

**BEFORE THE MAHARASHTRA
REAL ESTATE REGULATORY AUTHORITY, MUMBAI**

Physical Hearing @3.30pm

SUO-MOTU CASE NO.220 OF 2022

VARDHMAN ENCLAVE PHASE 1
VIKUNJ ENTERPRISES PVT. LTD.

...PROJECT NAME
...PROMOTER NAME

MAHARERA PROIJECT REGTSTRATTON NO. P51800012208

a/w

VARDHMAN PEARL
DIWALI DEVELOPERS

...PROJECT NAME
...PROMOTER NAME

MAHARERA PROIJECT REGISTRATTON NO. P51800032809

Order

August 05, 2022

(Date of hearing – 28.04.2022 – matter was reserved for order)

Coram: Shri. Ajoy Mehta, Chairperson, MahaRERA
Advocate Tanuj Lodha for Vikunj Enterprises Pvt. Ltd.
Advocate Nilesh Gala for Diwali Developers
Advocate Kunal Maskar a/w Anil D'souza for the Society,
Mumbadevi Malad Cooperative Housing Society Ltd.

1. The captioned Suo-Motu case is not a complaint but an application for revocation of double MahaRERA project registration by the first Promoter sought for the same real estate project. This is a regulatory matter and since the said application has been objected to by the subsequent Promoter, MahaRERA in exercise of its powers under the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as the "**said Act**") deems it fit to hear the subsequent Promoter while deciding the aforesaid application.
2. The Promoter namely Vikunj Enterprises Pvt. Ltd. is the first Promoter (hereinafter referred to as the "**said first Promoter**") and the Promoter namely Diwali Developers is the subsequent Promoter (hereinafter referred to as the

“**said subsequent Promoter**”) within the meaning of Section 2 (zk) of the said Act and Mumbadevi Malad Co-operative Housing Society Ltd. is the Co-operative Housing Society (hereinafter referred to as the “**said Society**”) and also the land owners of the plot bearing / CTS / Survey / final plot No.: 628, 628/1 to 49 at Borivali, Mumbai Suburban, 400064 (hereinafter referred to as the “**said Property**”). The said first Promoter has registered the redevelopment project “VARDHMAN ENCLAVE PHASE 1” under section 5 of the said Act bearing **MAHARERA Project Registration No. P51800012208** (hereinafter referred to as the “**said Project No.1**”). The said subsequent Promoter has registered the redevelopment project “VARDHMAN PEARL” under section 5 of the said Act bearing **MAHARERA Project Registration No. P51800032809** (hereinafter referred to as the “**said Project No.2**”).

3. Further from the MahaRERA Project registration webpage the following Project registration details are noteworthy against both the said Project Nos. 1 & 2:

PROJECT NOS.	DATES	DETAILS on MAHaRERA webpage
1. P51800012208	31.07.2017 01.09.2017 31.03.2017 30.06.2019 29.12.2020 Project Status Co-Promoter name Total number of floors / wings Total number of apartments Total number of apartments booked	Application for registration Registration Certificate issued Proposed completion date Revised completion date Extended completion date On-Going Project The said subsequent Promoter herein 19/Wing A 37 12
2. P51800032809	11.11.2021 29.01.2022 31.12.2024 Project Status Co-Promoter name Total number of floors / wings Total number of apartments Total number of apartments booked	Application for registration Registration Certificate issued Proposed completion date New Project The said Society herein 23/NA 109 0

4. The following pleadings (*date wise*) are filed by the said first and the subsequent Promoters which are all taken on record by this Authority:

SR. NO.	DATE	NATURE OF PLEADINGS	FILED BY
1.	21.02.2022	Application for revocation of subsequent MahaRERA Project registration for said Project No.2	The said first Promoter
2.	12.04.2022	Application on maintainability of captioned case	The said subsequent Promoter
3.	21.04.2022	Written submissions	The said Society
4.	22.04.2022	Reply to application on maintainability of captioned case	The said first Promoter
5.	22.04.2022	Written submissions	The said first Promoter
6.	26.04.2022	Written submissions	The said subsequent Promoter
7.	27.06.2022	Counter complaint to declare said Project No.1 as null and void	The said subsequent Promoter
8.	27.04.2022	Reply to written submissions of the said Society	The said first Promoter
9.	10.05.2022	Reply to counter complaint	The said first Promoter

