

Nalawade

Oct 17, 2200

**BEFORE MAHARASHTRA REAL ESTATE APPELLATE TRIBUNAL,
MUMBAI**

**APPEAL NO. U-18 OF 2019
IN
Complaint No. SC10000474**

Maharashtra Chamber of Housing Industry, Raigad

504, 5th Floor, Neel Enclave,
Plot No 1, Sector 9, Khanda Colony,
Raigad, Panvel,
New Panvel- 410206

... *Appellant*

~ *versus* ~

**City and Industrial Development Corporation of
Maharashtra Ltd. (CIDCO)**

Nirmal, 2nd floor, Nariman Point,
Konkan, Mumbai-400021

... *Respondent*

-ALONG WITH-

**APPEAL NO. U-27 OF 2019
IN
Complaint No. 10000474**

**City and Industrial Development Corporation of
Maharashtra Ltd. (CIDCO)**

Nirmal, 2nd floor, Nariman Point,
Konkan, Mumbai-400021 and also at
Konkan Bhavan, CBD Belapur,
Navi Mumbai-400707.

... *Appellant*

~ *versus* ~

CREDAI Maharashtra Chambers of Housing Industry, Raigad.

504, 5th Floor, Neel Enclave,
Plot No 1, Sector 9, Khanda Colony,
Raigad, Panvel,
New Panvel- 410206

... *Respondent*

Ms. Ritika Agarwal, Advocate for CREDAI MCHI.

Mr. G. S. Hegde a/w Ms. Dharini Jain, Advocate for CIDCO.

**CORAM : SHRI SHRIRAM R. JAGTAP, MEMBER (J)
& DR. K. SHIVAJI, MEMBER (A)**

DATE : 18th OCTOBER 2024

(THROUGH VIDEO CONFERENCE)

JUDGEMENT

[PER: DR. K. SHIVAJI, MEMBER (A)]

Captioned Appeals (for convenience, Appeal No.U-18 of 2019 and Appeal No. U-27 of 2019 will be addressed as Appeal and Cross Appeal respectively,) have been preferred under The Maharashtra Real Estate (Regulation and Development) Act, 2016 (for short, "the Act") by challenging the order dated 3rd June 2019 passed by learned Chairperson, Maharashtra Real Estate Regulatory Authority ("MahaRERA"), in Complaint No.SC10000474.

2. The captioned appeals are arising out of similar facts and are raising identical questions of law. Accordingly, these appeals are heard together and are being disposed of by this common order as hereunder.
3. Appellant in Appeal No. U-18 of 2019 is a multipurpose organization and a recognised body of real estate developers (in short "MCHI") in Mumbai and Mumbai Metropolitan Region with its main objective to develop a common platform of interests connected with the construction industries and claims to have been taking constructive action.
4. Respondent in Appeal No. U-18/19 being is City and Industrial Development Corporation of Maharashtra Limited, (in short "CIDCO"), a Government company, wholly owned by the Government of Maharashtra and is incorporated under the Companies Act, 1956 having its registered office at Nariman point, Mumbai -21 and has been declared as a New Town Development Authority (in short "NTDA") under Section 113(3A)



of the Maharashtra Regional Town Planning Act, 1966 (in short "MRTP Act"). For convenience, appellant and respondent in Appeal No. U-18 of 2019 will be addressed hereinafter as "MCHI" and "CIDCO" respectively.

5. Brief background giving rise to the present appeals are as under; -

a. Complainant's case: MCHI has filed the captioned complaint in October 2018 before MahaRERA on account of non-registration of CIDCO with MahaRERA as project promoter under the Act before launching several schemes akin to the scheme no. CUC- MKTG/01/-2017-18 and these schemes have been formulated for allotment/sale and disposal of land plots to members of MCHI by inviting the tenders/advertising/marketing of these plots as projects. As such, members of MCHI are allottees under the Act after getting allotments of these plots by virtue of becoming successful bidders in the said tenders floated by CIDCO under these schemes. Therefore, CIDCO being a promoter under the provisions of the Act is liable to register as promoter under Section 3 of the Act.

b. Learned counsel for CIDCO refuted these contentions of the MCHI before MahaRERA by submitting that CIDCO is selling/ disposing of these plots by inviting public tenders to prospective developers to develop these land plots by constructing buildings/ apartments etc., on these plots to be sold to 3rd parties. Thereby, CIDCO has been selling these plots for their developments and therefore, MCHI members, being successful bidders of the land plots alone are required to register as promoters with MahaRERA under the Act and CIDCO is not liable to register under this scheme for sale of such plots.

c. After hearing the parties, MahaRERA disposed of the captioned complaint, vide its order dated 3rd June 2019 by recording its concluding observations as follows: -



".....7. From the above it is clear that, the sale transactions effected by CIDCO in the instant case are of immovable property where **permissions for development of the said immovable property is yet to be given by the Competent Planning Authority. Therefore, they cannot be treated as sale for the purpose of plotted development which comes under the definition of a Real Estate Project.** Pursuant to the transactions effected by CIDCO, the buyers of the said developed plots, who are real estate developers, will seek approval from the competent authority for development of building on the said plots and the said development of building on these plots will have to be registered with MahaRERA under the provisions of the Act by the said developers. These buyers of the CIDCO plots would then be promoters for the development of buildings on these plots which they have bought from CIDCO.

