

**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. 209 OF 2021

FALCO WOODSHIRE

...PROJECT NAME

KAMBAR CONSTRUCTIONS

...PROMOTER

MahaRERA Project Registration No. P51700012252

Order

December 23, 2021

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

Coram: Shri. Ajoy Mehta, Chairperson, MahaRERA
Advocate Disha Karambar Mulgaonkar a/w Priya Rita for
M/s. Shreeji Enetrprises (new Developer/ Promoter)
Along-with
Mr. Santosh Tandel, from Woodsheir Welfare Association,
Committee Member

1. M/s. Kambar Construction is 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 “FALCO WOODSHIRE” under section 5 of the said Act bearing MAHARERA **Registration No. P51700012252** (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:

“It is brought to the notice of this Authority that the Project was being executed by M/s. Kambar Constructions who in turn handed over the same to the Association of Persons (AOP) who brought in M/s. Shreeji Enterprises as the new Promoter/ Developer of the Project. The Advocate for M/s. Shreeji Enterprises brings to the notice of this Authority an order of RERA dated 05.11.2020 wherein the Tahsildar was directed to freeze the RERA account. The Advocate also submits that they may be permitted to operate the

Aj Mehta

aforesaid account and also be provided with registration No. to proceed with further activities including sale of tenements in the Project.

It is brought to notice that 76% of Allottees have given consent for change in name of the new Promoter. One Shri Santosh Tandel, a member of the AOP is present and submits that they would have no objections with regard to the new Promoter/ Developer taking over the Project.

Matter is heard and reserved for orders."

3. M/s. Shreeji Enterprises, a Proprietary Concern, the new Promoter has submitted an application i.e., **Annexure A** under section 15 of the said Act, for transferring/ assigning the rights and liabilities in the said Project that was being undertaken by M/s. Kambar Construction in favour of M/s. Shreeji Enterprise.
4. Further consent of 2/3rd Allottees has been submitted. Total units booked in the said Project is 115 and consent letters from 76 Allottees has been uploaded. Further, the new Promoter has also submitted necessary declaration vide the said application declaring/ undertaking 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 said Project and that there is no bar to transfer the rights and liabilities to a third party from any financial institution who have a charge on the said Project; and that there is no prohibitory orders passed by any court of law against transfer of the existing said Project in favour of third party.
5. With regard to the change of Promoter sought by M/s. Shreeji Enterprises 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:

H. K. Kell

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. M/s. Shreeji Enterprises herein shall not happen without obtaining prior written consent from two-third Allottees, except the Promoter. In the present case, 76 out of the 115 Allottees have given consent and thus, this Authority is of the view that the transfer of the said Project from the Promoter to M/s. Shreeji Enterprises i.e. the new Promoter can be permitted and thereby allow the change of Promoter to be carried out in the said Project. However, it is observed that the new Promoter i.e. M/s. Shreeji Enterprises 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 in the said Project.

A. J. Reddy

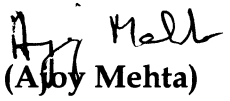
7. The new Promoter has also submitted declaration Form - B in which it is mentioned that the said Project land is free from encumbrances and that the time period required for completion of the project is mentioned as "12 MONTHS".
8. With regard to the issue of the extension sought by the incoming Promoter section 7 (3) of the said Act needs to be examined. The relevant extract of section 7 (3) is reproduced hereinbelow:
"7 (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."
9. On the plain reading of section 7(3) of the said Act, it is clear that instead of revoking the registration this Authority can impose certain terms and conditions as it thinks fit in the interest of the Allottees to let the registration remain in force. In view thereof, it is observed that since the new Promoter has submitted the consent from 76 out of the 115 Allottees for the completion of the said Project this Authority directs the grant of extension of the said Project from the date of this order to 22.12.2022 (12 months).
10. Further it has been brought to the notice of this Authority that vide an order dated 05.11.2020 the Tahsildar was directed to freeze the RERA account in the said Project. The said account be allowed to be operated by the new Promoter i.e. M/s. Shreeji Enterprises upon the change of Promoter being effected in the said Project with MahaRERA so as to facilitate activities including sale of tenements in the said Project.

FINAL ORDER

Thus, M/s. Shreeji Enterprises is permitted as the new Promoter for the said Project. Needless to say, that M/s. Shreeji Enterprises 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 in the said Project.



Further, M/s. Shreeji Enterprises is also granted an extension of the said Project from the date of this order to 22.12.2022 (12 months) to complete the balance construction work and handover possession to all the Allottees of the said Project. M/s. Shreeji Enterprises is also directed to submit PERT CPM charts about the milestones to be achieved with respect to the completion of the said Project in a time bound manner and also submit quarterly progress reports of achievements of such milestones and/or delay if any, to MahaRERA, all the Allottees and the AOP of the said Project.


(Ajay Mehta)
Chairperson, MahaRERA