

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

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

SUO-MOTU CASE NO. 219 OF 2022

MARVEL BASILO A & B BUILDING	...PROJECT NAME
MARVEL SIGMA HOMES PVT. LTD.	...EXISTING PROMOTER
1. WADHWA GROUP HOLDINGS PVT. LTD.;	
2. VIJAY VASUDEV WADHWA;	
3. NAVIN AMRLAL MAKHIJA;	
4. RAGHULEELA ESTATES PVT. LTD.;	
5. RUTUVARSHA ESTATES PVT. LTD.	...LANDOWNERS

MAHARERA PROJECT REGISTRATION NO. P52100001711

Order

June 26, 2023

(Date of virtual hearing – 11.05.2023 matter reserved for order)

Coram: Shri. Ajoy Mehta, Chairperson, MahaRERA

Advocate Amit Patil for Erstwhile Promoter

Advocate Pravar Veer Misra for Interim Resolution Professional

Advocate Abir Patel for Landowners

1. MARVEL SIGMA HOMES PVT. LTD. is the existing Promoter/Developer within the meaning of Section 2 (zk) of the Real Estate (Regulation and Development) Act, 2016 (“**said Act**”) of Real Estate Regulatory Authority (“**RERA**”) and had registered the project “MARVEL BASILO A & B BUILDING” under Section 5 of the said Act bearing MAHARERA **Registration No. P52100001711** (hereinafter referred to as the “**said Project**”).
2. The Authority vide an interim order dated 13.04.2023 (hereinafter referred to as the “**said interim order**”) framed two issues namely:
 - a. Whether the settlement agreement can be uploaded in the public domain?
 - b. Whether the implementation of the settlement agreement can be gone into as on date while the NCLT orders subsists?

On the above two issues the Authority passed the following order (*operative part*) which is reproduced herein below:

"10. Thus, it is very clear that the said settlement agreement between the Parties who are also Parties herein is important from the point of view of both the existing allottees and the likely new allottees. In the interest of transparency, it would be important that the allottees are very well aware of the Parties like the Promoters / Developers / Land Owners that they are dealing with. Non-disclosure of this would seriously jeopardise the very goal for which this legislation was enacted. It is therefore in the interest of all concerned that the said settlement agreement is put in public domain. Needless to say, apart from the criticality of this document from the point of view of transparency the said settlement agreement itself in clause 38 (reproduced hereinabove at para 7(x)) calls for the same to be put on the MahaRERA webpage of the said Project. The Authority therefore, sees no reason for withholding the said settlement agreement from public viewing. Thus, the issue at para No.4(a) is answered in affirmative.

11. Further, the contention of the Existing Promoter is that the National Company Law Tribunal (NCLT) order has imposed a moratorium for prohibiting institution of suits. The Existing Promoter therefore pleads that this particular case must not proceed and the relief being sought should not be given. The Land Owners on the other hand seek direction to the Existing Promoter to implement the said settlement agreement. Thus, it would be important here to examine Section 14 of the Insolvency and Bankruptcy Code, 2016 (IBC) which is reproduced hereinbelow for ease of reference:

"14. Moratorium:

(1) Subject to provisions of sub-sections (2) and (3), on the insolvency commencement date, the Adjudicating Authority shall by order declare moratorium for prohibiting all of the following, namely:

(a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;

(b) transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;

(c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;

(d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.

(2) The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.

(3) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

(4) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process:

Provided that where at any time during the corporate insolvency resolution process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be."

Under Section 14(a) a moratorium is imposed on institution of suits and continuation of pending suits against the Corporate Debtor. Further it also prohibits execution of any judgment decree or order of an arbitration panel. In this case it is a simplicitor settlement agreement between the two Parties herein of which one party i.e. the Land Owners are

seeking directives for implementation. Further as enumerated above the said settlement agreement clearly impacts the rights of the home buyers/ allottees. The Authority also notes that there is nothing on record to indicate that the said settlement agreement has been challenged or stayed by any other Authority.

12. Further Section 14(b) of the IBC deals with transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets. The captioned matter before the Authority is not one seeking orders for disposal of assets. It simply seeks orders for implementation of the said settlement agreement. The Authority thus does not see any reason why it cannot adjudicate on whether to issue or not to issue directions for the implementation of the said settlement agreement. As articulated above the said settlement agreement is a critical document as far as the allottees are concerned. The Authority is mandated by the said Act to protect the interest of the allottees. The Authority therefore concludes that it would be important for it to hear on merits the issue whether there is a need for issuing any directive on the implementation of the said settlement agreement. In view of above the Authority thus answers the issue at para No.4(b) in affirmative.

