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IN A FIRST, MAHARASHTRA RERA ALLOWS DE-REGISTRATION OF A REAL ESTATE PROJECT

28 September 2022 [Introduction](#)

Upon an application by the promoter in the case of Turf Estate Joint Venture LLP v Kesari Realty and Others (Regulatory Case No. 1 of 2022, erstwhile Suo-motu Case No. 218 of 2022), the Maharashtra Real Estate Regulatory Authority (Authority) has proceeded to de-register a real estate project despite the fact that there is no provision in the Real Estate (Regulation and Development) Act, 2016 (Act) providing for such de-registration.

[Background](#)

The application pertained to the real estate project, "DB Turf View" (Project), which was first registered by Turf Estate JV under Section 5 of the Act. Of the 27 allottees, Turf Estate JV, having obtained the consent of 2/3rd of the allottees, applied for change in the name of the promoter in terms of Section 15 of the Act. Such consent also included consent for change in the plan of the Project, from residential to commercial. Pertinently, 5 of the allottees did not consent to such change. The application for change in promoter was accepted by the Authority and Turf Estate Joint Venture LLP (Promoter) became the new promoter of the Project.

An application for de-registration of the Project was subsequently made to the Authority by the Promoter. The Promoter indicated that the consent of 2/3rd of the allottees to this effect had been sought and received; allotments for such 2/3rd of the allottees (being 22 in number) had been cancelled and refunds made (where applicable); and the remaining 5 allottees were sent cheques containing the refund amounts with 9 percent interest.

The 5 allottees who had not consented, however, refused to accept the refund and challenged the termination of their allotment by way of suits before the Bombay High Court (Court), which are presently pending adjudication. The allottees also filed writ petitions seeking orders prohibiting the Promoter from taking steps for de-registration of the Project. These writ petitions were disposed of by the Court with directions to the Promoter to re-file the application for de-registration to the Authority showing the allottees as respondents to enable the allottees to oppose the application. The Court kept the questions of jurisdiction and availability of the remedy of de-registration open. It is in deciding this re-filed application that the Authority passed the order for de-registration of the Project.

[Findings of the Authority](#)

To answer the primary question of whether the Authority can de-register a real estate project on the request of the promoter, the Authority framed the supplementary question of whether the registration of a real estate project is granted in eternity. The

Authority observed that this is not the case, considering that the Act provides for revocation of registration of a Project under Section 7 which indicates that the Act takes into account circumstances where a registration may lapse, but the project may remain incomplete.

Relying on the legislative intent as evident from the Preamble (which is two-fold – promotion of the real estate sector and protection of consumer) and an overall view of the provisions of the Act, particularly the ones pertaining to situations where it is not possible to deliver what was originally planned or promised, the Authority accordingly held that de-registration could be allowed upon request by the Promoter.

Further, the Authority observed that the Act envisages the commercial reality where major changes in respect of a project become necessary, and in such cases the Act makes the consent of two-third of the allottees a mandatory requirement. For instance, Sections 14 and 15 require the consent of 2/3rd of the project's allottees other than the promoter for any alterations or additions to the sanctioned plans of a project and for the transfer or assignment of a promoter's rights and liabilities, respectively. Borrowing from these provisions, the Authority held that any 'inevitable' changes made without *mala fide* intent would stand the test of fairness and protection provided that the consent of 2/3rd of the allottees is obtained.

Taking an overall view, the Authority also specifically dealt with other relevant provisions of the Act to conclude that there is no legislative mandate to force the completion of the Project by the Promoter. As such, the Authority noted that it could not remain a mute spectator despite the lack of provision for de-registration in the Act and held that it would become inevitable where a deadlock is created by the inability of the promoter to continue the project and the allottees refusal to exit.

Notably, Section 18 of the Act dealing with the failure of the promoter of a real estate project to complete it, does not allow for voluntary refund at the instance of a promoter. However, the Authority held that this provision would not allow allottees to force completion where the promoter is unwilling to continue with the project, such as in the present case. Section 18 of the Act intends to protect the interest of the allottee(s) concerned and to prevent a promoter from singling out any of the allottees.

In the facts of the case, the Authority found the change to be inevitable, as (i) 2/3rd of the allottees had acknowledged that the Project would not proceed in the form previously envisaged and agreed to exit the project; (ii) it would not be commercially viable to insist on the Promoter completing the Project as the Promoter might not be able to find new takers for the Project to render it viable; (iii) the Promoter had indicated willingness to refund the amount paid by the allottees along with interest; and (iv) since the allottees did not contend that they were selectively chosen for removal from the project, no *mala fide* intent was alleged. Accordingly, in the facts of the case, the Authority held that de-registration would be appropriate.

Having concluded that de-registration would be permissible, the Authority considered the question of the remedy available to the 5 allottees. The Authority observed that the remedy now available to the 5 allottees is to accept payment of refund together with interest. Having said that, given that the adjudication of the issue of termination of the allotment was pending before the Bombay High Court (in the suits filed by these 5 allottees), the Authority held that it would refrain from interfering in this regard.

Comment

With this Order, the Authority has significantly transformed the regulatory landscape for real estate projects. Taking a pragmatic view, the Authority has struck a balance in acknowledging commercial realities that may necessitate de-registration, while also safeguarding the interest of allottees. This Order is likely to open the floodgates for applications by promoters seeking the remedy of de-registration where their real estate

projects begin to appear unviable due to a change in circumstances. It remains to be seen how the remedy of de-registration evolves as RERA authorities deal with more such cases - specifically with respect to the questions of the standards applicable to determine whether de-registration is appropriate in a particular case, and the form and extent of remedies available to allottees.

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