BEFORE THE MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY MUMBAI

Complaint No. CC006000000303238

Heena M Kashmiri .... Complainant

Versus

M/s. Nileshwar Developers

M/S. Nityanand Builders & Developers

Dinesh Ishwarlal Desai

Nitesh Ranchhoddas Patani

Jayesh Ishwarlal Desai

Mr. Premshankar Alias Rinku Pande

Prakesh Ranchoodas Patani. .... Respondents

MahaRERA Project Registration No. P51800021643

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

Ld. Adv. Shweta Kher appeared for the complainant

Mr. Kiran Bhogle, representative, appeared for respondent No. 1.

ORDER

(Monday, 3rd April,2023)

(Through Video Conferencing)

1. The complainant above named has filed this complaint before the MahaRERA on 12-12-2022 to the respondents to execute and register agreement of ownership / conveyance and to handover possession of her flat and also pay interest under the provisions of the Real Estate (Regulation & Development) Act, 2016 (hereinafter referred to as 'RERA') in respect of Flat No. 501 on the 5th floor of the free sale building

in the respondent's registered project known as **"Jai Ambe SRA CHS Ltd"** bearing MahaRERA registration No. **P51800021643** located at Village : Andheri, Dist. Mumbai.

2. This complaint was heard on 02-01-2023 as per the Standard Operating Procedure dated 12-06-2020 issued by 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, both the parties appeared for the hearing and made their respective submissions. The MahaRERA heard the submissions of the parties and perused the available record.

3. After hearing the arguments of both the parties, the following Roznama was recorded -

"The complainant is present. The respondent no.1 is present. The respondent no.2 is absent. At the outset, admittedly this is an SRA project and the complainant has signed an agreement with respondent no.2 which is an agreement for permanent alternate accommodation. Also admittedly, there is a complaint pending before the District Consumer Forum, Mumbai Suburban District. The respondent has also pointed out that if there is any privity of contract, it is with the respondent no.2 and not with respondent no.1. In view of the above, both parties are given two weeks' time till 16-01-2023 to upload their application/written submission regarding maintainability of this complaint. The matter is reserved for order on the issue of maintainability suitably after 16-01-2023. The further course of action

in the complaint will be decided once such order is issued."

4. Pursuant to the direction given in the hearing, the complainant has not uploaded her written submissions on the issue of maintainability of this complaint on record of MahaRERA on 13-01-2023. The respondent No. 1 has uploaded its written submission regarding maintainability of this complaint on record of MahaRERA on 16-01-2023. The said submission is taken on record. The MahaRERA heard the submission of both the parties and has also perused the available record.

5. The complainant has filed the application on record on 13-1-2023 for the limited purpose of presenting the maintainability as per directions passed by the MahaRERA. She stated that she was the owner/occupier of a separate independent structure admeasuring 1000 sq.ft. carpet area which was thereafter taken up for re-development under the Slum Rehabilitation Scheme, under the said project. Further, an agreement dated 30.04.1998 was executed between the chief promoter of Jai Ambe Co-operative Housing Society (proposed) and M/s. Nityanand Builders and Developers, (respondent no.2) who was entrusted with the work of re-development. It was during this time, on 22.09.1999, the respondent no. 1 entered into an agreement with the complainant for Permanent Alternate Accommodation ("PAAA") in the saleable building known as "Satellite Heights," in lieu of her old structure which was to be demolished as per SRA norms. Further, the commencement certificate granted to the respondent no.2 pertains to the re-development of rehab building and not the saleable building which is not concerned with the complainant. The said commencement certificate stands in the name of

both the developers i.e. respondent nos. 1 and 2. Further, the respondent no.2 vide confirmation letter dated 12.09.2004 assured her that she would receive possession of the premises being, Flat No.501, Satellite Heights in the Saleable Building on or before 31.12.2005 but since the year 2005, she has not received the said possession. She made several requests and has also addressed a legal notice dated 26.11.2007 to them but since both are acting hand-in-gloves with each other, they have deprived her from seeking possession of the said flat. Further, the respondent no. 1 deceitfully has concealed the name of the respondent no.2 by not mentioning their name as "Developer" in the particulars of the disclosures uploaded on the website of MahaRERA. Further, with respect to the maintainability of the complaint she has stated that as per the definition under section 2(d) of the RERA, a person must fall into any of the three categories viz., allotment, sale and/or otherwise transfer. In the instant case, the complainant falls in the category of transfer, as in lieu of her old independent structure she was offered a PAAA (consideration in kind) by the respondent no. 2 vide agreement dated 22.09.1999. Further, the obligation of the promoter/developer and/or co-developer in the present case, regarding amenities and facilities provided in the project are common to all flat occupants irrespective of whether it is a sale or a rehab component. There cannot be two separate co-operative housing societies for sale or for rehab component as it would result into an absurd situation. Thus, a flat taker in sale component and flat taker in rehab component in the real estate is placed on the same footing as an "Allottee" under RERA. Further the respondent no.2 has executed a Power of Attorney dated 20.01.2005 in favour of the partners of the respondent no.1 and the respondent nos. I and 2 have also been granted

commencement certificate on 11.06.2004 by the SRA to jointly carry out the re-development works and by entering into the Development Agreement dated 10.10.2004, the respondent no.1 has elected himself to agree to the terms of Agreement entered with the complainant. The complainant has relied upon the judgment passed by Hon'ble Supreme Court in the case of New Bihari Leaves Vs. State of Bihar, wherein it was observed: "It is a fundamental principle of general application that if a party accepts a contract on certain terms such party cannot be allowed to accept the terms which are advantageous and at the same time repudiate other terms which are dangerous." As per the specimen of the agreement uploaded on the website of MahaRERA, both names of the parties i.e. respondent nos.1 and 2 are clearly reflected in the recitals of the agreement. On account of the project being registered under RERA by the respondent no. 1 who has undertaken to carry out the re-development works with the respondent no.2 vide Development Agreement dated 10.10.2004 and Power of Attorney dated 20.01.2005 executed in favour of the partners of the respondent no.1, the complaint of the complainant falls within the ambit of RERA and is therefore, tenable in law.

