



1. The Existing Promoter herein had registered the project namely "ANANTIYA 1B & ANANTIYA 1A" under section 5 of the Real Estate (Regulation and Development) Act, 2016 ("said Act") of Real Estate Regulatory Authority ("RERA") bearing MAHARERA Registration Nos. P51800009827 & P51800005533 respectively (hereinafter referred to as the "said Project No. 1 & said Project No. 2 respectively").
2. The details of the said Project Nos. 1 & 2 are briefly mentioned in the table below for ease of reference:

<b>Project Nos.</b>	P51800009827	P51800005533
<b>Project Name</b>	ANANTIYA 1B	ANANTIYA 1A
<b>Project status</b>	Ongoing projects	
<b>PCD<sup>1</sup> &amp; RCD<sup>2</sup></b>	PCD: 31.12.2020 RCD: 30.12.2025	
<b>Plot Number/ Survey Number</b>	CTS NO. 200 (pt), Village: Wadhavali, Taluka: Kurla, District: Mumbai Suburban	
<b>Area</b>	9400.58 sq. mtrs.	13577.40 sq. mtrs.
<b>Existing Promoter</b>	Radius & Deserve Builders LLP	
<b>Incoming Promoter</b>	Chandak Realtors Private limited	
<b>Complaints in the Project</b>	5 complaints filed of which 4 are disposed.	30 complaints filed of which 13 are disposed and 3 non-compliance has been filed.
<b>Total number of buildings</b>	3 buildings (tower Nos. 1, 3 & 6)	5 buildings (tower Nos. 2, 4, 5, 7 & 8)
<b>Disclosure of sold/unsold inventory</b>	14 units are booked	total units 1272 of which 462 are sold. 176 allottees of the 462 units only have entered in to an agreement.

3. On 04.09.2023, an application was made by the Incoming Promoter seeking change of Promoter for the said Project Nos. 1 & 2 as per MahaRERA circular no 24/2019 r/w 24A/2021. The captioned cases were heard on 12.03.2024 wherein the following roznama was recorded by the Authority:

*"Advocate for the Incoming Promoter informs the Authority that the land is situated in Kurla which is a declared Slum. The SRA issued an LOI for its development in 2012 followed by a revised LOI in 2013. Subsequently, a few rehab structures were constructed but the Project however did not move forward. Taking cognizance of the same SRA then under Section 13(2) of the Slum Act passed an order dated 20.09.2021, removing Radius*

<sup>1</sup> PCD - proposed completion date

<sup>2</sup> RCD - revised proposed completion date

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& Deserve Builders LLP as the Promoters. On 20.01.2023 a resolution was passed appointing the present Incoming promoter as the Developer of the Project and an LOI dated 12.04.2023 was issued the SRA. The SRA further in its order directed the appointment of a government approved valuer to value the structures on site and expenditure incurred towards them would have to be paid by the Incoming developer to the erstwhile developer.

The Incoming Promoter avers that in this case there is no assignment of right and that he is a fresh appointee. Being fresh appointee, the liabilities of allottees as created by the ex-developer would fall on the shoulders of the ex-developer and not him. He cites orders in Kapil Kunj, Vaidehi Akash and Goregaon Case in support of his submissions. The bank account will also remain with the erstwhile developer and monies to be paid towards part construction would also go to the erstwhile developer. It is now for the allottees of ex-developer to state their claims against the erstwhile developer.

It is also brought to the notice of the Authority that CIRP proceedings have been initiated against the erstwhile developer i.e. Radius. These proceedings were initiated on 27.09.2023. The SRA order directing the termination of the old promoter is dated 20.09.2021. The Incoming promoter thus states that since the SRA order predated the CIRP proceedings, this asset does not and cannot form a part of the assets of the company under NCLT proceedings. It is further reiterated by Advocate Abir Patel on behalf of the Incoming Promoter that allottees in his case are not remedy-less and in case they are aggrieved they have remedies available to them.

