

**BEFORE THE MAHARASHTRA REAL ESTATE
APPELLATE TRIBUNAL, MUMBAI**

**Appeal No. U-8/2021
In
SC10002323**

Inorbit Malls (India) Pvt. Ltd.
Raheja Towers, Plot No. C-30,
Block G, Opposite SIDBI,
Bandra Kurla Complex, Bandra (East),
Mumbai-400 051

Cavalcade Properties Private Limited

Raheja Towers, Plot No. C-30,
Block G, Opposite SIDBI,
Bandra Kurla Complex, Bandra (East),
Mumbai-400 051

Through its Authorised Signatory - Mr. Jayant Gosavi ... Appellant

Versus

Shitalkumar Bhagchand Jadhav

Vitthalo Chhaya, 664, Ghorpade Peth,
Khadakmal Ali Pune

... Respondent



*Adv. Mr. Sureshkumar R. Firodiya for Appellant
Adv. Ms. Priya Nawale for Respondent*

CORAM : SHRIRAM R. JAGTAP, MEMBER (J) &
DR. K. SHIVAJI, MEMBER (A)

DATE : 6th February, 2024

(THROUGH VIDEO CONFERENCING)

JUDGMENT

[PER : SHRIRAM R. JAGTAP (J)]

This Appeal arises out of the Order dated 16.07.2021 passed by the learned Chairperson, MahaRERA (for short the Authority) in SC10002323 whereby the learned Authority imposed penalty of INR 50,000/- on account of violation of provision of Section 3 of Real Estate (Regulation and Development) Authority RERA, Act, 2016 on the Promoter.

2] For the sake of convenience parties to the Appeal will hereinafter be referred to as "Promoter" and "Complainant".

3] The factual matrix of the complaint and giving rise to appeal is that the Promoter undertook the Project namely "**Raheja Vistas F5 Phase III**" situated at Survey No.38 Hissa No. 1C & others, Village Mohammedwadi, Pune. The land area of the project is more than 500



sq. mt. The number of units is also more than 8. The Promoter did not obtain the Completion Certificate on the date of commencement of RERA Act, 2016. The subject project being an on-going project, as contemplated under Section 3 of RERA, the Promoter was required to register the project with MahaRERA within a period of 3 months. Despite this, the Promoter has not registered the subject project with MahaRERA and thereby violated the provision of Section 3 of RERA Act, 2016. This conduct of Promoter redound to file Source Complaint by Complainant.

4] After hearing the Complaint, the learned Authority was pleased to pass the Order in Source Complaint and imposed penalty of INR 50,000/- on account of violation of provision of Section 3 of RERA, Act, 2016 on the Promoter.

5] We have heard learned counsel appearing for respective parties. The submissions advanced by Advocate Mr. Sureshkumar R. Firodiya for Promoter/ Appellant are nothing but reiteration of the contents of Appeal memo. The gist of submissions of Advocate Mr. Sureshkumar R. Firodiya for Appellant/ Promoter is that the subject project was launched by Appellant/ Promoter. Survey no.

38/1C+42/5+6A+8+9+10 situated at Village Mohammedwadi, Pune has been sub-divided into plot Nos. A and B, and the Appellant has demarcated an area admeasuring 11,375.35 sq. mt. from and out of the said Plot No. A being a portion of the larger property. Cavalcade Properties Pvt. Ltd. (for short CPPL) and the Promoter have developed the said land in phase-wise manner. Building Nos.F1, F2, F3, F4, G1 and G2 have been developed by CPPL whereas Building No.F5 has been developed by Appellant herein on the said land.

