

BEFORE THE MAHARASHTRA REAL ESTATE REGULATORY  
AUTHORITY, MUMBAI

Complaint No. CC006000000251545

Nehru Nagar Shanti Bhuvan CHSL Society

... Complainant/s

*Versus*

1) Amit Mahendra Ruparel

2) Shri Siddhivinayak Classic Construction Pvt Ltd

... Respondent/s

**MahaRERA Project Registration No. P51800020602**

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

Ld. Adv. Sushil Inamdar appeared for the complainant.

Ld. Adv. Sakina Kothari appeared for the respondent/s.

**ORDER**

(Friday, 13<sup>th</sup> September 2024)

(Through Video Conferencing)

1. The complainant - society above named has filed this online complaint before the MahaRERA on 22/06/2022 mainly seeking directions from MahaRERA to the respondents to pay the arrears of rent for alternate accommodation to the members of the society and to provide copies of the approved sanction plans, CC, and progress report as prescribed under the provisions of the Real Estate (Regulation & Development) Act, 2016 (hereinafter referred to as 'RERA') in the respondents' registered project known as "**Ruparel Pride**," bearing MahaRERA registration No. **P51800020602** located at Krula, Dist - Mumbai Suburban.

2. This complaint was heard by the MahaRERA on 21/02/2024 and the same was heard finally on 22/05/2024 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. On the said dates of hearings, the parties have appeared as per their appearances recorded in the Roznamas and made their respective submissions. The MahaRERA heard the submissions of the parties as per their appearances and also perused the available record.

3. After hearing the argument of both the parties( as per their appearances recorded in the roznama), the following Roznamas were recorded in this complaint:-

i) On 21/02/2024 :

*"The complainant is absent. The respondent is present. At the outset the respondent has raised the issue of maintainability of this complaint as the said project is a redevelopment project which does not fall under the jurisdiction of the MahaRERA. Therefore, the respondent may file an application on maintainability of this complaint within a period of 3 weeks i.e. by 13-03-2024. Further 3 weeks' time i.e. till 03-04-2024 is granted to the complainant to file its reply on the application of the respondent on the issue of maintainability of this complaint. This matter is adjourned to a suitable date after 03-04-2024 for final arguments and as a last chance to the complainant. List the matter for next hearing on 22-05-2024."*

ii) On 22/05/2024 :

*"Both the parties are present. As mentioned in the previous hearing, the respondent has raised the issue of maintainability and has filed an application yesterday. Therefore, the complainant may file rejoinder to the said application along with written arguments within a period of two weeks i.e. by 5-6-2024. Further two weeks' time i.e. till 19-6-2024 is granted to the*

*respondent to file sur-rejoinder if any, along with written arguments in the complaint. Accordingly, this matter is reserved for orders suitably after 19-6-2024 based on the arguments of both sides in the hearing as well as the application, rejoinder, sur rejoinder and written arguments filed in the complaint."*

4. Pursuant to the said directions issued by the MahaRERA, the respondents on 22/05/2024 have uploaded Miscellaneous Application (MA) raising an issue of maintainability of this complaint, on record of MahaRERA. The complainant-society on 08/06/2024 has uploaded its reply to the said MA on record of MahaRERA. However, despite directions, the respondents have uploaded no further document, submission on record of MahaRERA. Hence, the MahaRERA has perused the available record.
5. It is the case of the complainant that it is a registered society and the respondent no.1 is a co-developer / promoter of the said project. It has stated that the respondents have orally agreed to complete the re-development project within a period of 18 months after registration of the Development Agreement. Accordingly, the respondents have executed and registered the Development Agreement, Supplementary Development Agreement and Permanent Alternate Accommodation Agreement (PAAA) with the complainants- society and its members. Further, the respondents have assured to pay monthly rent timely, to all its members and as enumerated under the development agreement and the PAAA. However, the respondents have failed to adhere to the terms of the Development Agreement and the PAAA. Also, the said project is not constructed as per the approved plans. Hence, being aggrieved by such actions on the part of the respondents, the complainant - society has filed this complaint seeking entire arrears of rent to its members and also to provide copy of CC etc.