8. It was further explained to the Complainant that if their building development of the plots acquired from CIDCO are dependent on certain off-site infrastructure that has to be provided by CIDCO, then while registering their projects with MahaRERA, the Complainant or their members can include CIDCO as a promoter (Land-owner).

9. In view of the explanation given above, the sale transactions effected by CIDCO are sale of immovable property where permissions for development of the said immovable property is yet to be given by the Competent Planning Authority and such transaction does not fall under the definition of a real estate Project. "

d. Aggrieved by this order of MahaRERA, both the parties have preferred the captioned appeals, wherein, MCHI is praying for various reliefs *inter alia* to quash and set aside or modify the impugned order dated 3rd June 2019 as well as for direction to CIDCO to register with MahaRERA and abide by all the provisions of the Act for the purpose of sale/disposal of plots under the said scheme.

e. At the same time, aggrieved by this order of MahaRERA, CIDCO has also filed the captioned cross appeal no. U-27/2019, praying for various reliefs including to quash and set aside the findings against



the CIDCO rendered in paragraph no.8 of the impugned order dated 3rd June 2019.

6. Heard learned counsel for parties *in extenso*.
7. MCHI has filed the captioned appeal and opposed the cross appeal by submitting as follows; -
 - a. Considering the provisions under Section 2(b)- for advertisement, Section 2(d)-of Allottees, Section 2(s)- Development , Section 2(t)-for Development works, Section 2(zg)-Person, Section 2(zn)- for Real Estate project and Section 2(zk) of the Act, development activities under the said scheme are real estate project, CIDCO fulfills all the criterion of the promoter of Real Estate project under the said schemes for sale/disposal of the planned land plots in accordance with the procedure prescribed in Navi Mumbai Land Disposal (Amendment) Regulation, 2008 for development of City of Navi Mumbai over the land acquired/ placed at its disposal by the Government. Thus, CIDCO being a "promoter", is compulsorily required to register itself as a promoter before the MahaRERA under the Act prior to commencement of the auctions of the subdivided plots.
 - b. Members of the MCHI are in the business of the real estate constructions and developments, who get allotment of these plots after becoming successful bidders in the said tenders floated by CIDCO under the said scheme. Thus, members of MCHI are allottees under Section 2(d) of the Act. Accordingly, the said schemes of CIDCO are real estate project development activities under the provisions of the Act and therefore, the members of the MCHI have rights of the allottees under the Act *inter alia* under Section 19 and CIDCO is a promoter.
 - c. Whereas Section 3 of the Act specifically mandates prior registration before the promoter advertise, market, sell and invite person for the



purchase of plots. However, CIDCO despite being promoter, has been routinely marketing/ tendering the subdivided plots of lands without registration, has failed to fulfill its obligations including for the removal of the encroachment/ encumbrances without carrying out final demarcations of the tendered plots in the scheme booklet(s). These deficiencies are causing inordinate delay, harassment to allottees and consequent delay in completion of the project construction undertaken by the allottees.

- d.** CIDCO, despite being promoter has not been complying with the preamble/objectives of the Act to carry out the sale of plots in an efficient and transparent manner, transparencies of the contractual conditions are not being maintained besides not establishing symmetry of information between the promoter and the purchasers. Therefore, the interest of the allottees/real-estate consumers and of its members of MCHI are not being protected. This is despite the fact that the provisions of the Act do not exclude the public Authorities.
- e.** CIDCO, after sub-dividing the land into plots, prepares internal roads and provides infrastructures likes water, power, sewage pipes to these plots and these activities are clearly the development activities but, the legislative mandates under the Act are not getting complied with, therefore, is leading to statutory breach of the provision of the Act.
- f.** Impugned order is invalid, suffers from infirmities, has failed to consider the provisions of the Act including its FAQs issued by MahaRERA itself and MahaRERA has grossly erred in reading the broad definition of the Development and Real Estate project. MahaRERA has failed to even refer to the judgement passed the Hon'ble Supreme court in the case of *Lucknow Development Authority vs M.K. Gupta* [(1994) 1 SCC 243] I despite having been placed on



record. Therefore, impugned order suffers from infirmities because the RERA is a beneficial Central Legislation.

- g.** The contention of the CIDCO that RERA Act does not have overriding effect over MRTP Act is also erroneous in view of the provisions of Section 89 of the Act. Whereas MRTP is an administrative State Legislation. Moreover, the provisions of RERA are in no way in conflict with the provisions of MRTP Act. Thus, it is possible to harmoniously interpret the provisions of both the statutes and give effect to the intentions of both the Central and State legislatures. The argument that MRTP is a special law is also erroneous.
- h.** Impugned order has rightly held that CIDCO is promoter in respect of offsite infrastructure development, but its obligations are limited only for the removal of encroachments, demarcation of plots and infrastructure developments such as provision of road, power, water, sewage. However, the construction of the building project on the allotted plots cannot be completed for want of off sight and on sight infrastructures.
- i.** Since, CIDCO is undertaking real estate development activities of real estate projects by subdividing the plots of the lands and is selling these plots on lease under the said scheme of real estate projects. Therefore, as per Section 2(zk)(iii)(b) of the Act, CIDCO is a promoter and is liable for registration under the provisions of the Act.
- j.** MCHI has further referred to the following citations/judgments in support of the above contention (a) *Lucknow Development Authority Vs. M.K. Gupta AIR 1994 SC 787* and (b) *Lavasa Corporation Limited Vs Jitendra Jagdish Tulsani and Ors. 2018 (5) ABR 553* (c) *Shelton Infrastructure Pvt. Ltd. Vs State of Maharashtra & Ors.* (d) *Maharashtra Chamber of Housing Industry Vs The Municipal Corporation of Greater Mumbai and Ors.* Therefore, prayed for her




appeal be allowed and the cross appeal filed by CIDCO be dismissed with costs.