5. The following reliefs are sought by the said first and the subsequent Promoters:

BY PROMOTERS	RELIEFS SOUGHT
The said first Promoter	<p><i>"a. MahaRERA registration certificate bearing No. P51800032809 should be immediately revoked/ cancelled.</i></p> <p><i>b. MahaRERA should investigate the affairs of Diwali Developers interalia under section 3, 4, 7, 13 of the RERA Act and impose penalty under section 59, 60, 61 of the RERA Act.</i></p> <p><i>c. MahaRERA should injunct /prohibit Diwali Developers from advertising, marketing, booking, selling or offering for sale, or inviting persons to purchase in any manner any apartment in the said Real estate project or part of it.</i></p> <p><i>d. MahaRERA should shall debar Diwali Developers from accessing its website in relation to that project and specify his name in the list of defaulters and display the photograph on its website and also inform the other Real Estate Regulatory Authority in other States and Union territories about such revocation or registration.</i></p> <p><i>e. Also, the construction work of the project should be stayed as large number of public are being misled due to the incorrect information being advertised by Diwali Developers."</i></p>
The said subsequent Promoter	<p><i>"a. This Hon'ble Authority be pleased to declare the "Vardhman Enclave Phase 1" bearing MahaRERA Registration P51800012208 as null and void.</i></p> <p><i>b. In the alternative to prayer a., this Hon'ble Authority by an order direct the removal/deletion of the Respondent No.1 as the Co-promoter of "Vardhman Enclave Phase 1" bearing MahaRERA Registration P51800012208 as per the Order dated 9th October, 2020 passed by the Ld. Sole Arbitrator Justice Dr. S. Radhakrishnan (Former Judge Bombay High Court) and allow complainant to continue as sole promoter under the same registration without any liabilities created by Respondent No.1.</i></p> <p><i>c. Any alleged sales without consent of this Complainant to third parties, after enquiry by this authority and if it comes to conclusion the same are fraudulent,</i></p>

	<p><i>interconnected transactions the such allotments be declared null and void.</i></p> <p><i>Respondent No.1 to refund all such alleged allottees.</i></p> <p><i>d. Costs.</i></p> <p><i>e. Any other and further reliefs as this Hon'ble Authority may deem fir and proper.</i></p> <p><i>"</i></p>
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6. From the facts and submissions of the said first and subsequent Promoters and the said Society the following chronology of events are noteworthy:

DATE	EVENTS	REFERNCE AT
26.03.2001	An agreement was executed between the said Society and the said subsequent Promoter herein whereby the development cum sale rights in respect of the said Property was granted.	Counter complaint of the said subsequent Promoter
26.11.2001	Further the said Society also executed a power of attorney in favour of the said subsequent Promoter to do all acts and deeds for the development of the said Property.	
23.10.2001	Commencement Certificate (CC) was obtained in the name of the said Society for rehab as well as for the saleable building.	MahaRERA Project registration webpage of said Project No.2
15.06.2005	A development agreement was executed between the said first Promoter and the said subsequent Promoter herein for joint development for the said Property.	Counter complaint of the said subsequent Promoter
27.10.2008	The development agreement dated 15.06.2005 was registered by way of a deed of confirmation.	
05.12.2009	Occupation certificate (OC) was obtained by the said first Promoter for the rehab wings namely C & D of 7 floors each and possession was handed over to 86/87 tenants. Further the saleable wing A, construction was completed till 10 floors.	Reply of the said first Promoter to the counter complaint
2012	Additional 33% TDR FSI was purchased at a premium by the said first Promoter herein	
26.10.2015	OC obtained for saleable wing A by the said first Promoter for 10 floors completed out of the 22 floors.	
28.03.2016	A supplementary agreement was executed between the said subsequent Promoter and the said first Promoter herein for identifying area of their respective share as per the development agreement dated 15.06.2005.	Counter complaint of the said subsequent Promoter
01.09.2017	MahaRERA Project registration was granted to the said first Promoter for the said Project No.1 herein.	MahaRERA Project registration webpage of said Project No.1
11.01.2018	Vide a notice the said subsequent Promoter terminated the development agreement dated 15.06.2005 and the supplementary	