6. The respondent no. 2 is a company of the promoter, which has registered this project with the MahaRERA and the respondent no. 1 is the director of the respondent no. 2 company. Hence, for the sake of brevity both the respondents are hereinafter referred to as the respondent.
7. The respondent on 22/05/2024 has uploaded a MA on record of MahaRERA, mainly raising a preliminary issue of maintainability of this complaint. It has stated that the present complaint is not maintainable and hence the same is liable to be dismissed on the preliminary grounds of maintainability. Further, the respondent has also contended that the complainant-society has erroneously stated that the respondent no.1 is the co-developer/ promoter of the said project, although the respondent no.1 is the director of Shree Siddhivinayak Classic Construction Pvt. Ltd. Further, the complainant-society has failed to prove any contravention to justify why this complaint is filed under section 31 of RERA. Further, complainant -society has also filed a Writ Petition No. 3934 of 2023 before the Hon'ble Bombay High Court seeking identical reliefs as sought for in this complaint. Hence, the complaint of the complainant-society is liable to be dismissed.
8. The complainant -society on 08/06/2024 has uploaded its reply to the said MA on record of MahaRERA, wherein it has denied the contentions of the respondent made in the said MA. The complainant- society further stated that the respondent has failed to complete the said project within the timelines. Also, the respondent has failed to adhere to the terms of the Development Agreement (DA) and PAAA dated 13-11-2018. Further, the name of respondent no.1 is mentioned in the project registration. It has also stated that the said Writ Petition filed before the Hon'ble Bombay High Court is for non-performance of the Development Agreement and Supplementary Development Agreement. Hence, the complainant-society is seeking reliefs as

mentioned in the complaint.

9. The MahaRERA has examined the rival submissions made by both the parties and also perused the available record. By filing this complaint under section 31 of the RERA, the complainant society has approached the MahaRERA mainly seeking directions to the respondent to pay the arrears of rent for alternate accommodation to its members (of the complainant society) and also to provide copies of the approved plans, CC, and progress report of the said project under the provisions of the RERA. The complainant society has agitated such claims by virtue of the Development Agreement, Supplementary Agreement signed between it and the respondent as well as the PAAA signed with its members. The complainant society has mainly contended that the respondent by executing the said Development Agreement, Supplementary Agreement and the PAAA, has agreed to complete the said project within a period of 18 months and also to pay monthly rent to its members. However, it has failed to do so. Hence, it has filed this complaint.
10. The respondent promoter has contested this complaint by filing the MA on record of MahaRERA. It has refuted the claim raised by the complainant in this complaint, mainly raising a preliminary issue of maintainability of this complaint on the ground that the complainant is part of the redevelopment component, which does not fall within the purview of MahaRERA. Further, the complainant society has also filed W. P. No. 3934 of 2023 before the Hon'ble Bombay High Court seeking similar reliefs. Hence, it has prayed for dismissal of this complaint being not maintainable.
11. Hence, before deciding this complaint on merits, the said issue of maintainability of this complaint raised by the respondent has to be decided as a preliminary issue.

12. Admittedly, the respondent promoter has undertaken this redevelopment project of the complainant society by virtue of the Development Agreement signed in the year 2016. Further, it seems that pursuant to the said development agreement, the respondent promoter has executed Permanent Alternate Accommodation Agreement (PAAA) with the members of the complainant society. The complainant by filing this complaint is mainly seeking compliance of the terms and conditions of the said development agreement and the PAAA, towards completion of this project and also for payment of arrears of rent to its members (as per the PAAA).
13. Admittedly, the complainant society is part of the rehab component of the redevelopment project undertaken by the respondent on the land originally belonging to the MHADA.
14. However, as far as the substantive reliefs sought by the complainant society towards arrears of rent to its members as per the PAAA, it is pertinent to peruse the order dated 28-02-2019 passed by Hon'ble Maharashtra Real Estate Appellate Tribunal in appeal No. AT006000000010362 filed by one Shrivankumar Pardeshi V/s. M/s. Sagar Shopping Developers. In the said order, the Hon'ble Appellate Tribunal has held that, *"the PAAA is not converted under section 13 of the RERA. Moreover, the complainants are seeking relief by virtue of the development agreement dated 6-04-2014 signed by and between the respondents which is not governed under the provisions of RERA. Hence, the MahaRERA cannot grant any reliefs under the development agreement."*
15. In addition to this, the MahaRERA has also perused the relevant provisions of the section 3 of the RERA, which reads as under: -

***"3. (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:*

*Provided further that if the Authority thinks necessary, in the interest of allottees, for projects which are developed beyond the planning area but with the requisite permission of the local authority, it may, by order, direct the promoter of such project to register with the Authority, and the provisions of this Act or the rules and regulations made thereunder, shall apply to such projects from that stage of registration.*

