

LEGAL ALERT

COMPLETED PROJECTS WITHOUT COMPLETION CERTIFICATE WILL HAVE TO REGISTER WITH MAHARERA

Through Final Order passed against Complaint No. CC00500000000135, dated 5th February 2018, the Maharashtra Real Estate Regulatory Authority, has passed an order in the case of

Parag Pratap Mantri (Complainant) Vs. Green Space Developers (Respondent)

FACTS OF THE CASE

- The complainant had booked Flat No. E-001 situated in respondent's **Angel Hill Project** situated at Talegaon, Dabhole, Dist. Pune and has been **residing therein from last 4 years.**
- The respondents have **registered only H wing** of the project with MahaRERA as according to them its construction is under way.
- 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.
- 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.
- 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.
- The **project is started before RERA** came into force and it is still incomplete to some extent.

ISSUE CONSIDERED

Sr No	Issues	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 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

FINAL ORDER

Whether E wing/ building is on-going project?

- The Adjudicating Authority (AA) referring to Section 3 of RERA opined that 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.
- Further, for application of Section 3, both the clauses namely
 - 3) ongoing /incomplete project on the date of commencement of the Act and
 - 4)for which the completion certificate has not been issued must co-exist.
- Since, 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; AA concluded that E-Wing is an ongoing project on the date of commencement of the RERA and hence, eligible for registration.

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

- 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.
- AA clarified that 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; however, respondents have simply entered into the agreements for sale and have not executed the sale deeds / conveyance deeds as yet.
- AA referring to **Section 54 of Transfer of Property Act**, where sale is being defined, opined that the sale is transfer of ownership in which the price is paid or promised or partly paid or partly promised.
- Further, 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.
- Furthermore, **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 77 of RERA; this process of sale and it is yet to take place.
- In the absence of registration of the project if respondent executes such **sale/conveyance it will become illegal** and contrary to the law in view of Section 10 of the Indian Contract Act and therefore, it shall be **void ab-initio**.
- The AA, stated that the **allottees have various remedies** under RERA, however, same can be **claimed only when the project is either registered with RERA or 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.
- Even though, 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, **RERA 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.**
- Hence, the AA concluded that the respondents cannot escape from their liability to register their project.

Whether allottee can complain contravention Section 3 of RERA?

- AA opined 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, u/s 31 of RERA, 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.

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

- 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.
- Therefore, 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, these buildings are also eligible for registration u/s 3 of the Act.

Penalty

- Taking a lenient view, AA directed the respondents to register their project and to pay penalty of Rs. 50,000/-

SPCM's Comments

- The MahaRERA Authority has been very efficient in its working, which is evident by the recent introduction of Conciliation and Dispute Resolution Forum and the above case-law.
- Even though the AA acknowledged that there was a confusion created by the MahaRERA office with respect to Registration of On-Going projects, this case laws puts almost all the issues to rest.

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