

**MAHARASHTRA REAL ESTATE APPELLATE**  
**TRIBUNAL UNDER RERA Act**

**No.AT006000000010684**

**Lodha Bellissimo Crown Buildmart Pvt. Ltd.**

**412, 4<sup>th</sup> Floor, Vardhaman Chambers,  
Fort, Cawasji Patel Street,  
Fort, Mumbai 400 001.**

**..Appellant/s**

**V/s.**

**Haresh Jethmal Asher  
301 Pooja Kunj, Plot No. 198,  
Sher-e-Punjab Socieety,  
Andheri (East),  
Mumbai 400 093**

**..Respondent/s**

Shri Nimai Dave for Appellant.

Shri Kaustubh Patil for Respondent / Complainant / Allottee Haresh.

Respondent Haresh present.

CORAM :Hon'ble Shri K. U. CHANDIWAL, J.

Heard on : 25th October, 2018

Dictated/Pronounced on : 25th October, 2018

Transcribed on : 26th October, 2018

**:-ORAL JUDGMENT:-**

Heard finally.

1. The Appellant / Promoter feels aggrieved by order dated 12<sup>th</sup> September, 2018 whereby Promoter's application for dismissing the



complaint was rejected. The promoter had pleaded before the Member and Adjudicating Officer, MahaRERA, Mumbai as on date before registration date earmarked by provision of sec. 3(2) of RERA there was part Occupancy certificate dated 8<sup>th</sup> June 2017. The Ld. Member and Adjudicating Officer in his exhaustive order, negated the said submissions and hence this Appeal.

2. The Allottee had booked Flat no. 1301, 13th floor in Promoter's project known as 'Evoq' situated at New Cuffe Parade alongwith three car parking spaces. The Promoter contended that they had received part Occupancy Certificate on 8<sup>th</sup> June 2017 from MMRDA for 1 to 40 floors of B wing wherein the flat booked by the Allottee is situate and consequently owing to such part Occupancy Certificate, it was not incumbent on the Promoter to register the project with MahaRERA.
3. The Ld. Adjudicating Officer has referred to the order in the matter of Prasad Patkar Vs. M/s. Runwal Project Pvt.Ltd. wherein on 17<sup>th</sup> November, 2017 the full bench of MahaRERA indicated that MahaRERA gets jurisdiction to entertain only those complaints which relate to a registered project. However in the judgement of Mohammed Zain Khan V/s. Maharashtra Real Estate Regulatory Authority in W.P.(Lodging) No. 908 of 2018 a statement by MahaRERA was made that MahaRERA shall take cognizance of complaints in respect of unregistered projects also.
4. The Ld. Adjudicating Officer has exhaustively dealt with the definition contemplated in Sec. 3(1) and 3(2)(b) of RERA which deals with 'completion certificate' and also rule 4 dealing with 'occupancy certificate or 'completion certificate.'
5. The Ld. Member has also dealt with definition of Sec. 2(q) which deals with 'completion certificate' and Sec. 2(zf) dealing with 'Occupancy Certificate.'

6. The findings of the Ld. Member and Adjudicating Officer on broad prospective indeed does not warrant interference even if there are rejections of three complaints by the Authorities in the matter of Akash Gupta V/s. Bellisimo Crown Buildmart Pvt. Ltd. dt. 18<sup>th</sup> Dec. 2017, Pravin Shah V/s. Bellisimo Crown Buildmart Pvt. Ltd. and Sanjay Fulvaria V/s. Bellisimo Crown Buildmart Pvt. Ltd.
7. The crucial point which is tricking the thought is that the Promoter has a part completion certificate dated 8<sup>th</sup> June, 2017 for building Three (subject bldgs.). This is later than the implementation of RERA in the State of Maharashtra which has come into force effective from 1<sup>st</sup> May, 2017. Even if concession is extended by Sec. 3(1) Proviso which reads as under :

"Provided that projects that are ongoing on the date of commencement of this Act and for which the completion certificate has not been issued the promoter shall make an application to the Authority for registration of the said project within a period of three months from the date of commencement of this Act;"

However such concession is in respect of ongoing projects for which completion certificate has not been issued, three months extension has been granted for registration. It will not therefore automatically provide an elbow room or concession to the fact in issue as the part occupancy certificate is dated 8<sup>th</sup> June, 2017 later than 1.5.2017. It is curious, that special conditions incorporated in part occupancy certificate also highlights that the applicant (promoter) shall complete the unfinished work before applying for full Occupancy Certificate of the building or before handing physical possession of the building for habitation whichever is earlier as ensured by the Promoter in the Undertaking dated 26.5.2017. There is nothing produced by the Promoter indicating that this has been adhered to before completion of the project or getting full O.C.



8. The definition in Rule 2(p) – “Phase of a Real Estate Project” may consist of a building or a wing of the building in case of building with multiple wings or defined number of floors in a multi-storeyed building / wing;” or rule 4(I) – “the expression “phase of the project” means the building or buildings in a project in respect of which occupancy or completion certificate has not been received;” in respect of ongoing projects or phase of real estate project will not be of any assistance to the Promoter particularly when the letter of part Occupancy Certificate is dated 8<sup>th</sup> June 2017.
9. Shri Dave says, even the Letter / O.C. dated 8.6.2017 will embrace three months extension, since in Frequently Asked Question, MahaRERA clarified so; However Respondent’s Counsel retorted by informing that the Answer No. 60 in FAQ is again contradictory. Incidentally, the FAQ has a Disclaimer Clause and hence the views expressed by Secretariat of MahaRERA will not mould the provisions of Statute, contrary to its spirit. Hence FAQ is put out of consideration.
10. The changed situation occurred in the matter of Mohammed Zain Khan V/s. Maharashtra Real Estate Regulatory Authority also need not be obliterated, which encompass within sweep of RERA of unregistered projects also.
11. Taking stock of above facts, I hold that the order under challenge does not call for interference. The MahaRERA Adjudicating Officer has jurisdiction to entertain the complaint in peculiar facts as enumerated hereinabove.

**-: ORDER :-**

1. Appeal dismissed.

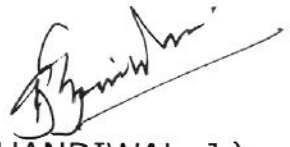
Heard.



3. Since the promoter desires to challenge the order, the order under challenge dated 12th September, 2018 shall not be implemented till 26<sup>th</sup> November, 2018.

Dictated and pronounced in open Court today.

Place: Mumbai  
Dated: 25th October, 2018

  
(K. U. CHANDIWAL, J.)  
President,  
Maharashtra Revenue Tribunal,  
Mumbai  
& I/c. Maharashtra Real Estate  
Appellate Tribunal, (MahaRERA),  
Mumbai