

BEFORE THE MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY
MUMBAI

SOURCE COMPLAINT NO. SC10001557

Vijay Rebello Complainant

Versus

Aashna Construction Company ... Respondent

Coram: Shri. Gautam Chatterjee, Chairperson, MahaRERA

Complainant was represented by Mr. Demis Lopes, Authorised representative.
Respondent did not appear.

Order

September 20, 2019

1. The present complaint pertains to non-registration of the building and some proposed floors of the said building, named 'Dattakrupa' situated at Borivali, District: Mumbai Suburban. The Complainant has stated that he is an allottee of the said project via an allotment letter for an apartment situated on the sixth floor. He further stated that the Respondent has constructed only 4 floors, out of the initially proposed total 7 floors, and the four floor constructed has been occupied, without the Occupancy Certificate (OC) from the concerned planning authority, till date. It is the contention of the Complainant that though 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 not registered the same. Therefore, he is praying that appropriate directions be issued to register the project.
2. The Respondent did not appear, in spite service of notice to the address provided by the Complainant.



3. During the course of the hearing, it transpired that the Promoter-Respondent does not have valid approvals for floors beyond the first four floors and therefore, no construction beyond four floors has taken place.
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.


Under explanation, it has been clarified that if a project is developed in phases, each phase is considered a stand-alone project.

6. From the above, it is clear that the Promoter has physically completed the phase of the real estate project consisting of the first four floors 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 said phase of the real estate project consisting of the first four floors has ceased to be a project and has become a developed phase of the building.
7. Moreover, since the Respondent does not have approvals like IOD and CC for apartments proposed above the fourth floor, they cannot register the said phase consisting of the floors above the fourth floor. 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 or its phase 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. The completed four floors of 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. The proposed floors above the fourth floor can only be treated as a proposed phase of real estate project which has yet to get building plan approvals. 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 Complainant has not been gone into. The Complainant has 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