or any other defect in workmanship, quality or provision of services or any other obligations of the promoter as per the agreement for sale relating to such development is brought to the notice of the promoter within a period of five years by the allottee from the date of handing over possession, it shall be the duty of the promoter to rectify such defects without further charge, within thirty days, and in the event of promoter's failure to rectify such defects within such time, the aggrieved allottees shall be entitled to receive appropriate compensation in the manner as provided under this Act."*

Section 14 deals with a situation wherein the sanctioned plans layout plans or specifications as was promised cannot be delivered. Thus, the said Act is not oblivious to situations where what was promised cannot be delivered. The legislature having recognised a situation where due to certain circumstances a promise of a particular sanction plan etc. cannot be delivered has laid out a mechanism for dealing with this event. Some of these are as below:

- i) Section 14(2) hereinabove also clearly states that wherever, larger changes like alterations in sanction plan layout plan specification of the building or common area within the Project are envisaged the same cannot be done without the previous written consent of 2/3<sup>rd</sup> of the Allottees. The said Act lays out the condition precedent to permit substantial changes when they become necessary.
- ii) Section 15 is reproduced hereinbelow for ease of reference:

**Section 15 - Obligations of promoter in case of transfer of a real estate project to a third party:**

*"(1) The promoter shall not transfer or assign his majority rights and liabilities in respect of a real estate project to a third party without obtaining prior written consent from two-third allottees, except the promoter, and without the prior written approval of the Authority: Provided that such transfer or assignment shall not affect the allotment or sale of the apartments, plots or buildings as the case may be, in the real estate project made by the erstwhile promoter.*

*Explanation – For the purpose of this sub-section, the allottee, irrespective of the number of apartments or plots, as the case may be, booked by him or booked in the name of his family, or in the case of other persons such as companies or*

*firms or any association of individuals, by whatever name called, booked in its name or booked in the name of its associated entities or related enterprises, shall be considered as one allottee only.*

*(2) On the transfer or assignment being permitted by the allottees and the Authority under sub-section (1), the intending promoter shall be required to independently comply with all the pending obligations under the provisions of this Act or the rules and regulations made thereunder, and the pending obligations as per the agreement for sale entered into by the erstwhile promoter with the allottees: Provided that any transfer or assignment permitted under provisions of this section shall not result in extension of time to the intending promoter to complete the real estate project and he shall be required to comply with all the pending obligations of the erstwhile promoter, and in case of default, such intending promoter shall be liable to the consequences of breach or delay, as the case may be, as provided under this Act or the rules and regulations made thereunder."*

Section 15 lays out the process to be followed wherein the original Promoter desires to transfer or assign his majority rights and liabilities in respect of the real estate project to a third party. Here once again the legislation prescribes that this cannot be done without obtaining prior written consent from 2/3<sup>rd</sup> Allottees. Thus, the legislature has recognised that there will be situations arising wherein certain major changes would have to be carried out without jeopardising the rights of the Allottees. The legislation has sought to protect the rights of the Allottees in the event of major changes becoming necessary by providing for obtaining a consent to do so by 2/3<sup>rd</sup> majority of the total Allottees. The legislature has been over cautious and not satisfied itself by just prescribing a simple majority (51%). It has gone the extra step by prescribing absolute majority of 2/3<sup>rd</sup>.

- iii) Thus, the legislation recognises that the very nature of a real estate project will force certain changes to be carried out and has provided for the same after suitably safe guarding the interest of the home buyers. This therefore, would have to be used as the guiding light for any change that becomes necessary and where the intent is not malafide. It is also important to recognise the fact that any commercial venture would undergo amendments as it proceeds and the law would have to provide provisions for taking cognizance of the same and enable these changes

in a manner that protects the interest of the Allottees. In this case, not only is there a change in the Promoter name but the very nature of the said Project is sought to be changed from residential to commercial. In order to enable giving effect to these two changes the Promoter has obtained consent of more than 2/3<sup>rd</sup> of the total 27 Allottees (*including the 5 Respondents*). Thus, while the law does not prescribe a process for this particular situation however borrowing from other sections dealing with amendments and changes and looking at the intent of the legislature it would suffice to say that any inevitable changes made without malafide would stand the test of fairness and protection provided 2/3<sup>rd</sup> consents of the Allottees is obtained. The above are some instances of how the law has dealt with permitting changes that become inevitable. These instances will have to be applied as a test in the present case. Here is now a situation where 2/3<sup>rd</sup> of the Allottees have exited and only 5 of the 27 Allottees i.e. the 5 Respondents remain in the said Project. It is hence clear that the said Project cannot proceed from here onwards in the manner originally planned. It is not the case of the 5 Respondents that they have been selectively and with malafide nominated for eviction from the said Project. While this Authority has nothing on record to doubt the intent of these 5 Respondents but is left wondering as to what purpose and goal would be achieved by insisting to stay in the said Project. Therefore, in view of the arguments above the only remedy available to the 5 Respondents is now to exit the said Project by taking a refund of the amounts paid as prescribed in the law. Hence to answer the **issue No.9(b)** it would suffice to say that the remedy now available to the 5 Respondents is to accept the payment of refund together with interest as prescribed under the said Act.