13. The Authority notes with concern that even till date the Existing Promoter has not complied with the directions of the interim order in the captioned case while granting extension to the said Project.

14. Thus, the Authority directs the said settlement agreement shall be uploaded on MahaRERA webpage of the said Project within 2 weeks of this order and further directs that the captioned case be fixed for virtual hearing on 27.04.2023."

3. The captioned case was listed for hearing on 27.04.2023 and thereafter on 11.05.2023 wherein the following roznamas were recorded:

On 27.04.2023:

"The Landowners namely the Wadhwa Group Holdings Pvt Ltd., Vijay Vasudev Wadhwa, Navin Amarlal Makhija, Raghuleela Estates Pvt. Ltd. and Rutuvarsh Estates Pvt. Ltd. aver that a Development Agreement was made in 2013 and as per that certain obligation were cast. However, the Project is only partly constructed and especially the obligation of handing over LIG flats to MHADA still remains unfulfilled. In the year 2019 an arbitration award was passed wherein amongst other things the premises were apportioned between the landowners and the Developer. That Agreement is still not challenged. The Landowners also bring to our notice that the order of the Authority dated 13.04.2023 regarding putting in public domain the agreement between the two parties has also not been complied with either by Marvel or by the RP. The RP however avers that he needs to seek information on the same.

The Landowner further makes the following requests based on the agreement between the parties:

1. He be given access to the Project to enable him to demonstrate before the Authority that Marvel has not complied with the returns and statutory compliances that need to be done.

2. To enable him to open a bank account so as to facilitate the start of the Project.
3. To enable him to complete the Project.
4. The extension given to the Project is now expiring shortly and before the Project lapses as Landowners Wadhwa, they seek to move for grant of extension for the Project.
5. The settlement document of 2019 is not challenged and remains. This document sets out the rights and liabilities between the parties. Only the access to the Project will enable them to ascertain if there has been lapses with respect to the compliances and also operate the account in furtherance of completing the project.

The Project stands stalled today and it is in the interest of the allottees that immediate action is taken to implement the 2019 Settlement Agreement so as to carry the Project forward. The Wadhwas as the Landowners reiterate that the 2019 Settlement Agreement has crystalized the rights and liabilities of the parties and the same now needs to be implemented.

The RP is now standing in the shoes of Marvel and the responsibility now vests on him to ensure that the Settlement Agreement is implemented. The advocate for the Landowners opposes any adjournment in view of the fact that the Settlement Agreement has been in place since 2019 and this matter was listed in January 2023.

The advocate representing RP states that he would have to seek instructions on the same and therefore seeks an adjournment. The advocate for the RP also informs that he would seek instructions on the order passed for making the Settlement Agreement between parties public.

Matter stands adjourned to 11.05.2023."

On 11.05.2023:

"Advocates appear for IRP, for the Wadhwa Group and Amit Patel appears for Marvel. At the outset, the Advocate for the Wadhwa group takes objection to the presence of an advocate representing Marvel group as the IRP is now the administrator for Marvel and Marvel as an entity is now represented by the administrator and his Advocate.

The IRP at the outset brings to our notice that he has received instructions that as per the directives of the Authorities vide Interim order dated 13.04.2023, they have now uploaded the Settlement Agreement. The Authority makes it clear to the IRP that in the event it has not been uploaded, the same would be uploaded by the Authority. The IRP also brings it to our notice that they are yet to receive the login credentials.

On the second issue of implementation of the Settlement Agreement, the IRP states that it would not be correct to say that the rights under the Settlement Agreement have not been challenged. He brings to our notice that vide its suit initiated in 2022, the Hon'ble High Court is now seized of the issues surrounding the Settlement Agreement. In view of the fact that the Settlement Agreement is itself contested, it may not be appropriate for the Authority to proceed with adjudicating upon the implementation of the same. Then IRP also informs us that he works under the supervision and oversight of the COC and the constitution of the same is also presently stayed by the NCLAT.

Advocate for the Wadhwa group avers that the moratorium has been obtained by ICIC Bank. However, this land and property is not mortgaged to ICICI and instead Altigo happens to be the lender. In 2019, through the Settlement Agreement, the rights of the Wadhwa Group vis-à-vis the Marvel group were crystalised and on this there is no restraining order till date. The Advocate for Wadhwa group further reiterates that these rights are vested in him through an Arbitration Award and not a simple agreement which is not challenged and therefore what was decided in 2019 must be implemented. The implementation of this would be in the interest of the Project and the Allottees. He further states that the suit in the Hon'ble High Court is by Altigo and not by Marvel. Therefore, the challenge is by Altigo and not Marvel who is actually the party to the Settlement Agreement. The Advocate for the Wadhwa Group also takes objection to the fact that on one hand, the IRP claims to be representing Marvel on the basis of NCLT order and on the other hand claims that, since the COC is not in place he is not able to get suitable directions. He also raised issues on the IRP still not having the login credentials and in spite of that, the board that has been superseded, now appears to be using the login credentials for uploading the Agreement as directed by the Authority.