	agreement dated 28.03.2016 for many breaches of the aforesaid development agreement terms.	Counter complaint of the said subsequent Promoter
13.03.2019	The said subsequent Promoter filed a section 9 arbitration petition No. 348 of 2019 wherein the Hon'ble Bombay High Court passed an order to maintain status quo in respect of the said Property.	
25.09.2019	The Hon'ble Bombay High Court appointed ret'd. Justice Dr. S. Radhakrishnan as the sole Arbitrator to decide the dispute between the said first and the subsequent Promoters herein.	
09.01.2020	The sole Arbitrator, ret'd. Justice Dr. S. Radhakrishnan passed an order under section 17 of the Arbitration and Conciliation Act restraining the said first Promoter from acting upon the development agreement dated 15.06.2005 and the supplementary agreement dated 28.03.2016 or take any steps pursuant thereto and from entering upon the said Property. The same order also restrained the said first Promoter to deal with the said Property or any portion including creating of any third-party rights by sale, mortgage, lease, license, encumbering, creating charge, etc. on the said Property.	
05.01.2021	The said first Promoter challenged the order dated 09.01.2020 passed by the sole Arbitrator in appeal before the Hon'ble Bombay High Court which appeal is till date pending.	
10.07.2021	A resolution was passed by the said Society ratifying the termination of the said first Promoter herein.	
29.01.2022	MahaRERA Project registration was granted to the said subsequent Promoter for the said Project No.2 herein.	MahaRERA Project registration webpage of said Project No.2
21.02.2022	The application for revocation of the registration of the said Project No.2 was filed by the said first Promoter herein.	-

7. Before the facts and submissions are examined, it is pertinent to note that against the said Project No.1 a complaint bearing No. CC00600000078183 was filed by a Complainant namely Ajay Garg wherein the following interim orders were passed by the Member 1, MahaRERA:

DATES	OPERATIVE PART OF THE INTERIM ORDERS REPRODUCED
15.11.2019	<p>"5. <i>Primo facie</i>, it appears that the respondents have failed to take the first extension for revised completion period of the said project from MahaRERA. Hence, it is required to take decision on that issue first.</p> <p>6. In the light of these facts, the MahaRERA directs the respondents to make appropriate application for extension of validity period of the said project before the MahaRERA. A decision in the present complaint would be token only after the validity period of the said project is decided by MahaRERA."</p>
24.12.2019	<p>"7. In this regard, the MahaRERA is of the view that, the complainant has nothing to do with the dispute between the respondent No. 1 and respondent No. 6. Moreover, the respondents are the promoters and responsible to hand over the legal possession of the commercial premise to the complainant by obtaining the occupancy certificate. In the present case, the respondent No. 6, who is the owner of the land is liable to obtain the relevant permissions for this project.</p>

	<p><i>The respondent No. 6 cannot deny the responsibility of being the promoter by incorporating any terms and conditions in the development agreement executed with the respondent No. 1. Though the arbitration proceeding in the Hon'ble Bombay High Court is pending, the termination of the development agreement has not attained finality.</i></p> <p><i>8. In the light of this, the MahaRERA directs the respondent No. 6 to provide the 'login ID' and 'password' for the MahaRERA registered project to the respondent No. 1, to enable it to get the extension of the project registration period from the MahaRERA within a period of one week. The respondent No. 1 to make an application and get the project extension within next 15 days. After the project gets revalidated, the final order will be passed in this complaint."</i></p>
06.02.2020	<p><i>"7. In view of the aforesaid facts, MahaRERA feels that in the present case since the complainant is pressing for compensation, the said issue has to be adjudicated by the Ld. Adjudicating Officer, MahaRERA who has to decide whether the complainant is entitled to seek compensation and interest under Section-71 & 72 of RERA. The Ld. Adjudicating Officer, MahaRERA Mumbai, is also requested to expedite the hearing of this complaint. 8. With the above directions, the complaint is transferred to Ld. Adjudicating Officer, MahaRERA for further necessary action."</i></p>
12.02.2020	<p><i>"5. In view of the above facts brought to the notice of MahaRERA that the project validity period is extended, it is in the interest of justice to grant the additional relief sought by the complainant.</i></p> <p><i>6. The MahaRERA, therefore, directs the respondents to complete the project as per the extended revised completion date mentioned in MahaRERA registration i.e. 10-06-2020 and also takes necessary action to obtain occupancy certificate with the change of user for the complainant's commercial promises as agreed in the agreements for sale."</i></p>

8. The captioned case was heard by this Authority on 12.04.2022 and 28.04.2022, wherein the following roznamas were passed:

12.04.2022:

"The Parties are present. Besides the two Parties the Advocate on behalf of the Society namely Mumbadevi Malad Co-operative Housing Society Ltd. is also present.

