

**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. 208 OF 2021

DREAMS ARYAN A B WINGS

...PROJECT NAME

DREAMS CORPORATION PVT. LTD.

...PROMOTER

MahaRERA Project Registration No. P52100001771

Order

November 26, 2021

(Date of virtual hearing – 23.11.2021)

Coram: Shri. Ajoy Mehta, Chairperson, MahaRERA

For Aryan Construction and for Mr. Aryan Sopal
represented by Mr. Dilip Sopal

For Dreams Aryan Flat Owner/Holder's Association A & B
represented by Mr. Nitin Malpani,
Mr. Devendra Bhattad & CA Nicky Milani

1. Dreams Corporation Pvt. Ltd. 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 “DREAMS ARYAN A B WINGS” under section 5 of the said Act bearing MAHARERA **Registration No. P52100001771** (hereinafter referred to as the “**said Project**”).
2. The Dreams Aryan Flat Owner/Holder's Association (“**AOP**”) filed an application dated 04.08.2021 for seeking name change of the Promoter of the said Project and during the hearing mentioned below they have also sought an extension for completion of the said Project. The said Project is a joint venture between the Promoter Company herein and M/s. Aryan Constructions and Mr.

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Aryan Sopal. M/s. Aryan Constructions and Mr. Aryan Sopal are the original land owners on which land the said Project is situated (“said land owners”).

3. On 23.11.2021, a virtual hearing was held in the matter wherein the following roznama was passed:

“The Parties are present.

CA Nicky Milani submits on behalf of the Dreams Aryan Flat Owner’s Association (“AOP”) A & B wings. He brings to the notice of this Authority that the Project was to be developed on the piece of land owned by Aryan Construction and Mr. Aryan Sopal. As the Project is now stalled the landowners namely Aryan Construction and Mr. Aryan Sopal have now given no objection (“NOC”) to the Flat Owner’s Association to complete the Project. The copy of the NOC has been already filed with MahaRERA office.

The construction work of the Project was taken up by Dreams Corporation Pvt. Ltd., the Promoter herein who had stopped the construction on site in the year 2018 and since then there has been no construction carried out. Mr. Ramesh Mehta, Director of the Promoter Company has now given NOC to the Flat Owner’s Association to complete the Project. The copy of the NOC has been already filed with MahaRERA office.

It is also brought to the notice of this Authority that 32 units are sold in the Project to 28 Allottees and 18 units have been allotted to the land owner. All these Allottees have given their permission to the AOP to enable them to complete the remaining work.

The MahaRERA registration number is in the name of Dreams Corporation Pvt. Ltd.

The MahaRERA completion date is shown as 31st December, 2021.

The AOP desires that:

- 1. they be permitted to complete the Project for which purpose they will need to collect the money from the Allottees.*
- 2. the original MahaRERA completion date, namely 31st December, 2021 be extended by 18 months to June 2023.*

Heard all present, matter is reserved for orders.”

4. The AOP has submitted an application dated 04.08.2021 under Section 15 of the said Act, for transferring/ assigning the rights and liabilities in the said Project to the extent undertaken by the Promoter herein to the AOP. The reasons for transfer are that the Promoter has not been able to complete the construction work and handover the possession of the units/ apartments within the stipulated time. The Promoter has not carried any construction activity for the last couple of years and the said Project is at a standstill stage. Thus, the Allottees have therefore come forward by formation of this AOP to take over the said Project and complete the balance construction activity.

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5. The said Project in toto has 50 units/apartments in both A & B wing and all the 50 units/apartments are sold i.e. 32 units/apartments are sold to amongst 28 Allottees and 18 units/apartments are allotted to the said land owners.
6. Further, all the Allottees of the said Project have consented for completing the balance construction and accordingly the AOP has entered into a deed/agreement between themselves including the said land owners.
7. The AOP 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 are no pending cases before any court/NCLT/any authorized body regarding transfer of the Promoter's rights and liabilities in the said Project, that there is no bar to transfer the rights and liabilities to a third party i.e. the AOP from any financial institution or financiers who have a charge on the said Project; and that there is no prohibitory order passed by any court of law against transfer of the said Project in favour of a third party i.e. the AOP.
8. As per the rules and regulations under the said Act, Annexure 'B' has been submitted along with declaration Form - B by the AOP. Further Annexure 'C' has also been submitted wherein it has been stated that the Promoter is absconding, the said Project is at standstill and that new designated RERA account shall be opened in the name of the AOP as the new Promoter for the said Project. Further, the AOP has also submitted a notarised declaration dated 23.07.2021 of the Promoter herein declaring that they have no objection if the balance construction work of the said Project is completed by the AOP i.e. the new Promoter.
9. With regard to the change of Promoter sought by the AOP it is pertinent to examine section 15 of said Act. The relevant extract of section 15 is reproduced hereinbelow:

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“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.”

10. 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. the AOP herein shall not happen without obtaining prior written consent from two-third Allottees, except the Promoter. In the present case, 100% consent has been sought by AOP and thus, this Authority is of the view that the transfer of the said Project from the Promoter to the AOP 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. the AOP 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.

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11. Further, the AOP during the hearing mentioned aforesaid has also sought for an extension from 01.01.2022 to 30.06.2023 (*18 months*) for completing the balance construction work of said Project.
12. With regard to the issue of the extension sought by the 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.”
13. 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 has submitted that all Allottees have no objection to completing the balance construction work by the AOP which amounts to permission of 100% of the Allottees in the said Project permitting the extension of the said Project this Authority directs the grant of extension of the said Project from 01.01.2022 to 30.06.2023 (*18 months*).

FINAL ORDER

Thus, the AOP is permitted as the new Promoter for the said Project. Needless to say, that the AOP 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, the AOP is also granted an extension of the said Project from 01.01.2022 to 30.06.2023 (*18 months*) to complete the balance construction work and handover possession to all the Allottees of the said Project. The AOP 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

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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.


(Ajoy Mehta)
Chairperson, MahaRERA