

BEFORE THE  
MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY  
MUMBAI

1. SOURCE COMPLAINT NO. SC10000616  
Sheela Pandya

2. SOURCE COMPLAINT NO. SC10001726  
Nirav D Raichura

... Complainants

Versus

1. Shabbir Chunawala  
2. Nirav CHS Ltd

.... Respondents

**Coram:** Shri. Gautam Chatterjee, Chairperson, MahaRERA

Complainants were present themselves.

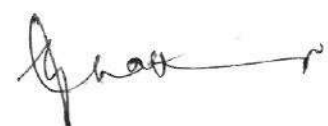
Respondent (1), Mr. Shabbir H. Chunawala, appeared himself

Respondent (2), was represented by Adv. Vikhil Dhoka (i/b. GM Legal).

Order


January 02, 2020

1. The complaints are pertaining to non-registration of a stalled redevelopment project named 'Nirav CHS Ltd.' situated at Andheri West, Mumbai, 400053. The Complainants have stated that they are allottees in the said redevelopment project and have paid a substantial consideration amount to the Respondents/Developers. The Complainants submitted that the construction work has been stalled from last many years as there is a dispute pending between previous developer and Society. The Complainants have, therefore, prayed that appropriate directions be issued to the Respondents to register the project in accordance with the provisions of Real Estate (Regulation & Development) Act, 2016 (herein after referred to as the *said Act*).
2. The Source Complaint bearing no. SC10000616 was heard on various dates of hearing. The matter was initially heard on November 26, 2018 before the Member -II, MahaRERA



and on that date of hearing, Adv. Niraj Vishwakarma for the complainant appeared and for Respondent-Proprietor, Mr. Shabbir Chunawala, was present in person. Since the appearance of society was also necessary the matter was adjourned to the next date of hearing.

3. Then the matter was kept for hearing on December 10, 2018, and Complainant was himself present along with Adv. Niraj Vishwakarma. Respondents were present in person. After hearing the submissions of the parties, the Hon'ble Member -II directed/ passed order that Nirav CHS Ltd. shall register the project within two weeks from the date of the order and imposed a penalty of Rs. 1,00,000/- under section 59 of RERA. The Society aggrieved by the order, filed an Appeal in MahaRERA Appellate Tribunal, Mumbai. And thereafter, have withdrawn the same with the liberty to file review before MahaRERA.
4. The Respondent Society has filed the review application/submissions dated 08/05/19 stating that on or about March 12, 2015 the MCGM had issued warrant of attachment for nonpayment of property taxes in respect of the project property as Promoter/ Developer failed to pay the property taxes since the year 2012. Further the Respondent had not paid the development charges to be paid to the MCGM hence the Commencement Certificate was not revalidated by MCGM. Since the Developer has breached the Development Agreement, the society has terminated the Agreement with the Developer. Therefore, the project does not have valid IOD/ CC at present. Hence, the society has requested to review the order dated December 10, 2019 passed.
5. The Source Complaint bearing no. SC10000616 was reheard on i.e. 22/05/19 before the MahaRERA Authority. The Complainant and 'Nirav CHS Society' remained present for the hearing. Respondent remained absent. During the hearing, the Complainant submitted that this is a redevelopment project and the owner Society has terminated the *developer in the year 2016*. The Complainant further submitted that there are 13 buyers in the said project and they have paid huge amounts of money to the earlier developer for this project. The society was represented by its members who were present during the hearing. They also stated that they have terminated the previous developer and

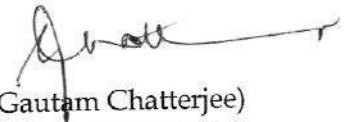


Arbitration/ Litigation proceedings are going on between them and the developer. Therefore, to safe guard interest of buyers the society was instructed to convene meeting with buyers to incorporate them as prospective society members.

6. The Source Complaint bearing no. SC10000616 was heard again along with the Source Complaint bearing no. SC 10001726 on August 21, 2019, and October 04, 2019. Parties to the complaints were duly heard. During the hearing, Society submitted that they are in process of appointing a new developer. Society further submitted, that upon appointment of a new developer, approvals like IOD and CC would be obtained to carry out the remaining development work of the project.
7. On the background explained above, it is necessary to primarily consider whether the Respondents can be directed to apply for registration of the project immediately, in accordance with the provisions of the said Act and rules and regulations made thereunder.
8. 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 any plot or 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 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.
9. 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) and (d) of the said Act, it is obligatory on the part of the promoter to enclose along with the application for registration, the authenticated copy of the approvals and commencement certificate, sanctioned plan, layout plan etc. from the competent authority.



10. The Respondent No. 1 in the present complaints, is no longer a promoter for the project and the outcome of the arbitration/litigation proceedings are still pending. Moreover, the land owner society is yet to appoint a new developer for the project. Further, the project does not have the valid building plan approvals. Hence, no directions can be issued to either of the Respondents to apply for registration of the project, at this stage. However, the application for registration with MahaRERA shall have to be made within 30 days of the project obtaining the valid building plan approvals for the project from the Competent Planning Authority. Since, the Respondents cannot make an application for registration of the project at this stage, the prayer of the society to waive the penalty imposed by the earlier order of the Authority is accepted and the said penalty is waived.
11. It was also explained that as stated in Para 86 of the judgment of Hon'ble Bombay High Court in *Writ Petition No. 2737/- U Neelkamal Realtors. Vs. Union of India*, RERA will apply after getting the project registered. Therefore, merits of the other grievances made by the Complainants have not been gone into. The Complainants have the liberty to raise the same in an appropriate forum.
12. In view of the above, the complaints for registration of the project stands disposed of.

  
(Gautam Chatterjee)  
Chairperson, MahaRERA