- 8.** Per contra, CIDCO opposed the appeal of MCHI and prayed for above reliefs by filing captioned cross appeal and submits the followings; -
- a.** MahaRERA has correctly held in para 7 of the impugned order that buyers of the said plots are real estate developers, who have to seek approvals from the Competent Planning Authority before development of the said plots and thereafter, such proposed building construction/ project development works have to be registered with MahaRERA under the Act. Accordingly, buyers of the CIDCO plots will be promoters of those plots. Participants of the tender(s) of the plots are required to comply with the terms and conditions of the tenders. Therefore, the conclusions recorded in para 7 of the impugned order do not require any interference in the captioned appeals.
- b.** "Real Estate project" defined under Section 2(zn), and the "Development" under Section 2 (s) respectively under the Act do not cover the disposal of plots and these plots are not being developed by CIDCO but are merely disposed of by selling these plots to 3rd parties by public tendering process. Therefore, only the 3rd party purchasers are required to register the said plots if these are intended to be developed by constructing apartments/buildings thereon. Section 2(zn) and 2(s) of the Act do not cover the disposal of plots as real-estate project and development respectively, which are not personally developed by CIDCO itself and are merely sold to 3rd parties by public tender.
- c.** The aims and objectives of the Act are to ensure the sale of such plots in an efficient and transparent manner to protect the interests of the real estate consumers. But, neither CIDCO nor MCHI members are



the real-estate consumers *qua* disposal of such plots. Therefore, CIDCO is not promoter under Section 2(zk) of the Act.

- d.** Lands are disposed of under the NMDLR by tendering process on the conditions *inter alia* "as is where is basis" on lease terms and the prospective bidders are required to visit/ inspect the status of the proposed plots including existing infrastructures thereon before putting their bids. Tender conditions stipulate for compliance of the provisions of the Act by the successful bidders (members of the MCHI) including for registration as promoter of the proposed real estate project. Therefore, CIDCO is not bound to be registered for such real estate project as promoter nor as promoter (land development).
- e.** Apart from 50 - 52 percent of the area, rest are dedicated for public use, roads, open spaces, playgrounds, gardens, STP drainage and for other infrastructure works and CIDCO being the NTDA, owes obligations to develop social infrastructures, including to provide hospitals, schools, various religious and cultural activities, for which the lands are allotted at concessional rates. In addition, CIDCO is also constructing houses for economically weaker sections, lower-income groups, rehabilitation of project affected persons by allotting 12.5 percent land schemes in accordance with the government policies.
- f.** CIDCO is appointed as New Town Development Authority under Section 113 (3A) of the MRTP Act and is acting as an agent of the State Government for performing these functions assigned to it for development of Navi Mumbai on behalf of the State Government. Additionally, CIDCO is governed by the provisions of the MRTP Act, and the Rules framed thereunder, more particularly Navi Mumbai Disposal of Lands (Amendment) Regulation 2008 (in short "NMDLR") for disposal of plots. MRTP Act being the special law, provisions of the



Act would not override and/ or supersede the provisions of the MRTP Act/ Rules framed thereunder.

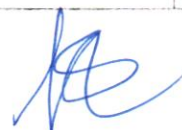
- g.** Both the Acts, albeit held non-obstinate clause but the earlier enactment was held to cover the field and is to be given primacy over the later enactment. Assuming that later enactment prevails over the earlier one to apply, the two enactments need to be harmoniously construed to ensure that later enactment does not cause violence to the intend to the earlier enactment and the focus must be on the special one with respect of the principle subject matter of the Act.
- h.** Disputes between the parties arising out of the subject plot disposal through tender are required to be referred to and addressed by the provisions of the MRTP Act and MCHI has no remedy against CIDCO under the Act.
- i.** Tender conditions are governed under Section 118 of the MRTP Act and NMDLR made thereunder, and the terms and conditions of the disposal of the plots are set out in the NMDLR 2008 about which, MCHI members are well aware of these terms and conditions before participating in the land disposal tendering process. Therefore, they have not only accepted these terms but also these are binding upon them. Having availed the benefits of these tenders, MCHI members are estopped from raising the plea of registration of the subject scheme under the Act otherwise, it will amount to rewriting the tender conditions, which is not permissible under the law.
- j.** It is the settled position of law that there is no scope for invoking doctrine of fairness and reasonableness under the duly executed successful contract for the purpose of adding/ altering the terms and conditions of the contract.
- k.** Moreover, the MCHI having already registered as the promoter of those real-estate projects on those plots as contemplated in the



