

BEFORE THE  
MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY  
MUMBAI  
COMPLAINT NO. CC006000000000291

Sunderlal Aklinglal Jain ... Complainant.

**VERSUS**

Hare Krishna Builders

( Deeplaxmi Co.op.Housing Society) ... Respondents.

MahaRERA Regn:- P51900008778

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

Complainant: Mr. Sunderlal Jain present a/w Mr. Ramesh Prabhu.

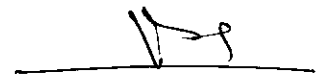
Respondent: Represented by Mr. H.K. Shenoy, Adv.

**Final Order.**

4<sup>th</sup> January 2018.

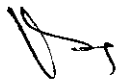
Whether Real Estate Regulatory Authority has jurisdiction to decide, as to who is the promoter of the project, irrespective of the civil dispute lying between the parties, is the legal issue involved in this complaint.

2. The complainants are the partners of Deeplaxmi Builders, a registered firm. Improvement Committee of Mumbai Municipal Corporation proposed to redevelop the municipal property known as B.I.T. Chawl No. 13, 14, 15, 16 standing on plot no. 1870 (P) of Byculla Division, Red Cross Street, Agripada, Mumbai under D.C.R. 33 (7). The tenants of the chawls formed Deeplaxmi Co-operative Housing Society. Improvement Committee of Mumbai Municipal Corporation appointed respondents Hare Krishna Builders as developer by issuing Letter of Intent (LOI) dated 04/10/2007 with the consent of the said housing society. The said society gave liberty to the respondents to enter into Joint Venture Agreement with any other associates. The respondents entered into a Joint



Venture Agreement with M/s. Deeplaxmi Builders. The partners of respondents, Hare Krishna Builders hold 50% share in this M/s. Deeplaxmi Builders and 50% share is held by Mr. Sunderlal Jain and his family members. The Joint Venture Agreement between the two had been executed in May 2006. It is the contention of the complainants that after the said joint venture agreement the respondents do not have any right, title and interest over the project. However, they registered the said project without mentioning M/s. Deeplaxmi Builders as promoters of the project. Therefore, the complainants have prayed that the name of M/s. Deeplaxmi Builders be mentioned as the promoter of the project. They are seeking other reliefs like production of records, delivery of possession and handing over relevant documents etc.

3. The respondents have opposed the claim of complainants by contending that with the consent of M/s. Deeplaxmi Housing Improvement Committee, Mumbai Municipal Corporation appointed them as a developer. They took necessary permissions and approvals for erecting the project. However, they took the help of Deeplaxmi Builders only as financier. They did not transfer any development rights to M/s. Deeplaxmi Builders. M/s. Deeplaxmi Builders stopped their finance from 2010 and therefore, the respondents have cancelled the agreement from 2012. M/s. Deeplaxmi Builders are not the promoters and they could not be added as co-promoter also. Moreover, civil dispute between the parties is going on and hence MahaRERA does not get any jurisdiction to issue any directions in this respect. They further contend that M/s. Deeplaxmi Builders was a Partnership Firm at will. One of its partners Mr. Balwant Doshi, by his letter dated 06.10.2017 dissolved M/s. Deeplaxmi Builders and therefore, the said firm is dissolved on 13.10.2017 when the notice of Mr. Doshi is received by other partners. Hence, it cannot be added as promoter/co-promoter in this project.

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4. The following points arise for consideration and I record my findings there as under:

POINTS	FINDINGS
a. Whether the Real Estate Regulatory Authority has jurisdiction to decide as to who is the promoter for the purpose of the registration of the project?	Affirmative.
b. Whether M/s. Deeplaxmi Builders comes under definition of promoter under RERA?	Affirmative.
c. Whether it is necessary to direct the respondents to add M/s. Deeplaxmi Builders as promoters?	Affirmative.

#### REASONS

5. The Real Estate (Regulation and Development) Act, 2016 has been enacted for regulation and promotion of real estate sector in efficient and transparent manner. It is also brought with the object to protect interest of the consumers in the Real Estate Sector and to establish a mechanism for speedy dispute redressal. It also established the Real Estate Regulatory Authority for the regulation and the promotion of Real Estate Sector. The Act makes it compulsory to register eligible projects with the Real Estate Regulatory Authority by furnishing all the necessary information by putting it on the website of the Authority for public view. From this point of view, therefore, section 4 of RERA makes it necessary to furnish brief details of the enterprises including its name and the name and photographs of the promoter.

6. Section 2 (zk) defines promoter as under:

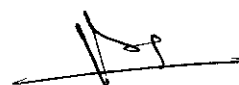
*" (i) a person who constructs or causes to be constructed an independent building or abuilding consisting of apartments, or converts an existing building or a part thereof into apartments, for the purpose of selling all or some of the apartments to other persons and includes his assignees; or*



- (ii) *a person who develops land into a project, whether or not the person also constructs structures on any of the plots, for the purpose of selling to other persons all or some of the plots in the said project, whether with or without structures thereon; or*
- (iii) *any development authority or any other public body in respect of allottees of –*
- (a) Buildings or apartments, as the case may be, constructed by such authority or body on lands owned by them or placed at their disposal by the Government; or*
  - (b) Plots owned by such authority or body or placed at their disposal by the Government; for the purpose of selling all or some of the apartments or plots, or*
- (iv) *an Apex State level co-operative housing finance society and a primary co-operative housing society which constructs apartments or buildings for its Members or in respect of the allottees of such apartments or buildings; or*
- (v) *any other person who acts himself as a builder, coloniser, contractor, developer, estate developer or by any other name or claims to be acting as the holder of a power of attorney from the owner of the land on which the building or apartment is constructed or plot is develop for sale; or*
- (vi) *Such other person who constructs any building or apartment for sale to the general public. “*