- g. Once the Project itself ceases to exist a registration loses the very purpose for which it was granted. In this case 2/3<sup>rd</sup> of the Allottees have in a way consented that the said Project cannot proceed in its present form / nature

and have thus, opted to exit from the said Project. The question that arises now is that *can a minority in this case the said 5 Respondents Allottees use the registration as a weapon to enforce the completion of the said Project in its present form / nature?* In other words, we need to answer the question as to who has the privilege of initiating the process of registration. In this context section 5 of the said Act which is reproduced hereinabove at para No.11(c) is noteworthy. Section 5 of the said Act clearly provides for the Promoter to make an application to this Authority for registration of a real estate project. Thus, the privilege of seeking a registration is with the Promoter and not with the Allottee. Further on perusal of section 6 dealing with extension of registration it is once again clear that registration granted by this Authority under section 5 may be extended by this Authority on an application made by the Promoter. Thus, once again the option of seeking extension is clearly within the purview of the Promoter. The said Act therefore vests only the Promoter with the privilege and option of not only seeking a registration but also its extension in certain circumstances. In this context section 6 of the said Act is reproduced herein below for ease of reference:

**Section 6 – Extension of registration:**

*“The registration granted under section 5 may be extended by the Authority on an application made by the promoter due to force majeure, in such form and on payment of such fee as may be specified by regulations made by the Authority:*

*Provided that the Authority may in reasonable circumstances, without default on the part of the promoter, based on the facts of each case, and for reasons to be recorded in writing, extend the registration granted to a project for such time as it considers necessary, which shall, in aggregate, not exceed a period of one year:*

*Provided further that no application for extension of registration shall be rejected unless the applicant has been given an opportunity of being heard in the matter.*

*Explanation –*

*For the purpose of this section, the expression “force majeure” shall mean a case of war, flood, drought, fire, cyclone, earthquake or any other calamity caused by nature affecting the regular development of the real estate project.”*

Thus, in the present case the Allottee cannot insist on a registration or its continuation when the Promoter does not intend to avail this privilege. This Authority further needs to examine the purpose of registration as laid out in the said Act. Further it is also necessary to see the compliances needed for

making an application for registration. These are dealt in sections 3 and 4 of the said Act which are reproduced hereinabove at para No.11(c). Section 3 lays out that registration must precede any advertisement, marketing, booking or inviting persons to purchase etc. Thus, any Promoter must first register the real estate project before he begins the process of soliciting customers. In this case, the Promoter has decided to abandon the said Project at the present stage and does not intend to invite anymore buyers to purchase the premises. In the present case the very purpose for which the registration was sought is now being abandoned. In such a situation one is left wondering whether the legislature ever intended to have a law in place that could force the Promoter to retain the registration and continue soliciting customers for a project which he does not find viable. Further section 4 deals with documents of the proposed project. In the present case the proposed project itself is being abandoned. This section also deals with allotment letter, agreement for sale and conveyance deed proposed to be signed. It further deals with how accounts of the real estate project are to be maintained. Thus, the registration as envisaged becomes infructuous once the said Project itself is sought to be abandoned.

- h. Thus, section 3, 4 , 5 & 6 read in conjunction make the following things clear:
- (a) A registration is a pre-requisite for any sale or booking of apartment / flat / unit / premise by a Promoter in any real estate project.
  - (b) It is only a Developer / Promoter who can apply for registration of a real estate project.
  - (c) A continuation or extension of a project can be applied for only by the Promoter in certain circumstances.