tender conditions, CIDCO is not liable to register the same real estate project as promoter under the Act. Accordingly, MCHI has not made any cogent and compelling case to therefore, the appeal filed by MCHI is liable to be dismissed and the reliefs sought by CIDCO in its cross appeal be allowed and placed reliance of the following citations/judgments in support of the above contention (a) *State of UP Vs. Karunesh Kumar, 2022 SCC online SC 1706* (B) *K. C. Ninan Vs Kerala State Electricity Board & Ors. 2023 SCC Online SC 663* (c) *Percival Joseph Pereira Vs. The special land Acquisition on Office and Ors. -W.P. NO. 1211 OF 2009* (d) *Atma Ram Properties Pvt. Ltd. Vs. Oriental Insurance Company Ltd. -(2018) 2 SCC 27* (d) *Sanwarmal Kejriwal Vs. Vishwa Co-operative Housing Society Limited. -(1990) 2 SCC 288* (e) *Morgan Securities & Credit P. Ltd Vs Modi -(2006) 12 SCC 642* (f) *Grinar Traders Vs. State of Maharashtra and Ors. -(2011) 3 SCC 1.*

9. From the rival pleadings, submissions and documents relied upon by the parties, following points arise for our determination in these appeals and we have recorded our findings against each of them for the reasons to follow: -

| | POINTS | FINDINGS |
|----|--|---------------------|
| 1. | In view of the scheme for allotment of plots by tender, whether CIDCO is liable to register as promoter under the provisions of the Act? | In the affirmative. |
| 2. | Whether MCHI is entitled for other reliefs as prayed for? | Partly affirmative |
| 3. | Whether impugned order is sustainable in law? | In the negative. |
| 4. | Whether impugned order calls for interference in these appeals? | In the affirmative. |



REASONS

Points 1, 2, 3 and 4:

- 10.** These points are interrelated, so have been considered together as under.
- 11.** It is not in dispute that CIDCO is a fully owned Government of Maharashtra undertaking established under the Indian Companies Act, 1956, has been declared as a New Town Development Authority ("NTDA") under Section 113 (3A) of the MRTD Act, 1966 and has also been empowered to perform as Special Planning Authority for development of new town/s in respect of planning and development of Navi Mumbai. As a part of these roles, CIDCO, after acquiring and obtaining lands (raw lands), prepare development plans /town plans over these area, wherein, it provides lands for urban infrastructures, municipal services, for open spaces, social infrastructures, hospitals including gardens space for the economically weaker sections, rehabilitation of project affected persons and provide space to incorporate infrastructures such as water, power, sanitation, streetlights and other basic civil amenities etc. In this process, CIDCO finalizes master development plans for nodes/town, layout plans and finalise the locations/layout etc. of residential, commercial and reservation plots. After finalisation of development/lay out plans over these areas as competent planning authority under the Act, CIDCO disposes of these planned land plots in accordance with the government approved New Mumbai Disposal of Land Regulations, 1975, amended Regulation 2008 ("NMDLR"), by floating advertisements and marketing of tender booklets under NMDLR approved rules containing schemes akin to the said illustrated scheme no. CUC- MKTG/01/- 2017-18. Real estate developers including the members of the MCHI participate in the said bidding process. The successful bidders get allotment of land plots on the terms



and conditions as stipulated in the tenders structured under schemes akin to the said scheme under reference. Thereafter, successful MCHI members after receipt of sanctioned building plan/s from planning authority to develop/construct building complexes/ apartments over these plots, register these real estate projects with MahaRERA under Section 3 of the Act as promoters and construct buildings on these allotted plots.

- 12.** In pursuit of better appreciations of the controversies ingrained in the captioned appeals, liberty has been taken to elaborate the above chains of development activities involved herein along with the roles being played by CIDCO and that of the members of the MCHI as hereunder: -
- 13.** Careful analysis of the chains of activities involved in the said process of town developments starting from acquisition of raw lands till the completion of the apartment buildings complexes, we find that CIDCO, as competent planning and town development authority, plays important roles by undertaking town planning exercises over the raw land parcels/ areas and finalises development/ layout plans by suitable subdivisions and formulation of plots making these plots ready and suitable for construction of building complexes etc, thereon by the members of the MCHI/ real estate developers.
- 14.** In that view of the matter, it is pertinent to note that the roles being played by CIDCO as competent planning and town development authority, under its schemes, akin to scheme no. CUC- MKTG/01/- 2017-18 are (generally) confined only for the chains of activities starting from the acquisition/development of raw land till the finalisation of development of town plans/layout plans containing well carved out final plots (ready to construct building complexes thereon) and for marketing of these planned lay out plots. Whereas MCHI members are involved only after getting allotments of these plots in the development chains



for construction/ completion of building complexes on the planned layout plots and to sell these flats/shops etc constructed in the building complexes built on these land plots to 3rd parties.

