

BEFORE THE MAHARASHTRA
REAL ESTATE REGULATORY AUTHORITY, MUMBAI

Physical Hearing @3.30pm

SUO-MOTU CASE NO. 298 OF 2023

Project No. 1

SHADES OF TRADE

...PROJECT NAME

KAKADE GREEN ESTATE PVT. LTD.

...PROMOTER NAME

MAHARERA PROJECT REGISTRATION NO. P52100017854

a/w

Project No. 2

LE SKYLARK

...PROJECT NAME

KAKADE GREEN ESTATE PVT. LTD.

...PROMOTER NAME

MAHARERA PROJECT REGISTRATION NO. P52100027797

INTERIM ORDER

March 13, 2024

(Date of hearing - 04.07.2023 - matter was reserved for order)

Coram: Shri. Ajoy Mehta, Chairperson, MahaRERA &
Shri. Mahesh Pathak, Member-1, MahaRERA
Advocate Amit Kendre a/w Pushkar Patil for the Promoter

1. The captioned case is not a complaint, but a proceeding initiated by the Authority against the Promoter namely Kakade Green Estate Pvt. Ltd. by issuing the show cause notice dated 03.05.2023 calling for explanation pertaining to dual project registration, sought for one real estate project. This is a regulatory matter and the MahaRERA in exercise of its powers under 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") deems fit to hear the Promoter while deciding the aforesaid notice.

Details of the project and its registration under RERA:

2. The Promoter namely Kakade Green Estate Pvt. Ltd. is a Promoter within the meaning of Section 2 (zk) of the said Act (hereinafter referred to as the "said Promoter"). The said Promoter has registered one real estate project twice with MahaRERA and has obtained two separate MahaRERA project registration

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numbers for development of a real estate Project on Plot No. C, Survey No. 16, 18, 19, 51 and 53 (Part), Village - Karve Nagar, Taluka - Haveli, District - Pune, Division - Pune, State - Maharashtra, Pin Code - 411 052., admeasuring total Plot/Project area about 11269.53 sq. mtrs. (herein after referred to as the 'said project land')

3. The Promoter herein obtained the first registration for the project named as "SHADES OF TRADE" under section 5 of the said Act bearing **MahaRERA Project Registration No. P52100017854** (hereinafter referred to as the "said Project No. 1") on the said project land. The said Project No. 1 was applied for registration by the Promoter on 17.09.2018 and the MahaRERA registration certificate was issued to the Promoter on 24.09.2018 by MahaRERA. The said Project No. 1's project registration webpage reflects that the registration was granted to the said Project for one commercial building consisting of 130 units (49 showrooms + 81 offices) having proposed date of completion mentioned by the Promoter as 10.11.2022. The said Project No. 1 lapsed as the Promoter took no steps to seek extension of the same since 10.11.2022.
4. The Promoter herein obtained the second registration for the project named as "LE SKYLARK" under section 5 of the said Act bearing **MahaRERA Project Registration No. P52100027797** (hereinafter referred to as the "said Project No. 2") on the said project land during the validity of the said Project No. 1. The MahaRERA registration certificate for the said Project No. 2 was issued on 03.01.2021. The said Project No. 2's project registration webpage reflects that the registration was granted for construction/development of commercial as well as residential buildings. The commercial building consists of 67 numbers of commercial units/shops/apartments whereas the residential building A wing consists of 27 numbers of apartments and the residential building B wing consists of 27 numbers of apartments as well. Thus, the Project No. 2 consists of a total 121 units/shops/apartments. The proposed date of completion of the said Project No. 2 as mentioned by the Promoter on the MahaRERA project registration webpage is 15.06.2025.

