

**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. 214 OF 2021

GOKUL SHREEJI

...PROJECT NAME

HEENA HIGH-TECH DEVELOPERS

...PROMOTER

MahaRERA Project Registration No. P51800014345

Order

December 23, 2021

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

Coram: Shri. Ajoy Mehta, Chairperson, MahaRERA
CA Parag Shah for Shriji Apartment CHS Ltd.

1. Heena High-Tech Developers 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 “GOKUL SHREEJI” under section 5 of the said Act bearing MAHARERA **Registration No. P51800014345** (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:

“CA Parag Shah brings to the notice of this Authority that vide a Development Agreement of 2016 registered in 2017, Heena High Tech Developers were appointed to execute the Project. In about one and a half years’ time there was no progress and the Society approached the Hon’ble Bombay High Court. During the pendency in the matter before the Hon’ble Bombay High Court, Heena High Tech Developers terminated the Development Agreement. Finally, in the year 2020 the Development Agreement was terminated.

In August 2021, consent terms were filed between the buyers, the Society and Heena High Tech Developers. The Hon’ble Bombay High Court vide its order dated 20.09.2021 approved the consent terms and also ruled that this would be used for seeking registration with MahaRERA. The Society also obtained consent of 50 out of the 90 new Allottees of

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the Project. The Society now seeks that the Project be - (a) transferred to the Society and (b) the completion date of the Project be registered as December 31, 2025.

The Society undertakes to complete the Project with the new timelines and also honour all commitments.

Matter is heard and is reserved for orders."

read along-with

ROZNAMA RECTIFICATION dated 23.12.2021

"It has been brought to the notice of this Authority vide an email dated 22.12.2021 by the Chairman of incoming Promoter, Shriji Apartment CHS Ltd. with regard to the typographical error of 50 and 90 in the roznama dated 21.12.2021 in the above matter.

*The said typographical error is hereby corrected vide this rectification roznama i.e. 50 shall read as 15 and 90 shall read as 19 and thus the sentence shall read as **"The Society also obtained consent of 15 out of the 19 new Allottees of the Project."***

Except the above correction in the roznama dated 21.12.2021 the remaining part of the said roznama remains the same. This rectification roznama henceforth be read along-with the roznama dated 21.12.2021."

3. The Promoter has submitted an application under section of 15 of the said Act, for transferring/assigning their rights and liabilities in the real estate project being undertaken by them to Shriji Apartment CHS LTD., a Society who are the owners of the Project site. The reason for transfer is that by an order of the Hon'ble Bombay High Court dated 20.09.2021 in Commercial Suit (L) No. 958 of 2019 with Commercial Division Notice of Motion (L) No. 2108 of 2019 filed by Shree Jam Hosiery Works Pvt. Ltd. against Heena High Tech Developers and Ors. along with Commercial Suit No. 1320 of 2019 with Commercial Division Notice of Motion No. 2549 of 2019 filed by Shriji Apartment CHS Ltd. against Heena High-Tech Developers Ors., the Parties have settled their disputes and filed consent terms wherein it was specifically mentioned that the termination of Development Agreement and that now Society shall be doing self-redevelopment of the said Project.
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

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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. Shriji Apartment CHS LTD. herein shall not happen without obtaining prior written consent from two-third Allottees, except the Promoter. However, in the present case, Shriji Apartment CHS LTD. has obtained consent of 15 out of the

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19 new Allottees of the said Project and that the Promoter and Shriji Apartment CHS LTD. i.e. the incoming Promoter have also entered into consent terms which shall remain binding on both the Parties.

7. The said consent terms records that the incoming Promoter shall be in absolute peaceful possession of the Project site. It further states that there are Allottees in the said Project and save an except the said mentioned Allottees all other premises/ flats sanctioned / to be sanctioned are absolutely free from all encumbrances, claims and demands. It also records that the Promoter has not availed any loan nor has created any encumbrances on the Project site. The said consent terms records that the incoming Promoter shall be entitled to continue with the redevelopment work/ construction in its own name by appointing contractors and other personals as required and shall be entitled to deal and dispose of the premises/ flats to such intending purchasers save and except the units mentioned therein.
8. Shriji Apartment CHS LTD. has submitted declaration in Form - B dated 04.12.2021. However, in the aforesaid declaration the time period required to complete the said Project would be 31.12.2025.
9. 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."
10. 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 Promoter and the incoming Promoter vide the consent terms have taken into consideration issues with regard to the said Project and that the said consent terms shall be binding on both Parties to perform their part in accordance thereto and also to complete the balance work in a time bound manner together with honouring all the responsibilities agreed

to by the Promoter and the incoming Promoter under the said consent terms. Further, Shriji Apartment CHS LTD. has obtained consent of 15 out of the 19 new Allottees for the completion of the said Project. Thus, this Authority directs the grant of extension of the said Project up to 31.12.2025.

FINAL ORDER

Thus, Shriji Apartment CHS LTD. is permitted as the new Promoter for the said Project. Needless to say, that Shriji Apartment CHS 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 in the said Project. Further, Shriji Apartment CHS LTD. is also granted an extension of the said Project up to 31.12.2025 to complete the balance construction work and handover possession to all the Allottees of the said Project. Shriji Apartment CHS LTD. 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