- 15.** In view of the above, we find the **town developments** and **plot developments** are two different development activities. Accordingly, the roles being played in the said chains of development activities by CIDCO and MCHI are quite different and distinct. Thus, for convenience, the roles of CIDCO will be called hereinafter as Developer (Town Development, in short, "TD") and that of the roles of MCHI members as Developer (plot development, in short, "PD") respectively.
- 16.** In the above chains of development activities, members of MCHI, are admittedly promoters of plots development, for convenience say, promoters (plot development, in short, "PD"), who are involved for development of plots including for the construction of building complexes thereon, say for Project (plot development, in short, "PD"). Therefore, indisputably, Promoters (PD) are required to register these plot development projects (PD)) under Section 3 of the Act before MahaRERA.
- 17.** In this background, diligent perusal of the captioned complaint of the MCHI reveals that the controversies in the captioned appeals/ complaint are squarely confined only in respect of the roles of CIDCO as elaborated herein above as Developer (TD) and is (generally) not directly involved in the activities for plot developments. In that view of matters, we have to examine, whether CIDCO is a Promoter (TD) under the provisions of the Act for the chains of the town developments activities under the said schemes akin to the scheme referred earlier and whether these schemes are liable to be registered as Project (TD) under Section 3 of Act, wherein, CIDCO is promoter (TD)?



18. In the light of foregoings, it is crystal clear that the roles of CIDCO under the said scheme in the complaint is development work as per Section 2(t) of the Act. Moreover, upon perusal of Section 2(zn), (being reproduced below), it is more than evident that the chains of development works undertaken by CIDCO for the stated **development of raw land into planned/ sanctioned layout plots under the said schemes as competent planning and town development authority** for the purposes of **selling/ marketing** of all or some of the said plots are *prima facie* real-estate projects.

*"Section 2(zn): "real estate project" means the development of a building or a building consisting of apartments, or converting an existing building or a part thereof into apartments, or the **development of land into plots** or apartments, as the case may be, for the purpose of selling all or some of the said apartments or plots or building, as the case may be, and includes the common areas, the development works, all improvements and structures thereon, and all easement, rights and appurtenances belonging thereto; "*

19. From the foregoing discussions, it is abundantly clear that CIDCO is promoter (TD) for its stated chains of development activities for planning of land into plots / sub plots for the purpose of selling all or some of these plots after its subdivisions into sub plots with proper town planning and the contentions of the learned counsel for the CIDCO is legally not sustainable on account of the followings; -

a. Section 2(zk)(ii) clarifies that promoter is a *person, who **develops land into project** relevant for the purpose of selling to other person all or **some of the plots in the said project** with or without structures thereon"*.

b. Section 2(zk)(iii) specifically emphasises that promoter may be by *any one **irrespective of even the development authority or any other public body** in respect of allottees of--*

*(b) plots **owned by such authority or body** or placed at their disposal by the Government, for the purpose of selling all or some of the apartments or plots; or*

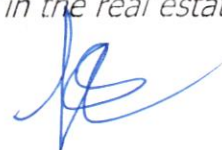


c. It is further to note that CIDCO is **not only engaged in only the Town development activities by carving out ready to construct plots** for building complexes, **but it also sells these plots** to the members of MCHI and to other real estate developers under this said schemes. Whereas explanation provided under section 2 (zk), specifically clarifies that the person, who sells such plots are **if different persons then, both of them shall be deemed to be promoters and shall be jointly liable** for the functions and responsibilities under the Act.

*Explanation. — For the purposes of this clause, where the person who ... or develops a plot for sale and the **person who sells apartments or plots are different person, both of them shall be deemed to be the promoters** and shall be jointly liable as such for the functions and responsibilities specified under this Act or the rules and regulations made thereunder;*

This has further been clarified and it has been held *inter alia* by The **Hon'ble Bombay High Court in para 17** of its judgement in Second Appeal (Stamp) No. 21842 of 2023 in the case of **Wadhwa Group Housing Private Ltd. V/s. Mr. Vijay Choksi & Ors dated 26th February 2024** *inter alia* as follows; -

*"..Thus, definition of the term "Promoter" under Section 2(zk) of RERA is wide enough to include every person who is associated with construction of the building such as builder, coloniser, contractor, developer, estate developer or by any other name or even the one who claims to be acting as the holder of a power of attorney from the owner of the land. **One of the principal objectives of RERA is to bring transparency in real estate sector and to protect the interests of the consumers in the real estate project. The term 'Promoter' has been so widely defined that it virtually includes every person associated with construction of the building. Thus, even a person who is merely an investor in the project along with the Promoter and who is entitled to benefit in the real estate project is***



also covered by definition of the term 'Promoter'. In the present case, I need not delve deeper into the enquiry as to whether Appellant is covered by the expression 'Promoter' or not.

..

..
*Explanation to Section 2(zk) makes all persons who construct or convert building into apartments or develop a plot for sale, **as well as a person who sells apartments or plots to be promoters making them jointly liable as such for the functions and responsibilities specified under the Act, or the Rules and Regulations made thereunder.** Thus, a person who does not actually construct or **causes to be constructed** a building but merely takes part in the joint venture and sells flats, becomes a Promoter. ..."*

According as clarified by the Hon'ble Bombay High Court, CIDCO is also a promoter even based on its role under the said schemes for selling/marketing/disposing these sanctioned lay out plots under the provisions of Act of 2016.

