

BEFORE THE MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY
MUMBAI

Complaint No. CC00600000209962

Pulin Co-Operative Housing Society Limited ... Complainant

Versus

Tirupati Developers ... Respondent

MahaRERA Project Registration No. P51700006582

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

Ld. Adv. Shreeprasad Parab appeared for the complainant.

Ld. Adv. Sunil Kewalramani appeared for the respondent.

ORDER

(Monday, 10th June 2024)

(Through Video Conferencing)

1. The complainant above named has filed this online complaint before the MahaRERA on 09-02-2022, mainly seeking directions from MahaRERA to revoke the registration of the said project granted in favour of the respondent - promoter as prescribed under the provisions of section 7 of the Real Estate (Regulation & Development) Act, 2016 (hereinafter referred to as 'RERA') in respect of the respondent's registered project known as "**PULIN CO-OP HOUSING SOCIETY LTD**" bearing MahaRERA registration no. **P51700006582** located at Nerul, Navi Mumbai (M Corp.).
2. This complaint was heard by the MahaRERA on merits on 04-10-2023 and the same was heard finally on 10-01-2024 as per the Standard Operating Procedure dated 12-06-2020 issued by the MahaRERA for hearing of complaints through

Video Conferencing. Both the parties have been issued prior intimation of this hearing. On the said dates of hearings, the parties have appeared as per their appearances recorded in the Roznamas and made their respective submissions. The MahaRERA heard the submissions of the parties as per their appearances and also perused the available record.

3. After hearing the argument of both the parties, the following Roznamas were recorded in this complaint -

On 04-10-2023-

“Both the parties are present. The respondent has filed its reply to the complaint and raised the issue of maintainability of this complaint on the ground that:- i) the matter arises out of a development agreement. Therefore, it is not maintainable under the provisions of RERA; ii) the issues raised by the complainant are related to the Planning Authority. Therefore, at the outset the MahaRERA will have to decide the issue of maintainability of this complaint. The complainant is directed to file a rejoinder to the reply of the respondent along with its written arguments within a period of two weeks i.e. by 18-10-2023. Further two weeks time i.e. 1-11-2023 is granted to the respondent to file sur rejoinder if any, along with its written arguments. This matter is adjourned to a suitable date after 1-11-2023 for final arguments on the issue of maintainability of the complaint. List this matter for next hearing on 10-01-2024”.

On 10-01-2024-

“Both the parties are present. The matter was kept today for arguments on the issue of maintainability of this complaint. The complainant has argued that the complaint is maintainable as the litigation which is pending before the Civil Court regarding the development agreement is not disclosed. Moreover, the writ petition which was filed by the society in the Hon'ble

High Court at Bombay has already been dismissed. Therefore, this complaint is maintainable according to the complainant. The complainant further avers that the CC was for only 17 flats however, the information in the project registration shows that there are additional 3 floors constructed which are for 29 flats and the area mentioned is also more than that which was available in the CC. However, the respondent refutes this contention of the complainant and avers that the said additional three floors are not illegal as there is a deemed permission from the Planning Authority as per the MRTP. The respondent also points out that the CC is in fact in the name of the society and the society is not giving the necessary NOC either for the OC after regularising the construction or for availing the additional FSI which is available to the building because of the unified DCPR. The complainant refutes this contention of the respondent and has mentioned that the project registration should be revoked on the grounds of illegal construction which are made without sanction of the authority. The respondent has also pointed out that an administrator had been appointed in the society in January 2023 and therefore the rejoinder uploaded by the complainant should be approved by the said administrator on behalf of the society which is not done. The respondent has further contended that the matter regarding the development agreement before the Civil Court has been filed by the respondent for specific performance. Be that as it may, the complainant may file its written arguments within a period of two weeks i.e. by 24-1-24. The respondent is granted further two weeks' time i.e. till 7-2-2024 to file its written arguments. Accordingly, this matter is reserved for orders on the issue of maintainability suitably after 7-2-2024 based on the arguments of both sides in the hearing today as well as the reply, rejoinder, sur-rejoinder and written arguments filed in the complaint. The future course of action in this complaint will be decided once such an order is issued."

