

BEFORE THE MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY

MUMBAI

1. SOURCE COMPLAINT NO. SC10001886

Mohd Saeed Mohd Shaikh

2. SOURCE COMPLAINT NO. SC10001888

Mohammed Anwar Kutbuddin Siddique

3. SOURCE COMPLAINT NO. SC10001889

Shaikh Mohammad Ashraf Hakimuddin

... Complainants

Versus

M/s Myco Construction Co

... Respondent

Corum: Shri. Gautam Chatterjee, Chairperson, MahaRERA

Complainant (1) was represented by Mr. Rahul Pandey, Adv.

Complainants (2), (3) appeared themselves.

Respondent did not appear.

Order

January 09, 2020

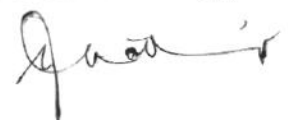
1. The present complaint pertains to non-registration of a building named 'Diamond Apartment' situated at Boradpada, Mahim East, Mumbai 400017. It is the Contention of the Complainants that the Respondent has failed to obtain the Occupancy Certificate (OC) for the building hence it should be treated as an ongoing project. It is the prayer of the Complainants that appropriate directions be issued to the Respondent 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 Complainants have submitted that they had booked apartments in the building and the building was complete in the year 2016-2017. The Complainants further mentioned that the said building has thereafter been occupied without Occupancy Certificate. The Complainants have added that due to dispute between landowner and the Respondents the possession to some of the allottees have not been given yet.



3. The complaints were heard on November 01, 2019 in the presence of the Complainants but had to be adjourned for appearance of the Respondent. On next date of hearing also i.e. on January 03, 2020 the Respondent did not appear in spite of service of notice on the address provided by the Complainant.
4. On the background explained above, it is necessary to consider whether the Respondent should be directed to register the project in accordance with the provisions of the said Act and rules and regulations made thereunder.
5. 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 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.

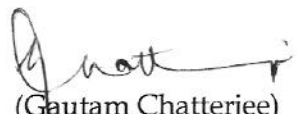
Provided that projects that are ongoing on the date of commencement of the said Act and for which completion certificate has not been issued, promoter shall make application for registration within a period of three months from the date of commencement of the said Act.

6. 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) (D) of the said Act, it is obligatory on the part of the promoter to declare the time period within which he undertakes to complete the project. As per Section 4(2) (D) of the said Act, it is obligatory on the part of promoter to maintain separate account and deposit 70% of the amount realized for the Real Estate Project from the allottees from time to time. The said amounts to be utilized to cover the cost of construction and land cost and shall be used for that purpose only and the promoter is entitled to withdraw said amount in proportion to the percentage of completion of the project. Only after compliance of provisions of Section 4(2) of the said Act, the promoter is entitled for registration on the terms and conditions prescribed by the Authority.
7. This provision of Section 3 of the said Act has to be read along with Section 4 and Section 5(3) of the said Act which states that registration granted shall be valid for a period declared by the promoter under sub-clause (C) of clause (1) of sub-section (2)



of Section 4 for completion of the project or phase thereof, as the case may be. If before filing an application for registration, a project has been completed, neither Section 4 (2) (for making application for registration) nor Section 5 (3) (for granting registration) can be complied with.

8. From the above, it is clear that the Promoter has physically completed the real estate project prior to the commencement of the said Act and thereafter has also handed over apartments to the allottees. Consequently, the real estate project has ceased to be a project and has become a developed building. Therefore, no directions can be issued to the Respondent to register the said project as an ongoing project, as per the relevant provisions of the said Act. The building cannot be treated as an ongoing project in accordance with Section 3 of the Act, which requires two conditions to be fulfilled i.e. project work has to be ongoing on the date of commencement of the Act and for which completion certificate has not been issued. Though it is a fact that the building has failed to obtain OC, keeping in view the objective of the Act of completing project work and handing over possession, such buildings of the past, which have been occupied prior to the coming into effect of the Act but which do not have completion or occupancy certificate, should not be brought under the ambit of the Act and should not be directed to register merely to obtain OC. Therefore, no directions can be issued to the Respondent/ Promoter to register the said project as per the relevant provisions of the said Act.
9. It was also explained that as stated in Para 86 of the judgement 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.
10. In view of the above, the complaints for registration of the project stands disposed of.


(Gautam Chatterjee)
Chairperson, MahaRERA