

**THE MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY
MUMBAI.**

COMPLAINT NO: CC006000000055673.

Bandra Navpada Chs Ltd.

... Complainant.

Versus

Shaista Majid Khan.

...Respondent.

MahaRERA Regn: P51800013576.
(Yakub Apartment)

Coram: Shri B.D. Kapadnis,
Member-II.

Appearance:

Complainant: Adv. Mr. Bhimani.

Respondent: Adv. Mr. Parth Chande.

FINAL ORDER
24th July, 2020

The complainant, Bandra Navpada Co-operative Housing Society has filed this complaint to contend that the respondent has registered Building No.2 named 'Yakub Apartment' situated at Bandra with MahaRERA. It is composite building consisting of sale and rehab components constructed as an SRA Scheme. Respondent constructed building No. 1 and building No. 2 under the scheme. The respondent for obtaining occupancy certificate for building no.1, has proposed that two units for Balvadis, two units for welfare centre and one unit for society office which were to be constructed/used for these purposes in building No. 1 would be in building no.2 and on this condition received occupancy certificate of building no.1. Complainant contends that now these units



earmarked in the building no.2 be given to the society i.e. the complainant as on the said condition Slum Rehabilitation Authority granted occupancy certificate for building No. 1. It is the grievance of the complainant that the respondent has not been handing over the five units to the society for the aforesaid purposes. The respondent put them on rent and is earning money from them. The complainant has also voiced its grievance regarding non-payment of water and electricity charges of rehab building no.1. It requests this Authority to ensure that the respondent demolishes four temporary structures before applying for occupancy certificate of building no.2, as per LOI. The complainant asks to stop the occupation of building No. 2 unless and until the promoter pays water and electricity compensation and pending assessment tax of the land and unless the transit camp is cleared by the builder. It orally prays for the possession of the five units earmarked for Balvadis, welfare centres and the society office.

2. I have heard Adv. Mr. Bhimani for the complainant. According to him, the respondent has shifted the units of two balvadis, two welfare centres and society office from building No. 1 to building No. 2 and on that basis, she has obtained the occupancy certificate for the building no. 1. Now the respondent declines to handover the possessions of those five units though she herself has earmarked them in building no. 2 while registering it with MahaRERA. He further submits that these are the common amenities/areas and the members of complainant are entitled to use them. So, society is aggrieved person and is competent to file this complaint before this Authority as it has the jurisdiction to regulate the registered project registered with it. Since the respondent has refused to hand over the possession of those units, the respondent has violated the



provisions of Section 14 (2) of Real Estate (Regulation and Development) Act 2016.

3. The respondent has filed her reply to contend that the units for Balvadis, welfare centres and society office are going to be re-shifted to building no. 1 and she has submitted the revised plan to SRA. According to her, six encroachers on the support of the members of the society are occupying six units in the building no. 1 and SRA authorities have issued the eviction orders against them. Their matter is pending before the Hon'ble High Court. It has directed to maintain status quo in respect of them. The respondent further contends that she shall handover five units out of those six units to the society after getting them vacated for Balvadis, welfare centres and society office. This issue of revised plan/sanction is pending before SRA. She has deposited Rs. 28,00,000/- for the maintenance of buildings in the year 2004 with SRA and the interest on this amount is being accrued which is to be used for the maintenance of the buildings and for payment of taxes. The respondent contends that the complaint is not maintainable because this Authority has no jurisdiction to entertain and try this complaint.

4. I have heard Adv. Mr. Bhimani for the complainant and Adv. Mr. Parth for the respondent on virtual platform.

5. After giving thought to the submissions of the Ld. Advocates of the parties as well as on perusal of the documents placed by them on record, I notice that the following facts do emerge:



- i. On the city survey No. A-32 part of Bandra, Taluka Andheri the redevelopment scheme has been sanctioned under DCR 33 (10) for constructing building nos.1 and 2 in a SRA scheme.
- ii. Building no. 1 is composite building having sale component- A wing and there are B and C Wings of rehab component. Its occupation certificate is obtained in the year 2017.
- iii. Composite building no. 2 consists of sale component as well as 5 units of rehab earmarked for society office on ground floor, two Balvadis on first floor and two welfare centres on second floor.
- iv. There is no dispute between the parties that under the scheme, the respondent was directed to give two units for Balvadi, two units for welfare centre and one unit for office of the society in building no. 1.
- v. The respondent's architect filed an application before SRA and proposed to shift these units in buildings no. 2. SRA issued occupancy certificate for building no.1 on condition that respondent shall provide society office on the ground floor, two Balvadis on the 1st floor, two welfare centres on the 2nd floor of the building no. 2.
- vi. The members of the society have already occupied their flats free of cost in building no. 1.
- vii. Six units in the building no. 1 have been allegedly occupied by the relatives of some members of the society but the eviction orders have been passed against them. Their matter is now before Hon'ble High Court and Hon'ble High Court has asked to maintain status quo until further order.
- viii. The society filed writ petition no. 2090 of 2016 seeking the similar reliefs before the Hon'ble High Court wherein the respondent has filed an affidavit, on basis of which the Society withdrew the Writ Petition, resulting in parties desire to refer the issue to the High-Power Committee.



6. Aforesaid facts make it clear that building no. 1 is not registered with this Authority and it is completed one. The complainant has been asking the respondent to pay the water and electricity charges of the rehab building no. 1 which is outside the jurisdiction of this Authority. The complainant prays for demolition of the 4 temporary structures, as it is SRA scheme, there are SRA Authorities established under Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act 1971 and the complainant has already approached to those authorities for redressal of its grievances. Therefore, I find that these two prayers are not within the jurisdiction of this Authority and they cannot be considered and hence they are rejected. This is the one aspect of the matter.

7. On the basis of these facts now it is necessary to consider the issue of jurisdiction for grant of the relief of possession of five units. Ld. Advocate Mr. Bhimani submits that this Authority has the jurisdiction to entertain this complaint as the building no. 2 is a composite building consisting of sale and rehab components, it is registered with MahaRERA and therefore MahaRERA has the authority to regulate it. According to him, the units for Balvadi, welfare centre and society office are the common amenities/areas to be enjoyed by all the allottees and these common amenities have not been provided by the respondent. Hence the respondent has contravened section 14 (2) of the RERA. The complainant being the aggrieved person has right to file complaint under section 31 of the RERA.

8. There is no dispute between the parties that as per the scheme, two units for Balvadi, two units for welfare centres and one unit for the society office were to be provided in building no.1. It is also not in dispute that while obtaining the occupancy certificate for building No. 1, the



respondent proposed to SRA that the units referred to above shall be shifted to building no. 2 and, on this condition, occupancy certificate has been granted. It is also a fact that, Writ Petition no. 2090 of 2016 was filed by society before the Hon'ble High Court for possession of two units for Balvadi, two units for welfare centres and one unit for the society office. When the respondent filed an affidavit that the issues involved therein can be referred to High Power Committee, the complainant has withdrawn its writ petition. It is also the fact that the respondent has filed the proposal for revision of the plans and now they want to re-shift the units earmarked for Balvadi, welfare centre and office to building no. 1 in the units occupied by the six encroachers. According to the respondent, when the encroachers would be evicted, then those units would be utilised for these purposes and the issue is before SRA.

9. SRA schemes are undertaken as per the provisions of Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act 1971. This Act has been brought into the effect to make better provision for improvement and clearance of slum areas in the state and for their redevelopment and for the protection of the occupiers from the eviction and distress warrants and for matters connected with the purpose aforesaid. It provides a complete scheme for the slum clearance and for rehabilitation of the slum/hutment dwellers. These schemes are to be formulated or they are to be executed/ implemented by the authorities under the Act. These authorities have quasi-judicial powers to take the appropriate decisions for completing the SRA projects. It includes the power to adjudicate and decide the disputes between the promoter and the slum dwellers. Section 37 of the Act provides that whoever fails to comply with the notice / direction issued / given under the Act shall on conviction



be punished with imprisonment for term which may extent to 3 months or with fine which may extent to Rs. 1,000/- and under Section 39 only the magistrate of the first class or the presidency magistrate shall take the cognizance and try and offence punishable under the Act. Section 42 of the Act further provides that save as expressly provided , no civil court shall have the jurisdiction in respect of any matter which the administrator/competent authority or the tribunal is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act. Therefore, Section 42 ousts the jurisdiction of other authorities and that of the civil court also from entertaining the matter of which administrator / competent authority or the tribunal is empowered to take cognizance and to decide it.

10. Mr. Bhimani refers to Section 14 of the RERA, the relevant portion of it reads as under:

Section "14. (1) The proposed project shall be developed and completed by the promoter in accordance with the sanctioned plans, layout plans and specifications as approved by the competent authorities.

