

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

Virtual Hearing held through video conference as per
MahaRERA Circular No.: 27/2020

SUO-MOTU CASE NO. 216 OF 2022

LAKHANI PANACHE

...PROJECT NAME

LAKHANI BUILDERS PVT. LTD.

...EXISTING PROMOTER

SILVERSTONE HOMEMAKERS PVT. LTD.

...NEW PROMOTER

**MahaRERA Project Registration No. P52100007543
Order**

February 25, 2022

(Date of virtual hearing – 23.02.2022, matter reserved for order)

Coram: Shri. Ajoy Mehta, Chairperson, MahaRERA

None for the existing Promoter

Advocate Rajkumar Jagtap for the new Promoter

Advocate Parth Chande for the 3 complaints (Allottees) in the Project

1. Lakhani Builders Pvt. Ltd. is the existing Promoter/Developer within the meaning of Section 2 (zk) of the Real Estate (Regulation and Development) Act, 2016 (“said Act”) of Real Estate Regulatory Authority (“RERA”). The Promoter had registered their project “LAKHANI PANACHE” under section 5 of the said Act bearing MAHARERA **Registration No. P52100007543** (hereinafter referred to as the “said Project”). It is pertinent to note here that the Project name LAKHANI PANACHE has two registrations bearing Project registration No. P52100002873 and the said Project number i.e. P52100007543. However, on perusal of MahaRERA Promoter details web page it is noticed that Phase 1 or Phase 2 is not mentioned as against the aforesaid Project registration numbers. Further the total villas mentioned in Project No. P52100002873 is 3 (*villa Nos. 29 to 31*) and in Project No. P52100007543 is 41 (*villa Nos. 1 to 28, 32 to 43 & 50*)
2. On 23.02.2022, a virtual hearing was held in the matter wherein the following roznama was passed:

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“The Advocate for new Promoter brings to notice that they are co-Promoter as they are owners of the land. The other promoter being the incumbent Promoter. The incumbent Promoter started the work but as they could not show progress and hence cancelled their agreement. Now the new Promoter has taken charge of the Project. They intend to complete the Project. The MahaRERA completion date is 31.07.2023. The new Promoter brings to notice they would now like to take permission for change of promoter. The Project is in two phases and the change of promoter is being sort for phase II. The 3 complaints have been filed in phase I and the new Promoter is willing to settle the matter amicably. However, this aspect does not impact phase I.

Advocate for the 3 complaints (Allottees) in the Project states that in view of the common project numbers it was not sure as to the status of their premises. The new Promoter confirms that these three bungalows are in phase II and they would settle the matter amicably with the 3 Allottees (Complainants). The new Promoter also ensures that in the event the bungalow numbers are changed then they could fall in different phase and that they undertake to settle matter before 23.03.2022. On this assurance the 3 Allottees shows willingness to give their consent for change in promoter however the commitments made by the new Promoter shall be on record.

The matter is heard and is reserved for order.”

3. Lakhani Builders Pvt. Ltd., the existing Promoter has submitted an application i.e., **Annexure A** under section 15 of the said Act, for transferring/ assigning the rights and liabilities in the said Project i.e. Project No. P52100007543.
4. Further consent of 2/3rd Allottees has been submitted. Total number of Allottees in the said Project are 13 against the booking of 18 villas and consent letters from 9 Allottees has been submitted. In this regard, it is pertinent to note that the 3 consents are from 3 complaints filed by Allottees against the existing Promoter for villa Nos. 26 to 28 in the said Project. These 3 Allottees have agreed to provide consent for change of promoter on the assurance of the new Promoter that these three villas (bungalows) issue would be settled amicably in the event the villa numbers are changed and could fall in different phase. The new Promoter undertakes to settle the matter before 23.03.2022 (*ref. the submission made by the Respondent during hearing dated 23.02.2022- roznama*).



5. The existing Promoter has submitted **Annexure B** along-with a brief write up on the present status of the project, no encumbrance status as well as the amount required to complete the project.
6. The new Promoter has submitted the declaration **Form -B** in which the date for completion of the said Project is stated as **31.07.2023**. Further, **Annexure C** i.e. the joint declaration has also been submitted which shows year wise amounts deposited/withdrawn and the balance available in the designated RERA account. A copy of the cancellation of the development agreement dated 02.09.2021 along-with all ancillary documents therein have also been submitted.
7. The existing Promoter also declares / undertakes that the details furnished are true and correct; that any changes would be immediately informed; that there is no pending case before any Court/NCLT/any authorized body regarding transfer of the Promoter's rights and liabilities in the project, that there is no bar to transfer the rights and liabilities to a third party from any financial institution or financiers who have a charge on the project; and that there is no prohibitory order passed by any Court of law against transfer of the existing project in favour of third party.
8. With regard to the change of Promoter sought by the existing Promoter it is pertinent to examine section 15 of said Act. The relevant extract of section 15 is reproduced hereinbelow:

"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

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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."


9. From the plain reading of section 15, it is clear that the transfer of majority rights and liabilities of the Promoter herein in respect of said Project to a third party i.e. the new Promoter shall not happen without obtaining prior written consent from two-third Allottees, except the Promoter.

10. In the present case, 9 out of the 13 Allottees have given consent and thus, this Authority is of the view that the transfer of the said Project from the Promoter to the new Promoter namely Silverstone Homemakers Pvt. Ltd. can be permitted and thereby allow the change of Promoter to be carried out in the said Project i.e. Project No. P52100007543. However, it is observed that the new Promoter i.e. Silverstone Homemakers Pvt. Ltd. shall be required to independently comply with all the pending obligations under the provisions of the said Act or the rules and regulations made thereunder, and the pending obligations as per the agreement for sale entered into by the Promoter with the Allottees in the said Project.

FINAL ORDER

Thus, Silverstone Homemakers Pvt. Ltd. is permitted as the new Promoter for the said Project i.e. Project No. P52100007543. Needless to say, that Silverstone Homemakers Pvt. Ltd. shall be required to independently comply with all the pending obligations

under the provisions of the said Act or the rules and regulations made thereunder, and the pending obligations as per the agreement for sale entered into by the Promoter with the Allottees in the said Project. Further, Silverstone Homemakers Pvt. Ltd. shall complete the said Project on or before the completion date i.e. 31.07.2023 and handover possession to all the Allottees of the said Project. Silverstone Homemakers Pvt. Ltd. is also directed to submit PERT CPM charts about the milestones to be achieved with respect to the completion of the said Project in a time bound manner and also submit quarterly progress reports of achievements of such milestones and/ or delay if any, to MahaRERA, all the Allottees and/ or the AOP, if formed of the said Project.


(Ajoy Mehta)
Chairperson, MahaRERA