6] Learned Advocate Mr. Sureshkumar R. Firodiya further submits that Building No.F5, which is the subject matter of this Appeal, consists of total 43 units. The Appellant had received Occupancy Certificate (OC) for 42 units out of the 43 units on 21.10.2014 from Pune Municipal Corporation. The Appellant has received OC for the 43rd unit from concerned authority on 10.07.2017. It is significant to note that all the flats in Building No.F5 have long back been completed, sold and delivered into possession of their respective purchasers under the registered instruments much prior to the commencement of the RERA Act, 2016. However, only one residential flat bearing No.1103 admeasuring 55.60 sq. mt. (594.48 sq. ft.) carpet area located on the

11th floor of Building No.F5, remained to be sold, while its OC, has been issued by the Municipal Corporation, Pune, on 10.07.2017 i.e. within 3 months of commencement of RERA Act, 2016. Therefore, registration of Building F5 was not required to be done with MahaRERA as an on-going project. Besides no notice of the Source Complaint was issued and or served on the Promoter either by regular post or through e-mail or otherwise. The learned Authority has decided the Source Complaint without giving sufficient opportunity of being heard to the Respondent. Learned Authority did not consider the fact that Promoter has already received the completion certificate for 42 units out of the 43 units and within the window of 3 months, the Promoter has received completion certificate with respect to the 43rd unit. Therefore, there is no violation of provision of Section 3 of RERA Act, 2016. Learned Advocate has placed his reliance on the following citations:

- i. **Macrotech Developers Ltd. Vs. State of Maharashtra** [2021 (3) BCR]
- ii. **Atlantis IT Solutions Pvt. Ltd. Vs. Macrotech Developers Ltd.** [Appeal No.AT006000000052431 delivered by the Tribunal]



iii. **Ahmedsahab (Dead) by LR& Ors. Vs. Sayyed Ismail**

[2016(6) MLJ 503]

7] With these contentions, learned Advocate Mr. Sureshkumar R. Firodiya for Appellant submitted that the Appeal be allowed and the impugned order be set aside.

8] Learned Advocate Ms. Priya Nawale for Complainant/ Respondent has submitted that the reply filed by Complainant to Appeal be considered as written submissions and also oral submissions of the Respondent/ Complaint. She has further submitted that the Respondent/ Complainant does not want to make oral submissions.

9] After considering the submissions advanced by the learned Advocate for the respective parties and material on record, only point that arises for our consideration is whether the impugned Order warrants for interreference in this Appeal? To which our answer is in the affirmative for the reasons to follow.

REASONS

10] It is not in dispute that the Appellant had undertaken the project namely "**Raheja Vistas F5 Phase III**". The land area of the

project is more than 500 sq. mt. The project consisted of 43 units. According to Complainant since the land area of the project is more than 500 sq. mt. and the number of units is also more than 8, and the subject project being ongoing project, the Promoter was supposed to register the project with MahaRERA within a period of 3 months as per provisions of Section 3 of RERA. Despite this Promoter has not registered subject project with MahaRERA and thereby violated the provisions of Section 3 of RERA, 2016.

11] The record reveals that no opportunity of being heard was extended to the Appellant. Impugned order itself shows that at the time of hearing Respondent was absent. It means there is sheer violation of the principle of natural justice. On this score also the impugned order warrants interference in this Appeal. However, there are further reasons which entail us to consider legality and propriety of the impugned order.

12] Appellant claims that the CPPL and the Promoter (Appellant) have developed the land in question in phase wise manner. CPPL has

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constructed building Nos. F1 to F4, G1 and G2 whereas Appellant has developed/constructed building No. F5.

13] It is further contention of the Appellant that the Appellant had received Occupancy Certificate for 42 units out of 43 units on 21.10.2014 from Pune Municipal Corporation much prior to commencement of RERA, 2016. The Appellant has received OC for 43rd Unit from concerned Authority on 10.7.2017 i.e. within 3 months of commencement of RERA, 2016 and therefore the subject project was not required to register with MahaRERA. It is significant to note that the Complainant has not disputed the fact that the project was consisting of 43 Units and the Appellant had obtained OC for 42 Units out of 43 Units on 21.10.2014.

14] Section 3 of RERA, 2016 talks about prior registration of Real Estate Project with Real Estate Regulatory Authority. Proviso to Section 3(1) of RERA, 2016 provides that "*Projects that are ongoing on the date of commencement of the Act and 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 RERA Act, 2016."

It means Proviso to Section 3 gives an opportunity to "ongoing Real Estate Projects" to register themselves under the RERA, 2016 with MahaRERA. For this, window of three months is provided.

