

**THE MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY
MUMBAI.**

COMPLAINT NO: SC10000728

Pranali Puttewar

.... Complainants.

Versus

Nirmal Ujjwal Credit Cooperative Society Ltd

.... Respondents.

Nirmal Nagari

KH 553, Mauja Harpur, Umred Road, Nagpur

**Coram: Hon'ble B.D. Kapadnis,
Member-II.**

Appearance:

Complainant: Adv. Atul Pathak.

Respondents: Adv. Bhushan Dafale.

**Order
(4th January 2019)**

This complaint has been placed before me to decide whether the respondents have violated Section 3 of the Real Estate (Regulation and Development) Act, 2016 by not registering their Nirmal Nagari project situated Mouje Harpur situated at middle ring road, Nagpur..

2. I have heard the arguments of the learned Advocates of the parties and perused the documents placed before me. After perusal of the documents, I find that the respondents have taken the commencement certificate dated 01.09.2008 and 09.08.2012 from Nagpur Municipal Corporation under Section 45 of MRTP Act to erect buildings on the land bearing House No. 3011/AA, City Survey No. 533, 649/1, 649/3, Ward No. 20 of Mouje Harpur situated at middle ring road, Nagpur. The respondents admit that they have not registered the project. According to them some construction is completed and some construction is going on at the site. The learned Advocate of the complainant also submits the same but he

submits that Municipal Corporation has not issued the completion certificate because the respondents have made some unauthorised construction and it asked the respondents to remove the same.

3. Section 3 (1) of RERA prevents the promoter from advertising, marketing, booking, selling or offering for sale or inviting individuals to purchase any plot, apartment or building in any real estate project, in any planning area or without registering the project. Sub Clause (2) provides three exemptions enumerated in (a) (b) (c). The respondents' project does not come in any of the three exemptions. In this circumstance, the entire project needs registration.

4. The learned Advocate of the complainant submit that the project is being erected on 17.4 Acres land. The respondents are constructing 944 units consisting of flats, duplex flats, row bungalows/houses, independent bungalows and shop galas. He submits that out of 944 units 725 units are agreed to be sold by the respondents. According to him, each flat is worth at Rs. 12 lakh, duplex flat is worth Rs. 22 lakh, row house costs Rs. 38 lakh and independent bungalow costs Rs. 60 lakhs, shop gala costs Rs. 7.5 lakhs. After taking into consideration these facts which have not been denied by the respondents' advocate, I hold that the total cost of the project in any circumstances is not less than 300 cores. The opportunity was given to the respondents to disclose the estimated cost of the project but they have not disclosed it. Section 59 of RERA empowers the Authority to determine the estimated cost of the real estate project. Therefore, by exercising this power, I find that the estimated cost of the project is not less than Rs. 300 crores.

5. The learned advocate of the respondents has produced the letter dated 27.03.2018 given by the respondents to the Authority wherein the respondents have mentioned that their claim for non-eligibility of their project has been rejected by the Hon'ble High Court in W.P. No. 4692 of 2017 on 17.07.2017 and they are ready to register the project within 60 days.

The respondents have not registered the project despite this undertaking.
Hence, the following order.


ORDER

The respondents shall register their project with MahaRERA within three weeks from this order.

They shall pay Rs. 6 cores towards the penalty under Section 59 of RERA.

Mumbai.

Date: 04.01.2019.



4.1.2019

(B. D. Kapadnis)
Member II,
MahaRERA, Mumbai.

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Member-II.**

**ORDER ON THE RECOVERY APPLICATION FILED IN THE
COMPLAINT.**

The respondents have not registered their huge project constructed on 17.4 acres of land situated on ring road of Nagpur, despite the order dated 4th January 2019 imposing the penalty amount of Rs. 6 crores under Section 59 of RERA.

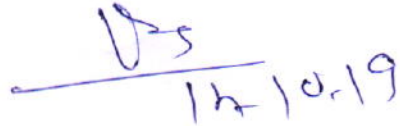
2. The matter came before me on 04.10.2019. Advocate Mr. Mohd. Zain Khan appeared before me for the respondents and sought adjournment for two weeks to move the Appellate Tribunal for granting stay to the execution of the final order. However, the respondents have not brought any stay order.

3. Mr. Mohd. Zain Khan has not filed his VP for the respondents today despite his undertaking. It amounts to professional misconduct. Today Mr. Ashraf Kapoor holding for Mr. Mohd. Zain Khan has appeared to submit that the matter may be adjourned. He has also not filed his VP.



4. After taking into consideration the fact that the order dated 04.01.2019 though was required to be complied with within the period of 30 days, has not been complied with by the respondents. They have not moved the Hon'ble Appellate Tribunal to stay the execution of the order even after taking 10 days' time by applying on 04.10.2019. Mere filing of appeal does not amount to automatic stay to the execution of the order directing payment of penalty.
5. After noting the conduct of the respondents, I find that the respondents do not have any desire to comply with the order and they want to buy time.
6. The allottees of the project have moved the Hon'ble High Court by filing the Writ Petition and the issue regarding the non-compliance of the order is also involved therein.
7. Found in this situation, I find no other alternative but to issue the recovery warrant under Section 40(1) of RERA against the respondents for recovering the amount of penalty.
8. Issue recovery warrant.

Mumbai.
Date:14.10.2019.


14/10/19

(B.D. Kapadnis)
Member II,
MahaRERA, Mumbai.