- d.** The contention of the learned counsel that CIDCO is not promoter because, it is also a planning authority, is also not legally tenable because the definition of the promoter under the Act, does not provide any exemptions from becoming promoter even if, it is a planning authority or even if, it is a government owned company.
- e.** As such, these provisions do not specify any exemption even if, these plots are continuous or stand-alone and are being sold stand alone basis or otherwise etc., or these plots are to be used for residential/ commercial purposes, even if plots are sold on the terms of "as is where is basis" or otherwise without any such distinctions. As such, the compliance of the provisions of the Act, itself requires that the agreement for sale ought to be structured in line with the model agreement and in compliance of the provisions of the Act.
- f.** At the same time, **admittedly members of the MCHI will continue to remain promoter (plot development, PD) for the**



plot development real estate project for construction of building complexes/apartments etc., on the allotted plots by CIDCO. It is to note that Project (TD) and Project (PD) are two different and distinct real estate development activities.

g. Diligent perusal of the Section 2 (d), clearly demonstrates that "allottee" in relation to a real estate project, means the person to whom a plot, has been allotted, sold (**whether as freehold or leasehold**) or otherwise transferred by the promoter...;" Therefore, it is more than evident that members of the **MCHI are the allottees** of the town development real estate project of which, **CIDCO is the promoter (TD).**

h. Learned counsel for CIDCO further contended that members of the MCHI are not allottees because CIDCO continues to retain ownership of land plots, and these allocations of plots are made only on long term lease basis. However, perusal of Section 2(d) of the Act clearly shows otherwise, which in fact specifically elaborates that the allottee in relations to a 'real-estate project' means a person to whom a plot has been allotted, sold, whether **as free hold or lease hold or as otherwise**. The relevant abstract is being reproduced herein below; -

*Section 2(d) : "allottee" in relation to a real estate project, means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (**whether as freehold or leasehold**) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent; "*

20. In view of above, we find that CIDCO is promoter (TD), under the provisions of the Act despite being a public authority, fully owned by the Government of Maharashtra based on its chains of development activities involved for the said real estate project works and selling these



plots after planning/sub dividing plots irrespective of the CIDCO being also a planning authority/ public authority as well.

21. However, learned counsel for CIDCO submits that the provisions of the Act are not applicable in view of the CIDCO being a statutory government organization to carry out the functions as mandated by the government policy in accordance with the objectives of the MRTP Act, 1966 and in case of conflict between the two Acts, provisions of MRTP will prevail over the Act of 2016. However, this contention is also legally not tenable on account of the followings; -

a. Diligent perusal of the objects and Reasons of the Act of 2016 and that of the MRTP Act (being reproduced below) clearly demonstrates that there is hardly any conflict between the two statutes. Moreover, learned counsel for CIDCO has failed to demonstrate any particular Section under which, the provisions of these two Acts contradicts each other. As such the provisions of these two Acts supplement each other and do not supplant nor conflict each other.

Preamble of the Act of 2016: *An Act to establish the Real Estate Regulatory Authority for regulation and promotion of the real estate sector and to ensure sale of plot, apartment or building, as the case may be, or sale of real estate project, in an efficient and transparent manner and to protect the interest of consumers in the real estate sector and to establish an adjudicating mechanism for speedy dispute redressal and also to establish the Appellate Tribunal to hear appeals from the decisions, directions or orders of the Real Estate Regulatory Authority and the adjudicating officer and for matters connected therewith or incidental thereto.*

*Relevant abstracts of the Statement of **Object and Reasons of the Act 2016-***

*2. In view of the above, it becomes necessary to have a Central legislation, namely, the Real Estate Bill, 2013 in the interests of effective consumer protection, uniformity and standardization of business practices and transactions in the real estate sector. The proposed Bill provides for the establishment of the Real Estate Regulatory Authority (the Authority) for regulation and promotion of real estate sector and to ensure sale of plot, apartment or building, as the case may be, **in an efficient and transparent manner** and to protect the interest of consumers in real estate sector and*

establish the Real Estate Appellate Tribunal to hear appeals from the decisions, directions or orders of the Authority.

*3. The proposed Bill will **ensure greater accountability towards consumers**, and significantly reduce frauds and delays as also the current high transaction costs. It attempts to balance the interests of consumers and promoters by imposing certain responsibilities on both. **It seeks to establish symmetry of information** between the promoter and purchaser, **transparency of contractual conditions**, set minimum standards of accountability and a fast-track dispute resolution mechanism. The proposed Bill will induct professionalism and standardization in the sector, thus paving the way for accelerated growth and investments in the long run."*

Objectives of MRTTP Act, 1966

"An Act to make provision for planning the development and use of land in Regions established for that purpose and for the constitution of Regional Planning Boards therefor; to make better provisions for the preparation of Development plans with a view to ensuring that town planning schemes are made in a proper manner and their execution is made effective; to provide for the creation of new towns by means of Development Authorities; to make provisions for the compulsory acquisition of land required for public purposes in respect of the plans; and for purposes connected with the matters aforesaid.