15] We would like to reiterate that it is not in dispute that the subject Project was consisting of 43 Units, out of which Appellant had received occupancy certificate for 42 Units on 21.10.2014 from Pune Municipal Corporation. The Appellant has also received occupation Certificate for the 43rd Unit on 10.7.2017. It means though the Project was ongoing on the date of commencement of RERA, 2016, the Appellant has successfully completed the project and obtained Occupancy Certificate on 10.7.2017 within the period of 3 months from the date of commencement of RERA Act, 2016. It means subject project is squarely covered by proviso to Section 3 of RERA Act, 2016. The Hon'ble Bombay High Court in a case of **Macrotech Developers Limited V. State of Maharashtra reported in 2021 (3) BOM CR**



295 :: AIRONLINE 2021 BOM 5959 has held in paragraph Nos. 54 to 61 of the said Judgement as follows:

"54. It would appear from the definition of 'building' in Section 2U), that a building includes a part of structure or erection which is intended to be used for residential or commercial purposes. Further, from the definition of project and Real Estate Project under Section 2U) and 2(zn), it is apparent that a Real Estate Project means development of a building consisting of apartments for the purpose of selling of some of the said apartments and includes the common areas. It is further apparent from Rule 2(p) of the Registration Rules which defines phase of a Real Estate Project, that a phase would also consist of defined number of floors in a multi storied building or wing. These definitions assumes importance in the interpretation of Section 3 of the Act. From the opening of Section (3) (1), the disability resulting from a failure to register has been provided and which is that a promoter shall not advertise, market, book, sell or offer for sell any building or apartment or any part of it in any Real Estate Project without registering the Real Estate Project with the authority.

Thereafter in the first proviso in Section 3 (i) it is stated that the projects which are ongoing on the date of commencement of the Act, and for which the completion certificate has not be issued, the promoter shall make an application to the Authority for registration of the project within a period of three months from the date of commencement of the Act. Thus, there is a window created of three months from the date of commencement of the Act. (read as three months from the date of commencement of Section 3 as per Rule 4 (1) of the Registration Rules).



Under Section 3(2) there is non - obstantive clause which provides circumstances where no registration of a Real Estate Project shall be required. Section 3(2) (b) indicates one such circumstance, that is where the project has received completion certificate for a Real Estate Project prior to the commencement of the Act. The Explanation in Section 3 is relevant and which says that for the purpose of this Section, where the Real Estate Project is to be developed in phases, every such phase shall be considered as a stand alone Real Estate Project and the promoter shall obtain registration under this Act for each phase separately. Section 4(2) (i) throws light on the interpretation of Section 3 as it provides for a declaration to be submitted by the Promoter supported by an Affidavit stating the time period within which it undertakes to complete the project or phase thereof as the case may be. Section 5(3) states that registration granted under the Section shall be valid for the period declared by the promoter under Section 4(2) (1) (c) for completion of the project or phase thereof.

55. Thus, from the plain language of Section 3(1) it is clear that registration must be in respect of any Real Estate Project or part of it. The window of three months in the first proviso of Section (3) (1) makes it clear that in so far as ongoing projects are concerned, the promoter has been given the said window of three months within which he can apply for registration of the said ongoing project. **The ongoing project would be a Real Estate Project and / or a phase of the project which would require registration during the three months window after the commencement of Section 3 of the Act i.e. 1st May 2017.** Section 3(2) (b) would apply only to completed projects that have received the completion certificate before the commencement

of the Act and thus entitled to exemption from registration. Thus, there is a clear distinction made between the projects 'that are ongoing projects' and 'projects which have received completion certificate before commencement of the Act'. The Real Estate Project or part of it which receives a part occupancy certificate during the three month window denotes its completion and upon completion would not require to be registered. There is no substance in the submission of the learned Counsel for the Respondents / Complainants that the part occupancy certificate issued in the present case did not denote completion of that phase of the project and was only a conditional part occupancy certificate. We accept the submission of the learned Senior Counsel for the Petitioners that the scope of the proviso to Section 3 (1) and Section 3 (2) (b) can never be the same or overlapping and that would amount to or attributing surplusage to legislature which could never have been the intention.

