BEFORE

MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY

MUMBAI

COMPLAINT NO: **CC005000000000136**

Parag Pratap Mantri. ... Complainant.

Versus

Green Space Developers. ... Respondents.

MahaRERA Regn: **Nil.**

Complainant: In person.
Respondents: Atul Mahashabde.

Coram: Shri B.D. Kapadnis,
Hon'ble Member & Adjudicating Officer.

FINAL ORDER.

5th February,2018.

Whether fully constructed building without constructing common areas and without providing agreed amenities but occupied by all flat purchasers without occupancy/completion certificate as on the date of commencement of RERA, amounts to ongoing project? If yes, whether it needs registration? are the legal issues involved in this complaint.

Pleadings of the parties.

2. The complainant complains that he has booked the flat no. E-001 situated in respondents' Angel Hill Project situated at Talegaon, Dabhole, Dist. Pune. The complainant alleges that though the respondents have not received completion certificate of E-wing/ building, they have not registered the same with MahaRERA and thereby they contravened Section 3 of Real Estate (Regulation and Development) Act, 2016 (in short RERA). The respondents have filed their reply to contend that the complainant has been residing in his flat from the year 2013. Construction of E-wing wherein the

complainant's flat is situated, is completed and they have applied for completion certificate on 16.08.2013 itself but it is awaited. However, construction of common areas and amenities is also under way with the construction of building H. All the amenities shall be provided before the completion/occupation certificate of H building is obtained. In this circumstance, the respondents contend that this Authority has no jurisdiction to entertain the complaint. Respondents have further contended that they have the project of 13 buildings of which building nos. F,N & P are also duly completed and handed over to the respective tenement purchasers but their completion certificates have not been issued though they have applied for the same.

3. Following points arise for determination. I record my findings thereon as under.

Points.	**Findings.**
1. Whether E-wing fully constructed Building without constructing common areas and without providing agreed amenities but occupied by all flat purchasers without occupancy/completion certificate as on the date of commencement of RERA, amounts to ongoing project?	Affirmative.
2. If yes, whether it needs registration under Section 3 of RERA?	Affirmative.
3. Whether F, P, N buildings also need registration?	Affirmative.

REASONS

Undisputed facts.

4. Before entering into the arena of controversy, it is necessary to note following undisputed facts:

1. The complainant complains that his flat is in the E-Wing of the project and he has been residing therein from last 4 years.
2. The respondents have registered only H wing of the project with MahaRERA as according to them its construction is under way.
3. According to respondents, the work of construction of common areas and amenities of the entire project is not completed and would be completed along with the completion of H wing.

4. The respondents have submitted application to the Local Authority on 16.08.2013 itself for issuance of completion certificate of E wing and it is awaited.
5. Building nos. F,N & P are also duly completed and handed over to the respective tenement purchasers but their completion certificates have not been issued though they have applied for the same.
6. The project is started before RERA came into force and it is still incomplete to some extent.

Whether E wing/ building is on-going project?

5. The respondents have submitted that E-wing is completely constructed but the work of construction of common areas and amenities of the entire project is not completed and would be completed along with the completion of H wing. It is admitted fact that completion certificate is awaited. All the units of the wing have been booked and they have been occupied by the buyers before RERA came into force. Respondents submit that nothing was to be sold when RERA came into force on 01.05.2017. Therefore, they did not register E-wing. According to the complainant, since completion/occupation certificate is not obtained, E-wing was ongoing project on the day when RERA came into force in the State of Maharashtra. So, on this backdrop when I look at the Section-3 of the Act, I find that it prevents the promoter from advertising, marketing, booking, selling or offering for sale or inviting persons to purchase in any manner plot, apartment or building in any real estate project or part of it situated in planning area without registering the project. First proviso of Sub-Clause-(1) of Section 3 provides that the projects that are 1) ongoing /incomplete on the date of commencement of the Act **and** 2) 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 the Act. For application of this section both the clauses namely 1) ongoing /incomplete project on the date of commencement of the Act **and** 2) for which the completion certificate has not been issued must co-exist. There is no dispute that in E-wing, there are more than 8 apartments, common areas are yet to be constructed, agreed amenities have not been provided and the completion certificate is still awaited. Therefore, I have to draw a conclusion that E-wing can be said to be an ongoing project on the date of commencement of RERA and hence, it was eligible for registration.

Whether booking of all units in the project is a criteria to refuse registration?

6. The respondents have contended that on the date of commencement of Act, all the units situated in E-wing of their project were booked and agreed to be sold, nothing

remained to be sold. It is true that the provisions of RERA intend to safeguard the interest of buyers. In Section 3(1) of the Act, the word "sell" denotes that the promoter cannot sell without registering the project with Real Estate Regulatory Authority. Respondents have simply entered into the agreements for sale and have not executed the sale deeds / conveyance deeds as yet. In this context, Section 54 of Transfer of Property Act attracts my attention wherein sale is defined. It lays down that the sale is transfer of ownership in which the price is paid or promised or partly paid or partly promised. It also provides the manner of making the sale, by laying down that such transfer in case of tangible immovable property of the value of 100 rupees and upwards, or in the case of reversion or other intangible things can be made by registered instruments. Mere agreement for sale though registered do not pass any title to buyer without execution of sale/conveyance deed. Therefore, respondents are required to execute the conveyance deed in favor of the allottees/society by executing the registered instrument u/s 17 of RERA; this process of sale and it is yet to take place. Therefore, without registering his project, he cannot sale of apartments, that is, he cannot execute sale/conveyance deed thereof. In the absence of registration of the project if he executes such sale/conveyance deed, it will become illegal and contrary to the law in view of Section 10 of the Indian Contract Act. It shall be void ab-initio. The allottee shall not get any legal title under such illegal conveyance deed. Therefore, I am convinced that respondents ought to have registered their project within three months from the commencement of the Act.