Advocate Lodha states that the Project named Vardhman Enclave Phase L was started by the land owner Diwali Developers ("Diwali") who entered into a development agreement with the Promoter Vikunj Enterprises Pvt. Ltd. ("Vikunj"). Subsequent to this in 2017 bookings have taken place. Various extensions were granted to the Project and the last extension was given up to 30.12.2020 by MahaRERA. However, the Project could not proceed further as order u/s 17 was passed. The said order restrained Vikunj from taking any further action and restrained them from entering the property. However, the said order did not set aside the registration nor the agreements nor did it pass any injunction on the Project. The present Promoter now finds that a new name namely Vardhman Pearl (Diwali) bearing Registration No. P51800032809 is now in place and they are remarketing the Project. The original Promoter states that the old Registration Number has only lapsed and has not been revoked or cancelled. The erstwhile Promoter also brings to the notice of this Authority an order of Member-1 directing completion of the Project. They seek relief u/s 7 (1)(d) and also seek a suo motu investigation u/s 35 (1).

Advocate for Diwali raises the initial objection on the format of filing and states that the same is not maintainable. They also point out to an order of the Hon'ble Bombay High Court wherein the form has been emphasized to prevent any unnecessary issues and litigations. He points out that all sales made by Vikunj are through their family members and they do not hold any Power of Attorney to make sales. He emphasizes the order of the Arbitrator which has clearly restrained Vikunj from dealing with the Project in any manner. The Advocate also cites orders of the Hon'ble High Court both pre and post RERA that all third-party rights created by an erstwhile and subsequently terminated developer can only be claimed as

money rights. The Advocate further raises the issue of maintainability and seeks a decision on maintainability before the matter can proceed.

The Advocate for Vikunj once again reiterates that while a number subsists and has only lapsed a new number cannot be sought and given. He also points out that Diwali have shown zero booking.

Advocate for Diwali points out that a part OC for the commercial component has been received and that they would be standing by the contractual commitments/ obligations wherever they have sold or agreed to sell. He further states that details of the old registration and circumstances leading up to the event of seeking a new registration could not have been provided in the online registration Process as the same does not have a provision. However, this was brought to the notice of RERA by him personally and the registration was given after RERA conducting due prudence which took nearly one month.

The Advocate for Vikunj seeks relief in terms of revocation of new registration investigation of the affairs of Diwali and imposition of penalties, seeks immediate restraining orders on Diwali, preventing them from both constructing further and dealing with it in any manner causing a creation of third party right created, preventing them from use of the MahaRERA website.

Advocate for Diwali states once again that the old number is neither in subsistence nor in existence. The very agreement which became the basis of the restraining order given by the arbitral award has not been challenged / neither stayed by any court. He also further states that the society has ratified his appointment.

The Advocate for Vikunj once again emphasises that lapse of a number does not mean that it is deregistration.

Advocate Maskar appears on behalf of the Society and seeks to be heard. Advocate Maskar is advised to first file his written plea serving copies on both the Parties and the MahaRERA before he could be heard.

The matter stands adjourned to 28.04.2022 for physical hearing @ 3.30 pm at Churchgate office, MahaRERA. Notice be also served on Society to appear.

The Authority is not passing any interim orders presently and expects that none of the Parties would take any action to prejudice the matter. The Authority will decide on the issue of an interim order to be passed if any subsequent to receiving written submissions from the Vikunj, Diwali and the Society. Written submissions, if any to be filed by the 22.04.2022."

28.04.2022:

" All the Parties are present.

The Society states that they appointed Diwali Developers ("Diwali") through a Development Agreement who in turn appointed a sub developer namely Vikunj Enterprises Pvt. Ltd., ("Vikunj"). The Society states that the Developer namely Diwali terminated the agreement between themselves and Vikunj. This was confirmed by the Society. Having terminated this the developer namely Diwali then approached RERA for a new registration number. It is seen that the old registration number has been jointly obtained by the developer namely Diwali and the sub developer Vikunj. The new registration number has been obtained by Diwali. The Society and Diwali informed the Authority that they kept the Authority in the know of the fact that the earlier registration number had lapsed and in view of the termination of the sub developer they are now seeking a new registration number. The Society states that the new registration number should be allowed to continue so as to enable the society to complete the project and discharge all liabilities together with the Diwali.

