

**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. 215 OF 2022

KHAMBHATI MODH VANIK SAMAJ, MUMBAI

...APPLICANT

IN THE MATTER OF:

SAMAJ DARSHAN

...PROJECT NAME

M/S. BHAKTI ENTERPRISES

...PROMOTER (OLD)

H. RISHABRAJ DEVELOPERS

...PROMOTER (NEW)

MAHARERA PROJECT REGISTRATION NO. P51800010479

ORDER

(In Rectification Application)

December 19, 2022

(Date of virtual hearing – 12.07.2022, matter reserved for order)

Coram: Shri. Ajoy Mehta, Chairperson, MahaRERA

Advocate Bishwajeet Mukherjee for Promoter (New)

Advocate Shashikant Chaudhari for Applicant.

1. The Applicant herein has filed the miscellaneous application seeking rectification under section 39 of Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as the “**said Act**”) of the order dated 21.01.2022 passed by this Authority in the captioned suo-motu case (hereinafter referred to as the “**said order**”). The Operative part of the said order, is reproduced hereunder:

“FINAL ORDER

Thus, H. RISHABRAJ DEVELOPERS are permitted as the new Promoter for the said Project and the said Trust shall be held liable to take on all the responsibility arising out of the liabilities created by the erstwhile (old) Promoter / Developer of the said Project. Needless to say, that H. RISHABRAJ DEVELOPERS 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. Further, H. RISHABRAJ DEVELOPERS are allowed to make changes in FSI as may be approved by the Planning Authority. and are also granted an extension of the said Project up to 30.04.2023 to complete the balance construction work and handover possession to the Allottees of the said Project. H. RISHABRAJ DEVELOPERS 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, the said Trust, the Allottees and the Association of Allottees of the said Project."

2. The Applicant is seeking the following reliefs vide the rectification application:

"a) That this Hon'ble Tribunal in the exercise of powers under the Real Estate (Regulation & Development) Act, 2016 be please to modify the observations recorded in the Order dated 21-01-2022 and/or pass a fresh Order based upon all the facts, circumstances and grounds as mentioned hereinabove.

b) That this Hon'ble court be pleased to provide cost of the Application.

c) Any other and such further reliefs which this Hon'ble Forum/ Tribunal deems fir and proper in the interest of justice granted in favour of the Applicant(s)."

3. On 12.07.2022, a virtual hearing was held in the matter wherein the following roznama was passed by this Authority:

"Both Parties present.

The Applicant points to the order of the Authority dated 21.01.2022. The Applicant seeks the observation namely that the trust is responsible for any third-party rights created to be expunged. The Applicant cites the hon'ble High Court order dated 13.01.2022, wherein the hon'ble High Court has clearly articulated upon the roles of each party. The hon'ble High Court has clearly stated that no claims for the earlier allottees shall lie against either the new developer or the trust. The Applicant states that in view of the observation in the order dated 21.01.2022 he is been put to numerous difficulties and is unable to take the project forward. The Respondent promoter does not add anything as there is nothing which is adverse to him today.

Matter reserved for orders."

4. Before moving ahead this Authority rectifies a typographical error in the roznama dated 12.07.2022 wherein the Suo-Motu case No. is mentioned as 2015 instead of **215** and the body of the roznama starts with the title "*Remand matter*" which is inadvertently mentioned in place of "**Rectification matter**". These errors are hereby rectified and the roznama dated 12.07.2022 shall henceforth read the **case No. as 215 of 2022** with the title as "**Rectification matter**".

5. It is also noted that the Applicant had filed an Appeal before the Hon'ble Maharashtra Real Estate Appellate Tribunal (**MahaREAT**) against the said order which was withdrawn by them with liberty to file the present rectification

application. The order dated 28.03.2022 of the Hon'ble MahaREAT is reproduced hereinbelow for ease of reference:

"Learned counsel for Appellant submits that observations and directions made in the impugned order are contrary to the order dated 13.01.2022 of the Hon'ble Bombay High court. He seeks to withdraw the Appeal with liberty granted to Appellant to approach the Authority by filing necessary Application for rectification in line with the submissions made by the Appellant during complaint proceeding and also in conformity to the order of the Hon'ble Bombay High court.