Advocate for Wadhwa group state that the implementation of the Settlement Agreement would in no way compromise the Resolution Process that has been initiated or in any way jeopardise its outcome.

The IRP states that he is representing the Corporate Debtor and that while he looks after the day-to-day administration, but the larger issues and his works is to be conducted under the supervision of the COC. He once again reiterates that it would be prudent to maintain the present status as the High Court is seized of the matter surrounding the Settlement Agreement. He further states that because of the Moratorium decision surrounding the same should be kept in abeyance. The IRP also states that he is playing a fiduciary role in relation to the assets of the Corporate Debtor and it would not be proper to displace or in any way jeopardise the assets which in turn would create hurdles in the Resolution Process. IRP while bringing to our notice that he does not have the Login credential also states that it would make his working more efficient if the erstwhile promoters offered their full corporation to him. The Authority notes this and would advise the erstwhile promoter to cooperate with the IRP to ensure that the rights of the allottees, which we are concerned with, are not jeopardised in any manner.

Parties are at liberty to file written submissions, if any, by 25.05.2023. Subsequent to which, the matter will be reserved for orders."

4. The Existing Promoter through the IRP (Interim Resolution Professional) and the Landowners have filed their submissions which are taken on record but the same are not repeated hereinbelow.
5. It is pertinent to note that since disputes arose between the Existing Promoter and the Landowners who vide a conciliation proceeding entered into a

Settlement Agreement on 04.12.2019 whereby both the Parties agreed on certain terms to fully settle the disputes between them (hereinafter referred to as the “**said settlement agreement**”). By executing the said settlement agreement, the development agreement and the power of attorney executed between the Parties stood terminated and revoked.

6. The Parties have till date not brought on record any details of litigation filed pursuant to the said settlement agreement. However, while perusing the submissions and the documents relating to the matter, the Authority notes that a civil suit i.e. Commercial Suit No. (L) 19331 of 2022 was filed by Lender of the Existing Promoter namely Vistra ITCL (India) Ltd. (“**Lender**”) against the Existing Promoter and the Landowners. This was also brought to the notice of the Authority by the IRP during the course of hearing and the same is on record in the roznama reproduced hereinabove. The same is presently pending before the Hon’ble Bombay High Court wherein the following reliefs (*reference page 227 onwards of the compilation of documents submitted by the Landowners*) are sought by the Lender:

“31. In light of the foregoing, the Plaintiff hereby humbly prays:

(a) That this Hon'ble Court be pleased to declare that the Settlement Agreement dated December 4, 2019 executed between the Defendant No.1 and Defendant Nos. 2 to 6 (at Exhibit N-1), is invalid, non-est, null and void and not binding upon the Plaintiff.

(b) That this Hon'ble Court be pleased to declare that all the right, title and interest created in favour of the Plaintiff by Defendant No.1 in the said Land (as described in Exhibit A) under the terms of the Common Indenture of Mortgage dated November 30, 2017 are valid, subsisting and enforceable.

(c) That this Hon'ble Court be pleased to order and decree Defendant No. 7 to pay to the Plaintiff an amount of Rs. 148,96,63,318 (Rupees One Hundred and Forty Eight Crores Ninety Six Lakhs Sixty Three Thousand Three Hundred and Eighteen Only) and the Defendant No. 8 to pay to the Plaintiff an amount of Rs. 201,04,60,419 (Rupees Two Hundred and One Crores Four Lakhs Sixty Thousand Four Hundred and Nineteen Only), being the amount outstanding under the financial facility advanced to the Defendant Nos. 7 and 8 as on June 2, 2022 as per the Particulars of Claim annexed hereto as Exhibit DD, along with further interest at the rates mentioned in the facility agreements till payment and/or realisation.