The Complainant Vikunj states that the Society's Chairman and Secretary and the partners of Diwali are related and same and hence these transactions are not at arm's length.

The Complainant further states that he has completed the rehab building at a huge cost and has resettled nearly 86 of the 90 tenants. These 86 tenants are today occupying the rehab premises allotted to them. With regard to the 4 remaining tenants the Complainant states that they are the relatives of the society's

office bearers and there appears to be an issue regarding accommodating them in the sale component rather than the rehab component.

The Complainant Vikunj sates that having initially spent money towards obtaining permissions and constructing the rehab building he is now entitled to the benefits that would accrue out of construction and sale of the sale component. He cannot thus be denied of the same by terminating this agreement.

Diwali states that all permissions like IOD and CC have been obtained in the name of the society. The Respondent No. L also states that old registration number may if so desired by the Authority be continued provided Vikunj is not considered as a sub developer and instead Diwali by using the old registration number shall be exclusively entitled to complete the development of this project.

The Respondent No.1 states that in the event the old reg no is allowed to continue without Vikunj as the sub developer he would be ready to rehabilitate any of the remaining tenants and bonafide flat purchasers provided liability beyond this does not accrue to him.

The Respondent No.1 also puts on record an FIR Dated 06.07.2021 to indicate how several sales have been made behind the back.

The Complainant puts on records the IOD and CC to indicate that he has not made any sales without having obtained approvals of the planning authority.

He states that on RERA coming to effect when the registration number was sought all these sales were declared to RERA. The Complainant thus states that he has done no sales behind the back.

The Respondent No. L has filed counter complaint, the copy of which is not available with the Complainant. The Respondent No. L is directed to serve copy of the counter complaint within 7 days of today and the Complainant will have the liberty to file a reply to the same before the 17.05.2022 and the same shall be taken on record. The Authority takes on record order of the Arbitrator u/s17.

The Parties shall not create any third-party rights nor indulge in any marketing or sale so as not to prejudice the matter till the final orders are passed by this Authority. The matter is Reserved for orders subsequent to the 12.05.2022."

9. From the above facts and submissions, the following issues are required to be examined by this Authority:
- a. *Whether a real estate Project can have two / multiple MahaRERA Project registration numbers?*
 - b. *Whether this Authority has the jurisdiction to declare who the rightful Promoter is as on date in view of the pending arbitration proceedings pertaining to the termination of the development agreement between the said first and subsequent Promoters herein?*
 - c. *Whether the MahaRERA Project registration No. P51800032809 obtained by the said subsequent Promoter herein needs to be revoked / cancelled?*
 - d. *Any other order?*

10. Before dealing with the issues framed, it is pertinent to note the following sections of the said Act:

a. Section 7: Revocation of registration:

“(1) The Authority may, on receipt of a complaint or suo motu in this behalf or on the recommendation of the competent authority, revoke the registration granted under section 5, after being satisfied that –

(a) the promoter makes default in doing anything required by or under this Act or the rules or the regulations made thereunder;

(b) the promoter violates any of the terms or conditions of the approval given by the competent authority;

(c) the promoter is involved in any kind of unfair practice or irregularities.

Explanation – For the purposes of this clause, the term "unfair practice means" a practice which, for the purpose of promoting the sale or development of any real estate project adopts any unfair method or unfair or deceptive practice including any of the following practices, namely:

(A) the practice of making any statement, whether in writing or by visible representation which, –

(i) falsely represents that the services are of a particular standard or grade;

(ii) represents that the promoter has approval or affiliation which such promoter does not have;

(iii) makes a false or misleading representation concerning the services;

(B) the promoter permits the publication of any advertisement or prospectus whether in any newspaper or otherwise of services that are not intended to be offered;

(d) the promoter indulges in any fraudulent practices.”.

b. Section 15: Obligations of promoter in case of transfer of a real estate project to a third party:

(1) The promoter shall not transfer or assign his majority rights and liabilities in respect of a real estate project to a third party without obtaining prior written consent from two-third allottees, except the promoter, and without the prior written approval of the Authority:

Provided that such transfer or assignment shall not affect the allotment or sale of the apartments, plots or buildings as the case may be, in the real estate project made by the erstwhile promoter.

Explanation – For the purpose of this sub-section, the allottee, irrespective of the number of apartments or plots, as the case may be, booked by him or booked in the name of his family, or in the case of other persons such as companies or firms or any association of individuals, by whatever name called, booked in its name or booked in the name of its associated entities or related enterprises, shall be considered as one allottee only.

