

**THE MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY
MUMBAI**

Complaint No. SC 10000789

Rebekah Titus Benjamin Complainant

Versus

Prathmesh Land Developers Respondents

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

Complainant: Present

Respondent: Present

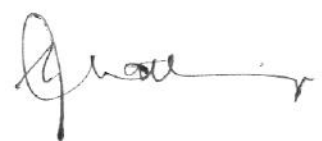
Review Order

Date: 22nd February 2019

1. This complaint is pertaining to a project known as "Sethia Sea View" situated on CTS No.22, Pahadai, Goregaon (herein referred as the said project). The project consists of 4 wings, A,B,C & D. Smt. Rebekah Titus Benjamin is an allottee of A wing and she has filed this complaint bearing No. SC 10000789 praying for directions against the Respondents, i.e. Prathamesh Land Developers to register the said project in accordance with the provisions of Real Estate (Regulation & Development) Act, 2016. Wings C & D in which construction is still ongoing are registered with MahaRERA.



2. It is the contention of the Complainant that she is an allottee of the said project in A wing and since the Respondents have not obtained Occupancy Certificate (OC), she has not taken the possession of her apartment. Since the Respondents have not obtained OC, they may be directed to register the project in accordance with the provisions of Real Estate (Regulation & Development) Act, 2016.
3. It is the contention of the Respondents that the entire A wing was completed and also occupied, prior to the Act coming into effect. It is only the Complainant who did not take possession, since the Wing did not have an OC.
4. The complaint was heard earlier by the Hon'ble Member-II & Adjudicating Officer who by his order dated 3rd December 2018 had directed the Respondents to register A wing too and imposed a penalty too for non-registration.
5. Thereafter, the Respondent filed application under Section 39 of the Real Estate (Regulation & Development) Act, 2016 read with Rule 36 of the Maharashtra Real Estate Regulatory Authority (General)



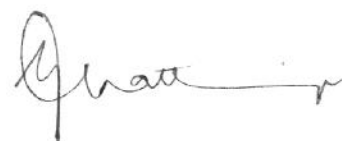
Rules 2017 for review of the order dated 03.12.2018. He made a contention that, during the period 1st May to 31st July, 2017 when the registration window for ongoing projects was open, he had through email enquired with MahaRERA whether A Wing would require registration since building work had been completed and building occupied. In keeping with MahaRERA's stand in all such projects, he had been communicated vide Authority's email dated 28.09.2017 that since building work is not ongoing and possession has been given, MahaRERA registration is not required.

6. Keeping in view the Authority's earlier decision, the complaint was taken up for review and rectification of order. During the course of hearing of the review it was pointed out by the Respondent that on 28.09.2017 team of the Authority, with approval of the Hon'ble Chairperson, MahaRERA had confirmed that building work is completed and the possession of A wing has already been given, therefore, registration is not required. These facts were not brought



to the notice when the earlier order was passed by Hon'ble Member-II & Adjudicating Officer.

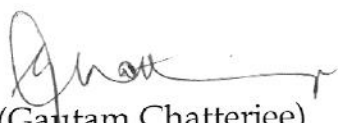
7. During the course of hearing it was submitted on behalf of the Respondent that the building in this project has been duly completed and the same has been duly occupied since the year December, 2015. In accordance with the provisions of Real Estate (Regulation & Development) Act, 2016 the two criteria prescribed for registration of project, under Section 3, are that the project work should still be ongoing and OC not received. In the present case though the OC criteria is not met, the other more important criteria of the building work to be still ongoing is not met as the building is complete and building occupied since 2015. Sections 4 & 5 interalia provides obligation on the part of the promoter to declare the time period within which he undertakes to complete the project, to maintain separate Bank account for depositing 70% of the amount realised from the said project from time to time. These provisions



become inoperative, as the building is already completed and occupied.

8. So far as obtaining OC is concerned the Respondent submitted that he has been pursuing the matter with the Competent Authority and is confident that he will be in a position to obtain OC within a period of 3 months and hand over the possession of the flat to the Complainant immediately thereafter. The Respondent gave undertaking to obtain OC within a period of 3 months and on the basis of the said undertaking given by the Respondent, the Complainant agreed to withdraw the complaint with a liberty to approach MahaRERA again in case the Respondent violates the said undertaking. The undertaking of the Respondent and withdrawal of complaint application by Complainant are taken on record.
9. In view of the above present review stands disposed of as withdrawn.

Place: Mumbai
Date: 08.03.2019


(Gautam Chatterjee)
Hon'ble Chairperson/MahaRERA