

BEFORE THE MAHARASHTRA REAL ESTATE REGULATORY
AUTHORITY MUMBAI

Complaint No. CC006000000196987

1. Ashapurti Co-operative Housing Society Ltd.

2. Suresh P Deshmukh

.... Complainants

Versus

Mr. Sudhanshu Agarwal

.... Respondent

MahaRERA Project Registration No. P51800020496

Coram: Shri. Mahesh Pathak, Hon'ble Member - I/ MahaRERA

None appeared for the complainants.

Ld. Adv. Himanshu Agarwal appeared for the respondent.

ORDER

(Friday, 30th December 2022)

(Through Video Conferencing)

1. The complainants above named have filed this complaint seeking directions from the MahaRERA to the respondent-promoter to provide the agreed amenities to all its member's flats and also to pay monthly enhanced rent to the members as per the development agreement etc under the provisions of the Real Estate (Regulation & Development) Act, 2016 (hereinafter referred to as 'RERA'), in respect of respondent-promoter's registered project known as "**Raghav One**" bearing MahaRERA registration No. **P51800020496** located at Nehru Nagar, Kurla, Mumbai.
2. This complaint was heard finally on 16-11-2022 as per the Standard Operating Procedure dated 12-06-2020 issued by the MahaRERA for

hearing of complaints through Video Conferencing. Both the parties have been issued prior intimation of this hearing and they were also informed to file their written submissions if any. Accordingly, the respondent appeared for the hearing and made its submissions. However, despite the notice of hearing, the complainants remained absent.

3. After hearing the arguments of the respondent-promoter, the following Roznama was recorded in this complaint: -

"The complainant is absent. The respondent is present. The respondent has raised an issue of maintainability of this complaint on the ground that the resolution of the society as well as the substantive issue of implementation of the development agreement cannot be adjudicated by the MahaRERA. In view of the above, the respondent is directed to file its objections and reply to the complaint within a period of one week i.e. by 23-11-2022. The MahaRERA will first decide the issue of maintainability suitably after 23-11-2022 and the further course of hearing will be decided after orders on the maintainability are issued"

4. Pursuant to the aforesaid direction, the respondent has filed his reply on the issue of maintainability of this complaint on record of the MahaRERA on 23-11-2022. The same is taken on record.
5. On the bare perusal of this online complaint, prima facie it appears that it is the case of the complainants that by a registered Development Agreement, the complainant No. 1 society viz. Ashapurti Co-operative Housing Society Ltd, (hereinafter referred to as the society) and the respondent who is one of the partner of M/s Raghav Raj Builders &

developers LLP, the society has entrusted the redevelopment work of the society building to the respondent. The respondent has registered the said redevelopment project with the MahaRERA on 08-04-2019 and also obtained requisite permissions from MHADA which is competent authority. The complainants have stated that, while carrying out pile foundation work, the respondent did not test pile with load test even after requests for the same. Further it has charged heavy penalty on daily basis to the members deducting their rent on daily basis in addition to deducting daily charges to members. Even, it did not execute Guarantee of Performance document and took undue advantage of the same denying rightful rent and amenities of member's flat and has also not followed any agreed terms of development agreement and tender document for the development work. Further, it has not called a single monthly work progress meeting with society, and has also not paid the monthly rent to members as per said development agreement during pandemic putting members in great financial difficulty. The complainants further stated that the respondent has also carried out most of construction work without proper permission from society, fixed the amenities in member's flats without formal written approval from the society etc. Hence the complainants have filed this complaint before the MahaRERA requesting to look into the matter and carryout detailed investigation and provide justice to society by directing the developer to:- i) fix amenities to be fixed in members flat strictly as per terms of Development Agreement and with prior written approval for all the amenities of Society before fixing it, ii) the respondent should pay enhanced rent from the month of June 2020 as per the terms of Development agreement till the projected completion date of

redevelopment of building, iii) not to put any conditions for payment of rent and the same should be handed over to society, iv) for all future activities, the respondent should get approval of society and should not deal with individual member, v) the members flats should be handed over to society after fitting all amenities as per approved list and only after issue of full occupation certificate from the local authorities because the developer has not followed any of the terms of registered development agreement and tender document etc.