(2) On the transfer or assignment being permitted by the allottees and the Authority under sub-section (1), the intending promoter shall be required to independently comply with all the pending obligations under the provisions of this Act or the rules

and regulations made thereunder, and the pending obligations as per the agreement for sale entered into by the erstwhile promoter with the allottees:

Provided that any transfer or assignment permitted under provisions of this section shall not result in extension of time to the intending promoter to complete the real estate project and he shall be required to comply with all the pending obligations of the erstwhile promoter, and in case of default, such intending promoter shall be liable to the consequences of breach or delay, as the case may be, as provided under this Act or the rules and regulations made thereunder.

11. It is pertinent to note that the scheme of the said Act is to safeguard the interest of an Allottee against the Promoter. However, at the same time this Authority is also vested with the responsibility of safeguarding the Promoter against unreasonable demands and to create an ecosystem that ensures completion of the project in a time bound manner. Further this Authority is also mandated with the responsibility of ensuring that the transfer process in the real estate sector from one Promoter to another for a particular project does not jeopardise the rights of the Allottees of any such erstwhile / old Promoters / terminated Promoters and that their interest shall remain protected when the transfer takes place.

12. The following observations are noteworthy:
 - a. Firstly, from the chronology of events mentioned hereinabove, there is no dispute that the said Project is registered under two separate MahaRERA Project registration numbers i.e. P51800012208 issued in the name of the said first Promoter herein and P51800032809 issued in the name of the said subsequent Promoter herein.
 - b. Further the said Society is the one who had appointed the said subsequent Promoter and that the said subsequent Promoter further appointed the said first Promoter to develop the said Property which the said first Promoter carried out until the termination notice was sent by the said subsequent Promoter in January 2018.
 - c. Thus, the preliminary question that arises for consideration is that whether the said subsequent Promoter is in a fiduciary position having in the first place

brought in an entity in the form of the Developer (*said first Promoter herein*) which had the rights to create further obligations. This right to create further obligations have been granted by said subsequent Promoter to enable financial viability for the rehabilitation component. Thus, said subsequent Promoter has the dual responsibility of not only ensuring that its original members are rehabilitated but also further that the new Allottees in the sale component are put in possession of the premises offered for sale.

- d. Further it is pertinent to note that in the rehabilitation / redevelopment project scheme of things the rehab component precedes the sale component. In the captioned case as mentioned in the chronology of events the rehab component has been completed and delivered and that the OC for the same is also in place.
- e. Here it is important to make a difference between the act of appointing a Developer (*said first Promoter herein*) and the actions that the Developer (*said first Promoter herein*) subsequently takes. The Developer is appointed by the said subsequent Promoter vide a development agreement dated 15.06.2005 wherein the work was to be jointly carried out by both the said first and the subsequent Promoters herein and this is not disputed. The said subsequent Promoter having appointed the said first Promoter which in turn created obligations and responsibilities towards the Allottees cannot now take refuge behind the agreement and use it to terminate the agreement with the said first Promoter and claim that all obligations and responsibilities have also stood terminated. An agreement between Parties cannot extinguish rights and obligations (*as enumerated in chapter III of the said Act*) of Parties as mandated by the law. The said subsequent Promoter has appointed the said first Promoter and also terminated them without following the procedure laid out in section 7 of the said Act. The said section 7 of the said Act clearly lays out the conditions of revocation and also identifies MahaRERA as the competent authority to revoke project registrations.
- f. Here the said subsequent Promoter has tried to usurp to self the powers of MahaRERA under the garb of an agreement. Further the said subsequent

Promoter has attempted to protect itself from the action of the said first Promoter once again under the garb of an agreement. This protection to the said subsequent Promoter is available only to the extent of malafide and illegal actions or actions taken beyond the boundaries of the agreement by the said first Promoter. The said subsequent Promoter at a later date cannot use the weapon of an agreement to wish away bonafide liabilities created by the agreement appointing the said first Promoter and the provisions of the said Act. Under the said Act as clearly laid out in chapter III the Promoter has obligations and duties mandated because of his right to sell premises. Once the bonafide Promoter in this case the said first Promoter appointed by the said subsequent Promoter has created obligations and duties these shall then have to be carried to its logical conclusions. The said subsequent Promoter should have approached MahaRERA under section 7 clearly laying out how it intends to carry forward the obligations and duties of the said first Promoter and sought revocation. The said subsequent Promoter cannot take a stand that the said Project No.1 had lapsed and hence they went ahead with fresh project registration of the same said Project No.1. The said Act has no deeming provisions wherein the mere fact of being lapsed gives the said subsequent Promoter the power to take fresh / second project registration i.e. the said Project No.2. However, the said subsequent Promoter is well within its rights through an agreement with the said first Promoter to indemnify itself against the malafide and illegal actions of the said first Promoter. However, on the other hand the said subsequent Promoter squarely carries the burden of ensuring the duties and obligations as envisaged in Chapter III of the said Act are fulfilled in letter and spirit by the said first Promoter.