4. Pursuant to the directions given by the MahaRERA, the complainant has uploaded its written arguments on 24-01-2024 on the record of the MahaRERA. The respondent has also uploaded its written arguments on 01-02-2024 on the record of the MahaRERA. The MahaRERA has also perused the available record.
5. During the course of hearing the respondent pointed out that, this complaint is not maintainable before the MahaRERA as the present complaint arises out of the development agreements and the said dispute is of civil nature.
6. In the present case, the complainant stated that, CIDCO under the scheme floated in 1993/1994 for its employees, allotted the plot vide letter of allotment dated 10-10-1995, wherein CIDCO agreed to lease the said project land. The complainant society executed a development agreement dated 12-05-2004 and provided all the development rights to M/s J.P Builders & Developers (said J.P builders) for developing the said plot by financing the whole project, paying lease premium, and for obtaining the necessary permissions. By virtue of the said DA, the said J.P Builders was entitled for rights to deal with the shops/flats/units. The said J.P builders thereafter assigned the development rights to the respondent vide an agreement dated 30-10-2005 where most of the partners in the respondent - partnership firm were the family members of said J.P builders viz. Mrs. Dolly Jayant Parikh, Mr. Jimmy Jayant Parikh and Mr. Shashikant Jayant Parikh, which was also evident from the said project registration. The complainant further stated that, CIDCO sanctioned plans for 1.0 FSI for constructing residential cum commercial structure with ground and 4 upper storey structure with 17 flats and 10 shops. However, the said J.P builders along with respondent constructed 3 illegal floors above 4 storeys

with a total of 29 flats and 10 shops without legal sanction and approval from CIDCO. As per the said development agreement, J.P builders shall complete the development of the said property within 4 years from the date of execution of the said development agreement, however, J.P builders along with respondent did not even obtain OC for the said project. Further, the malafide intention of J.P builders and respondent had continued as they had registered the illegal project with the MahaRERA without authenticated copy of the approval and CC from the competent authority thereby causing contravention of the provisions of the RERA. The respondent had represented several facts on the MahaRERA website viz, in the common amenities area, the respondent had shown all the work as 100% complete, in building details, the respondent had shown slabs of super structure as 8 and number of apartments as 29, whereas there was no such sanctioned plan available for such disclosure. Further respondents had made false disclosure showing most of the work as 100% complete without sanctioned plans. The title certificate uploaded on the MahaRERA website was dated 18-03-2006 and point no. 5 (highlighted in the CC dated 16-12-2004) was for residential area of 1088.58 sq. mtrs. and commercial area of 288.80 sq. mtrs totalling to 1377.38 sq. mtrs. Further, the approved plans uploaded by the respondent in the project registration was for FSI 1 which was for 1445 sq. mtrs and ground plus 4 upper storey. In lieu of the above said breaches the complainant terminated the agreement along with all the other documents executed with the said J.P builders. Therefore, being aggrieved by the actions of the respondent, the complainant has filed this online complaint before the MahaRERA seeking revocation of the said project registration, for debar the respondent from accessing its website in relation to the said project and to specify its name in the list of defaulters, and to direct the bank to hold the project bank account specified under sub clause (d) of clause (1) of sub section 4 of RERA and to freeze the account, not to create

third party rights, impose penalty up to 5 % of the estimated cost of the said project and costs.

