

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

COMPLAINT No:SC10000227

Mr. Mohammed Zain Khan ..... Complainant

Versus

M/s. Emnoy Properties India & 9 Ors. .... Respondents

Coram: Hon'ble Shri. Gautam Chatterjee, Chairperson,  
Hon'ble Dr. Vijay Satbir Singh, Member 1

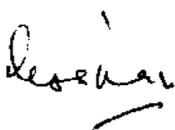
The complainant appeared in person.

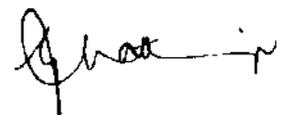
Mr. Yusuf Baik and Mr. Farhan Khan respondent appeared in person.

**Order**

(5<sup>th</sup> September, 2018)

1. The present complaint has been filed praying therein to take action against the Respondents on the ground of non-registration of bungalow project at Valvant, Taluka Lonawala. It is the contention of the Complainant that he has purchased plots from the Respondent at Valvant, Taluka Lonawala by executing necessary sale deed. The said land was admittedly agricultural land and the Complainant alleges that it was assured by the Respondents that they will get the necessary Non-Agricultural (N.A.) permission from the Competent Authority in order to carry out the bungalow project. However, they have neither obtained N.A. permission nor have registered the project under the relevant

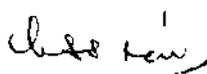




provisions of the Real Estate (Regulation and Development) Act, 2016 (RERA).

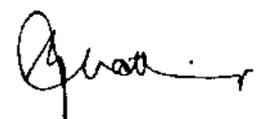
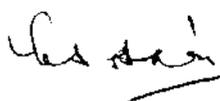
2. The Complainant initially had filed Writ Petition (L) No. 908 of 2018 before the Hon'ble High Court at Bombay with specific prayer that necessary direction may be issued to MahaRERA to register the Respondent's project in accordance with the provisions of Section 3 of the RERA Act. The said Writ Petition was heard by the Division Bench of the Hon'ble High Court at Bombay and the same was disposed of on 31<sup>st</sup> July 2018, on the basis of the statement made by the MahaRERA to the effect that the software would be upgraded so that online complaints can be filed before MahaRERA regarding non-registration of projects. Accordingly, liberty was granted to the Complainant to file complaint after necessary upgradation of the software by MahaRERA. In pursuance thereof, the present complaint has been filed and the same was heard finally.

3. During the hearing, the Complainant argued that the Respondents had undertaken bungalow project at Lonavala and in the year 2012, the Complainant had purchased bungalow plots from the Respondents for a total consideration amount of Rs.55 lakhs, out of which he paid an amount of Rs.12.5 lakhs. He further stated that at the time of booking, the Respondents had informed him that the N.A. Order is in process and will be obtained by the Respondents in due course of time. The registered agreement for sale was executed in respect of the said land. The Complainant further argued that the said project being an ongoing project on the date of commencement of RERA Act, 2016, i.e 1<sup>st</sup> May, 2017, the same is liable to be registered with MahaRERA under the provision of section 3 of the RERA Act, 2016 and the Complainant is entitled to seek reliefs under section 31,59 and 71 of the RERA Act, 2016.



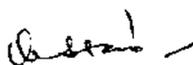


4. In reply , the Respondents argued that they had sold agricultural plots to the Complainant and had never taken upon themselves to obtain N.A. for the said land. They added that till date they have not applied for the N.A. Order and the said land continues to be agricultural land.
5. The MahaRERA has examined the facts of the present case as well as the relevant provisions of the RERA Act, 2016. In the present case, it is an admitted fact that the Complainant has purchased a parcel of land from the Respondents and till date, there is no N.A. Order issued by the competent authority, in respect of the development of the said land.
6. In this regard, it is necessary to consider the provisions of section 2, 3 and 4 of the RERA Act, 2016. As per section 3 of the RERA Act, 2016, 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.
7. As per the aforesaid provisions of the RERA Act, real estate projects that are ongoing and for which the completion certificate/occupancy certificate has not been obtained on the date of commencement of the RERA Act, 2016, are required to be registered with MahaRERA.
8. The term real estate project is defined under section 2 (zn) of the RERA Act, which provides that "real estate project" means the development of a building or a building consisting of apartments, or converting an



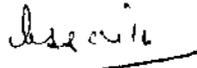
existing building or a part thereof into apartments, or the development of land into plots or apartment, as the case may be.

9. From the aforesaid definition of the project, it is clear that a real estate project necessarily requires development and the permission for the said development has to be given by the competent authority. The development of the land into plots or apartments has to be in accordance with the provisions of the Maharashtra Regional & Town Planning Act, 1966 or any other local law for the time being in force.
10. In the present case admittedly, the subject plots are agricultural land and till date there is no permissions granted by competent authority for development of the said land by way of N.A. order or otherwise. Therefore, MahaRERA is of the view that it is not a project as defined under section 2(zn) of the RERA Act, 2016. Hence the same cannot be registered under section 3 of the RERA Act, 2016.
11. In addition to this, as per the provision of section 4 of the RERA Act, there are mandatory requirements prescribed for registration such as layout plans, sanctioned plan, commencement certificate, specifications of the proposed project sanctioned by the competent authority etc. Unless the said mandatory requirements are fulfilled by the promoter, no application for registration can be entertained by MahaRERA.
12. In the present case, admittedly, as on today no such permissions are granted in respect of the said land for development and also the mandatory requirement under section 4 of the RERA Act, are also not fulfilled. Hence, MahaRERA is not in a position to register the alleged project as prayed by the Complainant.
13. With regard to contention of the Complainant that action under section 31, 59 and 71 of RERA Act, 2016, are required to be initiated against the respondents, the MahaRERA is of the view that the Full Bench of Hon'ble



High Court of Bombay in para 86 of its judgment and order dated 6<sup>th</sup> December, 2017 passed in W.P. No. 2737 of 2017, has clearly observed that the provisions of the RERA Act, 2016 shall apply to registered projects only. In the present case, since the alleged project claim by the Complainant is not eligible for registration under the provisions of the RERA Act, 2016, the prayer of the Complainant is not tenable.

14. In the light of the aforesaid facts, and mandatory provisions of RERA Act, 2016, the present complaint stands dismissed.



(Dr. Vijay Satbir Singh)  
Member 1, MahaRERA



(Shri. Gautam Chatterjee)  
Chairperson, MahaRERA