WHEREAS, it is expedient to make provision for planning the development and use of land in Regions established for that purpose and for the constitution of Regional Planning Boards thereof; to make better provision for the preparation of Development plans with a view to ensuring that town planning schemes are made in a proper manner and their executions is made effective; to provide for the creation of new towns by means of Development Authorities; to make provision for the compulsory acquisition of land required for public purposes in respect of the plans; and for purposes connected with the matters aforesaid ; "

- b.** In addition to above, it is pertinent to note that the Act of 2016 is a Central Legislation, whereas the MRTTP Act, 1966 is enacted by the State Legislature. Therefore, even if there is any conflict between these two statutes, then, Central Legislation passed by the



Parliament will prevail in view of Article 254 of the Constitution of India, being reproduced below: -

254. Inconsistency between laws made by Parliament and laws made by the Legislatures of States

(1) If any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which Parliament is competent to enact, or to any provision of an existing law with respect to one of the matters enumerated in the Concurrent List, then, subject to the provisions of clause (2), the law made by Parliament, whether passed before or after the law made by the Legislature of such State, or, as the case may be, the existing law, shall prevail and the law made by the Legislature of the State shall, to the extent of the repugnancy, be void.

- c. Additionally, Maharashtra Real Estate (Regulation and Development) Act, 2016 (in short, the Act) is a special Act with focused Scheme and Objective to protect interests of consumers in the real estate sector. Section 88 of this Act further provides that those provisions of this Act, shall be **in addition to and not in derogation of the provisions of any other Act** for the time being in force.
- d. Additionally, Section 89 of the Act further provides that the provisions of this Act **shall have effect notwithstanding anything inconsistent there with** contained in any other law for the time being in force. The provisions of this Act have overriding effects in case of repugnancy with any other Act including that of the MRTTP Act-1966.
- e. Furthermore, The Real Estate (Regulation and Development) Act, 2016 was **enacted with the aim and objective of *inter alia* regulation and promotion of the real estate sector and in an efficient, fair and transparent manner**, for protection of the interests of the real estate consumers.
- f. In addition, it is a well-settled proposition of natural justice encapsulated in the legal maxim "**lex posterior derogate legi priori**", that "**the later law overrides the previous law**". In the

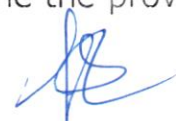


present case, the RERA Act, is of 2016, which is admittedly younger than the MRTTP Act of 1966.

g. The Hon'ble Supreme Court in its judgment in the case of *Lucknow Development Authority vs M.K. Gupta [(1994) 1 SCC 243]* has clarified "The authority empowered to function under a statute while exercising power discharges public duty. It has to **act to subserve general welfare and common good**. In a modern society, **no authority can arrogate to itself the power to act in a manner which is arbitrary**. Therefore, there is no distinction between the public authority and private institutions when they are discharging their legal duties under the provisions of the Act.

h. In the case under reference particularly in view of Section 88 of the Act as elaborated here in above, provisions of the Act of 2016 are in addition to and not in derogation of the provisions of any other law for the time being in force. In view of the above, it is established as above that the relevant Provisions of the Act 2016 will prevail and supersede over the provisions of MRTTP Act 1966, and the provisions of the Act of 2016 are **binding to parties**. Moreover, if there is any conflict with the **provisions of the Act of 2016, then, Act of 2016 will prevail and overrides**.

22. Foregoing discussions more particularly, under Section 2(d) and 2(zk) of the Act, makes it abundantly clear that the entire chain of activities involved herein above, are for the real estate development projects, successful bidders under the schemes floated by CIDCO for allocation of plots to successful bidders of the members of MCHI/other real estate developers are clearly real-estate consumers and allottees of the real estate projects (TD), CIDCO continues to be promoter (TD) under its said schemes under the NMDLR and also under the schemes including under the Act of 2016. Pursuant there to, all the the provisions of the

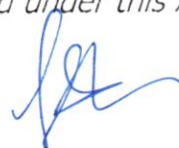


Act of 2016 are squarely applicable, and these provisions of the Act are binding to successful bidders of the members of the MCHI as promoter (PD) and also to CIDCO promoter (TD).

- 23.** Whereas the Act of 2016 is a welfare legislation intended for greater transparencies in the real estate transactions and to protect the interests of the allottees, wherein the core legislative intents behind its enactment strongly advocate for prior registration of such real estate projects prior to sale/ advertisements of tender under the any such scheme to inject greater transparencies.
- 24.** Contentions of the learned counsel for CIDCO that the captioned complaint including the captioned appeals filed by MCHI are not maintainable because the complaint does not contain prayers for any specific relief including for the registration under the Act. However, perusal of Section 3 of the Act clearly mandates that no promoter shall advertise, market, book, sell or offer for sell or invite person to purchase in any manner any plot in the real-estate project or part of it in any planning area without prior registration of the real estate project with MahaRERA. Therefore, CIDCO is not permitted to sell, advertise, market etc., for any area land proposed to be developed exceeding 500 sq. mtrs. under the said schemes of NMDLR or otherwise without first registering the same with MahaRERA under Section 3 of the Act (being reproduced below) as a promoter.

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:

..
..

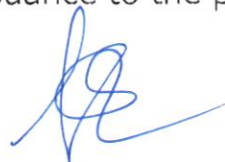


(2) Notwithstanding anything contained in sub-section (1), no registration of the real estate project shall be required—

*(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:*

Explanation. —For the purpose of this section, where the real estate project is to be developed in phases, every such phase shall be considered a stand-alone real estate project, and the promoter shall obtain registration under this Act for each phase separately.

