

BEFORE THE  
MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY  
MUMBAI

COMPLAINT NO: SC10000921

Sultana Dalal

... Complainant

Versus

Asia Group Akbar Shaikh  
Abdulla Mulla  
Manhar Bagadia

... Respondent

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

Complainant was represented by Mr. Avinash Pawar, Adv.

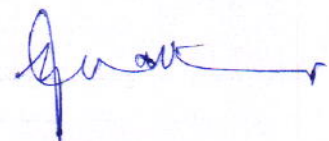
Respondent was represented by Mr. Vikramjit Garewal, Adv. a/w Mr. Jugal Kulkarni, Adv.

**Order**

April 04, 2019

1. This Complaint is pertaining to a building named 'Miracle Mall' situated at Bhiwandi, Thane. The Complainant alleged that the building is already occupied, but the Respondent has failed to procure the Occupation Certificate, till date. Therefore, he prayed for directions to be issued to the Respondent to register the building under the relevant provisions of the Real Estate (Regulation and Development) Act, 2016 (*hereinafter referred to as the said Act*).
2. The learned counsel for the Respondent submitted, that the building was completed and occupied in the year 2012-2013. He also stated that units were sold before the commencement of the said Act, and construction took place as granted by the concerned planning Authority. He further stated that the Respondent had purchased the land from the Complainant and her family members pursuant to an Agreement for Sale dated November 25, 1992. Finally, he submitted that Honourable High Court via an order dated November 19, 2013 for Civil Writ Petition bearing no. 10507 / 2013 has created an injunction restraining the Respondent from carrying out further new construction and creating any third party rights, thereby maintaining a status- quo in the said building.
3. Section 3 of the Said Act reads as: -

...



*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:*

...

There are two requisites for the applicability of this Section. It applies to only those projects where construction work is ongoing and for which the completion certificate has not been issued. In the present case, the project work has been completed and the building occupied by the allottees since 2012-13 and thereafter the building is under a status quo since the year 2013 onward. Thus it cannot be treated as an ongoing project under the provisions of Section 3 of the Act.

4. In view of the above, merely since the Occupation Certificate has not been procured does not itself construe as the only requirement for a building to be registered under MahaRERA. Moreover, the building has been occupied before the commencement of the said Act. Therefore, no directions can be passed for registration under the provisions of Section 3 of the Real Estate (Regulation and Development) Act, 2016.
5. Consequently, the Complaint for registration of the project stands disposed of.



(Gautam Chatterjee)  
Chairperson, MahaRERA