

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

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

COMPLAINT NO. CC005000000269342

MARVEL AQUANAS CO-OPERATIVE
HOUSING SOCIETY LTD

...COMPLAINANT

VS

1. MARVEL REALTORS AND DEVELOPERS LIMITED
2. CHAITANYA KAMAL INFRACON LLP
3. C.N. SANGHVI AND CO. (FORWARDS) PVT. LTD.
4. ISC INFRASTRUCTURES PRIVATE LIMITED
[now known as Ideal Prime Realtors LLP]

...RESPONDENTS

MAHARERA PROJECT REGISTRATION NO. P52100001521

Order

June 24, 2024

(Date of last hearing – 12.03.2024 matter was reserved for order)

Coram: Shri. Ajoy Mehta, Chairperson, MahaRERA

Advocate Lalit Jhunjhunwala a/w Society Member Saurabh Ratan for the Complainant
Advocate Amit Patil for Respondents

1. The Respondent No. 1 is the Promoter within the meaning of Section 2(zk) of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as the “**said Act**”) of Real Estate Regulatory Authority (hereinafter referred to as the “**RERA**”). The Respondent No. 1 is registered as the Promoter of the Project namely “MARVEL AQUANAS” under section 5 of the said Act bearing **MAHARERA Project Registration No. P52100001521** (hereinafter referred to as the “**said Project**”). The Complainant is a Society within the meaning of Section 2(zg) of the said Act.
2. On the MahaRERA Project registration webpage the proposed date of completion is 30.09.2017, revised date of completion is 31.12.2019 and extended date of

completion is 31.03.2024. No extension application is pending as on date. The said Project is lapsed.

3. The Complainant is seeking the following reliefs:

QUOTE

- a. *The registration granted to the Respondent under Section 5 for the project 'Marvel Aquanas' (P52100001521) be revoked.*
- b. *To debar the Respondents from accessing MahaRERA website in relation to and for the project 'Marvel Aquanas' (P52100001521).*
- c. *To specify the name of the Respondents in the list of defaulters and further display their photographs on Authority's website.*
- d. *To send intimation of the revocation of the project 'Marvel Aquanas' (P52100001521) to Other Real Estate Regulatory Authority in other states and Union Territories.*
- e. *To direct the bank holding the project bank account, specified under sub-clause (D) of Clause (I) of sub-section (2) of Section 4, not to allow the Respondents to operate the said account.*
- f. *To allow the Applicant to undertake and complete the construction of the project 'Marvel Aquanas' (P52100001521).*
- g. *To issue necessary directions to the Pune Municipal Corporation to allow the applicant society to deal with the Pune Municipal Corporation for the purpose of the project 'Marvel Aquanas' (P52100001521) (including but not limited to making application for revision/modification of the plan, for grant of completion certificate, grant of various NOC from various department of Pune Municipal Corporation).*
- h. *To issue necessary instruction to the bank holding the project bank account, specified under sub-clause (D) of Clause (I) of sub-section (2) of Section 4 to allow the applicant to operate the said bank account.*
- i. *To allow the Applicant to sell the unsold inventory to raise finance for the construction of the project 'Marvel Aquanas' (P52100001521).*
- j. *To allow the applicant to call for the unpaid sums on account of already sold units from the unit purchasers, if there is any unpaid sum due and payable.*
- k. *The Respondent be directed to provide the applicant with:*
 - i. *Original of all the sanctioned plans;*
 - ii. *Original of FIRE NOC;*
 - iii. *Original of the Lift License;*
 - iv. *Original of the Electrical Drawings;*
 - v. *Original of the plumbing Drawings;*
 - vi. *Original of the Warranty certificate of the equipment's used and installed;*
 - vii. *Original of the encumbrance certificate on the said land and said scheme;*
 - viii. *Original of the documents vide which encumbrance is created on the said land or said scheme or any of the units located in the said scheme.*
- l. *The Respondents be prohibited from creating any obstruction in the development of the project 'Marvel Aquanas' (P52100001521) by the Applicant.*
- m. *The cost of litigation amounting to Rs.5,00,000/- [Rupees Five Lakhs Only] be awarded to the Complainant.*

n. Any other order in the best interest of justice and equity be passed.

UNQUOTE

4. The complaint was heard on 12.03.2024 wherein the following roznama was recorded by this Authority:

“Both the Parties are present.

