

BEFORE THE MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY
MUMBAI

SOURCECOMPLAINT NO. SC10001750

Jagdish Nanikaran Shahani

.... Complainant

Versus

M/S. Pherwani Constructions

... Respondent

Coram: Shri. Gautam Chatterjee, Chairperson, MahaRERA

Complainant himself was present a/w Ms. Sara Khan, Adv. (i/b Dhaval Vussonji & Associates).

Respondent, Mr. Anil Pherwani, was himself present.

Order

August 02, 2019

1. The present complaint pertains to non-registration of the building named 'Crystal Heights' situated at Khondhwa Kurad, Taluka - Haveli, District - Pune. The Complainant has stated that he is an allottee of the said building, and that the building has been occupied. He further stated that the Respondent has failed to procure the Occupancy Certificate (OC) from the concerned planning authority, till date. He raised his contention that the Regularization Certificate procured by the Respondent is solely granted for the purpose of construction work, and hence for the same reason, it should be treated as an ongoing project, for which although the Respondent is under obligation to register the project in accordance with the provisions of Real Estate (Regulation & Development) Act, 2016 (herein after referred to as the *said Act*), he has failed to do so. Therefore, he is praying that appropriate directions be issued to register the project.
2. The Respondent submitted that the said building was developed under a Gunthewari Development scheme, for which the structures were ready by the year 2001. He further

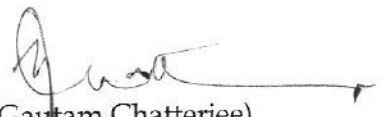


stated that, in 2004, he obtained the required Regularization Certificate under the said scheme. He also added that all the other allottees have been handed over possession in the year 2008 itself. However, the Complainant has refused to take possession. He made final submissions by stating that a litigation in the consumer forum between the same parties is ongoing, till date.

3. 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.
4. 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.
5. 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.



6. 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 under sub-clause (C) of clause (1) of sub-section (2) of Section 4 for completion of the project.
7. From the above, it is clear that the Promoter has physically completed the real estate project by completing the construction and development works as mandated by the competent planning authority prior to the commencement of the said Act and thereafter has also handed over the 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 occupancy certificate, 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.
8. 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 Complainant has not been gone into. The Complainant has the liberty to raise the same in an appropriate forum.
9. In view of the above, the complaint for registration of the project stands disposed of.


(Gautam Chatterjee)
Chairperson, MahaRERA