

BEFORE  
MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY  
MUMBAI

COMPLAINT NO: CC006000000000883

Pravin Liladhar Haria for

Samaj Kalyan CHS Ltd.

... Complainant.

Versus

Niraj Mansukhlal Ved

... Respondents.

MahaRERA Regn: **P51800009489**

Complainant: Mr. Vijay Pandurang Pawar.

Respondents: Represented by Joshi, Adv.

COMPLAINT NO: CC006000000001289

Paresh Jaywant Goraksha for

... Complainant.

The Chembur Hastinapur CHS Ltd.

Versus

Siroya Development Pvt.Ltd.

(Siroya Artemis)

... Respondents.

MahaRERA Regn: **P51800009244**

Complainant: Represented by Mr. Shashikant Kadam, Adv.

Respondents: in person.

COMPLAINT NO: CC006000000001377

Dayanand Rajayya Gajeli

... Complainant.

Versus

Siroya Development Pvt.Ltd.

(Siroya Apollo)

... Respondents.

MahaRERA Regn: **P51800009517.**

Complainant: Represented by Mr. Shashikant Kadam, Adv.

Respondents: in person.

**Coram:** Shri B.D. Kapadnis,  
Hon'ble Member & Adjudicating Officer.



**Final Order.**  
16<sup>th</sup> January 2018.

Whether a co-operative society which enters into a development agreement of its land on area share basis comes under the definition of 'allottee' or it comes under definition of 'promoter' defined in The Real Estate (Regulation and Development) Act, 2016, (RERA) is the important legal issue involved in these complaints.

2. The Samaj Kalyan CHS Ltd. entered into redevelopment agreement with the respondents on 20.01.2010 to redevelop its plot by demolishing its old structure. They agreed that its 13 members/tenants shall be accommodated in B-Wing up to 4<sup>th</sup> floor of the new building and respondents shall pay them rent also till they get possession within 24 months. They agreed that the respondents shall sell upper three floors of B-wing and A-wing. Respondents failed to give possession on agreed date and pay rent regularly.

3. The Chembur Hastinapur CHS Ltd. also entered into redevelopment agreement with the respondents on 12.01.2010 to redevelop their plot by demolishing its old structure. Each member of the society shall get 800 sq.mtrs. area + rent of Rs. 18,000/- per month which is revised to Rs. 27,500/-. The agreement shows that it is also based on area sharing. Respondents failed to give possession as agreed and to pay the rent regularly.

4. The Purna Aishwarya Housing Society has also entered into redevelopment agreement with the respondents on 30.12.2009 to construct new project in the place of old structure having 12 residential flats. The new building is going to be constructed on area share basis. Each member shall get the carpet area of 795 sq.ft. in the new building. The members are



to be accommodated up to 6<sup>th</sup> floor and upper 9 floors are for sale. In addition to this, respondents agreed to pay the members the rent at the rate of Rs. 27,500/- per month. Respondents failed to give possession as agreed and to pay the rent regularly.

5. Parties have been heard on the point of maintainability. Learned advocate of complainants submits that the members of the co-operative societies are the allottees and the respondents are the promoters, therefore, MahaRERA has jurisdiction to entertain their complaints. For this he has relied upon the definition of allottee. Now, it is necessary to look at the definition of allottee defined by section 2(d) of the Act. It reads as under:

*"allottee" in real estate project, means the person to whom a plot, apartment or buildings, 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 buildings, as the case may be, is given on rent;"*

6. According to him, the respondents have agreed to allot a units of the specific area to the members of the societies and therefore, they are the allottees of the said unit. In this context, it is necessary to consider the definition of promoter also. Section 2(zk) defines promoter as under:

*"promoter" means, --*

*(i) a person who constructs or causes to be constructed an independent building or a building consisting of apartments, or converts an existing building or a part thereof into apartments, for the purpose of selling all or some of the apartments to other persons and includes his assignees; or*

*(ii) a person who develops land into a project, whether or not the person also constructs structures on any of the plots, for the purpose of selling*



*to other persons all or some of the plots in the some of the plots in the said project, whether with or without structures thereon; or*

*(iii) any development authority or any other public body in respect of allottees of –*

*(a) building or apartments, as the case may be, constructed by such authority or body on lands owned by them or placed at their disposal by the Government; or*

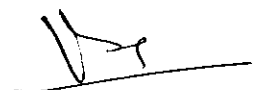
*(b) Plots owned by such authority or body or placed at their disposal by the Government; for the purpose of selling all or some of the apartments or plots, or*

*(iv) an apex State level co-operative housing finance society and a primary co-operative housing society which constructs apartments or buildings for its Members or in respect of the allottees of such apartments or buildings; or*

*(v) any other person who acts himself as a builder, coloniser, contractor, developer, estate developer or by any other name or claims to be acting as the holder of a power of attorney from the owner of the land on which the building or apartment is constructed or plot is developed for sale; or*

*(vi) such other person who constructs any building or apartment for sale to the general public.*

*Explanation: - For the purposes of this clause, where the person who constructs or converts a building into apartments or develops a plot for sale and the persons who sells apartments or plots are different persons, 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; "*



7. The complainants themselves have admitted that the apartments of their members were in the old building. The societies have taken decision to demolish the old building and to redevelop their property with the help of the respondents. They have engaged the respondents for the purpose of redeveloping their properties, it means that they being the land owners are causing the construction of the new buildings in the place of old one and therefore they come within the definition of the promoter.