*Explanation. – For the purposes of this clause, where the person who constructs or converts a building into apartments or develops a plot for sale and the persons who sells apartments or plots are different persons, both of them shall be deemed to be the promoters and shall be jointly liable as such for the functions and responsibilities specified, under this Act or the rules and regulations made thereunder;*

7. It is the responsibility of the Real Estate Regulatory Authority to see that all the eligible real estate projects contemplated by section 3 are registered, and all information mentioned in section 4 of the Act relating to



them are furnished and displayed on its website for public view. Non-compliance of section 4 invites the penalty under section 60 of the Act and this can be done by the Authority only. Section 79 of the Act provides that the jurisdiction of the Civil Court is barred in respect of any matter which the authority or adjudicating officer or the appellate tribunal is empowered by or under this Act to determine. In view of these provisions, I find that it is the jurisdiction of the Real Estate Regulatory Authority alone to decide as to who is the promoter of the project for the purpose of registration of the project and his name being displayed on the official website of the Authority for public view. Hence, this is exclusive jurisdiction of MahaRERA. Therefore, I do not agree with the learned Advocate of the Respondents when he submits that only because the civil dispute is pending between the parties, MahaRERA has no jurisdiction to decide as who is the promoter of the registered project and to issue necessary directions. I Maintain, MahaRERA does not enter in the arena of civil dispute lying between the promoters as civil court alone has jurisdiction to do so.

8. Now, the next question is, whether M/s. Deeplaxmi Builders comes under the definition of promoter. For this purpose, one has to look at the joint venture agreement entered into by the respondents with M/s. Deeplaxmi Builders dated 1<sup>st</sup> May 2006. On its perusal, it becomes clear that the parties have agreed that the respondents shall obtain necessary permission for demolition of existing buildings and for their development. In clause 10 itself, they have agreed that it shall be the sole responsibility of M/s. Deeplaxmi Builders to complete the entire project at its own cost. They also agreed as to how the money arising out of sale of units would be shared by them. The complainants have also produced Index-II of the 12 agreements of sale executed by M/s. Deeplaxmi Builders to show that they acted as promoter and sold 12 units of the project. Considering these facts, there remains no doubt, in my opinion that the respondents and M/s.



Deeplaxmi Builders jointly ventured to complete the project. Therefore, they are covered by the definition of promoter. Admittedly, the respondents have not added M/s. Deeplaxmi Builders as promoter.

9. The respondents have made an attempt to show that M/s. Deeplaxmi Builders, a partnership firm has been dissolved as one of the partners of M/s. Deeplaxmi Builders namely Mr. Balwant Doshi by his letter dated 06.10.2017 dissolved M/s. Deeplaxmi Builders, it being partnership firm at will. On perusal, of the Deed of Partnership Firm, I find that it was the partnership firm at will. Clause 5 thereof makes it clear that if any partner desires to retire from the partnership he shall be at liberty to do so by giving two months' notice in writing to the other partners. Therefore, M/s. Deeplaxmi Firm can be said to be dissolved only on 05.12.2017. It means that on the day of the registration of the project M/s. Deeplaxmi Builders existed. Hence, it was necessary to mention its name as promoter while registering the project. The law will take its own course and the effect of dissolution can be assessed as per the provisions of the Indian Partnership Act. However, it does not prevent this Authority from directing to the Respondents to mention the name of M/s. Deeplaxmi Builders as the promoters.

10. There are certain other issues regarding the incorrect information provided by the respondents while registering the project. I find that once the name of M/s. Deeplaxmi Builders shall be uploaded as promoter, it will be necessary to upload the joint venture agreement entered into by the parties. As Mr. Yogendra Doshi has expired, it is necessary to delete his name as partner of the respondents. The parties are required to sit and sort out their differences so far as the information of the project to be uploaded is concerned. They have to take care and to see that only true and necessary information of their project is put in a public domain including the number of units and their size, the number of units sold and the name of the engineer also. However, I do not agree with the complainants that the



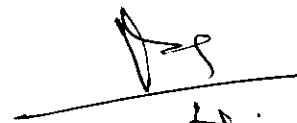
complaint filed in the Court of Magistrate in which the enquiry under section 202 of Code of Criminal Procedure has been ordered needs to be uploaded as it is not the pending case yet. With these observations, the following order.

### ORDER

1. The respondents shall upload the name of M/s. Deeplaxmi Builders as promoter and shall upload the necessary information regarding its partners and display their photographs. The complainants shall co-operate with the Respondents for the same.
2. The respondents shall upload the joint venture agreement, entered into by it with the M/s. Deeplaxmi Builders.
3. Both the parties shall sit together and shall sort out their dispute with regard to true and correct information of their project to be uploaded/corrected in respect of the name of the engineer, number of units, their size, number of the sold units etc.
4. Name of Yogendra Doshi be deleted as their partner, since he has expired.
5. This order is being passed without prejudice to the rights of the parties to get their Civil Dispute resolved before appropriate forum.

Mumbai.

Date: 04.01.2018.



24.1.18

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