1. The Complainant avers that in spite of three extensions the Respondent has not been able to bring the Project anywhere to completion. The booking was made in 2013 and up to 2016 the Complainant have paid nearly 90% of the amounts. The Complainant further avers that huge sums of money has been collected and there is every possibility of the same being diverted. The Complainant further avers that ever time an extension has been taken only to make further sales from the unsold inventory rather than make an effort to complete the Project. The Complainant seeks forensic audit revocation of registration, handing over of the Project to the society and various reports showing the status of the inventory. The Complainant further seeks that interest for delayed possession be also adjusted against their remaining dues.

2. The Respondent states that there was an earlier complaint also in which suitable orders have been issued by the Authority and now a similar complaint has come up which is hence barred by res judicata. The Respondent informs that they had sought extension up to 31.03.2024 and they are likely to complete and handover possession with OC in the next one and half months. Further the Respondent avers that the Complainant has not filed as per the circulars of the MahaRERA.

3. In the first instance the Authority will direct Shri Sanjay Deshmukh, Chief Consultant, MahaRERA, I.A.S. Retired; to call both the parties to understand the exact status of the work. Shri Sanjay Deshmukh, Chief Consultant, MahaRERA, I.A.S. Retired; will also depute one of the field officers of MahaRERA to inspect the work site to bring on record the present level of construction of the Project. Shri Sanjay Deshmukh, Chief Consultant, MahaRERA, I.A.S. Retired; will submit his report to the Authority on or before 02.04.2024, the copy of the report will be made available to all the Parties.

4. Parties at liberty to file written submission if any on or before the 12.04.2024, Subsequent to which the matter will be reserved for orders.”

5. Pursuant to the Roznama dated 12.03.2024 the captioned matter was transferred to Shri Sanjay Deshmukh, Chief Consultant, MahaRERA, and were directed to submit report on or before 02.04.2024 and Parties were given liberty to file written submissions if any by 12.04.2024 subsequent to which the matter will be reserved for order. In view of the above, Shri Sanjay Deshmukh, Chief Consultant, MahaRERA submitted its report dated 24.05.2024 and investigation report of engineer dated 27.03.2024 is on record. The observation of the said report dated 24.05.2024 is reproduced hereunder for reference:

“Observations:

- 1. The promoter claims that they shall be able to complete the project with respect to sold units till date within further 40 days from the date of the meeting.*
- 2. The promoter stated that they shall apply for the Occupancy Certificate from the competent authority within 40 days.*
- 3. The promoter claims that they shall not sell any further units till possession is offered to existing Allottees in the project.*
- 4. In view of the above, a report is submitted to the Authority for further necessary action.”*

6. The brief facts and submissions of the Complainant is as follows:
 - a. That the Complainant is the Cooperative Housing Society duly constituted and registered for the unit purchasers of the units of the said Project and are Allottees by virtue of their respective agreement for sale.
 - b. That Society has been constituted by 44-unit purchasers out of total of 72 units which is more than 50% and thus the complaint is maintainable. It is stated that the rest of the units are either unsold or no information has been provided by the Respondent.
 - c. That the project is lapsed, and the Complainants have made timely payments as per the demands raised by the Respondents.
 - d. That the Respondents are duty bound to provide basic amenities and liveable environment. However, till date the Respondents have failed to provide the same.
 - e. That the Complainant kept a constant follow up with the Respondent with respect to the completing of the development of the said project and the said amenities and standards, however the Respondent did not provide any satisfactory response to the queries of the Complainant.
 - f. That in the month of April 2018 the members of the Applicant had conducted an audit of the individual units through TUV India, who have found adversely with respect the commitments made by Respondents and the delivery being undertaken by Respondents.
 - g. Subsequently the Respondents have stopped the members of the Complainant from entering the said project to complete a site survey to ascertain stage of

work on site and to make a rough estimate of the amount required to complete the project.