One can thus, conclude that registration is for a specific purpose and is to be applied for and used by the entity defined in the said Act. The said Act does not provide for a third party namely the buyer to force the Developer / Promoter to take or continue with the registration even when the purpose for which it was sought is now being abandoned. One would of course state this

with a caveat namely provided the interest of the buyer is well protected. Here it is nobody's case that the interest is not being protected. Hence, for a moment even if it is accepted that the weapon of registration is now in the hands of the 5 Respondents to force the completion of the said Project in its existing form / nature, the question that still remains unanswered is one of commercial viability. Thus, while the 5 Respondents (*minority*) remains in the said Project the Promoter would now have to look for other Allottees in order to complete the said Project. There is every possibility that there may not be new Allottees or takers for the said Project. It would thus, end up in a situation where there are only the 5 Respondents and no one else to ensure commercial viability and completion of the said Project. An incomplete project would not even serve the purpose of the Respondents. In such a situation de-registration becomes the only option to allow the demise of the said Project in its present form / nature. De-registration thus, would be the first step to be taken if the said Project has to be reborn in a different form / nature. In the event the said Project has to restart in a new form / nature there shall be a different set of promises and plans which would have to be scrutinised and documented through a different registration number. Hence, de-registration becomes an inevitable act.

- i. It would also be important here to examine sections 7 & 8 of the said Act that deals with revocation. Sections 7 & 8 are reproduced hereinbelow for ease of reference:

**Section 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 back account, specified under subclause (D) of clause (I) 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."*

**Section 8 – Obligation of Authority consequent upon lapse of or on revocation of registration:**

*"Upon lapse of the registration or on revocation of the registration under this Act, the Authority, may consult the appropriate Government to take such action as it may deem fit including the carrying out of the remaining development works by competent authority or by the association of allottees or in any other manner, as may be determined by the Authority:*

*Provided that no direction, decision or order of the Authority under this section shall take effect until the expiry of the period of appeal provided under the provisions of this Act:*

*Provided further that in case of revocation of registration of a project under this Act, the association of allottees shall have the first right of refusal for carrying out of the remaining development works."*

The question that naturally arises is that the legislation deals with revocation but is silent on cancellation of registration. Revocation as is provided in the said Act is essentially a protective measure to safeguard buyers. Through the said act of revocation this Authority suspends / terminates the activity of the Promoter in respect to the registered project. This thus, then prevents further sale and other transactions in the project to safeguard buyers. Revocation as per the said Act is resorted to wherein the Promoter makes default in doing anything required by or under this Act and/or the Promoter violates any of the terms or conditions of the approval given by the competent authority and/or the Promoter is involved in any kind of unfair practice or irregularities. In short non-compliance or non-adherence behaviour is the cause that leads to revocation. Thus, revocation is a reactive mechanism available to the Regulator to discipline delinquent Promoters. In this matter no case of violation is made out. This is a matter where the Applicant Promoter desires to exit after paying the monies deposited by the home buyers. Thus, this does not fall within the purview of revocation.

- j. Thus, as stated above both from inference and after ensuring that the main objective of ensuring protection of the home buyer is met it can be interpreted that this Authority would have the powers to accept application for deregistration and order the same. In view of this, the primary issue at **para No.9** is answered in the **affirmative**.
- k. Dealing with the issue at para No.9(b) in view of conclusion that a registration is neither in eternity and that this Authority can accept a request for cancellation. The question that now arises is what is the remedy and protection available to the home buyers. In terms of the facts, it is clear that the Applicant has already paid the liabilities towards the rights of the

Allottees (22 out of 27). However, the 5 Respondents have refused to accept the refund with interest as offered. It is also observed that the Applicant has deposited the amounts to be paid to the 5 Respondents along with 9% interest in a fixed deposit. It is also pertinent to note that the application for de-registration was made by the Applicant and only after the captioned case was reserved for orders, the 5 Respondents who have refused the refund amounts have now come forward and sought recourse under section 31 of the said Act by way of 5 complaints bearing Nos. CC00600000261997, CC006000000261990, CC006000000261995, CC006000000262007 & CC006000000262002. This Authority has disposed of all the 5 complaints vide its order dated 02.09.2022.

1. Further 5 Respondents have refused to terminate the allotments and have challenged the said terminations before the Hon'ble Bombay High Court by way of suit. Thus, the adjudication on the issue of termination is pending adjudication before the Hon'ble Bombay High Court and this Authority shall refrain from interfering in this regard and hence the issue at **para No.9(b)** is answered accordingly.

#### FINAL ORDER

Thus, from the above observations the said Project is **de-registered** and the Applicant Promoter shall not advertise, market, book or create third party rights by offer for sale, enter into agreement for sale any apartment in the said Project. No order as to cost.

(Ajoy Mehta)  
Chairperson, MahaRERA