Further the scope today is not to determine the rights and liabilities of the Incoming promoter but instead is limited to appointing a new promoter in view of the fact the SRA, the mandated Authority has terminated the last Promoter. The Project is without a Promoter since 2021 and the work has come to a halt and thus it is imperative that he be given mandate under the act to now perform the duties of the Promoter to carry the Project further.

Further, the Development Agreement as executed by him and registered is not challenged by the ex-Promoter.

The Incoming Promoter thus seeks:

- a. Orders appointing him as Promoter.
- b. Opening a new bank account to enable him to function as a Promoter.
- c. Access to RERA portal
- d. Liberty to file fresh details in order to define Project in totality as required under the law.

Parties are at liberty to file written submissions if any and to also file citations as pointed out during the hearing, on or before 19.03.2024, subsequent to which matter will be reserved for order."

4. The Incoming Promoter has filed written submissions which are perused by the Authority and are taken on record. From the submissions of the Incoming Promoter the following points are noteworthy:

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a. Removal of Existing Promoter:

- i. The Existing Promoter failed to implement the SRA scheme for redevelopment of the three societies namely Om Ganesh Nagar SRA Co-operative Housing Society Limited, Ekta SRA Co-operative Housing Society Limited and Jai Hanuman Nagar SRA Co-operative Housing Society Limited (hereinafter referred to as the “three societies”).
  - ii. Pursuant to various defaults of the Existing Promoter, the three societies made an application under section 13(2) of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971, for removal of the Existing Promoter.
  - iii. On 20.09.2021, SRA removed the Existing Promoter as the developer and permitted the three societies to pass a general body resolution terminating the Existing Promoter and appointment of a new developer of their choice. SRA also directed that a government approved valuer be appointed to assess work carried out by the Existing Promoter and also access the actual expenditure incurred towards the SRA scheme.
  - iv. The three societies on 29.01.2023 in the presence of the Assistant Registrar, SRA, in their general body meeting terminated the Existing Promoter as the developer for the SRA scheme of redevelopment of the three societies and appointed the Incoming Promoter herein as the new developer.
  - v. Thus, on 12.04.2023, SRA vide a revised Letter of Intent (LOI) bearing No. SRA/ENG/1694/ME/STGL/L01SRA confirmed appointment of the Incoming Promoter as the Developer to implement the SRA scheme of redevelopment of the three societies. The LOI also directed the Incoming Promoter to reimburse the amounts as per the valuation report of the government appointed valuer to the Existing Promoter as per the prevailing policy.
- b. The Incoming Promoter submitted a declaration stating that they do not have login credentials and therefore cannot access the registration webpages of said Projects Nos. 1 & 2.

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- c. Further, consent of 2/3<sup>rd</sup> allottees have not submitted as the Incoming Promoter is appointed by SRA vide an order and hence requirement of consents is not applicable.
- d. The National Company Law Tribunal (NCLT) proceedings filed by Amit Infra-Logic (India) Private Limited, the Operational Creditor against the Existing Promoter are pending wherein an Interim Resolution Professional (IRP) has been appointed vide an order dated 27.09.2023.
5. From the facts and the submissions made by the Parties herein, the issue that needs to be considered is *Whether the change of promoter applications are maintainable under section 15 of the Act?*
6. In order to deal with the issue above it would be first important to examine Section 15 of the said Act. The Section 15 is reproduced hereinbelow for ease of reference:

***"15. Obligations of promoter in case of transfer of a real estate project to a third party –***

*(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*

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*consequences of breach or delay, as the case may be, as provided under this Act or the rules and regulations made thereunder.*

From the plain reading of section 15 it is clear that this section is applicable in cases where there is a transfer of a real estate project from an Existing Promoter to a new developer i.e. Incoming Promoter. In the present case the said Project Nos. 1 & 2 are not transferred to the Incoming Promoter (*new developer*) by the Existing Promoter, but the Incoming Promoter is being appointed by three societies and SRA who is the Planning Authority has confirmed the appointment of the Incoming Promoter herein. Further the Existing Promoter was terminated by three societies and SRA on account of various defaults and failure to implement the SRA scheme for redevelopment of the three societies.

