

Case law study

Saakar Bhimani Vs M/s Bhakti Enterprise and Ors

Complaint no. CC006000000056539

This article attempts to discuss the issues in respect of liability of the intending promoter or new promoter in case of transfer of project.

Issues:

Who will be liable for the pending obligations as per the provision of RERA and as per agreement for sale?

Is its erstwhile promoter? Co-promoter? Or new promoter?

Provisions:

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

Analysis: provision of Section 15(2) says that intending promoter or new promoter will be responsible for the compliance of the

- Pending obligations under the provisions of the Act and Rules and Regulation made and
- Pending obligations as per Agreement to Sale entered into by previous or old promoter

Fact of the Case:

In the present case the 6 complaints were filed before the MahaRERA Authority seeking relief under Section 7, 13 and 18 of the RERA i.e. related to execution of agreement to sale, revocation of registration of the project and interest for delay in possession.

The complainant has purchased the units from the erstwhile promoter i.e. Bhakti Enterprises who has obtained development rights from the land owner i.e. The Shree Khambhati Modh Vanik Samaj vide development agreement dated 7-12-2015. However, due to dispute arisen between the erstwhile promoter and the land owner, due to which the land owner approached the Hon'ble High Court. Thereafter, the Hon'ble High Court vide an

order dated 26-11-2020 has granted liberty to the land owner to appoint new promoter to complete the pending work Accordingly, the land owner has appointed H Rishabraj Developers as promoter of this project which is confirmed by MahaRERA Authority by passing an order dated 21.01.2022 in suo motu case no. 215/2022 for change of promoter wherein it was held that

“Land owner i.e.co-promoter 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.”

On the basis of the direction of Hon'ble Bombay High Court and the order dated 21.01.22 passed in suo motu case no 215/2022, in the present complaint it is held by the MahaRERA Authority that

- a. Since the project registration is extended till 30.04.2023 the relief for revocation of project cannot be granted.
- b. Due to non-submission of the allotment letter /payment receipt it is not possible to conclusively prove that the provisions of section 13 of the RERA have been violated.
- c. As per direction of MahaRERA in order no 11 dated 23.10.2019, the Group Complaint shall be entertained only in respect of common reliefs claimed under section 7 and 8 of the RERA or for common amenities and Individual complaints need to be filed separately for individual reliefs otherwise they will be held not maintainable for mis-rejoinders for cause of action and parties.
- d. As per the order dated 21.01.22 in suo motu case no 215/2022 the land owner has taken over all the liability and responsibility out of the liabilities created by the erstwhile promoter. Hence since the owner has stepped into the shoes of the erstwhile promoter, the land owner is liable to comply with the statutory obligations of the erstwhile promoters towards these complainants allottees not the new promoter.

Conclusion:

Though the order of MahaRERA Authority has protected the interest of the allottees in the project but keeping out the new promoter from the obligation arising out of the agreement to sale is not as per the provision of Section 15 of RERA, 2016.