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Brief history and background of the case:

5. That there were certain online complaints bearing Nos. CC005000000054214 and CC005000000106539 filed by the allottees in MahaRERA project registration No. **P52100006174** with respect to another real estate project of the Promoter herein. During the course of hearing held in the aforesaid complaints on 08.03.2023 before the Member 1, MahaRERA, the Complainant-allottees informed the Authority that the Promoter herein namely Kakade Green Enclave Pvt. Ltd. has changed the project name and obtained separate project registration numbers from MahaRERA.
6. In view of the above submission, a detailed report was called from the Chief Planning Officer, MahaRERA in respect of the projects registered by the said Promoter with MahaRERA (herein after referred to as the '**said report**'). In the said report dated 21.04.2023 it is stated that the Promoter herein has obtained two separate project registrations from MahaRERA i.e. the said Project No. 1 and the said Project No. 2 on the said project land. However, the said report, also clarified that there is another project registration No. **P52100006174** for the project named as "**Kothrud Baug A4 B1**" which is registered with MahaRERA but the same is not on the same said project land and is on a different plot of land bearing Plot No. A.
7. Further in the said report it was observed that the Promoter obtained the second project registration i.e. the said **Project No. 2** vide an application dated 24.12.2020 while the said Project No.1 registration was still valid and subsisting. However, while seeking registration of the said Project No. 2, the Promoter submitted a declaration dated 16.12.2020 stating that the said Project No.1 registration is revoked and cancelled and that the same will not be pursued in future by the Promoter.
8. Thus, the said Project No. 2 has been registered apparently without following due process of law and without obtaining appropriate order from the Authority,

this case was taken before the Authority as there is a case of dual registration obtained by the Promoter for one real estate project.

Details of hearing and Roznama:

9. Accordingly, a hearing was scheduled on 26.05.2023, where none appeared for the Promoter and the case was adjourned. The roznama dated 26.05.2023 is reproduced hereinbelow for ease of reference:

"The above - named Promoters have filed for an adjournment on the ground of medical emergency of the appointed person. In view of the same the captioned case is adjourned to 04.07.2023 at 03.30 pm for physical hearing at MahaRERA BKC Office."

10. Thereafter, the captioned case was again scheduled for hearing on 04.07.2023 wherein the Promoter appeared and made submissions. The roznama dated 04.07.2023 is reproduced hereinbelow for ease of reference:

"The promoter is present.

This suo moto hearing is fixed by the Authority as the promoter has ostensibly registered two separate projects on the same plot of land bearing Plot No. 'C', Survey Nos. 16,18,19,51 & 53 (Pt.) of Village Kopre Gaothan at Pune under MahaRERA Project Registration Nos. P52100017854 and P52100027797.

The record shows that the Show Cause Notice issued by the Authority to the Promoter mentions three projects viz. P52100017854, P52100027797 and P52100006174. However, the third project bearing registration no. P52100006174 is a different project as the same is implemented on a different plot of land and also the promoter of the said project is different. Hence, the said project no. P52100006174 is to be removed from the said show cause notice. Consequently, this suo moto hearing is restricted with respect to the remaining two project registration nos. viz. P52100017854 and P52100027797.

The Ld. Advocate for the Promoter - Kakade Green Estate Pvt. Ltd. mentions during the hearing today that they have not gone ahead with the construction work in the project with registration number P52100017854 and almost 95% of the allottees in the said project have been allotted commercial premises in the project bearing registration number P52100027797. Therefore, they are also in the process of settling the claims of the remaining 9 or so allottees of the previous project bearing No. P52100017854 - "Shades of Grade" (Kothrud Baug) which was decided not to be developed in 2018.

The Promoter is directed to file a written affidavit containing the above submissions along with all the details of the allottees in the earlier project viz P52100017854, who have been allotted units in the subsequent project bearing no. P52100027797 and whose claims have been settled along with necessary proofs within a period of 7 days i.e. by 11-07-2023.

In view of the above, this matter is reserved for orders suitably after 11-07-2023 based on the arguments of the Promoter today as well as the affidavit along with necessary proofs / documents filed in the matter."

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11. The brief submissions of the Promoter filed vide an affidavit dated 01.08.2023 are as follows:

- i. That all that piece and parcel of land bearing survey Nos. 16,18,19,51 and 53 (pt.) totally admeasuring about 15 Hectares 45 Ares situated at Village Kopare Gaothan, Hingane, Taluka Haveli, District Pune and within the limits of Pune Municipal Corporation and within the jurisdiction of Sub Registrar Haveli No. 13 Pune was granted by State Government for rehabilitation of project affected persons of Kopre Gaonthan.
- ii. Further, the State Govt vide its notification dated 10.07.2002 appointed Kakade Constructions Co. Pvt. Ltd. (hereinafter referred to as 'KCCPL') as the Developer and thereafter Revenue and Forest Department of Maharashtra Government vide its notification dated 15.05.2002 had granted permission for rehabilitation of 358 families.
- iii. Further, an area admeasuring 2 H. 84 Ares was acquired by Pune Municipal Corporation for water supply hence the said entire property was reduced to 12 H. 61 Ares.
- iv. That the KCCPL had received zoning demarcation on 25.10.2002 from the Pune Municipal Corporation and accordingly 36 mtrs. wide NDA Road divided the said larger property into two parts one on the northern side of the said road admeasuring 85801.90 sq. mtrs. being Plot No. A and one on southern side of road being Plot No. B having area admeasuring 19808.71 sq. mtrs. and Plot No. C having area admeasuring 12219.39 sq. mtrs.
- v. Further, the Promoter herein had taken the said Plot No. C on lease for 999 years by executing registered Lease Deed dated 03.02.2018. The Promoter initially decided to build only commercial building on the said project land and hence registered the said Project No.1 with MahaRERA but due to complication in technicalities, the construction of the said Project No. 1 did not begin till 2020. The Promoter thus, decided to cancel the said Project No. 1 registration. The Promoter also revised the plans and received new plans in 2020. The Promoter though registered the said Project No. 1 with MahaRERA but there were no sales in the said Project No. 1. The Promoter

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vide a declaration dated 16.12.2020 stated that the said Project No. 1 is cancelled and revoked.

- vi. The Promoter also submits that there is one complaint No. CC00500000022901 (herein after referred to as the 'said complaint') in said Project No. 1 filed by Mrs. Neetu Kaur Gandhi, Sanjay Jain, Yogesh Shah and M/s. Prima Home Kothrud against the Promoter along with KCCPL & Kolte Patil Developers Ltd. The said complaint mentions that the said Project No. 1 was named as K. P. Heights (*old name K.P. Projects*) which was launched by KCCPL in 2015. A Court Receiver was appointed to KCCPL and therefore, the said Project never started. Further, Kolte Patil Developers one of the Respondent therein was the Project Management Company who was appointed by KCCPL at that time. The Complainant namely Neetu Kaur Gandhi had also approached the alternate remedies i.e. Consumer Forum and NCLT which proceedings are currently going on and talks with other Complainant namely Sanjay Jain and Yogesh Shah are also going on for settlement.
- vii. Further, the Promoter submits that commencement certificate was received on 17.11.2020 from Pune Municipal Corporation and pursuant to the same the Promoter has started construction work of the said Project No. 2.

Issues:

12. From the aforesaid submissions made by the Promoter and after perusing the available record, the following issues are framed for determination:
- Whether a case of dual registration is made out?*
 - Whether a real estate project can have two/multiple MahaRERA project registration numbers?*
 - Whether the MahaRERA project registration Nos. P52100017854 or P52100027797 needs to be revoked or kept in abeyance or kept valid and subsisting?*

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Provisions of the said Act:

13. Before dealing with the issues framed, it is pertinent to note the following sections of the said Act pertaining to the grant and revocation of registration of a real estate project:

Section 5 - Grant of registration:

"(1) On receipt of the application under sub-section (1) of section 4, the Authority shall within a period of thirty days.

(a) grant registration subject to the provisions of this Act and the rules and regulations made thereunder, and provide a registration number, including a Login Id and password to the applicant for accessing the website of the Authority and to create his web page and to fill therein the details of the proposed project; or

(b) reject the application for reasons to be recorded in writing, if such application does not conform to the provisions of this Act or the rules or regulations made thereunder: Provided that no application shall be rejected unless the applicant has been given an opportunity of being heard in the matter.

(2) If the Authority fails to grant the registration or reject the application, as the case may be, as provided under sub-section (1), the project shall be deemed to have been registered, and the Authority shall within a period of seven days of the expiry of the said period of thirty days specified under sub-section (1), provide a registration number and a Login Id and password to the promoter for accessing the website of the Authority and to create his web page and to fill therein the details of the proposed project.

(3) The registration granted under this section shall be valid for a period declared by the promoter under sub-clause (C) of clause (1) of sub-section (2) of section 4 for completion of the project or phase thereof, as the case may be."