(d) That this Hon'ble Court be pleased to declare that an amount of Rs. 350,01,23,737 (Rupees Three Hundred and Fifty Crores One Lakh Twenty Three Thousand Seven Hundred and Thirty Seven Only) as per the Particulars of Claim (at Exhibit DD) along with further interest at the rate of 15.75% p.a. and penal interest at 4% p.a., as set out in prayer (c) above is due and payable to the Plaintiff and to fix a date of redemption of the mortgage created in favour of the Plaintiff of the said Land under the Common Indenture of Mortgage and upon failure of the Defendants to redeem its mortgage over the Land by payment of the entire claim of the Plaintiff before the date of redemption, this Hon'ble Court be pleased to

foreclose and enforce the mortgage properties by selling the same and directing the proceeds thereof to be used to realize the claim of the Plaintiff;

(e) That this Hon'ble Court be pleased to pass an order of restraining permanently injunction permanent Defendant No. 1, its directors, officers, agents, servants, representatives or any person acting in any capacity, from, in any manner exercising any rights over the Land in any manner whatsoever under the Joint Development Agreement (at Exhibit B) read with all supplemental agreements executed from time to time (at Exhibits C,D,E,G);

(f) That this Hon'ble Court be pleased to pass an order of permanent injunction permanently restraining the Defendants, their directors, officers, agents, servants, representatives or any person acting in any capacity, from, in any manner acting in furtherance of and/ or for the implementation of and/ or from taking any steps in furtherance of the Settlement Agreement (at Exhibit N1) in any manner whatsoever;

(g) This Hon'ble Court be pleased to pass an order of permanent injunction permanently restraining the Defendants, their directors, officers, agents, servants, representatives and/ or any person acting through or under them from in any manner dealing with the said Land (as described in schedule at Exhibit A hereto), including by transferring, alienating, assigning, mortgaging, assuring, gifting and creating any third- party rights over the Land;

(h) That pending the hearing and final disposal of the present Suit this Hon'ble Court be pleased to:

(i) appoint a Court Receiver High Court Mumbai with all powers under Order XL. Rule 1 of Code of Civil Procedure 1908 in respect of the Land (as described in schedule at Exhibit A hereto) any such area which Defendants are in use and occupation comprising any part of the Land;

(ii) order and restrain Defendant No.1 their directors, officers, agents, servants, representatives or any person acting in any capacity, from, in any manner from exercising any and/ or all rights under the joint development agreement read with all supplemental agreements in any manner whatsoever;

(iii) order and restrain the Defendants, their directors, officers, agents, servants, representatives or any person acting in any capacity, from, in any manner acting in furtherance of and/or for the implementation of and/ or from taking any steps in furtherance of the Settlement Agreement (at Exhibit N1) in any manner whatsoever;

(iv) order and restrain the Defendants, their directors, officers, agents, servants, representatives or any person acting in any capacity, from, in any manner, any manner dealing with the said Land (as described in schedule at Exhibit A hereto), including by transferring, alienating, assigning, mortgaging, assuring, gifting, creating any third- party rights including but not limited to putting any person in possession or in any manner proceeding with the redevelopment of the said Land, taking any steps to amend the plans for development of the Land and/ or putting up any plans for approval for development of the Land and/ or to take any steps from exploiting the development potential of the Land in any manner whatsoever;

(v) 233 21 direct the Defendant No. 1 to disclose on oath the current status of the Basilo project, the total development potential in the Land, the total number of units likely to be constructed, the details of the units sold along with the details of the amounts received from the sale of the Units and the balance amounts receivable from the sale of the Units, the particulars of the Agreements executed with the flat purchasers and all other relevant details and particulars pertaining to the Project; direct the Defendants to deposit any receivables/ proceeds/ balance receivables from units already sold, arising from the Land / Basilo Project in any manner whatsoever with this Hon'ble Court to accrue to the benefit of the Plaintiff;

(vi) direct the Defendant Nos. 7 and 8 to disclose on oath the details and particulars of the movable and immovable properties and assets held by them and on the filing of the disclosure on oath, pass and order of attachment in respect of the assets so disclosed by the Defendant Nos. 7 and 8;

(vii) Without prejudice to the Plaintiff's rights and interests and in the alternative to (v) above, to direct Defendant No. 1 to deposit all receivables / proceeds received in respect of the Developer Sale Units of the Defendant No.1 with this Hon'ble Court, to accrue to the benefit of the Plaintiff,

(i) for ad interim reliefs in terms of prayer clauses (h) above;

(j) for costs of the present Suit; and

(k) for such further and other reliefs as this Hon'ble Court deems fit and proper in the facts and circumstances of the case."