- h. It is stated that Complainant (Society) herein filed Deemed Conveyance Application bearing No. DC1006635/2019 before the Ld. Competent Authority & District Deputy Registrar of Cooperative Societies, Pune City. It is stated that vide order dated 14.10.2020 the Ld. Competent Authority & District Deputy Registrar of Cooperative Societies, Pune City allowed the said application and further issued certificate of deemed conveyance for an area to the extent of 9925.70 square meters of land area. It is stated that in pursuance thereof Sale Deed came to be executed and registered in favour of the Complainant (Society) on 20.10.2020 bearing Registration Serial No.11531/2020 in the Office of Sub-Registrar of Assurances at Haveli No. 14. It is stated that the Respondent No. 01 filed a Writ Petition bearing No. WP(ST)/94391/2020, thereby challenging the order dated 14.10.2020 before the Hon'ble High Court of Judicature at Bombay and the Hon'ble High Court of Judicature at Bombay vide its order dated 05.11.2020 has directed the parties to maintain status quo regarding the deemed conveyance.
- i. It is stated that, time and again the timeline of the project was extended however, and the said Project has shown very negligible progress and that till today possession has not been delivered to the flat/unit Purchasers.
- j. That the Complainants are aggrieved by the inaction on part of the Respondent to complete the construction of the said Project and Complainant (Society) is therefore entitled to seek direction from this Hon'ble Authority in accordance with Section 7 & 8 of the Real Estate Act, 2016.
- k. That the allottees in the said Project, have initiated various complaints against the Respondents for not completing the Project and not handing over the possession as per the timelines stated in their agreements. As on date penalty interest is due of Rs. 33,70,00,000/- [on account of the delay in handing over the possession to all the allottees as directed in order dated 07.03.2019 passed in the complaint no. CC005000000011446.

- l. That the Respondents have already taken multiple extension from this Hon'ble Authority with no sign of real progress on the site.
 - m. Furthermore, vide the Order decided in the complaint bearing no. CC005000000085534 and that the Authority had directed the present Respondents to complete the said project by October 2022. However, till date the project is incomplete and that the Respondents are time and again have taken the MahaRERA Authority for granted.
 - n. It is pertinent to note that, an Extension Application came to be filed by the Respondents, even after the failure to complete the said project within the timeline vide Extension Application bearing No. EXT52100012903 and a hearing was conducted in the Suo Motu 290 of 2022 on dated 08.12.2022, thereby hearing the parties and their grievances. However, even after multiple Orders which are against the present Respondents, the Hon'ble Authority was pleased to grant extension to the said project.
7. In furtherance to the directions of the Authority vide roznama dated 12.03.2024 Parties were given liberty to file written submissions if any by 12.04.2024 subsequent to which the matter will be reserved for order on report of Shri Sanjay Deshmukh, Chief Consultant, MahaRERA dated 24.05.2024 and investigation report of engineer dated 27.03.2024. Following are the submissions in brief tabulated hereunder:

SUBMISSIONS OF THE COMPLAINANT	SUBMISSION OF THE RESPONDENT
<p>a. That documents, PMC/Govt. approved plans, milestone sheets, construction details, copies of Sales Agreement, Brochure, Sales communications on the services, amenities, environmental criteria committed or assured were not referred to by the Agency to compare with actual implementation at site. The Investigators relied on the inputs given by the representatives of the Respondents who accompanied them and provided them incorrect information. The Agency, based on such information made their present report. Hence the same does not hold any merit in the eyes of law and cannot be fully relied upon.</p> <p>b. That during their site visit on the 26.03.2024</p>	<p>a. That the present complaint is not maintainable because it is barred by Res-judicata. The Complainant had filed similar Complaint bearing No. CC005000000085534 against the Respondent for similar reliefs wherein Hon'ble Authority was pleased to pass an order on 10.06.2022 which was rectified on 28.11.2022. This fact has been deliberately suppressed by the Complainant to obtain beneficial Order from this Hon'ble Authority. Hence on the res-judicata as well as suppression of facts, the Complaint is liable to be dismissed with costs. That same can be agitated by filing no-execution application under the Complaint bearing No. CC005000000085534 and do not have right to</p>