Section 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;

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*(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.”.*

14. It is pertinent to note that the scheme of the said Act is to safeguard the interest of an allottee against the Promoter. However, at the same time this Authority is also vested with the responsibility of safeguarding the Promoter against unreasonable demands and to create an ecosystem that ensures completion of the project in a time bound manner.

General Observations:

15. After perusing the facts stated by the Promoter and after perusing the MahaRERA project registration webpage information uploaded by the Promoter, the following observations are noteworthy:
- a) That the Promoter herein had launched a commercial project and registered the same under said Project No. 1 with the MahaRERA on 24.09.2018. However, no sale inventory was shown as booked in the said Project No. 1. The said complaint was however filed by the allottees of the said Project No. 1.
 - b) Subsequently and during the subsistence of the said project No. 1's registration the Promoter converted the nature of the development from **“Commercial”** to **“Residential Cum Commercial”** by obtaining revised commencement certificate dated 17.11.2020 and thereafter the Promoter obtained a second registration for the same project i.e. said Project No. 2 on 03.01.2021.
 - c) The Promoter has not denied the basic fact that both these projects are registered on the same plot of land. However, while obtaining the registration with respect to the said Project No. 2, the Promoter has merely submitted a declaration dated 16.12.2020 stating that it has already revoked and cancelled the said Project No. 1 and it would not pursue the said Project No. 1 in future.
 - d) That there was only one said complaint filed by 4 (four) different allottees in the said Project No. 1 on 14.04.2019 seeking reliefs under section 18 of the

said Act which was disposed of by granting them reliefs under section 18 for refund and interest along with compensation.

- e) The order of MahaRERA dated 16.03.2020 was challenged by Kolte Patil Developers Ltd. one of the Respondent Party in the said complaint vide an appeal bearing No. AT00600000052834 before the Hon'ble Maharashtra Real Estate Appellate Tribunal ("**MahaREAT**") seeking reliefs to set aside the said order. The Hon'ble MahaREAT upon hearing the appeal remanded the said complaint to MahaRERA vide an order dated 10.02.2022 for hearing the same afresh.
- f) Resultantly the said complaint was again heard by the bench of Member - 1, MahaRERA and the same was dismissed vide an order dated 13.02.2023 on the preliminary issue of maintainability.
- g) Eventually, aggrieved by the order of MahaRERA dated 13.02.2023 passed by Member - 1, MahaRERA, the allottees/original Complainants in the said complaint preferred an appeal bearing No. AT005000000144365 on 21.03.2023 which is pending adjudication as on date.
- h) That these allottees/ original Complainants were allotted unit/apartment in a residential Project known as '*K.P. heights*' and renamed as '*K.P. Towers*' in 2015 which was to be built on the same said project land. However, this residential project was subsequently changed to commercial project known as '*Shade of Trade*' i.e. the Project No. 1 which as on date is also registered under the said Project No. 2 namely '*Le Skylark*'
- i) Furthermore, the Promoter has admitted to have revoked and cancelled the said Project No. 1 without obtaining the appropriate order from this Authority.
- j) Admittedly, the commencement certificate issued earlier by the Planning Authority in the year 2018 (*for said Project No. 1*) was revised in the year 2021 and accordingly, the Promoter has commenced the construction work on site and obtained the second registration from MahaRERA i.e. the said Project No. 2.

