

BEFORE THE MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY

MUMBAI

- 1) SC10000483
MANDAKINI ASHOK VYAS
- 2) SC10000737
George Vikram Kumar DSA and Reena Vikram DSA
- 3) SC10000549
SUDHIR R KANAUIA
- 4) SC10001163
Dinesh Purohit, Devendra Sharma, Mahendra Malaviye
- 5) SC10000536
ANIL VICTOR DSOUZA
- 6) SC10000918
PAVANKUMAR SITARAM SHUKLA Complainants
Vs.

SAI AKRUTI EMPIRE Respondent

Coram: Hon'ble Shri Gautam Chatterjee, Chairperson, MahaRERA
Complainant

Complainant : Present

Respondent : Absent

ORDER

February 8, 2019

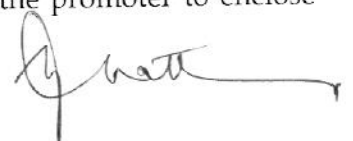
1. This matter is pertaining to a project known as "SAI AKRUTI EMPIRE", A, B & C Wing, Mira Bhyandar. The six complainants, who are allottees of the aforesaid project filed the present complaints on the ground of non-registration of the project. Since all the Complainants are praying similar relief against the same project, the six complaints are decided by passing present common order.
2. The complaints were listed for hearing on 8.2.2019 when the Complainants were present. However, the Respondent was absent. The Complainants informed that Respondent/promoter is in jail. During the course of hearing the Complainants submitted that though the Respondent/promote is under obligation to register the project, he has not registered the same in accordance with the provisions of Real Estate (Regulation & Development) Act, 2016 (herein after referred to as the

said act) and therefore praying that appropriate directions be issued to the promoter to register the project.

3. The Complainants also pointed out that the project was started in the year 2010 and partly completed till 2013 and the building has been partly occupied by 15 allottees without basic amenities and services. Commencement certificate issued in the year 2011 was valid only up to 17.7.2012 and the same is not revalidated. Considering the submissions made by the Complainants prima facie it is seen that the Respondent is not having any valid permissions as on date.
4. On the background explained above and in view of the fact that here is no valid commencement certificate as on date, which is a mandatory requirement for registration of a project, it is necessary to consider whether the Respondent can be directed to register the project in accordance with the provisions of the said Act.
5. In accordance with the provisions of Section 3 of the said Act, the promoters are under obligation not to advertise, market, book or offer for sale or invite in any manner apartment or building as the case may be without registering the Real Estate Project with the Real Estate Regulatory Authority under the provisions of the said Act.


Provided that the projects that are ongoing on the date of commencement of the said Act and for which completion certificate has not been issued, promoter shall make application for registration within a period of three months from the date of commencement of the said Act.

6. However, as per Section 4 of the said Act, it is obligatory on the part of the promoter to make an application to the Authority for registration of the Real Estate Project in such a manner and within such time and accompanied by such fee as may be specified by the Regulations made by the Authority. As per Section 4 (2) (c) of the said Act, it is obligatory on the part of the promoter to enclose

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authenticated copies of the approvals and commencement certificate from the competent authority at the time of applying for registration. As per Section 4 (2) (l) (C) of the said Act, it is obligatory on the part of the promoter to declare the time period within which he undertakes to complete the project. Only after compliance of provisions of Section 4 (2) of the said Act, the promoter is entitled for registration on the terms and conditions prescribed by the Authority.

7. The constitutional validity of the provisions of the said Act, particularly sections 3,4,5,6,7 were challenged in Writ Petition No. 2737/17 *Neelkamal Realtors Suburban Pvt. Ltd. and anr. Vs. Union of India and anr.* The Hon'ble High Court observed that so far as list of documents under Sec. 4 (2) are concerned, the same are required to be submitted for the purpose of application for registration. This indicates that before application is made by the Promoter all the necessary formalities need to be complied with and should be presented before the MahaRERA authority at the time of making application for registration.
8. From the above, it is clear that since the commencement certificate issued in 2011 to the Respondent/promoter is not no longer valid, therefore the mandatory compliance prescribed under Section 4 of the said Act cannot be insisted upon. Therefore, no directions can be issued to the Respondent/promoter as per relevant provisions of the said Act. The project of course will require to be registered, once the commencement certificates are validated.
9. In view of the above, the complaints for registration of the project stand disposed of.


(Gautam Chatterjee)
Chairperson/ MahaRERA