7. Further an interim application No.(L) 19346 of 2022 in the above suit against the Existing Promoter and the Landowners is pending before the Hon'ble Bombay High Court wherein the following reliefs (reference page 321 onwards of the compilation of documents submitted by the Landowners) are sought by the Lender:

" 24. In light of the foregoing, the Applicant/Plaintiff hereby humbly prays that pending the hearing and final disposal of the present Suit this Hon'ble Court be pleased to:

(i) appoint a Court Receiver High Court Mumbai with all powers under Order XL. Rule 1 of Code of Civil Procedure 1908 in respect of the Land (as described in schedule at Exhibit A to the Plaint in the above Suit) any such area which Defendants are in use and occupation comprising any part of the Land;

(ii) order and restrain Defendant No.1 their directors, officers, agents, servants, representatives or any person acting in any capacity, from, in any manner from exercising any and/or all rights under the joint development agreement read with all supplemental agreements in any manner whatsoever;

(iii) order and restrain the Defendants, their directors, officers, agents, servants, representatives or any person acting in any capacity, from, in any manner acting in furtherance of and / or for the implementation of and / or from taking any steps in furtherance of the Settlement Agreement (at Exhibit N1 to the Plaint in the above Suit) in any manner whatsoever;

(iv) order and restrain the Defendants, their directors, officers, agents, servants, representatives or any person acting in any capacity, from, in any manner, any manner dealing with the said Land (as described in schedule at Exhibit A to the Plaint in the above Suit), including by transferring alienating, assigning, mortgaging, assuring, gifting, creating any third-party rights including but not limited to putting any person in possession or in any manner proceeding with the redevelopment of the said Land, taking any steps to amend the plans for development of the Land and/or putting up any plans for approval for development of the Land and/or to take any steps from exploiting the development potential of the Land in any manner whatsoever;

(v) direct the Defendant No. 1 to disclose on oath the current status of the Basilo project, the total development potential in the Land, the total number of units likely to be constructed, the details of the units sold along with the details of the amounts received from the sale of the Units and the balance amounts receivable from the sale of the Units, the particulars of the Agreements executed with the flat purchasers and all other relevant details and particulars pertaining to the Project; direct the Defendants to deposit any receivables/ proceeds/ balance receivables from units already sold, arising from the Land / Basilo Project in any manner whatsoever with this Hon'ble Court to accrue to the benefit of the Plaintiff

(vi) direct the Defendant Nos. 7 and 8 to disclose on oath the details and particulars of the movable and immovable properties and assets held by them and on the filing of the disclosure on oath, pass and order of attachment in respect of the assets so disclosed by the Defendant Nos. 7 and 8;

(vii) Without prejudice to the Plaintiff's rights and interests and in the alternative to (v) above, to direct Defendant No.1 to deposit all receivables/ proceeds received in respect of the Developer Salg Units of the Defendant No.1 with this Hon'ble Court, to accrue to the benefit of the Plaintiff;

(a) for ad interim reliefs in terms of prayer clauses (h) above;

(b) for costs of the present Suit; and

(c) for such further and other reliefs as this Hon'ble Court deems fit and proper in the facts and circumstances of the case."

8. From the above it is clear that the first and primary relief sought by the Lender is that of declaring that said settlement agreement executed between the Exiting Promoter and the Landowners herein as invalid, non-est, null and void and not binding upon the Lender. Further the Lender vide the interim application has sought stay on implementation of the said settlement agreement.
9. In view of the pendency of the above suit and the applications therein which revolves around the issue of validity of the said settlement agreement, granting or examining a way forward based on the said settlement agreement shall be a futile exercise. The Authority observes the very said settlement agreement whose implementation is the bone of the contention between the parties in the captioned case, is itself under challenge. The Lender has in fact challenged both the Parties on the execution of the said settlement agreement. The two parties in the captioned case before the Authority are in fact grouped together and stand in an adversarial position viz-a-viz the Lender. Thus, while on one hand the said settlement agreement entered into between the two Parties herein is under challenge before the Hon'ble Bombay High Court by the Lender on the other hand the Parties herein are standing adversarial to each other before this Authority seeking adjudication on the implementation of the said settlement agreement. The Authority also notes that the fact of pendency before the Hon'ble Bombay High Court was brought to the notice by the IRP rather than the Parties herein i.e. the Existing Promoter and the Landowners.
10. It is also observed that the said Project has lapsed. Further the Existing Promoter is now in the hands of the IRP which has been appointed by the Hon'ble NCLT (*National Company Law Tribunal*) under corporate insolvency resolution process (CIRP) and a moratorium has also been imposed.

11. Thus, till the final outcome of the pending litigations before various courts mentioned above, this Authority shall keep the said Project registration in **abeyance** and the Existing Promoter / Landowners 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.
12. The captioned case is disposed of, and the Parties are directed to inform the Authority with regard the development and the outcome of the pending litigations from time to time. The Parties are at liberty to file an application to re-open the captioned case upon the outcome of the pending litigations and to revive the said Project.

(Ajoy Mehta)
Chairperson, MahaRERA