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- k) During the course of hearing, the Promoter has contended that it has not gone ahead with the construction work in the Project No. 1 and almost 95% of the allottees in the said Project No. 1 have been allotted commercial units in the said Project No. 2 and that it is in process of settling the claim of the remaining around 9 allottees in the said Project No. 1.
 - l) Further, despite specific direction being given to the Promoter, there is no affidavit submitted with regard to stating the details of the claims of allottees settled and the details of the allottees in the said Project No. 1 who have been allotted units in said Project No. 2 along with necessary proofs.
 - m) Admittedly, the said Project No. 1 has already lapsed on 10.11.2022 and the Promoter has not obtained any extension from the Authority.
 - n) Further, the Project registration webpage of the said Project No. 1 reflects 49 showrooms + 81 offices which totals to 130 units against which zero booking is shown on the MahaRERA webpage of the said Project No. 1.
 - o) Lastly, the Project registration webpage of the said Project No. 2 reflects 67 total number of unit/apartment/shops in the commercial building, wherein 18 numbers of shops in the commercial building have been shown to be booked in said Project No. 2. Further the residential building A-Wing and B-Wing reflects 54 numbers of apartment in total wherein all the 54 number of apartments have been shown to be booked.
16. Thus, as far as the first issue No. 12(a) of dual registration is concerned, it is pertinent to note that, while the said Project No. 1 i.e. P52100017854, was in subsistence, the Promoter never made any declarations of the bookings made in the said Project No. 1. Further the Promoter has also not submitted any affidavit on record with regard to the allottees of the said Project No. 1 being shifted to the said Project No. 2 and / or the allottees being settled therein. Further, the Promoter has obtained second registration i.e. said Project No.2 from MahaRERA on 03.01.2021 by merely declaring cancellation of the said Project No. 1. In this context, it is pertinent to note that specifically under Section 5(1) (a), it is amply clear that each real estate project cannot have two

and/ or multiple MahaRERA project registration numbers to avoid confusion and misrepresentation among various stake holders.


17. Further Section 7 of the said Act (*reproduced hereinabove*) provides a mechanism for revocation of a MahaRERA Project Registration number. Not only does it provide for revocation, but it also goes further and enumerates the conditions under which a MahaRERA project registration number can be revoked. The said section 7 also specifies that MahaRERA is the competent authority to revoke the MahaRERA Project Registration number of any real estate project in Maharashtra. The Promoter is debarred from applying for fresh registrations on the grounds of change in the plans or nature of development. This liberty is not available under the said Act and the reason for this strict rule of one project one registration is that the scheme of the said Act is to safeguard the interest of an allottee and other stake holders like lenders and also to create an ecosystem that ensures completion of the project in a time bound manner. It is also pertinent to note that not taking steps for seeking necessary corrections in the said Project No. 1 registration and instead taking a second registration number amounts to annulling the protection available to the Allottees thereby failing the very purpose of the MahaRERA legislation.

18. Further, two / multiple project registration numbers for the same project create confusion and chaos and the obligations created by Promoter would stand obfuscated. In such cases it would become impossible to fasten responsibility thus creating litigations and unprecedented harassment of the allottees and other stake holders. Therefore, keeping in mind the scheme of the said Act which is to safeguard the interest of each and every allottee and to ensure completion of the project in a time bound manner the Authority makes it clear that the said Act does not envisage any such event / circumstance wherein there can be two / multiple project registrations for the same project once it is registered. In the present case it is very evident from

the submissions of the Promoter that they not gone ahead with the construction work in the Project No. 1 and almost 95% of the allottees in the said Project No. 1 have been allotted commercial units in the said Project No. 2. That the Promoter is in process of settling the claim of the remaining around 9 allottees in the said Project No. 1. Further the said Project No. 1 has lapsed on 10.11.2022.

19. Thus, in view of the above, the second project registration number i.e. the said Project No. 2 shall remain **valid and subsisting** as 95% of the allottees of the said Project No. 1 have been allotted commercial units in the said Project No. 2. The first project registration number i.e. the said Project No. 1 shall be kept in **abeyance** till the Promoter submits an affidavit stating all the transfers and settlements of the allottees of the said Project No.1.
20. From the observations made hereinabove, the answer to the above **issue No. 12(a)** is in **affirmative** i.e. a case of dual registration has been made out in the captioned case. The answer to **issue No. 12(b)** is in **negative** i.e. is a real estate project cannot have two / multiple MahaRERA Project registration numbers and the reasons for the same are observed hereinabove. Lastly the answer to the **issue No. 12(c)** is clearly mentioned in para No. 19 hereinabove.
21. The Promoter is directed to file an affidavit stating all the transfers and settlement of the allottees in the said Project No. 1 and also the status of the designated bank accounts in the said Project No. 1 within 30 days from the date of this order after which the final order of revocation of the said Project No.1 shall be issued. Till then the Promoter is directed not to advertise, market, book, sell or offer for sale, or invite person/s to purchase in any manner any apartment / unit in the said Project No.1.


(Mahesh Pathak)
Member-1/MahaRERA


(Ajoy Mehta)
Chairperson, MahaRERA