7. The captioned cases were heard on the issue of change in promoter from the Existing Promoter to the Incoming Promoter mentioned herein. This is not a case of voluntary transfer by the Existing Promoter to the Incoming Promoter. The section 15 deals with voluntary transfer, therein listing out the pre-conditions that must be fulfilled before which an Existing Promoter shall transfer to the Incoming Promoter. Thus, a change in promoter as envisaged under section 15 cannot be made applicable here. The reason for the same being not applicable is that the Existing promoter has been terminated and the Incoming Promoter has been newly appointed by the three societies and confirmed by SRA.
8. The issue that now comes up is *whether the Incoming Promoter as appointed by the three societies and confirmed by SRA can be regarded as a Promoter under the said Act?*
9. The three societies vide their resolution dated 29.01.2023 has terminated the Existing Promoter. From the facts on record the same has not been challenged. This being the case, the said Project Nos. 1 & 2 are today without a Promoter, in effect the projects cannot proceed until there is a new promoter. It is not the case that the Existing Promoter is challenging the termination.

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10. Thus, there is therefore a situation that there is no promoter in the said Projects Nos. 1 & 2 and hence there is no entity that can carry the said Project Nos. 1 & 2 forward. The existing slum dwellers are dishoused and have yet to be provided with rehabilitation housing. This appears to be one of the main reasons for the SRA to have terminated the Existing Promoter. The Authority recognizes that it has no role in regulating the alternate / rehabilitation housing to be provided to the dishoused slum dwellers. However, the Authority cannot overlook the fact that there is a need to ensure that they are provided with houses urgently. The very scheme of the SRA is such that rehabilitation housing is financed and constructed by the developer from the proceedings of the sale of the free sale component. It is the promoter in SRA projects who constructs the rehabilitation houses and finances those by selling houses in the free sale component. In the absence of the promoter this scheme cannot be operationalized. This situation violates the spirit of the legislation. The whole aim and objective of this legislation as laid out in the preamble is to promote the real estate sector in an efficient and transparent manner and to protect the interest of consumers in real estate sector. In the event that a project is devoid of a promoter the very objective of promoting efficiency of the sector is compromised. Every project must have a promoter which is either a private or a government entity who carries the project forward delivering the promised homes which is in the interest of the consumers.
11. In this particular case it is the SRA that is mandated to recognize the Promoter and provide him with the legal Authority to enter upon the land which is declared as slum and to cause to construct both the rehabilitation component and the sale component. It is the SRA which subsequent to construction of rehab and sale component enables the transfer of the lease or conveyance of the underlying land to the respective societies. The SRA in this case has passed an order appointing the Incoming Promoter as the new developer. In effect it is this appointee who will now have rights to enter upon the land construct the same and subsequently enable conveyance to the societies. Thus, the Incoming Promoter now has the legal mandate to carry the said Project Nos. 1 & 2 forward.

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12. Since the Incoming Promoter has been appointed by SRA he would now have to perform the duties and obligations of a Promoter as defined in the said Act. It would be important here to examine section 2(zk) (i) & (ii) which is reproduced hereinbelow for ease of reference:

**(zk) promoter means –**

*(i) a person who constructs or causes to be constructed an independent building or a building consisting of apartments, or converts an existing building or a part thereof into apartments, for the purpose of selling all or some of the apartments to other persons and includes his assignees; or*

*(ii) a person who develops land into a project, whether or not the person also constructs structures on any of the plots, for the purpose of selling to other persons all or some of the plots in the said project, whether with or without structures thereon; or*

From the above it is thus clear that since it is the Incoming Promoter who would now construct the buildings and offer them for sale will have to be recognized as the promoter under the said Act to enable him to perform his duties and also enable the fastening of obligations onto him. Further section 3(1) of the said Act needs to be examined which is reproduced hereinbelow for ease of reference:

***“Section 3 - Prior registration of real estate project with Real Estate Regulatory Authority:***

*(1) No promoter shall advertise, market, book, sell or offer for sale, or invite persons to purchase in any manner any plot, apartment or building, as the case may be, in any real estate project or part of it, in any planning area, without registering the real estate project with the Real Estate Regulatory Authority established under this Act.”*

This section mandates that advertising, marketing, booking, selling and all other such related activities can only be done by the promoter. Hence in this case for the said Project Nos. 1 & 2 to move forward and to enable the Incoming Promoter to market advertise and sell the project the Incoming Promoter would have to be recognized as a promoter. Thus, the issue at para No. 8 is answer in affirmative. The Incoming Promoter as appointed by SRA is to be recognized as Promoter for said Project Nos. 1 & 2.