6. The respondent no. 1 is the partnership firm of the promoter, which has registered this project with MahaRERA and the respondent nos. 3, 4, 5 and 7 are the partners of the respondent No. 1 firm (hereinafter referred to the respondent promoter).

7. The respondent promoter has filed its written statement regarding maintainability of this complaint and prayed for dismissal of this

complaint. It has stated that during the first hearing conducted before the MahaRERA on 02-01-2023 , the complainant has admitted that she has already filed a complaint before District Consumer Forum, Mumbai Suburban District. This in itself is enough reason for the dismissal of this complaint as the complainant is approaching alternate forums and wasting their valuable time. Further, in her reply filed on 13-01-2023, the complainant has made a false claim that she entered into an agreement with it. For the purpose of convenience, this part of the complainant's claim is reproduced here:

5.3 The Complainant submits that vide Agreement dated 30.04.1998 executed between the chief promoter of Jai Ambe Cooperative Housing Society (proposed) and M/s. Nityanand Builders and Developers (hereinafter referred as the Respondent No.2"), the Respondent No.2 was entrusted with the work of re-development of Jai Ambe Project in accordance with the provisions of Slum Rehabilitation Authority ("SRA"). Thus, the Complainant submits that initially it was only the Respondent No.2 who was involved in the Re-development of Jai Ambe Project. It was during this time, on 22.09.1999, the Respondent No.l entered into an Agreement with the Complainant for Permanent Alternate Accommodation ("PAAA") in the Saleable Building known as "Satellite Heights," in lieu of her old, independent structure which was to be demolished as per SRA norms."

8. The respondent promoter has also stated that the claim of the complainant is bogus and it clearly indicates that the complainant is misguiding the MahaRERA on various counts just to harass it and put it into some financial hardships by unlawfully using the legal remedies

available in the judicial forums. Since the matter is reserved for order on the issue of maintainability of this complaint by the MahaRERA, the respondent promoter seeks leave of the MahaRERA to reply to all the points in the complaint in details at a later date if required. It is therefore, once again humbly submitted to the MahaRERA, that this complaint be dismissed with compensatory costs.

9. The MahaRERA has examined the rival submission made by both the parties on the issue of maintainability of this complaint raised by the MahaRERA during the course of hearing held on 02-01-2023. Hence, the said issue has to be decided first being a preliminary issue before dealing with this complaint on merits.

10. In the present case, on bare perusal of this online complaint filed by the complainant, it appears that the complainant is mainly seeking directions to the respondents to execute and register agreement of ownership / conveyance deed and to handover possession of her flat along with interest under the provisions of the RERA.

11. Admittedly, the respondent promoter has undertaken this redevelopment project under the Slum Rehabilitation Scheme of Jai Ambe SRA CHS Ltd and the complainant is the slum dweller and was having separate slum structure admeasuring 1000 sq.fts which was taken up for redevelopment. Hence, the respondent No. 2 (erstwhile promoter) has executed the Permanent Alternate Accommodation Agreement (PAAA) on 22.09.1999. Hence, in the present case, the complainant is seeking relief by virtue of the said PAAA.

12. In this regard, the MahaRERA has perused the judgement dated 28-02-2019 passed by Hon'ble Maharashtra Real Estate Appellate Tribunal in appeal No. AT006000000010362 in the matter of Shravankumar Pardeshi V/s. M/s. Sagar Shopping Developers wherein it has held that, the PAAA is not converted under section 13 of the RERA. Moreover, the complainant is seeking relief by virtue of the PAAA, which is not governed under the provisions of RERA. Hence, the MahaRERA cannot grant any reliefs under the PAAA.

13. Moreover, the MahaRERA has 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".

14. 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.

15. Considering these facts and in view of the explicit provision under section 3 (2)(c) of the RERA, the MahaRERA is of the view that the redevelopment component does not fall within the purview of RERA. Hence, the justification given by the complainant that she is an allottee as defined under section 2(d) of RERA has no substance in law. Hence, the MahaRERA has no jurisdiction to decide this complaint on merits.

16. In addition to this, the MahaRERA has also noticed that in the present case admittedly, the complainant is a part of rehab component of the Jai Ambe SRA CHS Ltd, which has undertaken redevelopment of its plot occupied by the said society, which falls within the redevelopment component, and does not fall within the purview of RERA.

17. Further, the complainant has not disputed the fact that she has already filed complaint before the District Consumer Forum, Mumbai Suburban District. In view of the pendency of the said complaint before the Consumer Court, the present complaint cannot be entertained by the MahaRERA being parallel proceeding.

18. In view of these facts, 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 and hence the same do not fall within the purview of the MahaRERA as per the provisions of section 3 (2) (c) of the RERA and ii) in view of the pending proceeding filed by the complainant before the Consumer Court, the present complaint cannot be entertained by the MahaRERA.

19. In view of these facts, the present complaint stands dismissed being not maintainable. Hence, no further hearing is required to be given in this complaint.

(Mahesh Pathak)

Member – 1/MahaRERA