7. The respondent on 03-10-2023 uploaded its reply on the record of the MahaRERA wherein the respondent denied each and every contention of the complainant. It has stated that the complainant did not disclose any cause of action and the same is not maintainable as the dispute was between the society and the promoter, arising out of the development agreements dated 12-05-2004 and 30-10-2005. The said dispute was of civil nature and the same is pending before the Civil Judge Senior Division, Belapur for adjudication. It was submitted by the respondent that; it has not violated any provisions of the RERA and that the MahaRERA have no jurisdiction to entertain the present complaint. The complainant had suppressed the material facts, the respondent had constructed the said additional 12 flats based on the deemed permissions from the NMMC and the same was not illegal. The CIDCO and NMMC were willing to give permissions to approve the additional flat's construction in respect of the enhanced FSI i.e. 0.50. The complainant society was also co-operating with the respondent to get the approvals, however when the process of obtaining the approvals were about to be completed, some miscreant members of the society for their vested interest, in total disregard to the terms mentioned in the agreements started causing hindrances in the efforts of the respondent towards getting the approvals. The complainant was trying to shift the burden upon the respondent for its alleged non-compliance. Further, the respondent submitted that it had handed over the fit-out possession of 17 residential apartments and 10 shops for carrying out interior work only to the existing society members around January 2010. The members of the society without the permissions of the respondent and without the OC started using and occupying their respective flats/shops since January 2010. Therefore, the

respondent was compelled to file criminal proceedings R.C.C no. 78 of 2014 against the complainant society members before the Hon'ble Court of JMFC at Vashi Belapur. The respondent with respect to the illegal floors submitted that, while registering the said project the respondent in the FSI details clearly mentioned total area of the above three floors and twelve flats, sanctioned FSI of the project and applied for registration as 1445.0 sq. metres i.e. 1.00 FSI and built up area as per proposed of 722.5 sq. metres. i.e., enhanced 0.50 FSI. Therefore, the respondent has not made default and has not committed any unfair practice. The respondent further submitted that, some members of the society i.e., the Chairman Mr. Dattatray Pisal, Secretary Mr. Pradeep Sale and Treasurer Mr. Vishwanath Gagh and other committee members acted in defiance of the prevalent laws of the Co-operative society act and were dismissed from the office by the Joint registrar's order dated 09-01-2023 and further disallowed from contesting for any society position for the next 5 years. This shows the extent of disregard for laws by the society committee members. The joint registrar further appointed Mrs. Vidhi Yendge as an administrator to temporarily look after the affairs of the complainant society till a new managing committee is elected. The respondent further submitted the basic facts of the said project and transfer of the development agreement from J.P builders to present respondent in a detailed manner.

8. The complainant on 18-10-2023 uploaded its rejoinder on the record of the MahaRERA wherein the complainant has reiterated the timeline of the events and submissions as mentioned herein above. The complainant in the said timeline submitted that, a writ petition in the Hon'ble Bombay High Court was filed by the respondent in the year 2011 to protect the 5th, 6th and 7th illegal floors of the said project. However, the said writ petition was rejected on 13-07-2011 on the grounds that the illegal construction was made without the

sanction from the concerned authorities.

9. The respondent on 01-11-2023 has uploaded its sur rejoinder on the record of the MahaRERA, wherein the respondent submitted that the rejoinder uploaded by the complainant is not tenable and should not be given any consideration as the signatures on the said affidavit were done by the people who do not hold any position in the society and they are dismissed by the Joint registrar's order. Further the issues raised by the complainant relate to the planning authorities, i.e., CIDCO and NMMC. If the complainant had any issues with regards to the violation of CC by the respondent, it ought to have taken up the same by filing an official complaint before the planning authorities, as the MahaRERA has no jurisdiction over the said matter. Further, as per complainant's submissions, the complainant has filed this complaint to bring to the notice of the MahaRERA that the respondent had registered the said project without any approvals, to which the respondent stated that, RERA came into force in Maharashtra from 01-05-2017. On the date of commencement of RERA, the work to seek compliance of all the formalities with CIDCO and NMMC through the complainant society (for obtaining the additional FSI for the society, thereby facilitating the respondent to obtain the OC in respect of the entire building standing on the said plot) was in progress and not completed. As the project was ongoing, therefore, as per the rules of RERA, the respondent registered the said project based on the CC granted on 14-12-2004 and deemed permission from NMMC for the enhanced FSI. Further the respondent reiterated the submissions as mentioned in its reply and replied to the complainant's submissions in para-wise manner.
10. The complainant on 24-10-2024 uploaded its written arguments on the record of the MahaRERA which is mere repetition of what has been stated

hereinabove.