Appeal stands withdrawn with liberty to Appellant to approach the Authority to seek redressal of grievance pertaining to the impugned order.

On being approached, the Authority to consider the contentions of Appellant/parties and take appropriate view in the matter accordingly.

No costs."

6. The Parties herein have filed their submissions which are taken on record and are not repeated for the sake of brevity.
7. Thus, from the reliefs sought and the submissions made by the Applicant the only issue that needs to be considered is *whether the said rectification is maintainable?*
8. In order to examine the present rectification application, the provision of section 39 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as the "**said Act**") reproduced hereinbelow is noteworthy.

"Section 39 - Rectification of orders: *The Authority may, at any time within a period of two years from the date of the order made under this Act, with a view to rectifying any mistake apparent from the record, amend any order passed by it, and shall make such amendment, if the mistake is brought to its notice by the parties:*

Provided *that no such amendment shall be made in respect of any order against which an appeal has been preferred under this Act:*

Provided further *that the Authority shall not, while rectifying any mistake apparent from record, amend substantive part of its order passed under the provisions of this Act.*

9. From the plain reading of section 39 it is clear that this Authority can only rectify any mistake apparent from the record or amend any order passed by it, if the mistake is brought to its notice by the Parties i.e. in the present case the Applicant

herein. The Applicant vide its application for rectification has brought to the notice of this Authority an apparent mistake in the observation and the operative part of the said order seeking rectification of the said order wherein the para No. 6 has inadvertently held the Applicant Trust liable for liabilities arising out of the erstwhile (old) Promoter though the Hon'ble Bombay High Court in its orders clearly stated that the appointment of the new Promoter was allowed and that the Allottees of the erstwhile (Old) Promoter cannot claim any ad-interim reliefs against either the new Promoter or the Applicant Trust herein with whom they have no privity of contract. In view of the order passed by the Hon'ble Bombay High Court the part of the observation in para 6 of the said order is hereby **deleted** i.e. *"In view of the undertaking submitted by the said Trust and the submission made by the said Trust this Authority directs the said Trust shall be held liable to take on all the responsibility, if any in the future arising out of the liabilities created by the erstwhile (old) Promoter / Developer of the said Project."* and also the part of the direction in the operative part of the said order is hereby **deleted** i.e. *"and the said Trust shall be held liable to take on all the responsibility arising out of the liabilities created by the erstwhile (old) Promoter / Developer of the said Project."* The remaining part of the said order shall remain valid and subsisting and the said order to be read with this rectification order henceforth.

10. In view of the above, the **issue** at **para No. 7** is answered in **affirmative** and the present rectification is **allowed** and to be read along with the said order. No order as to costs.

AJOY
MEHTA
(Ajoy Mehta)
Chairperson, MahaRERA

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by AJOY MEHTA
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**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. 215 OF 2022

SAMAJ DARSHAN	...PROJECT NAME
M/S. BHAKTI ENTERPRISES	...PROMOTER (OLD)
H. RISHABRAJ DEVELOPERS	...PROMOTER (NEW)

MahaRERA Project Registration No. P51800010479

Order

January 21, 2022

(Date of virtual hearing – 19.01.2022, matter reserved for order)

Coram: Shri. Ajoy Mehta, Chairperson, MahaRERA
Advocate Rashmin Khandekar for the Promoter (new)
along with Harrish Kumar Jain, Managing Director,
Niraj Jaswani, H. Rishabraj, Advocate Humera Syed,
Advocate Shekar, Bishwajeet Mukherjee and
Advocate Shashikant Chaudhari for Samaj Darshan Trust.