<p>and on 29.03.2024, they did not see any evidence of High Side equipment like DG sets, Pumps, Lift, OWC, energy meters, water meters etc. at site to support the completion timelines being projected.</p> <p>c. That in total 8 extensions are granted by this Hon'ble Authority to complete the project and has still failed to complete and even comply with the directions by this Hon'ble Authority. Latest extension has been granted in spite of non-adherence without consent of 51% owners.</p> <p>d. That while carrying out the investigation, no complainant or any members of the complainant were even intimidated by the Hon'ble Chief Consultant MahaRERA or by the Third-Party Investigator. It is further stated that, the entire investigation was conducted in the absence of the Complainants and that the Third Party was accompanied by the Project Engineer and the Sales Team Person i.e., representatives of the Respondents and thereby the present investigation lacks transparency.</p> <p>e. That only importance is given to civil work in the inspection work and failed to provide status review of MEP, Fire Fighting and Hydrant System, Approach Road, Transformers, DG Set and OWC jobs, CCTV, Municipal Water for drinking etc.</p> <p>f. That submissions of the Promoter/Builder with respect to the construction of civil in % is different from what it is been seen from the investigation report and thus it clearly brings out the malafide and dishonest intention of the Promoter/Builder.</p> <p>g. That the Investigator has only mentioned that the Parking Arrangement/Area is complete, however the same is not complete. The basement parking is in a grey shell with no evidence of slot marking.</p> <p>h. Club house and swimming pool is a critical amenity that, along with incompleteness of other amenities, cannot sum up to 70% complete as mentioned in the report.</p>	<p>file fresh complaint.</p> <p>b. Assuming without admitting, if the present Complaint file by the Complainant for Revocation, then the Complainant has not filed the present complaint as per procedure laid down by the MahaRERA vide circular, i.e. MahaRERA order No. 8/2019 dated 28/03/2019</p> <p>c. That though the Respondent has not applied for further extension of the said project, the Respondent states that they will complete the entire construction of the "MARVEL AQUANAS" and after obtaining Completion certificate, the Respondent will further sold the balance unsold flat to the prospective buyers.</p> <p>d. That the Respondent Prayers that the complaint be dismissed with costs for want of maintainability as well as Res-Judicata.</p>
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8. The Respondent no. 1 has filed an undertaking dated 10.04.2024 for completion of Project by end of June 2024. Following are the undertaking made by the Respondent no. 1:

- i. *Completion of Project: The Promoter hereby undertakes to complete all pending construction work, including but not limited to internal plumbing work, electrical installation, lift installation, and obtaining necessary permissions from concerned*

municipal authorities, for both Building A and Building B of the Project, by the end of June 2024.

- ii. Priority to Existing Allottees: The Promoter shall give priority to the existing allottees of the Project in completing the remaining work as per the Agreement to Sale, ensuring that their interests are duly considered and addressed.*
 - iii. Subsequent Completion of Unsold Apartments: The Promoter further undertakes to complete the remaining 16 unsold apartments subsequent to the completion of the allotted work for existing allottees.*
 - iv. Compliance with Regulatory Requirements: The Promoter shall diligently comply with all regulatory requirements, including but not limited to obtaining necessary permissions from municipal authorities, providing necessary amenities such as water connection, electric meters, DG sets, fire pumps, fire systems, etc., as required by law.*
 - v. Submission of Quarterly Project Reports. The Promoter shall ensure timely submission of Quarterly Project Reports (QPRs) to the Authority, providing updates on the progress of the Project, until its completion.*
 - vi. Financial Assurance: The Promoter states that although many Complainants have not made complete payments till date, the Promoter shall make funds available for the completion of the remaining work of the Project. The evidence of the same was submitted to the Authority regarding project costs, expenditures, and funds collected in the RERA designated bank account*
 - vii. Extension of Project Registration. The Promoter acknowledges that the Project registration was valid until 31 March 2024 and undertakes to complete the Project in or before the end of June 2024 and ensure compliance with regulatory requirements.*
 - viii. Assessment and Completion Timeline: The Promoter acknowledges the assessment by the investigator that the Project can be completed by the end of July 2024 but reaffirms the commitment to complete the Project by the end of June 2024, as stated herein.*
 - ix. Resolution of Pending Complaints: The Promoter undertakes to diligently address and resolve any pending complaints with the Authority, ensuring compliance with all relevant regulations and commitments made to the complainants."*
9. From the facts and the submissions made by the Parties hereinabove, the Authority shall examine the issue *Whether the complaint filed by the Society/Complainant seeking reliefs under section 7 and 8 of the said Act is maintainable?*