56. Under Rule 4 (1), the promoter of the ongoing Real Estate Project, where all building as per sanction plan have not received occupancy certificate or completion certificate, as the case may be, prior to the commencement of the Act as provided **by sub-Section 2 (b) of Section 3 is required to submit an application for registration for each such phase of the project within a period of three months from the date of commencement certificate of Section 3.** Thus, the words 'each such phase of the project' would include a building or part thereof i.e. number of floors in a multi-storey building / wing. **This cannot be given a restricted meaning as 'entire building' as sought to be contended by the learned Counsel for the Respondents/ Complainants.**



57. *The learned Counsel for the Respondents/ Complainants appears to have placed reliance on the Explanation to Rule 4 (1) of the Registration Rules in support of its interpretation of Rule 4 (1) of the Registration Rules. According to the learned Counsel for the Respondents / Complainants, the Explanation to Rule 4 (1) makes it clear that for ongoing projects 'the entire building' would require registration and not part of the building. However, this interpretation would be contrary to the plain language of Rule 4 of the Registration Rules read with the Explanation to Rule 4(1). It is apparent therefrom that the phase of a project means the building or buildings in a project in respect of which the occupancy or completion certificate has not been received. It is clear from the definition of building under the Act that it includes any structure or erection or part of a structure or erection which is intended to be used for residential, commercial or for the purpose of any business occupation, profession or trade or for any other related purpose. Thus, the word 'building' in Rule 4 (1) and in the Explanation thereof has to be read in conformity with the definition of building under the Act. Thus, including a part of a building.*

58. *Section 3 of the Act read with Rule 4(1) of the Registration Rules must be interpreted harmoniously with related provisions and cannot be looked in isolation as sought to be done by the complainants whilst interpreting Rule 4 (1) of the Registration Rules. The decisions of the Supreme Court in Eera through Dr. Manjula Krippendorf {Supra} and New India Assurance Company Ltd. {Supra} relied upon by the learned Senior Counsel for the Petitioner and which lay down the principles of interpretation of provisions of the Act are to be borne in mind whilst interpreting these provisions under the Act and Registration Rules.*

59. Further, the tenor of Rule 4 (2) and 4(3) in respect of any part or phase which is registered is the making of a disclosure of what has been completed or what is yet to be completed. Rule 4(4) indicates that upon registration, the balance construction or development must be in accordance with sanctioned plans. These Rules would have no meaning if what is registered is a completed Real Estate Project or part or phase, thereof which completion is evidenced by a completion certificate as defined in Explanation II to Section 4(1) of the Act.

60. Learned Senior Counsel for the Petitioners has relied upon the Authorities Website which contains the FAQs to assist all shareholders in the understanding and implementation of the Act and Registration Rules. **The relevant FAQ i.e. Q.11, where a specific query has been put viz. "if occupancy certificate / building completion certificate is issued in May/ June / July does the project has to be registered?" Has been answered to the affirmative by stating that "ongoing projects have time till 30th July to register. If before doing registration, the project has got an occupancy certificate/ building completion certificate, the project has been completed as per Section 5 (3) of the Act. Hence, it does not require registration." It would thus be apparent from the Authority under the Act that registration will not be required if the part occupancy certificate has been validly issued under the MR & TP Act / DC Regulations, 1991 in respect of that part or phase before 31st July 2017.**

61. This Court in Neelkamal {Supra} has in paragraphs 89 and 90 with respect to the analysis of the Act has held as under:-

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"89. On behalf of the petitioners it was submitted that registration of ongoing project under RERA would be contrary to the contractual rights os- wp-2737-17 & ors- RERA-JT.doc established between the promoter and allottee under the agreement for sale executed prior to registration under RERA. In that sense, the provisions have retrospective or retroactive application. After assessing, we find that the projects already completed are not in any way affected and, therefore, no vested or accrued rights are getting affected by RERA. The RERA will apply after getting the project registered. In that sense, the application of RERA is prospective in nature. What the provisions envisage is that a promoter of a project which is not complete/ sans completion certificate shall get the project registered under RERA, but, while getting project registered, promoter is entitled to prescribe afresh time limit for getting the remaining development work completed. From the scheme of RERA and the subject case laws cited above, we do not find that first proviso to Section 3/1 J is violative of Article 14 or Article 19/1 JfqJ of the Constitution of India. The Parliament is competent to enact a law affecting the antecedent events. In the case of State of Bombay vs. Vishnu Ramchandra {Supra}, the Apex Court observed that the fact that part of the requisites for operation of the statute were drawn from a time antecedent to its passing did not make the statute retrospective so long as the action was taken after the



