

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

COMPLAINT NO: CC0060000000054638.

Tarun Khetshi Shah

... Complainant.

**Versus**

Pragati Zee  
(Zee Nayak)

... Respondents.

MahaRERA Regn: P51800004058

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

**Appearance:**

Complainant: Adv. Arvind Giriraj .

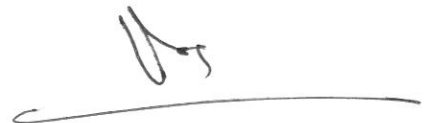
Respondents: For M.J. Juris, M.M. Jain,  
(Partner).

**FINAL ORDER**

**30<sup>TH</sup> JULY 2018.**

Heard the learned advocates of the parties on the maintainability of the complaint. Perused the papers.

2. It appears from the papers produced by the parties that Final Plot No. 16 bearing C.T.S. No. 975, 975/ 1 to 5 known as 'Nayak Bungalow' of village Vile Parle (East) came to the share of Motiram alias Digambar Ramrao Nayak in Partition Suit No. 784 of 1948. Motiram is survived by his daughters Mrs. Leena and Neema. They used to accept rent from the complainant's father Lt. Khetshi Shah in respect of shop no. C-1 and F. Thereafter on 29<sup>th</sup> April 2010, a development agreement came to be executed between owners of the land and the respondent Pragati Zee. It



is the contention of the complainant that the Respondent and the owners of the land agreed to provide shop no. 2 admeasuring 581.90 sq.ft. on the ground floor having minimum frontage of 13ft. 2 inches to complainant's father Lt. Khetshi Shah by way of permanent alternative accommodation.

3. Now, the complainant contends that the said shop was allotted to his father Lt. Khetshi Shah. The building was to be completed within two years from the commencement certificate dated 14.01.2015. It is the allegation of the complainant that part occupation certificate is received but the respondent has not been handing over the possession of the shop. The respondent failed to mention L.C. Suit No. 157 of 2017 filed by his father in respect of project as the pending litigation while registering the project, though it is still pending before the City Civil Court, Bombay. Therefore, he claims the possession of the shop and requests to impose penalty on the respondent. He also claims compensation.

4. The respondent challenges the maintainability of the complaint by contending that Lt. Khetshi Shah filed L.C. Suit No. 157 of 2017 for the same reliefs and hence, the complaint is not maintainable. It is also submitted that the L.C. Suit No. 157 of 2017 has now been mentioned in the column of pending litigation, pending the complaint.

5. I have gone through the plaint of Suit No. 157 of 2017 filed on 9<sup>th</sup> January 2017. Though the complainant contends that said Suit is filed mainly against Bombay Municipal Corporation, I find that it is mainly filed against the respondent. The relief of possession of the shop has been claimed by way of mandatory injunction from the respondents herein. The Suit is still pending before the City Civil Court, Mumbai. The Suit involves the complicated legal issues regarding the termination of the agreement of Lt. Shah and the issue of termination of his tenancy.



In addition to possession of the shop, Lt. Khetshi Shah has claimed other reliefs relating to the change of plan etc.

6. After giving thought to the facts of the case referred to above, I find that the cause of action according to the complainant's father to seek the possession of the shop arose before 9<sup>th</sup> January 2017 when the Suit has been filed. The RERA has come into force on 1<sup>st</sup> May 2017. Therefore, the cause of action has arisen before the RERA came into force and hence, this complaint is not maintainable.

7. The plaint shows that Late Shah claimed reliefs under the provisions of MOFA and the proper jurisdiction to claim these reliefs is that of Civil Court. Therefore, only because RERA has come into force and the project is registered as ongoing project with this Authority, the complainant cannot take disadvantage of these facts for doing forum shopping to file the complaint for reliefs which are already been sought in the L.C. Suit No. 157 of 2017.

8. So far as the omission to mention L.C. Suit No. 157 of 2017 as pending litigation while registration of the project is concerned, now the respondent has mentioned it. Therefore, on this count also there is no reason to proceed with the complaint.

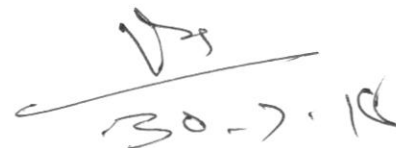
9. Considering all these facts, I find the complaint is not maintainable. Hence the final order.

### ORDER

The complaint is dismissed.

Mumbai.

Date: 30.07.2018.



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