

**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. 211 OF 2021

KANAKIA FUTURE CITY A

...PROJECT NAME

KANAKIA SPACES REALTY PRIVATE LIMITED

...PROMOTER

MahaRERA Project Registration No. P51800018007

Order

December 27, 2021

(Date of virtual hearing – 21.12.2021, matter reserved for order)

Coram: Shri. Ajoy Mehta, Chairperson, MahaRERA
Advocate Abir Patel i/by Wadiya Ghandy & Co. for the Promoter

1. Kanakia Spaces Realty Private Limited are the 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**"). The Promoter had registered their project "KANAKIA FUTURE CITY A" under section 5 of the said Act bearing MAHARERA **Registration No. P51800018007** (hereinafter referred to as the "**said Project**").
2. On 21.12.2021, a virtual hearing was held in the matter wherein the following roznama was passed:

"The Advocate of the Promoter is present and avers that pursuant to a demerger scheme Kanakia Spaces Realty Private Limited have transferred their capital asset to Kanakia Future Realty Private Limited. He further avers that the transferee and the transferor have the same shareholding pattern. He also points out that the condition mentioned in the circular No. 24 dated 04.06.2019 of MahaRERA are also fulfilled and thus seek exemption from taking consents of Allottees. He further assures that their clients having stepped into the shoes of the earlier entity now agree to fulfil all the promised conditions.

Matter heard and is reserved for order."



3. The Promoter has submitted an application Annexure 'A' dated 06.09.2021 under section of 15 of the said Act, for transferring/assigning their rights and liabilities in the real estate project being undertaken by them in favour of Kanakia Future Reality Pvt. Ltd. The reason for transfer as indicated in the said application is "Demerger Order dated 16.07.2021". The relevant portion of the said order is reproduced herein below:

"Order (Demerger Order) dated 16.07.2021 under Scheme of Arrangement CP(CAA) No.13 of 2021 in CA (CAA) No.1121 of 2020 between Kanakia Spaces Reality Pvt. Ltd. ("Transferor Company") and Kanakia Future Reality Pvt. Ltd. ("Transferee Company") along with other Transferee Companies, whereby all the assets and properties comprised in the real estate undertaking of the Transferor Company shall under provisions of Section 230 to 232 stands transferred to and vested in the Transferee Company. Clause 10 (ix) of the Demerger Order records that there is no requirement for procuring 2/3rd consent under Section 15 of the Real Estate (Regulation and Development) Act, 2016 since there is no change in the shareholding of the Transferee Company".

4. The Promoter also declares / undertakes that the details furnished are true and correct; that any changes would be immediately informed; that there is no pending case before any Court/NCLT/any authorized body regarding transfer of the Promoter's rights and liabilities in the project, that there is no bar to transfer the rights and liabilities to a third party from any financial institution or financiers who have a charge on the project; and that there is no prohibitory order passed by any Court of law against transfer of the existing project in favour of third party.

5. Thus, with regard to the change of Promoter sought by the Promoter herein it is pertinent to examine section 15 of said Act. The relevant extract of section 15 is reproduced hereinbelow:

"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.”

6. From the plain reading of section 15, it is clear that the transfer of majority rights and liabilities of the Promoter herein in respect of said Project to a third party i.e. Kanakia Future Reality Pvt. Ltd. herein shall not happen without obtaining prior written consent from two-third Allottees, except the Promoter. However, in the present case, the Demerger Order dated 16.07.2021 of the NCLT has clearly stated that there is no requirement for procuring 2/3rd consent under section 15 of the said Act as there is no change in the shareholding of the incoming Promoter company i.e. Kanakia Future Reality Pvt. Ltd., is a wholly-owned subsidiary of the Promoter (Kanakia Spaces Reality Pvt. Ltd.).
7. Further, the Promoter during the hearing has relied upon the MahaRERA circular No. 24 dated 04.06.2019 wherein it has been provided that if the amalgamation or merger or demerger of the companies, which is not regarded as transfer under section 47 of the Income Tax Act 1967 or where 75% of the shareholders remain same in the resultant company, the same shall not require taking approvals of Allottee(s) under section 15 of the said Act. In view of the

aforesaid circular the Promoter is exempted from taking 2/3rd consent of the Allottees and is permitted the change of name of the Promoter to Kanakia Future Reality Pvt. Ltd. In the said Project.

FINAL ORDER

Thus, Kanakia Future Reality Pvt. Ltd. is permitted as the new Promoter for the said Project. Needless to say, that Kanakia Future Reality Pvt. Ltd. shall be required to independently comply with all the pending obligations under the provisions of the said Act or the rules and regulations made thereunder, and the pending obligations as per the agreement for sale entered into by the Promoter with the Allottees and shall complete the balance construction work and handover possession to all the Allottees of the said Project as per the timelines mentioned on the MahaRERA Project registration webpage.


(Ajoy Mehta)
Chairperson, MahaRERA