10. Before determining the issue at para No.9, the following observations after examining the documents placed before the Authority are noteworthy:
- a. It is observed from the Report dated 24.05.2024, submitted by Shri Sanjay Deshmukh, Chief Consultant, MahaRERA, it is clear that the Respondent No.1 shall be able to complete the project with respect to sold units till date within 40 days from the date of the meeting and shall apply for the Occupancy Certificate (OC) from the competent authority within 40 days. Further the Respondent no. 1 claims that they shall not sell any further units till possession is offered to existing Allottees in the said Project.
 - b. It is also observed that the Respondent no. 1 has submitted undertaking dated 10.04.2024 for completion of Project by end of June 2024 and the same is reproduced at Para No. 8 hereinabove.
11. Thus, to answer the preliminary issue at Para no. 9 it would be necessary to examine section 7 of the said Act which is reproduced hereinbelow for ready reference:
- “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.*
- (2) The registration granted to the promoter under section 5 shall not be revoked unless the Authority has given to the promoter not less than thirty days notice, in writing, stating the*

grounds on which it is proposed to revoke the registration, and has considered any cause shown by the promoter within the period of that notice against the proposed revocation.

(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.

(4) The Authority, upon the revocation of the registration, –

(a) shall debar the promoter from accessing its website in relation to that project and specify his name in the list of defaulters and display his photograph on its website and also inform the other Real Estate Regulatory Authority in other States and Union territories about such revocation or registration;

(b) shall facilitate the remaining development works to be carried out in accordance with the provisions of section 8;

(c) shall direct the bank holding the project bank account, specified under sub-clause (D) of clause (l) of sub-section (2) of section 4, to freeze the account, and thereafter take such further necessary actions, including consequent de-freezing of the said account, towards facilitating the remaining development works in accordance with the provisions of section 8;

(d) may, to protect the interest of allottees or in the public interest, issue such directions as it may deem necessary.

From the plain reading of the above section, it is clear that this Authority may, on receipt of a complaint, revoke the registration granted under section 5, only after being satisfied that the essential ingredients of revocation are (a) the Promoter (*Respondent herein*) makes default in doing anything required by or under this Act or the rules or the regulations made thereunder; (b) the Promoter (*Respondent herein*) violates any of the terms or conditions of the approval given by the competent authority; (c) the Promoter (*Respondent herein*) is involved in any kind of unfair practice or irregularities; (d) the Promoter (*Respondent herein*) indulges in any fraudulent practices and in case the project has lapsed then the Authority, may consult the appropriate Government to take such action including the carrying out of the remaining development works by competent authority or by the Association of Allottees or in any other manner.

12. Further, it is also pertinent to note that as much as the scheme of the said Act is to safeguard the interest of an Allottee against the Promoter at the same time the said Act also bestows upon the Authority the responsibility to safeguard the Promoter against unreasonable demands and to create an ecosystem that ensures completion of the project in a time bound manner.

13. In the present case it is an admitted position that the said Project is not yet completed and the same is evident from the documents uploaded by the Respondents on the said Project registration webpage. Hence, there is a delay on part of the Respondents with regard to the handover of possession with OC.
14. It is also seen that MahaRERA Project registration of the said Project has lapsed on 31.03.2024 and the Respondents have taken no steps to seek extension of the same till date. The Respondents have violated the provisions of the said Act and hence the Respondent is directed to apply for extension of the said Project.
15. Further, the Authority notes that the Complainants are seeking possession of their flats purchased in the said Project. Thus, the issue of completion of the said Project becomes critical. However, the Authority notes with concern that in spite of the Respondents appearing before the Authority, the Respondents have not taken any steps to seek extension of the said Project registration till date. This leaves the Authority with a critical question as to how will the said Project reach completion?
16. In this regard the Authority lays down the following directions to the Respondent:
 - a. In view of the undertaking dated 10.04.2024 and report dated 24.05.2024, the Respondent is directed to complete the project with respect to sold units till date and shall apply for the Occupancy Certificate (OC) from the competent authority as committed in the undertaking.
 - b. Further the Respondent no. 1 is directed to not sell any further units till possession is offered to existing Allottees in the said Project.
17. In view of the above the captioned complaint is **disposed of**. Further since the said Project is lapsed and the Respondents have directed to apply for extension failing which shall be liable for penalty under section 63 of the said Act. No order as to costs.

(Ajoy Mehta)
Chairperson, MahaRERA