13. The issue that now comes up is as to the fate of the existing allottees of the Existing Promoter. The Authority is mandated to protect the interest of these allottees. Since the Existing Promoter has been terminated and the Incoming

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Promoter has been appointed by SRA the issue that needs to be dealt with is as to *who would be responsible for the obligations towards the earlier allottees?* In this case since the appointment of the Incoming Promoter does not fall under section 15 the obligation towards the allottees cannot be fastened on the Incoming Promoter. With this being the situation, it cannot be said that just because it is a change of promoter not falling under section 15 and instead is a case where the Existing Promoter has been terminated by SRA the rights of the allottees stands extinguished.

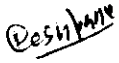
14. While terminating the Existing Promoter and issuing the LOI dated 12.04.2023 to the Incoming Promoter the SRA has clearly directed that the Incoming Promoter is to reimburse amounts spent by the Existing Promoter. The amounts to be reimbursed would be based on the valuation report of the government approved valuer who shall value the expenditure incurred by the Existing Promoter. Thus, the Incoming Promoter is now under an obligation to ensure all expenditure incurred on the said Project Nos. 1 & 2 by the Existing Promoter is reimbursed to him. The Existing Promoter is to then fulfill all the obligations towards the existing allottees. With this being the scenario as envisaged by the SRA the existing allottees stand protected and can enforce their claims against the Existing Promoter.
15. The Authority further observes that there are many complaints pending adjudication in the said Projects Nos. 1 & 2. All these complaints will be dealt with and all obligations arising out of those shall fall squarely on the shoulders of the Existing Promoter. As mentioned earlier the Incoming Promoter on assuming the role of the Promoter will not be saddled with the obligations of the existing allottees of the Existing Promoter. In order to ensure that there is complete separation of the obligations and duties between these two promoters the Authority would direct the Secretary, MahaRERA to keep the registration of the said Project Nos. 1 & 2 i.e. P51800009827 and P51800005533 as allotted to the Existing Promoter in **abeyance**. This would ensure that the Existing Promoter continues to remain under the regulatory oversight of the Authority till he fulfills


the obligations towards the existing allottees of the said Project Nos. 1 & 2. The Existing Promoter shall not advertise, market, book, sell or offer for sale, or invite person/s to purchase in any manner any apartment in the said Project Nos. 1 & 2.

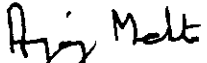
16. Similarly, the Incoming Promoter shall apply to MahaRERA for a new / fresh registration number with respect to the said Project Nos. 1 & 2 so as to enable the completion of the same by the Incoming Promoter.

#### FINAL ORDER

1. The Incoming Promoter to apply to MahaRERA for a new / fresh registration number with respect to the said Project Nos. 1 & 2 as per rules and procedures laid down under the said Act.
2. A new / fresh registration number to be issued to the Incoming Promoter after due scrutiny of the registration application filed by them with respect to the said Project Nos. 1 & 2.
3. The Incoming Promoter to open a new designated bank account as per rules and procedures laid down under the said Act for execution of the project.
4. The existing registration of the said Project Nos. 1 & 2 i.e. P51800009827 and P51800005533 allotted to the Existing Promoter be kept in abeyance till obligations of the existing allottees are settled.
5. The Existing Promoter shall not advertise, market, book, sell or offer for sale, or invite person/s to purchase in any manner any apartment in the said Project Nos. 1 & 2.
6. No order as to cost.

  
(Ravindra Deshpande)  
Member-II, MahaRERA

  
(Mahesh Pathak)  
Member-I, MahaRERA

  
(Ajay Mehta)  
Chairperson, MahaRERA