

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

COMPLAINT NO: CC0060000000044200.

Surekha Jain ... Complainant.

COMPLAINT NO: CC0060000000044202.

Rajesh Dama ... Complainant.

COMPLAINT NO: CC0060000000044207.

Vipul Mehta
Preeti Sanjay Mehta ... Complainants.

COMPLAINT NO: CC0060000000044269.

Gajendra Vasa
Mrs. Aruna Vasa ... Complainants.

COMPLAINT NO: CC0060000000044194.

Dharmesh J. Desai
Dimple D. Desai ... Complainants.

COMPLAINT NO: CC0060000000044195.

Suresh S. Metkar
Naresh Metkar ... Complainants.

COMPLAINT NO: CC0060000000044197.

Praful Gada
Madhu Gada ... Complainants.

COMPLAINT NO: CC0060000000044198.

Milan Mehta ... Complainant.
COMPLAINT NO: CC0060000000044201.

Deepak Gandhi ... Complainant.



COMPLAINT NO: CC0060000000044268.

Mr. Rajesh Gandhi
Neeta Gandhi

... Complainants.

Versus

M/s Reliable Build Heights LLP
Represented through its partners
(New Simit Apartment)

... Respondents.

MahaRERA Regn: P51800010193

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

Appearance:

Complainant: Adv. Madan Jain
Respondents: Adv. Kinjal Gala.

FINAL ORDER

3rd August 2018.

Heard the advocates of the parties on the preliminary issue of maintainability of the complaints.

2. The respondents have taken the objection that the complaints are not maintainable because the complainants are not the allottees. They being the owners/tenants of the old building. The learned advocate of the complainants submits that the respondents have agreed to provide alternate permanent accommodation to the complainants in lieu of surrendering their premises situated in the old building, for the construction of the new one and this amounts to 'transfer' and hence the complaints are maintainable.

3. Before entering into the arena of controversy, it is necessary to look at the backdrop of these cases. One Mr. Keshav Joshi was the original owner of C.T.S.



Nos. 786, 786/1 and 786/2, Malad (West), Mumbai and the building known as Dattaprasad was standing thereon. After his demise on 29.10.1978 his widow Vimala, Son Vasant and daughters Shamala and Shalini inherited his rights of ownership and their names appeared in the property card. These heirs entered into the unregistered agreement for sale with one Sadashiv Kanade on 19.12.1978 to sell the said land and paid full consideration. Thereafter, Sadashiv Kanade transferred his rights by executing unregistered agreement for sale on 09.03.1979 in favour of M/s. Khetani Enterprises which paid the purchase price to Mr. Kanade. Thereafter, M/s. Khetani Enterprises constructed second and third and fourth floor on the existing structure and named the building as 'new Simit Apartment'. M/s. Khetani Enterprises sold the flats on ownership basis. The occupiers of the ground and first floor were the tenants and they remained as tenants of M/s. Khetani Enterprises. Thereafter, the said building became dilapidated and hence, the tenants of the old building agreed to surrender their tenanted premises in lieu of earmarked premises in the new building. The sum and substance memorandum of understanding and agreements is, the respondents agreed to provide 30% additional carpet area to each of six flat owners and 40% additional carpet area to four tenants free of cost. The respondents also agreed to pay the owners and tenants the shifting charges, rent, corpus fund etc. The flat owners and tenants permitted the respondents to avail of additional FSI, obtain TDR and to construct the building and allowed respondents to sell part of the building to the new buyers to raise the fund for constructing the new building.

4. Both the learned advocates have referred to the definitions of 'allottee' and 'promoter' defined by Section 2(d) and Section 2(zk) of the Real Estate (Development and Regulation) Act (RERA). I do not want to go into the details of these aspects because they have already been discussed by me in Pravin Hariya - v/s - Niraj Mansukhlal Ved in Complainant No. CC006000000000883. The relevant portion of the order reads as under:



"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;"

According to him, the respondents have agreed to allot 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; "

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.

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.

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

5. I find that on the same principle and for the same reasons the flat owners and tenants of the old building who are the complainants all these cases do come within the definition of promoter.

6. However, the learned advocate of the complainants has brought to my notice that Mr. Gajendra Vasa and Mrs. Aruna Vasa, Rajesh Dama, Surekha Jain, Vipul Mehta have agreed to purchase more area than offered by the respondents in lieu of their old tenements. The learned advocate of the respondents submits that Surekha Jain and Vipul Mehta have not paid any money for the extra area. I have verified the fact that these complainants have agreed to purchase more area than offered by the respondents for old premises, hence, these complainants do come in the category of allottees to the extent of the extra area agreed to be purchased by them and their rights, respondents' liabilities under RERA would be confined to such area only. Though the units earmarked for other complainants are shown in sale component of the project that would not change their status.

7. The Authority has consistently taken the view that in redevelopment project the members of the society and their tenants are equity holders who cause the project to be constructed by retaining their "area share" and they also come within the definition of promoter. Section 31 of RERA empowers the Authority to entertain the complaint filed by the aggrieved person against the promoter or allottee or real estate agent for violating or contravening any provisions of RERA or Rules or Regulations made thereunder. Thus, the Real Estate Authority does not get jurisdiction to entertain the dispute lying between



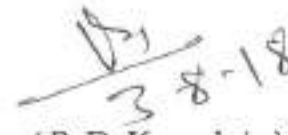
the two promoters. Hence, except the above named four complainants, the other complaints are not maintainable and hence the following order.

ORDER

The complaint nos. CC0060000000044207, CC0060000000044200, CC0060000000044202, CC0060000000044269 (4) are Maintainable and the rest of the complaints are dismissed for want of jurisdiction.

Mumbai.

Date: 03.08.2018.


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