8. In my view members of society/tenants are not allottees but they are promoters for following reasons.

a. The members of the societies are going to get their apartments in new building in lieu of their old apartments but without spending any additional money.

b. The societies have entered into the development agreement on area share basis.

c. The societies are also going to share the profits in the sense that their members shall get new apartments of bigger size in rehab component of the new project than they had in old buildings.

d. The respondents are going to raise funds from selling the additional floors/ FSI (sale component) and those funds will be used for the construction of the new buildings and for making profit which they may retain.

e. When a purchaser books flat in the sale component, the booked apartment is allotted to him by promoter. Members of societies are going to get their apartments in rehab component of the building which is earmarked to accommodate them.

f. Promoter allots apartment to purchaser but one promoter cannot allot apartment to another promoter, they simply share.



g. Society is the collective body consisting of its members. Its decision is in fact is the decision of members. Hence even if separate agreements are executed in their favour, they cannot become allottees.

h. Developer and land owner come under the definition of promoter.

i. in case of redevelopment of property, society causes the construction and development of its property which brings it under the definition of promoter.

j. In view of above facts the word "allotted" appearing in the definition of allottee cannot be construed in a sense that the apartments are allotted to the members, on the contrary they retain them.

K. Since societies are land owners who are causing construction of projects for selling part of it, they come within the definition of promoter and therefore there is no question of allotment or transfer of any apartment to them by a promoter. One promoter cannot allot or transfer an apartment to another promoter in the letter and spirit of the definition.

9. After taking into consideration all these aspects of the matter, I find that the complainants are in fact the promoters.

13. The learned Advocate of the complainants submits that the purchasers/allottees who purchase the apartment situated in the sale component can approach the Real Estate Regulatory Authority, why the tenants/members of the societies should approach the other forum. According to him, it will create anomalous position. I find that in such cases, only sale component is registered as a distinct phase with MahaRERA, therefore, the Authority gets the jurisdiction in respect of the disputes between the allottees and promoters which relates to the registered project or its phase only. The portion of the project (rehab component) which is not registered with the Authority is beyond the control of the Authority for which it cannot exercise its powers. Therefore,

there is no anomaly in contending that the allottees in respect of sale component which is registered with the Authority can file their complaints under Section 31 of RERA and the members of the society who are the promoters and whose apartments are situated in rehab component cannot complain to MahaRERA for resolving their civil disputes unless provisions of RERA or rules/regulations framed thereunder are contravened or violated.

10. The complainants have filed these complaints because the respondents have not paid them the agreed rent regularly and they failed to give possession of their apartments on agreed dates. They want that their project should be completed at the earliest. Section 31 of RERA empowers the Authority to entertain the complaint filed by the aggrieved persons only, when there is breach of the provisions of RERA or Rules and Regulations framed thereunder. If there is dispute between the promoters inter se then their complaints cannot be adjudicated upon unless and until there is contravention or violation of the provisions of the Act, Rules and Regulations framed thereunder. MahaRERA has limited jurisdiction. The facts incorporated in the complaints about arrears of rent and delayed possession do not attract the provisions of RERA. It appears that there is dispute of civil nature between the parties and therefore, they can get it resolved by approaching a proper forum. In the facts and circumstances of the case, I hold that the co-operative society which enters into development agreement of its land on area share basis becomes the promoter and its dispute with another promoter/developer cannot be entertained by the Real Estate Regulatory Authority for granting the said reliefs.

11. The complainants have complained that if they come under the definition of promoter, the respondents have not mentioned their names as promoters while registering the projects. I find that Section 4 of RERA casts an obligation on the promoters to furnish the correct information

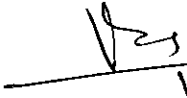
  
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relating to their projects. Section 4(2)(a) of the Act requires that the information regarding the promoters, their names, addresses etc. has to be furnished to the Real Estate Regulatory Authority while registering their projects and to submit the necessary documents thereof. I find that in all the three cases the respondents have not added the societies as promoters and they have not uploaded the redevelopment agreements entered into by them with these societies. To this extent, I find that the complaints are maintainable. Any person, as person includes a co-operative society also, can file the complaint under Section 31 of the Act if he is aggrieved because of violation or contravention of any of the provisions of the Act. Even the Real Estate Regulatory Authority has power to take suo-motu action in this context. Therefore, by exercising the powers conferred by Section 37 of RERA, I proceed to pass the following order.

#### ORDER

1. Respondents are directed to mention the names of the respective societies as promoter of their respective projects registered with MahaRERA and they shall upload the redevelopment agreements also within a month from the date of this order.
2. The Respondents of each case shall pay Rs. 20,000/- to their complainant/s.
3. The reliefs regarding possession of apartments and payment of arrears of rent are rejected for want of jurisdiction.

Mumbai.  
Date: 16.01.2018.

  
16.1.18  
(B.D. Kapadnis)  
Member & Adjudicating Officer  
MahaRERA, Mumbai.