Act came into force. The consequences for breach of such obligations under RERA are prospective in operation. In os-wp-2737-17 & ors RERA-JT.doc case ongoing projects, of which completion certificates were not obtained, were not to be covered under RERA, then there was likelihood of classifications in respect of undeveloped ongoing project and the new project to be commenced. In view of the material collected by the Standing Committee and the Select Committee and as discussed on the Floor of the Parliament, it was thought Fit that ongoing project shall also be made to be registered under RERA. The Parliament Felt the need because it was noticed that all over the country in large number of projects the allottees did not get possession for years together. Huge sums of money of the allottees is locked in. Sizable section of allottees had invested their hard earned money, life savings, borrowed money, money obtained through loan from various financial institutions with a hope that sooner or later they would get possession of their apartment/flat/unit. There was no law regulating the real estate sector, development work/obligations of promoter and the allottee. Therefore, the Parliament considered it to pass a central law on the subject. During the course of hearing, it was brought to notice that in the State of Maharashtra a law i.e. MOFA on the subject has been in operation. But MOFA provisions are not akin to regulatory provisions of RERA.



90. The important provisions like Sections 3 to 19, 40,59 to 70 and 79 to 80 were notified for operation from 1/5/2017. RERA law was enacted in the year 2016. The Central Government did not make any haste to implement these provisions at one and the same time, but the provisions were made applicable thoughtfully and phase-wise. Considering the scheme of RERA, object and purpose for which it is enacted in the larger public interest, we do not find that challenge on the ground that it violates rights of the petitioners under Articles 14 and 19(1)(g) stand to reason. Merely because sale and purchase agreement was entered into by the promoter prior to coming into force of RERA does not make the application of enactment retrospective in nature. The RERA was passed because it was felt that several promoters had defaulted and such defaults had taken place prior to coming into force of RERA. In the affidavit-in- reply, the UOI had stated that in the State of Maharashtra 12608 ongoing projects have been registered, while 806 new projects have been registered. This figure itself would justify the registration of ongoing projects for regulating the development work of such projects."

- 16] In view of the above preposition of Law laid down by the Hon'ble Bombay High Court, it is now settled that in case of ongoing projects where part Occupation Certificate is received within a window

of 3 months from the date of commencement of Section 3 of RERA i.e. 1st May, 2017 then registration of project or phase thereof is not required. In the instant case also as indicated above, it is not in dispute that the Appellant has already received Occupancy Certificate for 42 Units on 21.10.2014 prior to commencement of RERA Act, 2016. Apart from this, the Appellant has also received Occupancy Certificate for 43rd Unit from concerned Authority on 10.7.2017. It means the Appellant has successfully completed the project within the period of 3 months from the date of commencement of RERA Act, 2016.

17] It is further case of Appellant that the Appellant has already sold 42 flats and delivered the possession of said flats to respective purchasers under the registered agreement for sale much prior to the commencement of RERA Act, 2016. Considering the peculiar facts and circumstances of the case we are of the view that the impugned order warrants for interference in this Appeal. The impugned order is not sustainable in Law and requires to be set aside. Consequently, we proceed to pass the following order.



ORDER

- 1] Appeal No. U-8/ 2021 is partly allowed.
- 2] Impugned order dated 16.7.2021 passed by the learned Chairperson, MahaRERA in SC10002323 is set aside.
- 3] Complaint No. SC10002323 is dismissed.
- 4] Parties to bear their own costs.
- 5] Copy of this Order be communicated to the Authority and the respective parties as per Section 44(4) of RERA, 2016.


(DR. K SHIVAJI)


(SHRIRAM R. JAGTAP)

MBT/