7. In this context it is necessary to keep in mind that Section 19 (10) of RERA provides that every allottee shall take physical possession of the apartment, plot or building as the case may be, within a period of two months of the Occupancy Certificate issued for the said apartment, plot or buildings as the case may be. This clearly shows that the allottee is liable to take possession only on the receipt of occupancy certificate. Section 12 empowers the allottee to claim compensation and when he intends to withdraw from the project, to claim his entire investment with interest and compensation, when he sustains any loss or damage by reason of any incorrect or false statement included in notice, advertisement, prospectus or the model apartment. It is possible to detect it only when he would be called upon to take possession. At that stage only the allottee will be able to know whether the promoter adhered to sanctioned plans and project specification or not which is contemplated by Section 14. The allottee is entitled to get the relief of conveyance of title u/s 17 only on completion of project. Section 18 of RERA confers a right on allottee to claim refund of his amount with interest and / or compensation when he comes to know that his promoter failed to complete the apartment in accordance with the terms of the agreement for sale. I have quoted these provisions just as examples to show that the allottee has several remedies against the promoter

under RERA. He can claim the reliefs mentioned in the Act only when the project is either registered with Real Estate Regulatory Authority or it is eligible for registration u/s 3 of RERA. Therefore, the registration of on-going projects is mandatory as it shall provide the adjudicatory forum of MahaRERA to suffering allottees. By way of abundant precaution, it is also necessary to clarify at this stage that Section 5 (3) r/w Section 4 (2)(1)(C) of the Act makes it clear that the registration of the Real Estate Projects shall remain in force till the time period within which promoter undertakes to complete project or phase thereof. The Real Estate Regulation Authority holds reins even after the lapse of registration because the rights of the allottees and the liabilities of the promoters created under the Act do not extinguish on the lapse of registration.

8. It is fact that section 3(2)(i) of The Maharashtra Ownership Flats Act, 1963 provides that the promoter shall not allow any person to enter into possession until completion certificate, is duly given by the local authority and no person shall take possession of a flat until such completion certificate is issued. Therefore, both the parties have contravened this provision when complainant took possession of a flat and respondents gave it. This illegal act of the parties will not absolve the respondents from their liabilities to register E-wing of the project. It appears that though the respondents have applied for completion certificate in the year 2013, the local authority has not issued the same because the project is not completely constructed. As respondents themselves have admitted that the common amenities and areas are yet to be constructed, the local authority cannot be blamed for the delay. The complainant contends that the project is ongoing from last 10 years and all the amenities agreed upon by the parties, have not been provided to the occupants. These allottees will not get a forum established under RERA to redress their grievances unless their project is registered. It has been submitted by the respondents that since all the flats of E-wing were booked before commencement of the Act, the computer system did not accept his application for registration and he was informed that since nothing was to be sold out of Wing-E, the registration was not required. In my humble opinion it is misconception, I do not find any legal support to accept this proposition. I agree with the respondents that there was confusion due to the wrong information given by the office of the Authority. However, the respondents cannot escape from their liability to register their project.

Whether allottee can complain contravention of Section 3 of RERA?

9. I find that the authority has jurisdiction to entertain this complaint because E-wing of the respondents' project was eligible for registration on the day of commencement of the Act but they have not registered it. Therefore, obviously they have contravened the Section 3 of the Act and under Section 31 of it, the Authority has jurisdiction to entertain

the complaint filed by "any aggrieved person" for any violation or contravention of the provisions of the Act or Rules and Regulations made thereunder. The complainant is one of the allottees of E-wing, he is victim of circumstances referred to above, so he has better locus standi to file the complaint. I do not find any force in the submission of the respondents' that the complaint is not maintainable on this ground.

Is Suo-Motu action u/s 35 of RERA necessary?

10. Section 35 of RERA confers power on Real Estate Regulatory Authority to take action Suo-Motu if it considers it expedient to do so when it comes to its knowledge that the provisions of RERA, rules and regulations made thereunder are violated. In this case as I have mentioned above that the respondents themselves have contended in their reply that though building No. F, N & P are completed but common areas have not been constructed and they occupied by the flat purchasers but they have not received their completion certificates. Hence these buildings are also eligible for registration u/s 3 of the Act.

Penalty.

11. In view of the facts and circumstances to which I have referred to above, it is necessary to take lenient view in the matter, though Section 59 provides that the penalty which may extend up to 10% of the estimated cost of Real Estate Project can be imposed. In order to meet ends of justice, I find that direction to the respondents to register their project and to pay penalty of Rs. 50,000/- would be sufficient. Hence, the order.

ORDER

The respondents shall register E, F, P, N-wing/buildings of their project with MahaRERA within thirty days from this order.

They shall pay Rs. 50,000/- towards penalty under Section 59 of the Act.

5-2-18

Mumbai.
Date: 05.02.2018.

(B.D. Kapadnis)
Member & Adjudicating Officer,
MahaRERA, Mumbai.