(2) Notwithstanding anything contained in any law, contract or agreement, after the sanctioned plans, layout plans and specifications and the nature of the fixtures, fittings, amenities and common areas, of the apartment, plot or building, as the case may be, as approved by the competent authority, are disclosed or furnished to the person who agree to take one or more of the said apartment, plot or building, as the case may be, the promoter shall not make— (i) any additions and alterations in the sanctioned plans, layout plans and specifications and the nature of fixtures, fittings and amenities described therein in respect of the



apartment, plot or building, as the case may be, which are agreed to be taken, without the previous consent of that person:

Provided that the promoter may make such minor additions or alterations as may be required by the allottee, or such minor changes or alterations as may be necessary due to architectural and structural reasons duly recommended and verified by an authorised Architect or Engineer after proper declaration and intimation to the allottee.

Explanation. – For the purpose of this clause, "minor additions or alterations" excludes structural change including an addition to the area or change in height, or the removal of part of a building, or any change to the structure, such as the construction or removal or cutting into of any wall or a part of a wall, partition, column, beam, joist, floor including a mezzanine floor or other support, or a change to or closing of any required means of access ingress or egress or a change to the fixtures or equipment, etc.

(ii) any other alterations or additions in the sanctioned plans, layout plans and specifications of the buildings or the common areas within the project without the previous written consent of at least two-thirds of the allottees, other than the promoter, who has agreed to take apartments in such building.

Explanation. – For the purpose of this clause, the allottees, irrespective of the number of apartments or plots, as the case may be, booked by him or booked in the name of his family, or in the case of other persons such as companies or firms or any association of individuals, etc., by whatever name called, booked in its name or booked in the name of its associated entities or related enterprises, shall be considered as one allottee only."

In this context section 2(n)(vii) of RERA defining common areas can also be looked into. It includes 'community and commercial facilities. Units for Balvadi, welfare centres and the society office are to be provided for all the members/allottees of the project as community facility. Hence now even SRA cannot make any change in these facilities without consent of the allottees of the project as section 14 of RERA has overriding effect.



11. Building no.2 has been registered with MahaRERA as ongoing project and it is being governed under RERA, at the same time it is constructed in an SRA scheme and it is governed by The Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act 1971 also. Section 79 of RERA ousts the jurisdiction of civil court, as it provides, no civil court shall have the jurisdiction in respect of any matter which the Authority, Adjudicating officer or Appellate Tribunal is empowered by or under the Act to determine. Section 42 of The Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act 1971 and Section 79 of RERA, if are considered together, I find that section 79 of RERA prevails over Section 42 of The Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act 1971. It is the cardinal principle of jurisprudence that Parliament knows all the laws previously enacted by it or the state legislatures. RERA has been enacted by the Parliament in the year 2016 and at that time it was aware of Section 42 of The Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act 1971. Despite it, it exclusively empowered the Real Estate Regulatory Authority, Adjudicating officer or Appellate Tribunal to determine the issues arising out of RERA. Mr. Bhimani submits that common amenities and common areas cannot be changed after the contract or the agreement. However, in this case I do not find that there is any contract or agreement produced on record to show that the respondent agreed to give the two Balwadis, two welfare centres and one office in building no. 2. But the terms and conditions forming scheme must be treated as the terms and conditions of the contract which cannot vary at the volition of the promoter. Hence when the respondent proposes to re-shift Balwadis, welfare centre and society office to building no.1 from building no.2 without the consent of all allottees of the project, it amounts to contravention of section 14(2) of




RERA and as per section 79 of RERA, this Authority alone has the jurisdiction to entertain and try the issue. Hence, I hold that to this extent, this Authority has jurisdiction u/s 31 of RERA to entertain this complaint.

12. After taking into consideration all the factual and legal aspects of the matter, I hold to conclude that MahaRERA has jurisdiction over the issue relating to common areas of the project involved in this complaint and it can grant the relief relating to it. Respondent is directed to provide one unit for society office on ground floor, two units for Balwadis on first floor and two units for welfare centres on second floor of building no.2, as shown in the registration certificate. Respondent shall pay the complainant Rs.20,000/- towards the cost of the complaint. Rest of the reliefs are denied. Complaint stands disposed of accordingly.

Uploaded at Mumbai.

Date: 24.07.2020.


24.07.2020
(B. D. Kapadnis)
Member-II,
MahaRERA, Mumbai.