

Court seeks MahaRera reply on no action against unregistered projects

SWEETY ADIMULAM
sweety.adimulam@fpj.co.in

The Bombay High Court asked the Maharashtra Real Estate Regulatory Authority (MahaRERA) to file a reply over its refusal to exercise action in a case of "unregistered projects." Homebuyers challenged the authority's order in the HC, stating that RERA was specifically enacted to cater to their grievances. However, refusal to exercise jurisdiction on the ground that the project is not registered will impact homebuyers widely. The matter has been now listed on September 20 for further hearing.



The case is about flat purchasers (petitioners), namely the Parinee Almog Buyers Welfare Association, which

invested in Parinee Almog at Village Eksar, Borivali (West). The association is represented by advocate

Tanuj Lodha of Lodha and Lodha Advocates. These homebuyers booked the flats in 2013 and paid Rs 6.36 crore (40% of the consideration) towards it in the said building. However, the developer failed to enter into an agreement for sale and violated section 4 of MOFA, it contended.

Moreover, homebuyers were promised that the possession of the flats will be handed over in December, 2016, at the time of booking. However, the said project developer failed to keep its promise, they claimed. They then moved MahaRERA and sought refund along with interest.

**BASAVRAJ
GURAPPA
PATIL**

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BASAVRAJ GURAPPA
PATIL

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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.3607/2021

Parinee Almog Buyers
Welfare Association Petitioner

Vs.

The State of Maharashtra & Ors. Respondents

Mr. Kunal Katariya with Tanuj Lodha, Rachana Magdum,
Simran Gulabani and Sonal Dayma i/b. Lodha & Lodha
Associates for the Petitioner

Mr. V. S. Gokhale, "B" Panel Counsel for the State

Mr. A. M. Kulkarni for Respondent No.2.

**CORAM: K.K.TATED &
PRITHVIRAJ K. CHAVAN, JJ.**

DATED : AUGUST 31, 2021

P.C.

1 Heard. Liberty granted to the Respondent to file reply
on or before 07.09.2021, with copy to other side.

2 Rejoinder, if any, shall be filed on or before
15.09.2021.

3 Office is directed to place the matter on board on
20.09.2021.

(PRITHVIRAJ K. CHAVAN, J.)

(K.K.TATED, J.)

Shailaja

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.3607 OF 2021**

Parinee Almog Buyers Welfare]
Association] **.. Petitioner**

Vs.

State of Maharashtra and others.] **.. Respondents**

.....

Mr. Kunal Katariya a/w Tanuj Lodha, a/w Rachana Magdum & Ria Jain i/b Lodha & Lodha Advocates, for Petitioner.

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**CORAM : K.K. TATED &
PRITHVIRAJ K. CHAVAN, JJ.**

DATE : 3rd AUGUST, 2021.

PC.

1. Heard Mr. Katariya, learned Counsel for the petitioner.

2. By this petition under Article 226 of the Constitution of India, the petitioner is challenging the order dated 18th October, 2020 passed by respondent No.2- The Maharashtra Real Estate Regulatory Authority, Mumbai in Source Complaint No.SC10001999 declining to take any action against the respondent-Developer on the ground that he is not registered under Real Estate (Regulation and Development) Act, 2016.

3. Mr. Katariya, learned Counsel appearing on behalf of the petitioner submits that the reason given by the Authority is contrary to law. He submits that neither the Authority directed the respondent-Developer to refund the amount to the petitioner nor directed to take any action against them. Hence, the petitioner preferred the present writ petition.

4. It is to be noted that the Maharashtra Real Estate Regulatory Authority, Mumbai in its order dated 18th October, 2020 made following observations in paragraphs No.7 and 8 which read thus;

“7. Since the Respondent does not have valid approvals from the Competent Planning Authority, no directions can be issued to register the project, as on date. However, the Respondent is directed to apply for MahaRERA registration within 30 days of their obtaining the requisite approvals for the project. Further, he shall not advertise, market, book or create third party rights by offer for sale, enter into agreement for sale for any apartment in this proposed project, without registering the project with MahaRERA.

8. To the query of the learned counsel for the Complainants No.2 and 3, requesting for direction on their prayer to refund the consideration amount paid by the Complainant, it was explained that as stated in Para 86 of the judgment of Hon'ble Bombay High Court in Writ Petition No.2737/- U Neelkamal Realtors Vs. Union of India, RERA will apply after getting the project registered. Therefore, merits of the other grievances made by the Complainants have not

been gone into. The Complainants have the liberty to raise the same in an appropriate forum”.

5. Authority also relied on paragraph 86 of the judgment of this Court in case of ***Neelkamal Realtors vs. Union of India, 2018 (1) ABR, 558***, which reads thus :-

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

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

6. As the respondents are not served, following order is passed;

: ORDER :

- (a) The petitioner is permitted to serve the respondents by private notice along with entire proceedings either by R.P.A.D or hand delivery and file affidavit of service on or before 27th August, 2021;

(b) If affidavit of service is filed in time, the matter to appear on board on 31st August, 2021;

(c) If affidavit of service is not filed in time, the matter to appear on board as per C.I.S date.

[PRITHVIRAJ K. CHAVAN, J.]

[K. K. TATED, J.]