PRANAV
CONSTRUCTIONS
PRIVATE LIMITED PCPL®

09th November, 2023

To,

Maharashtra Real Estate Regulatory Authority
3rd to 9th Floor, Housefin Bhavan, Plot No. C – 21,
E – Block, Bandra Kurla Complex, Bandra (East),
Mumbai – 400 051.

Dear Sir / Ma'am,

Ref: (i) Redevelopment of Samrat Co-operative Housing Society Limited;

(ii) Clarification sought by MahaRera with respect to Table "C" of Form 3– selling the flats before Maharashtra RERA registration.

(iii) Clarification sought by MahaRera with respect to Table "C" of Form 3- unit consideration as per ready reckoner rate in Table C.

Sub: Clarification on behalf of Pranav Constructions Private Limited to the query raised by MahaRera as referred hereinabove before the Maharashtra RERA registration for Samrat Cooperative Housing Society Limited.

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1. We are in receipt of the query raised by the MahaRera with respect to the selling of the flats before the Maharashtra RERA registration of the project 'Samrat Co-operative Housing Society Limited' and in response thereto we seek to clarify / respond as under. By and under the Development Agreement dated 06th October 2022 ("Development Agreement") registered with the Sub-Registrar of Assurances bearing no. BDR 18- 16851-2022, Samrat Co-operative Housing Society Limited ("Society") has appointed us as the promoter to undertake the redevelopment on such terms and conditions as set-out in the Development Agreement.
2. Under the Development Agreement, we are obligated to provide to the members of the Society with a permanent alternate accommodation in the proposed new building comprising of the existing carpet area plus 36% of the existing carpet area as free of cost

area (**'Members' Entitlement'**). This is to state that the members of the Society had expressed their desire to purchase additional area i.e., area over and above the Members' Entitlement at a discounted / subsidised rate. Accordingly, at the request of the members of the Society, we had provided an option to the members of the Society to purchase an additional area of the existing carpet area if available and at the discretion of the developer at a subsidised rate of Rs. 45,000/- per square feet. The members of the Society as mentioned in the Table 'C' of Form 3 have availed the option to purchase additional area over and the Members' Entitlement in terms of the Development Agreement. Pertinently, the Development Agreement required us to execute and register the Permanent Alternate Accommodation Agreement in favour of the members of the Society prior to the members vacating their existing flats in the building.

3. By the present query, MahaRera has sought clarification from us with regard to:

   a. The selling of the flats prior to the Maharashtra RERA registration- In response thereto, we state that the details as provided in Table 'C' of Form 3 pertains to the saleable carpet area (in sq. mtrs,). We state that the additional area acquired by the members form part of their permanent alternate accommodation. The said additional area has no independent existence and the same is inseparable from the permanent alternate accommodation. The permanent alternate accommodation agreement executed by us in favour of the members govern their rights and obligations vis a vis their respective permanent alternate accommodation which comprises of the Members' Entitlement and the additional area acquired by them. It is a trite position in law that permanent alternate accommodation agreement is totally distinguishable from agreement for sale and that the permanent alternate accommodation agreement does not fall within the ambit of RERA. In light of the aforesaid, we respectfully state and submit that we have not sold any flats / units in the project in the open market prior to the Maharashtra RERA registration. The said position has been confirmed by the Hon'ble Appellate Tribunal MahaRera in the matter of Appeal No. AT 006000000052131, Kishor Shamji Thakkar & Ors. Vs M/s. Sumer Builders Pvt. Ltd. & Ors., by its Order dated 1st February 2022. Hereto annexed as Exhibit "A" is a copy of the Order dated 1st February 2022.

We state that as per section 3 (1) of the Act, "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 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 the Act.". With respect to the present project, we have neither advertised nor marketed nor booked nor sold nor offered to sell nor invited any persons to purchase any plot or apartment in the building prior to the registration with Maharashtra RERA. We have not sold any flats / units forming part of the preset project in the open market. We state that the sellable carpet area set-out in Table 'C' of Form 3 forms part of their permanent alternate accommodation.

b. The unit consideration as per ready reckoner rate in Table "C" of Form 3-In response thereto we would like to state that, as per the Development Agreement, we are obligated to provide to the members of the Society with a Permanent Alternate Accommodation in the proposed new building comprising of the existing carpet area plus 36% of the existing carpet area as free of cost area also known as Members' Entitlement. Further the members are also given an option to purchase an additional area of the existing carpet area if available and at the discretion of the developer at a subsidised rate of Rs. 45,000/- per square feet. The members of the Society as mentioned in the Table "C" of Form 3 have availed the option to purchase additional area over and above Members' Entitlement in consonance with the Permanent Alternate Accommodation agreement executed and registered by and between the members and the developer. The amount as mentioned in the Table "C" of Form 3 is in lines with the executed and registered Permanent Alternate Accommodation Agreements and in the Development Agreement.