*(2) Notwithstanding anything contained in sub-section (1), no registration of the real estate project shall be required –*

*(a) where the area of land proposed to be developed does not exceed five hundred square meters or the number of apartments proposed to be developed does not exceed eight inclusive of all phases: Provided that, if the appropriate Government considers it necessary, it may, reduce the threshold below five hundred square meters or eight apartments, as the case may be, inclusive of all phases, for exemption from registration under this Act;*

*(b) where the promoter has received completion certificate for a real estate project prior to commencement of this Act;*

*(c) for the purpose of renovation or repair or re-development which does not involve marketing, advertising selling or new allotment of any apartment, plot or building, as the case may be, under the real estate project".*

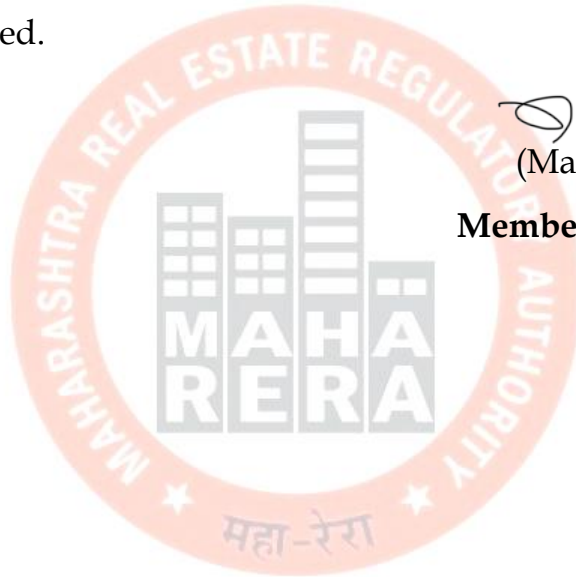
16. The aforesaid provision of section 3(2)(c) of the RERA clearly provides that the project registration is not required for the project taken for repairs/redevelopment, where no sale is involved. Meaning thereby, the provisions of section 3 (2)(c) of the RERA, clearly provide that the redevelopment component does not fall within the purview of RERA. Hence, the MahaRERA prima facie feels that the MahaRERA has no jurisdiction to

decide this complaint filed by the complainant in respect of the redevelopment component of the said project, on merits.

17. Moreover, the MahaRERA has also noticed that in the present case, the complainant has not denied the fact that it is part of rehab component of the said project, (which it has undertaken for redevelopment of its building occupied by members of the complainant, through the respondent), which falls within the redevelopment component. Also, the complainant has also not denied the fact cited by the respondent that it has also filed a Writ Petition No. 3934 of 2023 before the Hon'ble Bombay High Court. On the contrary, it has admitted the said fact and stated that the same is filed for specific performance of the said development agreement signed with the respondent. It therefore, shows that there is a pending parallel proceeding before the Hon'ble High Court between both the parties.
18. Be that as it may, the MahaRERA is of the view that the present complaint is not maintainable before the MahaRERA viz on two grounds :- i) the complainant is part of the redevelopment component which does not fall within the purview of the MahaRERA as per the provisions of section 3 (2) (c) of the RERA and ii) the MahaRERA has no jurisdiction to try and entertain the disputes arising out of Development Agreement as well as PAAA as held by the Hon'ble Appellate Tribunal in the aforesaid order, as mentioned in para-no. 14.
19. As far as the other issue raised by the complainant for directions to the respondent to provide the copy of sanction plan and CC for this project, the MahaRERA is of the view that all the information pertaining to this project has been uploaded by the respondent on the MahaRERA website as this project is registered with the MahaRERA, under the provisions of the RERA. Hence, no direction is required to be given to the respondent, as all the requisite

information is available on the MahaRERA website.

20. Consequently, the said MA filed by the respondent is hereby allowed and the present complaint stands dismissed being not maintainable. However, the complainant is at liberty to exhaust the other legal remedies available against the respondent for seeking arrears of rent under the applicable law.
21. In view of the aforesaid facts, the following order is passed:
- (i) The present complaint is not maintainable before the MahaRERA.
  - (ii) Hence, no further hearing is required to be given and the complaint stands dismissed.



  
(Mahesh Pathak)

**Member - 1/MahaRERA**