- 25.** Accordingly, we are of the view that the requirement of prior registration of every real estate project before marketing is the law of the land and is statutorily prerequisite even in the absence of any complaint altogether and also if there is a complaint with or without prayers for registration. As such, even in the absence of any complaint, registration may be insisted / ordered by initiating a proceeding Suo Motu, if the land proposed to be developed is exceeding 500 sq. mtrs.
- 26.** Foregoing discussions makes it mandatory for CIDCO for prior registration subject to the area of land proposed to be developed is exceeding 500 sq. mtrs. irrespective of the on-sight - off-sight infrastructures to be provided by CIDCO under the said scheme of the town development and allotment of plots by floating tender booklets or by marketing the same otherwise. Thereby, the entire compositions of the Agreements for Sale including the framework for allotments of plots are statutorily required to be in compliance with the provisions of the Act, the said schemes for disposal of plots including the tender and the agreements for sale are also required to be complied with the provisions of the Act irrespective of this being in pursuance to the provisions of the MRTP / NMDLR or otherwise.



- 27.** The conditions of the on-sight or off-sight infrastructures to be provided by CIDCO in the land development area will be guided by the tender conditions and these will have absolutely no bearing in terms of the prior registration requirements of the schemes as promoter (TD) under the Act.
- 28.** Careful perusal of the captioned complaint further shows that the said complaint is in respect of the CIDCO's schemes, which are akin to the scheme no. CUC- MKTG/01/- 2017-18 and are in relation to roles of CIDCO about the town development (TD) as well as for disposal of these plots and not for the plots development (PD) activities by constructing building complexes thereon. Therefore, the roles of CIDCO are not involved under this scheme in the chains of development activities after the disposal of plots to the members of MCHI as elaborated above. Thus, the concluding observations recorded in para 8 of the impugned order regarding the inclusion of "*CIDCO as promoter (land-owner), if the building development of plots allotted under the scheme are dependent on certain off sight infrastructures*", are beyond the scope of the current appeals/ complaint. Thus, MahaRERA has recorded these observations by travelling beyond the scope of the captioned complaint.
- 29.** It is also important to note that under the Real Estate (Regulation & Development) Act, 2016, provides several welfare provisions to protect interests of consumers including for greater accountability towards consumers to inject greater efficiency, transparency and accountability as contemplated in the statement of Objects and Reasons of the Act. Regulation 39 of Maharashtra Real Estate Regulatory Authority (General) Regulation, 2017 further stipulates inherent powers of the Authority. It lays down that

"Nothing in the Regulations shall be deemed to limit or otherwise affect the



inherent power of the Authority to make such orders as may be necessary for meeting the ends of justice or to prevent the abuse of the process of the Authority."

Similarly, Regulation 25 of Maharashtra Real Estate Appellate Tribunal, 2019 speaks about similar inherent powers of the Tribunal as "*25(1) Nothing in these Regulations shall be deemed to limit or otherwise affect the inherent power of the Tribunal to make such orders as may be necessary for meeting the ends of justice or to prevent the abuse of the process of the Tribunal.*"

It means the Regulatory Authority and the Appellate Tribunal have inherent powers under the Regulations framed under RERA Act, 2016 to pass appropriate Orders, which are necessary to meet the ends of justice. Accordingly, it is statutorily mandatory for CIDCO to comply with the provisions of the Act including to register of its ongoing and future schemes akin to the scheme no. CUC- MKTG/01/- 2017-18 *inter alia* under Section 3 of the Act of 2016 and also register itself as Promoter (TD) before MahaRERA in compliance with the provisions of the Act before disposal of plots irrespective of this being in pursuance to the provisions of the MRTTP / NMDLR or otherwise and irrespective of whether, CIDCO is required to provide on/off site infrastructures for plot developments or otherwise.

- 30.** In view of the forgoing, we are of the considered view that captioned cross appeal filed by CIDCO is devoid of merits, lacks substance and CIDCO is not entitled for the reliefs sought in its captioned appeal. Consequently, the captioned appeal filed by CIDCO is liable to be dismissed, the impugned order passed by MahaRERA is legally not sustainable as determined herein above and appeal filed by MCHI is partly allowed as above. Accordingly, we answer point nos. 1, 2, 3 and 4 as above and proceed to pass the order as follows; -



ORDER

- (i) Captioned Appeal No. U-18 of 2019 filed by complainant MCHI is partly allowed.
- (ii) Captioned cross appeal No. U-27 of 2019 filed by CIDCO stands dismissed.
- (iii) CIDCO is directed to register as promoter (Town Development, "TD") under Section 3 of the Act of 2016 before MahaRERA within 30 days of its ongoing schemes akin to the scheme no. CUC- MKTG/01/- 2017-18 for disposal of plots in compliance with the provisions of the Act and is further directed to register as promoter (TD) under Section 3 of the Act of 2016 before MahaRERA of its future town development projects initiated under its schemes akin to the scheme no.CUC-MKTG/01/-2017-18 before advertising/sale/ marketing etc of its planned land plots.
- (iv) Parties to bear their own costs.
- (v) In view of the provisions of Section 44(4) of the Act of 2016, a copy of the Judgment be sent to the parties and MahaRERA.


(Dr. K. SHIVAJI)


(SHRIRAM. R. JAGTAP J.)