11. The respondent on 01-02-2024 uploaded its written arguments on the record of the MahaRERA, wherein the respondent reiterated all the facts as mentioned in its reply and sur rejoinder. The respondent mainly raised the issue of maintainability of the complaint due to development agreement. Further the respondent submitted that issues raised by the complainant society were related to the concerned planning authority. The additional construction in the said project was carried out with the consent of the complainant society. Lastly, the respondent submitted that, the respondent rightly registered the said project with MahaRERA on the basis of CC and has not violated any provisions of the RERA. Therefore, the respondent prayed for dismissal of the present complaint not being maintainable with cost.

12. The MahaRERA has examined the rival submissions made by both the parties and also perused the available record. The complainant society by filing this complaint is mainly seeking revocation of project registration granted in favour of the respondent promoter alleging various illegalities done by the respondent. The specific reliefs mentioned by the complainant in its online complaint are as under:-

“(a) That this Hon’ble Authority shall, revoke the registration granted to the Respondent under Section 5 as the Respondent has made a default and is involved in unfair practice by uploading the details of the above illegal three floors and 12 Flats which are not sanctioned by any Authority nor obtained the Commencement Certificate.

(b) That this Hon’ble Authority shall debar the Respondent from accessing its website in relation to the project and specify his name in the list of

defaulters and inform the other Real Estate Regulatory Authority in other States and Union territories about such revocation.

(c) That this Hon'ble Authority shall direct the bank to hold the project bank account, specified under sub-clause (D) of clause (1) of sub-section (2) of Section 4, to freeze the account.

(d) That this Hon'ble Authority shall direct the Respondent to not create any third party interest for the said project.

(e) That this Hon'ble Authority may levy a penalty up to five per cent of the estimated cost of the real estate project.

(f) That this Hon'ble Authority may be pleased to direct the Respondent to provide cost of litigation of Rs. 1,00,000 to the Complainant.

13. The respondent has assailed the aforesaid reliefs sought by the complainant mainly by raising the issue of maintainability of this complaint on following two grounds viz i) the matter arises out of a development agreement and hence, the same is not maintainable under the provisions of RERA; ii) the issues raised by the complainant are related to the Planning Authority. Hence, the respondent has prayed for dismissal of this complaint.
14. In view of the above, both the parties were directed to file their respective submissions on the issue of maintainability of this complaint as raised by the respondent. Accordingly, both the parties have uploaded their respective written submissions on record of MahaRERA.
15. Hence, before dealing with this complaint on merits, the MahaRERA has to decide the said issue of maintainability raised by the respondent being a preliminary issue.
16. In the present case, as far as the issue of maintainability, the complainant has

mainly contended that this complaint is maintainable since the pending litigation filed before the Civil Court regarding the development agreement has not been disclosed by the respondent on the MahaRERA website. Also, the Writ Petition filed by the complainant society has also been dismissed by the Hon'ble High Court and hence, it has contended that this complaint is maintainable. In addition to this the complainant also contended that the commencement certificate issued by the planning authority was only for 17 flats. However, as per the information uploaded by the respondent on the MahaRERA website, it appears that the respondent has shown additional 3 floors and has also shown 29 flats (instead of 17 flats). Hence, it has prayed to allow this complaint.

17. The respondent has resisted the said contentions of the complainant and contended that the said additional three floors are not illegal as the same are within the deemed permission issued by the concerned competent authority, (Planning Authority) as per the MR & TP Act, 1966. Also, the said commencement certificate has been issued in favour of the complainant, which is not granting its NOC for utilising the said additional FSI permissible as per the unified DCPR.
18. Be that as it may, in this case, from the submissions made by both the parties, it appears that the complainant society who is holding the rights as lessee of the project land, by virtue of the development agreements dated 12-05-2004 and 30-10-2005 has assigned the development rights in favour of the respondent promoter to implement this project. Accordingly, the respondent has obtained various permissions from the competent authority and has registered this project with the MahaRERA after commencement of the RERA. However, alleging the violation of various terms and conditions of the said


development agreement dated 30-10-2005 , the complainant society has terminated the said development agreement in the general body meeting held on 10-07-2021. However, it appears that the respondent promoter has also filed a Special Civil Suit No. 358 of 2022 before the Civil Court at Thane against the complainant society seeking specific performance of the said development agreement. Admittedly, the said suit is pending for adjudication. The said suit will take its own recourse under law.

