

**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 Gunwantra 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)]

1

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

have come directly in Appeal without following due process by approaching the Authority.


ii] Appellants, who claim to be Allottees of Respondent No. 3, have no locus standi to file appeal as neither Respondent No. 3, who held the prior registration, has sought revocation of new registration nor there is any privity of contract of Appellants with the Society to hold the Society liable for any breaches committed by Respondent No. 3. Also, Appellants cannot be said to have been aggrieved as mere registration does not give any rights to Respondent No. 3 for developing the project for sustaining rights of Allottees in the project particularly for the reason that DA executed with Respondent No. 3 has already been validly terminated. The said DA also clearly laid down that the Society shall not be liable for any acts of the Respondent No. 3 including the contractual liability towards new buyers of the flats in the new building to be constructed by Respondent No. 3. Since the Respondent No. 3 was solely liable to Appellants, on termination of agreement third party purchasers i.e. Appellants cannot seek any remedy against Respondent Society in terms of **i) Vaidehi Akash Pvt. Ltd. V/s New D. N. Nagar Co-**

operative Housing Society Union Ltd. (Order dated 01.12.2014) and ii) Goregaon Pearl Co-operative Housing Society vs. Dr. Seema Mahadeo Paryekar and Ors.

iii) Balance of convenience exists in favour of Society and against Appellants as it is indisputable that Society has been allowed to self-redevelop the project by order of the Hon'ble Bombay High Court in arbitration proceedings and registration is made pursuant to the said order. Therefore, Appellants cannot seek cancellation of the registration. On the contrary, the registration obtained by Respondent No. 3 is in breach and contempt of the said order of the Hon'ble High Court.

iv) Even if Appellants are able to make out a case of irreparable loss or injury, they would have a case against Respondent No. 3 only and not against the Society as there is no privity of contract with Society as stated above.

10. Respondent No. 3 the erstwhile developer alleged that its removal by invoking arbitration by the Society was illegal and invalid and it defeats the very objectives of RERA. It is also contended that registration of project by Society by suppressing subsisting registration of Respondent No.3 and transfer thereof to Respondent No.2 is itself is violative of provisions of Sections 7, 8 and 15 of RERA. Respondent No.3 also submitted that it was entitled to sell the flats to Appellants without consent of the Society during the validity of DA and therefore the Society is liable to provide flats to Appellants and other allottees. It therefore supported the interim relief sought by Appellants with regard to not creating third party rights in the said flats.

 11. We have considered the respective submissions of the parties and perused the record. The only points that arise for our consideration are, (i) whether the impugned registration certificate calls for interference in Appeal?, and (ii) whether Appellants have made out a prima facie grievance?. Answers to both the points are in the partly affirmative for the following reasons.

12. At the outset, it is made clear that as per preamble of the RERA, provision of appeal is made for those who are aggrieved by any order, direction, decision etc. of the Authority. The registration is not only a procedural or an administrative act but a substantive decision also which forms the very basis of applicability of provisions of RERA to affect the entitlement of all those the RERA envisages to protect. Therefore, any grievance caused to purchaser, agent or Promoter on account of contravention of various provisions under RERA can be raised under Section 31 of RERA. Accordingly, Appellants claiming to be allottees of the erstwhile developer i.e. Respondent No. 3, are prima facie entitled to raise grievance regarding the second registration in this Appeal.



13. There is no denying the fact, as also revealed from documents, that there are two registrations of the project on the same land- First, registration certificate No. PS1800026517 obtained earlier by the Respondent No. 3 and the second, registration certificate No. P51800007227 obtained

subsequently by Society on 30.09.2020 subsisting the earlier registration. It is settled position of law that there cannot be two projects registered by two different promoters on the same piece of land. It is also not the case herein that the project is being executed in a phased manner requiring if necessary to assign a separate registration number for each phase. During the arguments, learned counsel for the Society candidly admitted that two registrations cannot coexist at the same time. Society also fairly conceded that two registrations pose an anomalous situation and may create complications to new buyers in exercising informed choice while buying units in the two projects on the same land.

14. In the above situation, it is significant to note that admittedly Appellants have come directly to the Tribunal and have not approached the Authority apprehending perhaps that their individual complaints raising issues with regard to registration of the project may not be entertained by the Authority owing to guidelines issued vide Circular No. 8/2019 dated 28.03.2019. In the result, the Authority never had any occasion to examine issues raised in this Appeal. Considering

significance of the said issues particularly with regard to factum of two registrations a suggestion was made to the parties by the Bench that it would be advisable if the dispute in its entirety is first examined by the Authority for taking necessary view in the matter. Learned counsel for the Society expressed agreement to this proposition and other parties also endorsed to the same.

15. In above view of the matter, though parties have raised contentions in support of their respective claims we refrain from examining the controversy in its entirety for the first time at the appellate stage. It therefore would not be proper to grant a blanket relief as prayed for by Appellants for restraining Respondents from creating third party rights especially as the same is strongly contested by Respondent Nos. 1 and 2 by relying upon the judgment in **Vaidehi Akash and Goregaon Pearl Co-operative Housing Society** (supra). However, considering the fact that the two registrations issued contrary to law on the same plot have created a peculiar situation, Appellants, in our view, can be



granted some temporary relief as per final order in this Appeal to avoid further complications and multiplicity of litigations.

16. In the above facts and circumstances of the matter we answer the points accordingly and passed the following order.

ORDER

1. Appeal No. RC-02 of 2021 is partly allowed with following directions:

- i) Appellants are granted liberty to file complaint(s) strictly within 15 days from this order as per law to the Authority to raise their grievance as raised in this Appeal to seek appropriate reliefs. Contentions of all parties are kept open.
- ii) Considering the peculiarity of the facts and circumstances of the matter the complaint(s) so filed by Appellants shall be entertained and decided by the Authority irrespective of directions whatsoever to the contrary.
- iii) The two registrations coexisting at present to remain in abeyance and inoperative to avoid further complications till the decision of the Authority at the earliest in the complaints, if filed.



- iv) Status-quo granted in Appeal to continue in respect of the flats claimed to have been purchased by Appellants till the interim decision of the Authority with regard thereto. Status quo order shall stand vacated if Appellants fail to file complaint as directed above at (i) of this order.
2. M.A. 213 of 2021 stands disposed of in the light of above directions.
3. No costs.
4. Copy of this order be sent to the Authority and the respective parties as per Section 44(4) of RERA.


(S.S. SANDHU)
DBL/-


(SHRIRAM S. JAGTAP)