4. Under the circumstances and in light of the aforesaid, we respectfully submit and clarify that we have not sold any flats / units and that we have not undertaken any activities that are prohibited or restricted by Section 3(1) of the Act in the said project, prior to the Maharashtra RERA registration.

5. We further state that the amount that has been mentioned in the Table "C" of Form 3 is with respect to the Permanent Alternate Accommodation Agreements executed and registered by and between the society members and the developers in concord with the Development Agreement.
6. We are hopeful that the clarification provided hereinabove would satisfy this Authority that we have not committed any breach of the provisions of section 3 of the Act and that no flats/units have been sold by us prior to the registration. We further state that we are ready and willing to provide any further clarification / explanation as may be desired by this Hon'ble Authority.
7. Our commitment to adherence to the law is unwavering, and we remain in strict compliance with all applicable regulations of MahaRERA.

For Pranav Constructions Private Limited

Pranav Kiran Ashar

Director

BEFORE THE MAHARASHTRA REAL ESTATE APPELLATE TRIBUNAL, MUMBAI

Appeal No. AT 006000000052131
In
Complaint No. CC006000000056070

Kishor Shamji Thakkar and Ors.
All having their office at: 311,
Kaliandas Udyog Bhavan,
Century Bazaar Lane, Prabhadevi,
Mumbai – 400 025. ... Appellants

Versus

M/s. Sumer Builders Pvt. Ltd. & Ors.
Having its office at : 201,
Commerce House, 140 Nagindas Master
Road, Fort, Mumbai – 400 001. ... Respondents

Mr. Nimay Dave, Advocate for Appellants
Mr. Harshad Bhadbhade, Advocate for Respondent

CORAM : SHRIRAM R. JAGTAP, MEMBER (J) & S. S. SANDHU, MEMBER (A)

DATE : 1st FEBRUARY, 2022.

(THROUGH VIDEO CONFERENCING)

JUDGMENT [PER : SHRIRAM R. JAGTAP, MEMBER (J)]:

This Appeal emanates from the order dated 8th November, 2019 passed by learned Member - 1/MahaRERA in Complaint No. CC006000000056070 filed by the complainants.

2. The appellants and respondents will hereinafter be referred to as 'Complainant' and 'Developer' respectively.

The facts which are necessary for disposal of this appeal, are that Complainants were erstwhile tenants in respect of room no. 9, room no.16 and a shed in a building known as "Laxmi Baug" located at property bearing CS No. 1218 of Lower Parel Division, bearing final plot FP No. 879 of TPS-IV, Mahim Division, Mumbai. On 28/12/2004 the landlords of the said property had sold and conveyed the said property to the Developer. The Developer launched a residential housing project consisting of Rehab component and Sale component by name "Sumer Princess" under Regulation 33(7) of the DCR - 1991. On 12/10/2012 the Developer executed a Permanent Alternate Accommodation Agreement (hereinafter it be referred as PAAA) and supplemental agreement with the Complainants whereby the Developer agreed to provide proposed flat no. 1203 to the Complainants a free of cost (consolidated) area admeasuring 1198 sq.ft. (carpet area) and in addition thereto the Complainants agreed to purchase and the Developer agreed to provide an additional area admeasuring 253 sq.ft. (carpet

area) (hereinafter be referred to as additional area) aggregating a total area of 1451 sq.ft. (carpet area) on ownership basis in lieu of tenanted premises in Free Sale Building. The Developer further agreed to hand over possession of the same to the Complainants within 36 months. The Developer had also agreed to pay rental compensation of Rs.90,000/- per month to the Complainants until the possession of the said flat is handed over to them. As per the terms and conditions of aforementioned agreements the Developer was entitled to adjust the rental compensation for the entire proposed development period of 36 months against the total purchase price for additional area purchased by the Complainants, amounting to Rs.51,00,000/-. However, the Developer has neither handed over the possession of the flat to the Complainants nor registered PAAA and supplemental agreement till date, despite repeated reminders by the Complainants. It was further contended by the Complainants that even the Developer has not paid the agreed rental amount for period after the adjustment of purchase price of Rs.51 Lacs and continuously defaulted in making payment without assigning any cogent reasons for the same to the

Complainants as a result they filed complaint. In relief, directions were sought to :-

i) The Developer to register PAAA and supplemental agreement both dated 12/10/2012.