19. Further, on bare perusal of the averments made in this online complaint, the MahaRERA has prima facie noticed that the complainant society is mainly raising an issue with respect to illegal construction being carried out by the respondent. In this regard, it is pertinent to note that the issue with regard to the construction permissions squarely falls within the purview of the concerned competent authority under the relevant provisions of the M.R & T.P Act, 1966. Hence, the issue whether the respondent has obtained any permissions for carrying out construction in the said project cannot be dealt with by the MahaRERA for want of jurisdiction under the provisions of the RERA.
20. However, the complainant alleging that the respondent has violated the terms and conditions of the said DA seems to have filed this complaint seeking revocation of the said project registration issued in favour of the respondent promoter. In this regard, it is pertinent to note that there is no explicit provision under RERA, which empowers the MahaRERA to try and entertain the disputes which arise out of the said DA. It is for the appropriate Civil Court of law (which has jurisdiction) to deal with such disputes, which are civil in nature. Admittedly, there is a special civil suit filed by the respondent promoter against the complainant, which is pending for adjudication. Hence,

both the parties need to agitate their grievances in the said civil suit.

21. In view of these facts, the MahaRERA prima facie feels that this complaint is not maintainable under the provisions of RERA as far as the aforesaid two issues raised by the respondent are concerned.
22. However, presuming that this complaint is maintainable before the MahaRERA, as far as the substantive reliefs sought by the complainant under section 7 of the RERA, it is pertinent to note that as per the provision of section 7 of the RERA, the MahaRERA registration may be cancelled if the promoter makes default in doing anything required by or under the RERA or if the promoter violates any of the terms or conditions of the approval given by the competent authority or if the promoter is involved in any kind of unfair practice or irregularities as specified under section 7(1)(a) to (c) and (A) and (B) of the RERA. However, in the instant case, as stated hereinabove, the complainant has not produced any cogent documentary evidence to show that the respondent has violated any of the terms or conditions stipulated in the provisions of section 7 of the RERA. Therefore, the prayer for revocation of projects registered by the respondent with the MahaRERA sought by the complainants is devoid of any merits. Also, the complainant has not established the fact that the respondent is involved in any kind of unfair trade practice or irregularities by submitting any order passed by the competent court of law. Moreso, the complainant has also not submitted any cogent documentary proof on record of MahaRERA i.e. any order passed by the competent authority to establish the fact that respondent has done any violation of various permissions granted by it. Hence, the relief sought by the complainant under section 7 of the RERA for revocation of the MahaRERA project registration granted to the respondent is devoid of any merits.

23. However, in the present case, the MahaRERA has also noticed that although there is Special Civil Suit No. 358 of 2022 filed by the respondent against the complainant society seeking specific performance of the development agreement. Admittedly, the said suit is filed with respect to the project land. Although the said suit is filed subsequent to the registration of this project with MahaRERA, the same needs to be disclosed on the MahaRERA website in 'pending litigation column' as mandated under section 4 of the RERA read along with relevant rules made thereunder.
24. In view of these facts, the present complaint stands dismissed being not maintainable as well as on merits. Hence, no further hearing is required to be given in this matter.
25. However, in compliance with principles of natural justice the respondent is directed to upload the details of pending litigation i.e., Special Civil Suit No. 358 of 2022 on the MahaRERA website in the pending litigation column within a period of 15 days from the date of this order. Failing which appropriate penal action would be taken against the respondent under section 63 of the RERA, if such non-compliance by the respondent is brought to the notice of MahaRERA by the complainant.


(Mahesh Pathak)
Member - 1/MahaRERA