6. The respondent has filed his affidavit in reply denying the contentions in the complaint and stating that the disputes arising out of the development agreement entered into between the builder and the society cannot be challenged before the MahaRERA as the MahaRERA does not have jurisdiction to deal with the said disputes. The respondent has relied on the judgement in Complaint no. CC00600000012265 in the matter of Muralidhar Mahadeo Prabhu vs GA Builders Pvt. Ltd. in which it has been held that the complainants have not pointed out any contravention or violation of the provisions of the RERA and that the MahaRERA is not the proper forum to resolve the grievance pertaining to non-payment of rent raised by the complainants. Further, as per section 31 of the RERA, the complaint may be filed where there is any violation of the provisions of the RERA however, the complainants have failed to bring out any contravention of the said RERA. Further, the complaint is filed by one Mr. Suresh P. Deshmukh (complainant No.2), a member of the complainant No. 1 society who is trying to seek relief for his personal gains and is filing the present complaint while masquerading behind the complainants. Moreover, the present

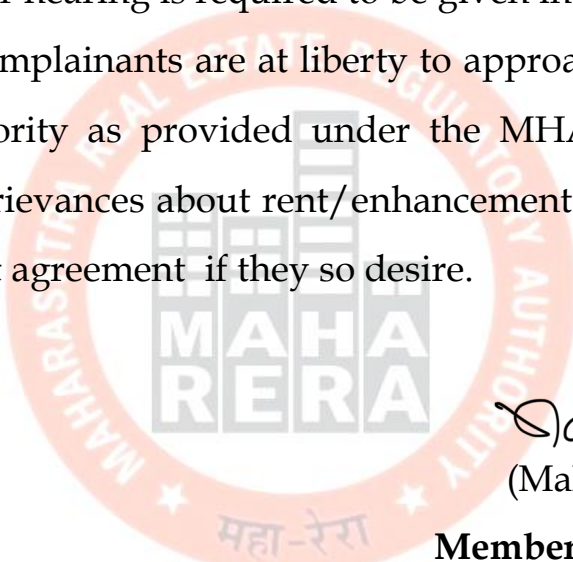
complaint filed on behalf of the society does not have authority letter and society resolution clearly establishing that one Mr. Suresh P. Deshmukh has filed the said complaint behind the society's back for personal gain and with ill motive and hence the complaint is not maintainable and be dismissed with cost.

7. The MahaRERA has examined the rival submissions made by the respondent on the preliminary issue of maintainability of this complaint and also perused the available record. In the present case, admittedly, the complainant No. 1 is the society which has undertaken redevelopment of its plot and has approached the MahaRERA seeking various reliefs under the provisions of the RERA by virtue of the development agreement (The complainants for the sake of brevity would be hereinafter referred to as the society).
8. In the present complaint, the said society has mainly raised two issues such as completion of the agreed amenities to its members as per the development agreement and payment of enhanced rent from 2020 as per the development agreements.
9. As far as these issues raised by the society by virtue of the development agreement, the MahaRERA is of the view that there is no explicit provision under the RERA, in which such reliefs could be granted to the society. Moreover, the society is seeking specific performance of the development agreement which do not fall within the purview of the RERA; the same is of civil nature. Needless to state here that, the society has to agitate such grievances about the specific performance before the

appropriate civil court of law. Hence, the MahaRERA prima facie is of the view that the present complaint is not maintainable before the MahaRERA ostensibly because of the nature of the reliefs sought by the society. Further, the MahaRERA has also noticed that the project is complete as the full OC has also been obtained by the respondent on 9-12-2021.

10. In view of these facts, the following order is passed: -

- a. The present complaint stands dismissed being not maintainable. Hence, no further hearing is required to be given in this matter.
- b. However, the complainants are at liberty to approach the concerned competent authority as provided under the MHADA Rules, 1986 agitating their grievances about rent/enhancement of rent etc as per the development agreement if they so desire.

The seal of the Maharashtra Real Estate Regulatory Authority (MahaRERA) is a circular emblem. It features a central shield with the word 'MAHA' above 'RERA'. The shield is flanked by two stars. The outer ring of the seal contains the text 'MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY' in English and 'महाराष्ट्र-रेरा' in Marathi.

Mahesh Pathak

(Mahesh Pathak)

Member - 1/MahaRERA