(ii) Pay rental compensation with escalation thereon per month from 12/01/2017 until handing over possession of the said flat.

(iii) Pay compensation to the Complainants under section 18 of RERA.

(iv) Pay a sum of Rs.8,50,00,000/- as compensation.

3. The Developer appeared in the complaint and filed written submissions. The Developer resisted the complaint contending that the Developer is implementing re-development project under Regulation 33(7) of the DCR, 1991 by purchasing a plot of land under the said project vide registered Deed of Conveyance dated 28/12/2004. The said plot of land was occupied by various tenants and occupants. The MHADA has issued NOC for the re-development of the said plot and also issued certified list of tenants, wherein the

Complainants were shown tenants occupying three premises having consolidated area admeasuring 700 sq.ft. (carpet area). Out of these three premises, one shed being a non-cessed temporary structure was not considered by MHADA as eligible in the said tenants' list. However, two residential premises were shown as eligible. The Developer agreed to provide to the Complainants a consolidated area of 820 sq.ft. (carpet area) i.e. 300 sq.ft. for each residential units and 220 sq.ft. in respect of temporary shed.

4. The Complainants have shown their willingness to purchase additional area of 250 sq.ft. for total cost of Rs.51 Lacs. The Developer agreed to allot 3 BHK flat in sale building. Though the total area allotted to the Complainants was 1070 sq.ft. (carpet area), inadvertently at the time of execution of PAAA, the area is wrongly mentioned as 1451 sq.ft. (carpet area) instead of saleable area. The Complainants had agreed that the additional consideration for extra area would be paid at pro-rata basis. However, the Complainants just to avoid payment for additional area are taking advantage of error which has been crept in PAAA. It was further contended by

the Developer that the sale building is yet to be constructed on site and he will complete construction and offer possession of the flat to the Complainants in sale building within the timeline stipulated with MahaRERA.

5. It was further contended by the Developer that the Rehab building wherein the Complainants could be rehabilitated, being the tenants, is on the verge of completion. As per clause 8 of PAAA , it is obligatory on the part of the Developer to complete the construction of the sale building and offer possession of the flat to the Complainants after obtaining Occupancy Certificate (OC) from MCGM within 30 months together with grace period of six months from the date of vacating the tenanted premises by last tenant. As on date there is one tenant who occupied the sale building plot has vacated his premises four months ago and still there are three tenants who have not vacated the premises. It was further stated that in view of clause 8 of PAAA, the Complainants cannot seek relief U/Sec.- 18 of RERA and if, the Complainants are willing to shift to rehab building, then the Developer will offer possession of flat in the said building within 12 months.

6. The learned Authority heard the parties and passed impugned order whereby the learned Authority disposed of the complaint holding as under :

"In the present case, admittedly, the Complainants have not paid any consideration amount to the respondent No.1. However, the additional area has been purchased by the Complainants. There is no provision in the RERA, wherein the relief sought by the Complainants can be granted to register the permanent alternate accommodation agreement and supplemental agreement."

"Further, the Complainants are not entitled to seek interest under section-18 of the RERA since there is no agreement for sale specifying the date of possession."

7. The Complainants have assailed the impugned order on the grounds enumerated in the memorandum of appeal primarily on the following grounds :-

(i) The learned Authority has failed to consider that the Complainants have paid consideration for purchase of

additional area admeasuring 253 sq.ft. which forms an inseparable part of Flat No.1203.

(ii) The learned Authority failed to consider that Complainants have purchased additional area in the Free sale building project known as "Sumer Princess" and not "Windcrest" as erroneously observed in the impugned order. The Complainants are not construed to be tenants to be rehabilitated in the rehab component of the project, therefore, the provisions of RERA are applicable.

(iii) The learned Authority has failed to consider that the Complainants are allottees within the meaning of Sec.-2(d) of RERA, therefore, they can seek relief under section 18 of RERA.

(iv) The learned Authority has failed to consider clauses of agreement dated 12/10/2012 which contemplated purchase of additional area by the Complainants.

(v) The learned Authority has failed to consider the admission of the Developer that the construction of free sale building had not commenced after almost seven years of the

execution of agreements and the Developer has not pleaded any hindrance, obstruction, force majeure situation that prevented the Developer from commencing and completing the construction of free sale building.

