

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

**Appeal No. RC-02 OF 2021
Along with
M.A. No. 213 of 2021 (Interim relief)**

**1. Manju K. Chawla, Jagdish K. Chawla
& Neetu K. Chawla.**

Flat No. 401, Lotus Arch CHSL,
Ram Mandir Rad, Vazira Naka,
Borivali – (W), Mumbai – 400092.

2. Milankumar Gunwantrai Desai.

304 Borivali Manorath CHS Ltd.
Chikuwadi, Borivali (West), Mumbai-400091.

3. Ranjna J Tiwari & Jitendra R. Desai.

Flat No. 211, Building No. 4
Trangest Comp. Old MHB Colney,
Gorai Road, Borivali (West),
Mumbai-400091.

... Appellants

Versus

1. Adinath CHS Ltd.

Flat No. 44 FP 620, Kastur Park,
Borivali (West), Mumbai-400092.

2. Murlidhar Developers.

507, C-32, Mahalaxmi CHS Ltd.
Charkop Depot, Charkop Sector – 5,
Kandivali (West), Mumbai-400067.

3. Aditya Developers.

A/101, Jeevan Mandir,
Opp Ambe Mata Temple,
Factory Lane, Borivali (West),
Mumbai-400092.

... Respondents

Adv. Mr. Satish Dedhia, for Appellants.
Adv. Mr. Chirag Kamdar, for Respondent No. 1.
Adv. Jeetendra Ranawat, for Respondent No. 2.
Adv. Mr. Chirag Kamdar, for Respondent No. 3.

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

**DATE : 28th FEBRUARY, 2022.
(THROUGH VIDEO CONFERENCING)**

JUDGMENT

[PER: S. S. SANDHU, MEMBER (A)]

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The above three Appellants have filed this Appeal against registration certificate No. PS1800026517 granted by the Authority on 30.09.2020 to the project registered by Respondent No. 1 (the Society, for short) along with M.A. No. 213 of 2021 for *inter alia* restraining Respondents in any manner whatsoever from creating third party rights in the flats purchased by Appellants from erstwhile developer i.e. Respondent No. 3.

2. Brief facts necessary for disposal of Appeal and Misc. Application are that the Respondent No. 1 (the Society)

entrusted re-development project of the Society building on CTS No. 11 at Kastur Park, Borivali (W), Mumbai vide Development Agreement (DA) dated 31.12.2011 to Respondent No. 3 from whom Appellants claim to have purchased flats in the said project. However, as Respondent No. 3 failed to perform its obligations under DA, the Society terminated the DA vide notice dated 30th July, 2019 and advertised the same in newspapers through public notice.

3. In the arbitration proceedings filed thereafter by the Society, the termination was upheld by the Hon'ble Bombay High Court along with right of the Society to self-redevelop its property. Pursuant thereto the Society proceeded to self-redevelopment of the plot and obtained the registration certificate No. PS1800026517 on 30.09.2020 subsisting registration certificate No. P51800007227 issued earlier to the project registered by Respondent No. 3 on the same plot. Society inducted Respondent No. 2 as its contractor vide agreement dated 16.09.2020. The aforesaid second registration certificate obtained by Society is challenged by Appellants in this Appeal.

4. Heard learned counsel for the parties.


5. It is the contentions of Appellants that while registering the project earlier with MahaRERA, Respondent No. 3 who is the erstwhile Developers had disclosed the flats it sold to Appellants and therefore, the Society had the knowledge of Appellants' rights over the said flats. Appellants alleged that Respondents colluded with each other whereby the Respondent Society took over the project with mutual consent of Respondent No. 3 and continued with approvals already obtained by Respondent No. 3 for the same project. It is further contended that Respondent No. 2 was inducted as developer by Respondent No. 3 as its nominee.



6. Appellants submit that the Society has fraudulently registered the project second time without intimating the Appellants and without obtaining consent of Appellants as mandated under Sections 7, 8 and 15 of RERA. It is strongly contended that the second Registration obtained by the Society


is void ab initio as there cannot be two registrations at the same time for a project on the same piece of land as also held by MahaRERA in its order dated 08.12.2020 in complaint No. SC10001864.

7. Appellants argued that as may be seen from index-II dated 12.03.2020 that Society is already benefitted from the sale proceeds contributed by Appellants towards purchase of the said flats which now appear to have been reserved by Society for Respondent No. 2 without even disclosing the same on MahaRERA website while registering the project.

 8. Appellants further argued that as second registration gives licence to the Society to sell the flats and therefore in order to prevent Society from depriving Appellants of their lawful rights over the flats by taking undue advantage of the second registration, it is necessary that Respondents be restrained from creating third party rights in the said flats. Appellants apprehended that if the aforesaid interim relief is

not granted serious prejudice would be caused to Appellants who have to face serious complications and multiple litigations. Apart from the aforesaid reliefs, Appellants submitted that since as per SOP guidelines issued vide Circular No. 8 of 2019 dated 28.03.2019 only Association or Society etc. and not individual complainant can file complaint to seek revocation of registration of the project, Appellants did not approach the Authority for redressal of their grievances. In this background, Appellants urged the Tribunal to entertain and expedite disposal of Appeal by directing Respondent No. 2 to furnish all necessary documents relating to the second registration.

9. The pleas as above of Appellants including the interim relief are strongly opposed by the Society and Respondent No. 2. They argued as follows.

 i] As the registration is only an administrative act, the same not being an order, direction or decision of the Authority cannot be appealed against before the Appellate Tribunal under Section 43 (5) of RERA. Also Section 7 provides specific remedy for revocation of the project and Appellants