- g. The relationship of the Developer (*the said first Promoter*) and the Allottees was in the first place created by the act of the said subsequent Promoter who appointed the said first Promoter to carry out the redevelopment jointly which entitled the said first Promoter to use the sale FSI to finance the rehab component. In this regard, it is pertinent to examine **section 2(zk)(iv)** “**promoter**” read with the explanation therein—

“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....

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.”.

Thus, the said subsequent Promoter by appointing the said first Promoter to carry out the dual role of providing premises in the rehab component to the existing Allottees and in the sale component to the new / fresh Allottees, falls within the definition of a deemed Promoter. Thus, the said subsequent Promoter herein is the primary Developer who in turn has appointed the said first Promoter to carry out the process of redevelopment under the development agreement, with well-defined terms and benefits for themselves namely the said subsequent Promoter and its existing members.

- h. Thus, it is important to note that in case the said subsequent Promoter at any stage terminated the rights given to the said first Promoter of redevelopment of the said Project No.1, the said subsequent Promoter is then not only duty bound to inform the same to MahaRERA but is also mandated by the said Act to have the registration revoked by following due procedure and cannot wait until the said Project No.1 lapsed and then approach MahaRERA for obtaining a new / fresh registration for the same said Project No.1. However, it is also observed that while terminating the Developer i.e. the said first Promoter herein, the said subsequent Promoter was mandated to apply for change of Promoter under section 15 of the said Act and not obtain new / fresh registration in the name of the said subsequent Promoter. This Authority disapproves the act of the said subsequent Promoter of not revoking an existing project registration number and seeking a new project registration number without following the due process of law and views this as a serious lapse on behalf of the said subsequent Promoter.

- i. With regard to the issue of obtaining the said Project No.2 i.e. P51800032809 when the said Project No.1 i.e. P51800012208 is still not revoked and / or cancelled under the said Act under section 5(1)(a) it is amply clear that each real estate Project can have only one MahaRERA Project registration number. This is very clear from the plain reading of section 5(1)(a) of the said Act, relevant extract reproduced hereunder:

“5(1) On receipt of the application under sub-section (1) of section 4, the Authority shall within a period of thirty days.

(a) grant registration subject to the provisions of this Act and the rules and regulations made thereunder, and provide a registration number, including a Login Id and password to the applicant for accessing the website of the Authority and to create his web page and to fill therein the details of the proposed project; or”.

Thus, a Project cannot have two and/ or multiple MahaRERA Project Registration numbers so as to avoid confusion and misrepresentation among various stake holders.

- j. Further the aforesaid section 7 of the said Act (*reproduced hereinabove*) provides a mechanism for revocation of a MahaRERA Project registration number. Not only does it provide for revocation but it also goes further and enumerates the conditions under which a MahaRERA Project Registration number can be revoked. The said section 7 also specifies that MahaRERA is the competent authority to revoke the MahaRERA Project Registration number of any real estate project in Maharashtra.
- k. The said subsequent Promoter or any Entity cannot keep on applying for fresh registrations as a response to any change / dispute amongst the Parties. This liberty ceases completely under the said Act and the reason for this strict rule of one project one registration is that the scheme of the said Act is to safeguard the interest of an Allottee and other stake holders like lenders and also to create an ecosystem that ensures completion of the project in a time bound manner. It is also pertinent to note that not taking steps under section 15 of the said Act while effecting change in the Promoter / Developer amounts to annulling the protection available to the Allottees thereby failing the very purpose of the MahaRERA legislation.