(vi) The learned Authority has failed to consider that the Complainants have paid more than 10% consideration in regard of purchase of additional area and, therefore, the Complainants are entitled to registration of agreement.

(vii) The learned Authority has failed to appreciate that PAAA and supplemental agreement consist of sale transaction and the learned Authority has failed to appreciate that even if, the date of possession is not mentioned in the agreements, the Developer is supposed to deliver the possession of flat within a reasonable period which can be considered as three years.

8. We have heard the arguments of Adv. Nimay Dave for the Complainants and Adv. Harshad Bhadbhade for the Developer. Submissions advanced by the learned

Advocates for respective parties are nothing but reiteration of contents of memorandum of appeal and affidavit-in-reply. However, learned Adv. Harshad Bhadbhade for the Developer has added that this is a dispute between the tenants and the Promoter. The tenants and the Promoter have executed Permanent Alternate Accommodation agreement (PAAA). The dispute between the tenants and promoter is not governed by RERA, therefore, MahaRERA has no jurisdiction to entertain the complaint.

9. From the pleadings, rival submissions and documents relied upon by the parties, the following points arise for our determination :

Points :

(a) Whether the MahaRERA has jurisdiction to entertain the complaint?
(b) Whether the impugned order calls for interference in this appeal?
(c) What Order?

Our findings on the above points for the reasons stated below are as under :-

Findings :

(a) In the negative.

(b) In the negative.

(c) As per final order.

REASONS :

10. It is not in dispute that the Complainants were erstwhile tenants of room nos. 9, 16 and a shed in the building known as "Laxmi Baug". Building 'Laxmi Baug' was purchased by the Developer vide registered Deed of Conveyance dated 28/12/2004. The building 'Laxmi Baug' being in the exclusive use and occupation of various tenants/occupants, the Developer decided to undertake re-development of the property with the consent of tenants of property who have granted their consent as required by MHADA in terms of regulation 33(7) of the Development Control Regulation. The Complainants claim that they have purchased additional area of 253 sq.ft. (carpet area) in the free sale building and, therefore, they are allottees within the meaning and definition of 'Allottee' as per Sec.- 2(d) of RERA and, therefore, dispute

between the Complainants and the Developer is governed by RERA.

11. Thus, the pivotal question, which falls for our consideration, is whether tenants whose transactions are witnessed in the form of PAAA are governed by RERA.

12. A careful examination of preamble of Real Estate (Regulation and Development) ACT, 2016 would show that the statement of object and reasons of the Act indicates to regulate and promote the Real Estate Sector by ensuring that, 'sale transaction' in relation to Real Estate Sector is conducted in an efficient and transparent manner so that interests of consumers are protected and a fast track dispute resolution mechanisms are to be established under the RERA in accordance with the aforesaid purpose. So, the intent of legislature clearly signifies that the RERA concerns itself only where "Sale transactions" in relation to the Real Estate Project are involved. Based on the element of sale, there are certain distinguishing factors between the projects relating to

redevelopment and those which are envisaged to be covered under RERA. The said factors may be described as follows:

(i) Section 3 mandates prior registration of the Real Estate Project including on-going projects with the Real Estate Regulatory Authority, so as to bring the same within the jurisdiction of the RERA. Section 3 provides that a promoter shall not advertise, marketing, booking, sale or offer for sale or invite persons to purchase real estate in any project without registering the project under the RERA. So the RERA makes it mandatory that prior to undertaking activities, such as, advertisement, publicity etc. for effecting sale, a project has to be necessarily registered.

(ii) On the contrary, the legislature U/Sec.-3(2)(c) 'concisely' and `expressly exempted re-development project from requirement of registration as the element of sale is completely missing and therefore no advertisement, publicity or marketing etc. is required to be undertaken in the transaction between tenants and the Promoter. This provision distinctly takes redevelopment project out of the purview of RERA.

(iii) The nature of instruments for redevelopment project and project under RERA are also distinct and different. In the redevelopment project, instrument known as PAAA is executed by a Developer and individual tenant based on the consent of tenants/occupants of tenanted building for redevelopment. Contrarily, agreement for sale is executed not on the basis of consent, but the same is mandated U/Sec. 13 of RERA to be executed by Developer before accepting amount more than 10% of the total consideration. Similar provisions for 20% amount also existed in section 4 of MOFA.

