

BEFORE THE
MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY
MUMBAI

1. SOURCE COMPLAINT NO. SC10000669

Ramesh H. Hiranandani

.... Complainant

Versus

S D Bhalerao

.... Respondent

2. SOURCE COMPLAINT NO. SC10001102

Bhoopal Jagannath Shinde

... Complainant

Versus

Monish Builder

... Respondent

3. SOURCE COMPLAINT NO. SC10001223

Bhoopal Jagannath Shinde

... Complainant

Versus

Monish Builder

... Respondent

Coram: Shri Gautam Chatterjee, Chairperson, MahaRERA

Complainants were represented through Mr. Om Bhanushali, Adv.

Respondent in Complaint No. 1 did not appear.

Respondent No. 2 and 3 were represented through Mr. Kishor, Authorized Representative.

Order

June 13, 2019

1. The present complaint pertains to non-registration of a stalled project named 'Mohan Mansion' situated at Village: Bhosari, District: Mumbai City taken on CTS No. 621. The Learned Counsel for the Complainants have stated that the Complainants have booked apartments on 10th and 11th floors respectively, whose construction is now stalled since last

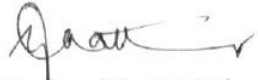


few years. He further stated that even after paying a substantial consideration amount, the construction work has stopped after completing till 9th floor. It is the contention of the Complainants that though the Respondent is under obligation to register the project in accordance with the provisions of Real Estate (Regulation & Development) Act, 2016 (*hereinafter referred to as the said Act*), he has not registered the same and therefore they are praying that appropriate directions be issued to the Respondent to register the project.

2. The Authorised Representative of Respondent submitted that he has completed the construction of the building up to the 9th floor. Also, allottees in the said phase of the building have taken possession. Further, he submitted that the said building up to the 9th floor was not required to be registered with MahaRERA as it had been completed and occupied much prior to the commencement of the said Act. Further, he added that for the construction of the 10th floor; he has applied for the Commencement Certificate to the Competent Planning Authority but he is yet to obtain the same. Further, he added that the Respondent is willing to refund the consideration paid by the allottees for the apartments yet to be constructed.
3. On the background explained above, it is necessary to consider whether the respondent can be directed to register the project in accordance with the provisions of the said Act and rules and regulations made thereunder.
4. In the explanation below Section 3, it has been stated that where the real estate project is to be developed in phases, every such phase shall be considered a stand-alone real estate project and the promoter shall obtain registration under the Act for each phase separately.
5. Rule 2(p) of the Maharashtra Real Estate (Regulation and Development) (Registration of Projects, Agents, Rates of Interest and Disclosures on Website) Rules, 2017 (*hereinafter called as the said Rules*) defines a phase of a Real Estate Project as consisting of a building or wing of a building with multiple wings or defined floors in a multi storeyed building/wing. Further, Rule 4(1) of the *said Rules* states that the promoter of an ongoing real estate project, in which all buildings as per sanctioned plan have not received occupancy or completion certificate, as the case may be, as provided by clause (b) of sub-section (2) of Section 3 of the Act, shall be required to submit application for registration of each such phase of the project, within a period of three months from the date of commencement of Section 3.



6. From the above, it is clear that the promoter has completed the phase of the real estate project comprising 9 floors by completing the development as mandated by the competent planning authority and the same is occupied by the allottees prior to the enactment of the Act. Therefore, the said phase of the real estate project has ceased to be a project and has become a developed phase of the building. Therefore, no directions can be issued to the Respondent/ Promoter to register the said phase of the project as per the relevant provisions of the said Act and Rules.
7. 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) (c) and (d) of the said Act, it is obligatory on the part of the promoter to enclose along with the application for registration, the authenticated copy of the approvals and commencement certificate, sanctioned plan, layout plan, etc. from the competent authority.
8. Since the Respondent does not have approvals as mentioned above in para 7 for the floors yet to be constructed, no directions can be issued to the Respondent to register the same, at this stage. However, the Respondent shall apply for MahaRERA registration within 30 days of them obtaining the valid approvals.
9. It was also explained that as stated in Para 86 of the judgment 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 complaint for registration of the project stands disposed of.


(Gautam Chatterjee)
Chairperson, MahaRERA