- l. Further, two / multiple project registration numbers for the same Project shall create confusion and chaos and the obligations created by each such newly appointed Promoters / Developers in the same Project would stand jeopardised upon subsequent new appointments. In such cases it would become impossible to fasten responsibility thus creating litigations and unprecedented harassment of the Allottees and other stake holders.
- m. Therefore, keeping in mind the scheme of the said Act which is to safeguard the interest of each and every Allottee and to ensure completion of the project in a time bound manner this Authority is clear that the said Act does not envisage any such event / circumstance of two / multiple project registrations for the same Project once it is registered. This one registration number shall remain unchanged even while the project is transferred and/ or handed over to any new Developers/ Promoters during the life cycle of the said Project.
- n. In the present complaint it is very evident from the submissions of the Parties herein that the said first Promoter and the said subsequent Promoter are in dispute with each other with regard to the performance of the development agreement executed and registered between them. Be as it may, while the disputes are pending between the Parties herein the said subsequent Promoter has defaulted by not taking proper and necessary steps for the change in the name of the Promoter as prescribed under the said Act and its rules thereunder and thus, has violated the provisions of section 7 of the said Act.
- o. Hence, the second registration being the said Project No.2 i.e. P51800032809 issued in the name of the said subsequent Promoter shall be revoked / cancelled. Further as per the details mentioned on the MahaRERA project registration webpage mentioned in para No.3 hereinabove the said Project No.2 does not reflect any booking / sale of apartments.
- p. Further, till the arbitration proceedings between the said first Promoter and the said subsequent Promoter is not concluded, both the Promoters are restrained from advertising, marketing, booking, selling or offering for sale,

or inviting persons to purchase in any manner any apartment in the said Project No.1.

13. From the observations made hereinabove, the answers to the above issue at **para No. 9 (a) to 9 (d)** are as follows:

a. With regard to the issue No. 9(a), the answer is in **Negative** i.e. a real estate Project cannot have two / multiple MahaRERA Project registration numbers and the reasons for the same are observed hereinabove.

b. With regard to the issue No. 9(b), the answer is in **Negative** i.e. the arbitration proceeding with regard to the termination of the development agreement between the said first Promoter and said subsequent Promoter is still pending and interim order dated 09.01.2020 has been passed by the Arbitrator still holds ground as on date. Further until the aforesaid arbitration proceedings are not completed the decision on the rightful Promoter in whose name the said Project No.1 registration shall be transferred shall be held in abeyance till such period. This Authority has no doubt that the rights and interest of Allottees in a re-development Project are not extinguished on account of this pending dispute between the said first Promoter and the said subsequent Promoter and that liabilities in this regard shall rest upon the shoulders of the Party as concluded in the said arbitration proceedings. Further it is pertinent to note that the said arbitration proceeding was invoked on account of the termination of the development agreement between the said first Promoter and said subsequent Promoter and thus, the same shall also conclude the liabilities created by the said first Promoter and its remedy / recourse thereto.

c. With regard to the issue No. 9(c), the answer is in **Affirmative** i.e. the MahaRERA Project registration No. **P51800032809** (*said Project No.2*) obtained by the said subsequent Promoter shall be **revoked / cancelled**.

d. With regard to the issue No. 9(d), this Authority directs the Parties herein to file an application upon the final order passed by the Arbitrator in the said arbitration proceedings and till such period the said Project No.1 i.e. **P51800012208** shall be kept in **abeyance**. Further, the inter-se liabilities

between the Allottees of the said Project No.1 and the said first Promoter shall also be adjudicated upon the conclusion and final award passed in the said arbitration proceedings.

FINAL ORDER

In view of the observations hereinabove, the following directions are passed by this Authority:

- a. The MahaRERA Project Registration number **P51800032809** issued to the said subsequent Promoter is **revoked and cancelled** as the same is void ab initio.
- b. The MahaRERA Project Registration number **P51800012208** shall stand though lapsed and the same shall remain in **abeyance** till the application for revival / extension is filed by the Parties upon the conclusion of the said arbitration proceedings between the said first Promoter and the said subsequent Promoter.
- c. Further, the inter-se liabilities between the Allottees of the said Project No.1 and the said first Promoter shall also be adjudicated upon the conclusion and final award passed in the said arbitration proceedings.
- d. Needless to say, till such time the arbitration proceedings between the said first Promoter and the said subsequent Promoter are concluded none of them nor the said Society shall advertise, market, book, sell or offer for sale, or invite person/s to purchase in any manner any apartment in the said Project No.1.
- e. No order as to cost.

(Ajoy Mehta)
Chairperson, MahaRERA