(iv) Furthermore, it is worthy to note that provisions and kinds of reliefs contemplated in the above instrumentalities are also different from each other. Section 18 read with Section 19(4) of RERA recognises the agreement for sale as the basic document to be acted upon for entitling purchasers of real estate to take refund of the amount with interest and or compensation on withdrawal of the project and interest till actual possession in case Promoter fails to hand over possession as per agreement for sale or the date specified therein. Per contra, PAAA executed under

redevelopment project provides reliefs such as rent or compensation in lieu thereof during the period of construction of the project and does not entitle tenant to withdraw from the project and to take refund as alternate accommodation is provided free of cost in lieu of tenants premises given to Developer for redevelopment and involves no sale or payment of consideration as contemplated under RERA. The said reliefs as per PAAA are not recognised by RERA and therefore claim to that effect of tenants cannot be considered under RERA.

13. In view of above observations, we are of the considered view that absence of provisions to envisage above instrumentalities and nature of reliefs associated thereto, itself provide enough indication that the RERA does not concern itself with the redevelopment project. Therefore, we can say that permanent alternate accommodation agreement (PAAA) is totally distinguishable from 'agreement for sale' and that does not fall within the ambit of RERA for extending any reliefs to tenants thereunder.

14. The complainants emphatically claim that they have purchased additional area of 253 sq. ft. (carpet area) and the Developer agreed to provide them flat in the Sale building, and therefore, the dispute between the Complainants and the Promoter is governed by provisions of the RERA. We do not find substance in the said contention of the Complainants. The rights and obligation of the parties flow from contractual covenant. A perusal of PAAA executed by Complainants and Developer, the recital 'F' would reveal that in lieu of tenanted premises Developer agreed to provide as **'free of cost'** consolidated area in the sale building and the said area called as new flat would collectively be referred to as the **new premises/Permanent Alternative accommodation.** Further paragraph Nos. 7 & 8 of the supplemental agreement indicate that it is an auxiliary or subsidiary to PAAA. It has no independent entity.

Paragraphs 7 and 8 of supplemental agreement are as under:-

> "Para 7. - This Supplemental Agreement will be read concurrently with the PAA and all the terms and conditions of the PAA which are not inconsistent with the Supplemental Agreement shall deemed to have been incorporated herein as if the same is specifically set out and traversed herein."

"Para 8. – This agreement is co-existing ad co-terminus with the PAA and in the event of termination of the PAA, this Agreement shall ipso facto stand terminated".

It means the Complainants and the Developer are bound by the terms and conditions of PAAA. The Complainants are also claiming their rights as per terms and conditions enumerated in PAAA.

15. It is significant to note that by virtue of PAAA the Developer agreed to provide flat no. 1203 to the Complainants on ownership basis in lieu of tenanted premises. Merely because the proposed flat is located in the 'Free Sale building', does not necessarily mean that the characteristics of PAAA changed to agreement for sale and PAAA can be termed as agreement for sale for considering entitlements of tenants in terms of PAAA under RERA. Besides the status of the Complainants as erstwhile tenants cannot be changed to home buyers.

16. As observed earlier, 'allottees' for the purpose of RERA are only those persons, whose sale transactions are witnessed in the form of agreement for sale and who perform their obligations of paying consideration etc. for the purchase of

real estate. So far as tenants are concerned, they neither pay any consideration nor execute sale transaction, therefore, they cannot be equated with buyers of real estate envisaged to be covered by the RERA.

17. It is further to note that additional purchased area admeasuring 253 sq. ft. has no independent existence and the same being in addition to permanent alternate accommodation agreed to be provided in sale building draws its sustenance from PAAA is an inseparable part of flat no. 1203. We would like to reiterate that the Developer has agreed to provide the proposed flat no. 1203 on ownership basis in lieu of tenanted premises and thus additional area is also governed by the terms of PAAA. Therefore, considering the fact that redevelopment projects are excluded from registration under RERA and the PAAA executed under redevelopment project for providing permanent alternate accommodation free of cost we are of the clear view that the dispute between the Complainants and the Developer does not fall within the ambit of RERA and no reliefs as prayed for in the complaint or Appeal can be considered under RERA.

18. In the result, we do not find any infirmity in the impugned order and accordingly, it does not call for any interference in appeal. Consequently, we proceed to pass the following order.

ORDER

(I) The Appeal stands dismissed.

(II) No order as to costs.

(III) Copy of the judgment shall be sent to the parties and MahaRERA as per Section 44(4) of the RERA, 2016.

(S. S. SANDHU) **(SHRIRAM R. JAGTAP)**

RMB/-