1. M/s. Bhakti Enterprises through its Proprietor Mr. Jayant Narendra Mehta is the erstwhile (old) Promoter/Developer and H. Rishabraj Developers are the new 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 erstwhile Promoter had registered the project "SAMAJ DARSHAN" under section 5 of the said Act bearing MAHARERA **Registration No. P51800010479** (hereinafter referred to as the "**said Project**").
2. On 19.01.2022, a virtual hearing was held in the matter wherein the following roznama was passed:

"The Applicant, new Promoter, and the Samaj Darshan Trust are present through their advocates and representatives as mentioned above.

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The Advocate for the new Promoter, H. Rishabraj Developers at the outset submits that he is not sure whether his application for change would strictly fall under section 15 or section 4 or section 7 of the RER Act. Further he brings out the background of the case by pointing out that one M/s. Bhakti Enterprises was the erstwhile Developer / Promoter who defaulted on various counts and the Samaj Darshan Trust thus terminated that agreement and appointed a new Promoter. The matter was heard by the Hon'ble Bombay High Court which vide an order dated 13.01.2022 ruled on two main issues amongst the others. One issue being that the Samaj Darshan Trust in view of the default was well within its rights to appoint the new Promoter and second that the Allottees of the erstwhile Developer / Promoter shall not have any claims against the Samaj Darshan Trust or the new Promoter and that the same would have to be settled through specific performance against the erstwhile Developer / Promoter who created the liabilities. The Advocate also pointed out that this being the case it is not a transfer or assignment in the strict sense of its terms. It is not a voluntary act but has been brought about by an order of the Hon'ble Bombay High Court.

The Advocate for Samaj Darshan Trust points out that earlier buyers were investors and cannot claim privity of contract and also points out that the erstwhile Developer / Promoter through an affidavit before the Hon'ble Bombay High Court has committed to carry the liabilities of the Allottees which were put in place by him.

Further, the Advocate for the new Promoter seeks the following:

- 1. Change of Promoter vide an application dated 18.11.2021;*
- 2. Possession date change to 31.04.2023;*
- 3. Change in FSI from 3588 sq. mtrs. to 3624 sq. mtrs.*

The Advocate for the new Promoter also submits that the consent is not required in the present case as this is sought subsequent to order of the Hon'ble Bombay High Court. The matter is heard and reserved for order."

3. Khambhati Modh Vanik Samaj (Mumbai) are the landowners and the co-Promoters of the said Project (hereinafter referred to as the "**said Trust**"). The said Trust had submitted an application under section 15 of the said Act for change in name of the Promoter from M/s. Bhakti Enterprises, a Proprietary Concern to H. Rishabraj Developers, a Partnership Firm. The change of name of the Promoter was applied pursuant to the order dated 26.11.2020 passed in Commercial Division Notice of Motion No. 99 of 2020 in Commercial Arbitration Petition No. 147 of 2018 with Commercial Arbitration Application No. 54 of 2018 before the Hon'ble Bombay High Court on the ground that the construction of the said Project was stalled for about 5 years and in view thereof the land owners

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/ the co-Promoter of the said Project was allowed appoint a new Promoter/Developer. The relevant portion of the order of the Hon'ble Bombay High Court is reproduced hereinbelow:

"16. Prayer clause (c) of the present Notice of Motion seeks leave of this Court to the Applicants / Petitioners to appoint a new developer for the development of the society. I do not see how this can possibly be denied."

4. Further, the Hon'ble Bombay High Court has also passed an order dated 13.01.2022 in a Suit No. (L) 18622 of 2021 filed by Mr. Jayesh Patel who claims to be the erstwhile (old) Promoter / Developer's Allottee against the erstwhile (old) Promoter / Developer wherein it has been observed that Mr. Jayesh Patel cannot claim any ad-interim reliefs against either the new Promoter / Developer or the owner of the said Property i.e. the said Trust with whom he has no privity to seek protection of his alleged right to the suit flat. The Hon'ble Bombay High Court also observed that the Mr. Jayesh's family member had approached the MahaRERA Authority making the same complaint of not being put in possession of the respective flats including the suit flat under the said agreement for sale dated 25.07.2017 with the erstwhile (old) Promoter / Developer which had been duly registered and that MahaRERA Authority by an order dated 13.10.2017 dismissed the complaint on the ground that agreement for sale was not executed as per the prescribed format of said Act and rules made thereunder and that there was no specific date of possession of the flats mentioned in the agreements for sale. Since, the date of possession was not specified, MahaRERA Authority felt that there is no cause of action for the complainant hence the complaint was dismissed. Thus, the Hon'ble Bombay High Court in view of the facts rejected the plea of Mr. Jayesh Patel for grant of ad-interim reliefs against the new Promoter / Developer herein. The relevant portion of the aforesaid order of the Hon'ble Bombay High Court is reproduced hereinbelow:

"13. In the present case, the Defendant No.8 – new developer has been appointed under the aegis of this Court vide order dated 26th November, 2020. The Defendant No.1, the erstwhile developer had executed the Agreement for Sale with the Applicant / Plaintiff as purchaser for which the specific performance is sought in the present Suit. The Suit proceeds on the premise that the Applicant continues to have a right to claim Specific Performance i.e. a right to be put in possession of the Suit flat. However, with the

appointment of the Defendant No.8 – new developer, prima facie I am of the view that the Applicant / Plaintiff's remedy will be in damages against the Defendant No.1, the erstwhile developer. The Applicant / Plaintiff cannot claim any ad-interim relief against either the new developer or the owner of the Suit property with whom he has no privity to seek protection of his alleged right to the Suit flat.

14. It is further pertinent to note that the Applicant / Plaintiff's family member had approached MahaRERA making the same complaint of not being put in possession of the respective flats including the Suit flat under the said Agreement for Sale dated 25th July, 2017 with Defendant No.1, the erstwhile developer which had been duly registered. The complaint had been made as this was a MahaRERA project. The MahaRERA by order dated 13th October, 2017 dismissed the complaint on the ground that Agreement for Sale was not executed as per the prescribed format of RERA Act and Rules made thereunder. There was no specific date of possession of the flats mentioned in the Agreements for Sale as also the possession was due on or before the occupation certificate. Since, the date of possession was not specified, and the Authority felt that there is no cause of action for the complainant to present the complaint and dismissed the complaint. Other than annexing the said order of MahaRERA the Applicant / Plaintiff has not mentioned in the Plea that the complaint for not being put in possession of the Suit flat was dismissed. In spite of the complaint having been rejected by MahaRERA by order dated 13th October, 2017, the Applicant / Plaintiff has belatedly filed the present Suit on 18th August, 2021 and taken out the present Interim Application, whereby they have sought for ad-interim relief to be passed. The Applicant / Plaintiff were also aware of the Defendant No.3, the owner of the Suit property had not recognized any right of the Applicant / Plaintiff to the Suit flat way back on 16th October, 2018 by correspondence addressed by the Advocate for Defendant No.3.

15. In view thereof, I find that there is no case made out for grant of ad-interim relief against Defendant Nos.3 to 8 apart from the fact that there is much delay in making such application as the Applicant / Plaintiff's cause of action, if any, would have arisen much earlier.

16. Accordingly, ad-interim relief sought for is not granted."

5. Thus, from the above orders passed in two separate matters by the Hon'ble Bombay High Court, it is clear that the appointment of the new Promoter / Developer is allowed and the Allottees of the erstwhile (Old) Promoter / Developer cannot claim any ad-interim reliefs against either the new Promoter / Developer or the said Trust with whom they have no privity to seek protection of their alleged right to the allotted flats. It is also observed that the new Promoter / Developer has not submitted consents of the Allottees of the erstwhile (old) Promoter / Developer. The new Promoter / Developer and the said Trust are relying on the order of the Hon'ble Bombay High Court wherein

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the question of the earlier Allottees has been dealt with. Since this change in Promoter is taking place as per the directions of the Hon'ble Bombay High Court and that the issue of Allottees of the erstwhile (old) Promoter / Developer has also been dealt with this Authority waives the need for consents to be obtained for change of name of Promoter as per section 15 of the said Act. In this context the relevant portion of the Hon'ble Bombay High Court order dated 13.01.2022 for ease of reference:

"11. Having considered the submissions, I am of the view that no ad-interim relief can be granted against the Defendant Nos.3 to 8 as sought for by the Applicant / Plaintiff in view of the settled law laid down by this Court in Vaidehi Akash Housing Pvt. Ltd. (Supra). This Court has in the said decision held that there is no privity of contract between Applicant purchaser and the new developer or owner of the Suit property when the agreement was entered into by the Applicant purchaser with the erstwhile developer. It was held in the facts of that case that specific performance cannot be claimed and / or granted either against the Society as owner or Rustomjee as the new Developer of the Suit property. The remedy of the purchaser would be to claim damages from the Vaidehi, the erstwhile developer under their agreement."

6. Further, it is also observed that the said Trust has submitted an undertaking dated 29.10.2021 along with the application wherein it categorically stated @para No.5 therein that all the claims that may arise from any person/s or any legal entity shall be settled by the said Trust and that the new Promoter / Developer shall not be liable in any manner to such claims. It is also pertinent to note that the Advocate for the said Trust during the hearing held on 19.01.2022 before this Authority has submitted that the earlier buyers were investors and cannot claim privity of contract and also pointed out that the erstwhile (old) Developer / Promoter through an affidavit before the Hon'ble Bombay High Court has committed to carry the liabilities of the erstwhile (old) Developer / Promoter's Allottees which were put in place by him. In view of the undertaking submitted by the said Trust and the submission made by the said Trust this Authority directs the said Trust shall be held liable to take on all the responsibility, if any in the future arising out of the liabilities created by the erstwhile (old) Promoter / Developer of the said Project.

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7. The said Trust being the co-Promoter 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. Thus, the change in name of the Promoter has been carried out on the MahaRERA Project registration webpage with regard to the said Project. However, the correction application with regard to the change in the date of possession i.e. completion date of the Project to be 31.04.2023 and the change in FSI from 3588 sq. mtrs. to 3624 sq. mtrs. is still pending before the MahaRERA.
9. The new Promoter/Developer has submitted declaration in Form – B along with the co-Promoter i.e. the said Trust. Further, the said Trust is also aware and consents the changes proposed by the new Promoter / Developer in the FSI from 3588 sq. mtrs. to 3624 sq. mtrs. In view thereof, the change in FSI as may be approved by the Planning Authority shall be made in the details of the said Project on the MahaRERA Project registration webpage.
10. With regard to the issue of the extension sought by the new Promoter/Developer section 7 (3) of the said Act needs to be examined. The relevant extract of section 7 (3) is reproduced hereinbelow:

"7 (3) The Authority may, instead of revoking the registration under sub-section (1), permit it to remain in force subject to such further terms and conditions as it thinks fit to impose in the interest of the allottees, and any such terms and conditions so imposed shall be binding upon the promoter."
11. On the plain reading of section 7(3) of the said Act, it is clear that instead of revoking the registration this Authority can impose certain terms and conditions as it thinks fit to let the registration remain in force. In view thereof, it is observed

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that since the co-Promoter i.e. the said Trust have granted unto the new Promoter/Developer absolute rights to develop the said Project and that the co-Promoter has undertaken that all the claims that may arise from any person/s or any legal entity shall be settled by them, this Authority directs the grant of extension of the said Project up to 30.04.2023.

FINAL ORDER

Thus, H. RISHABRAJ DEVELOPERS are permitted as the new Promoter for the said Project and the said Trust shall be held liable to take on all the responsibility arising out of the liabilities created by the erstwhile (old) Promoter / Developer of the said Project. Needless to say, that H. RISHABRAJ DEVELOPERS 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. Further, H. RISHABRAJ DEVELOPERS are allowed to make changes in FSI as may be approved by the Planning Authority. and are also granted an extension of the said Project up to 30.04.2023 to complete the balance construction work and handover possession to the Allottees of the said Project. H. RISHABRAJ DEVELOPERS 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, the said Trust, the Allottees and the Association of Allottees of the said Project.


(Ajay Mehta)
Chairperson, MahaRERA