

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

**6) M. A. No. 698/23 (Stay)**

**In**

**Appeal No. AT006000000184788/23**

D. N. Nagar Shivneri CHS Ltd.

...Appellant

V/s.

Sai Siddhant Developers

...Respondent

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*Adv. Ms. Jenifer Michael for Appellant*

*None for Respondent*

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**CORAM : SHRI SHRIRAM. R. JAGTAP, MEMBER (J), &  
DR. K. SHIVAJI, MEMBER (A)**

**DATE : 10<sup>th</sup> May, 2024**

(THROUGH VIDEO CONFERENCE)

Matter is kept back.

**Later at 1.00 pm**

**ORAL ORDER**

**M. A. No. 698/23 (Stay)**

1] Heard Learned Counsel Ms. Jenifer Michael for Appellant in extenso. By this Application, the Appellant is seeking interim two-fold reliefs *inter alia* to stay effect and implementation of the impugned Order dated 16<sup>th</sup> October, 2023 passed by the Learned Chairperson, MahaRERA on the Complaint filed before the MahaRERA by the Appellant Society seeking various reliefs including inter alia for revocation and/ or cancellation of the project registration granted in favour of the Respondent. Learned Counsel further submits that the



Hon'ble High Court in its Order dated 19<sup>th</sup> March, 2024 has requested this Tribunal to take up this captioned Application for expeditious disposal and to make an endeavor to decide on 8<sup>th</sup> May, 2024. The Appellant has filed another Application today containing the Order of the Hon'ble Bombay High Court dated 8<sup>th</sup> May, 2024 wherein this Tribunal has been requested to hear and decide the Appeal within four weeks. Today is the last working day before the ensuing summer vacation of this Tribunal and will be getting re-opened only on 10<sup>th</sup> June, 2024. Pursuant to the Order of the Hon'ble Bombay High Court, this matter has been taken up today on priority and has been heard in extenso about the details of the captioned Misc. Application. The Appellant herein is a developer, who has been engaged by the society for the redevelopment project and has also registered the project under RERA.

2] This Tribunal vide its Order dated 8<sup>th</sup> May, 2024 had granted liberty to the Appellant to file its reply as to why, the Appellant has not taken recourse to the liberties already granted in the impugned Order itself, more particularly, in its para 15 and 17.

3] Learned counsel confirms that even though in the impugned Order, certain liberties have been granted to the Appellant to approach MahaRERA under the relevant provisions of the said Act, more particularly, with the proposal on the road map ahead in order to ensure completion of subject redevelopment project in question.

4] Learned counsel further submits that by filing this Misc. Application, Applicant is seeking to stay the effect and implementation



of the impugned Order and also to permit the Appellant Society to apply for fresh registration of the project before the Authority under Section 4 of the Act. She further submits that in terms of the judgment of the Hon'ble High Court, more particularly, in case of **Deepak Prabhakar Thakoor & Ors. Vs. MHADA & Ors.** dated 12<sup>th</sup> October, 2023 and **Kapilkunj Co-operative Housing Society Ltd. Vs. State of Maharashtra & Ors.** dated 12<sup>th</sup> and 13<sup>th</sup> December, 2023 wherein it has been held *inter alia* that the Allottees in such situation have no rights and has recourse only to approach erstwhile Promoter and not against the society. She further submits that the society is not the Promoter and is intending to undertake self redevelopment of this project. She further submits that interim relief as sought in this captioned application is required in view of huge delay in completion of the subject redevelopment project basically to avoid further passage of time and Appellant society has apprehension that the purchaser of free sale component of the redevelopment project, Allottees may obtain certain injunctive Orders, which will jeopardize the interest of this Complainant society.

5] Perused record, particularly the impugned order and the captioned application and upon hearing the submissions of the learned counsel for the Appellant, solitary point that arises for our determination in this case is whether the relief sought in the Complaint is legally permissible for which our finding is in the negative for the reasons to follow:

- a) Upon hearing the submissions of the learned counsel, it is more than crystal clear that there is no urgency to provide interim reliefs as prayed herein. As such, learned counsel has





failed to demonstrate that in case of non grant of interim reliefs sought herein will render the Appeal itself infructuous or any permanent or irreparable prejudice likely to incur to the Appellant.

- b) Perusal of the impugned Order dated 16<sup>th</sup> October, 2023, more particularly, the operative part in para nos. 16, 17, and 18 and reliefs sought in the captioned Complaint in para 19(b) clearly reveals that they are not only similar, identical, but also overlap each other. So, these are required to be dealt with by entering into the roots of the controversies of the Appeal. It is settled position of law that in such a situation, it is not advisable to consider such reliefs as this interim stage.
- c) Perusal of the impugned order in para no.15 clearly indicates that ".....the Authority still does not have visibility as to how the Complainant society needs to complete the work and engage the allottees, once revocation takes place. In such circumstances, balance of convenience lies in putting the registration in abeyance. Complainant society need to submits detailed plan of action in keeping that the said act as to how they intend to complete the said project...."
- d) In para no.12 "...Keeping this in mind, it is to be understood that the act of revocation of registration has far reaching implications. It is because the said Act of 2016 has laid down a specific condition and circumstances in which the Authority can exercise these powers. This power has to be exercised after the Authority is satisfied about the non-performance of the developer promoter respondent herein with regard to the obligation as mentioned in Section 7 of the Act, 2016."



- e) In view of the peculiar facts and circumstances of the case, MahaRERA has already provided liberty to the complainant society to approach the MahaRERA under the relevant provision of the Act with a concrete proposal about road map ahead in order to ensure completion of the said redevelopment project. In the instant case, completion of the redevelopment project is of paramount importance, which requires the clarity in terms of the clear road map and society being the land owner, it is natural that the society need to come up with a clear road map on the details in terms of the way in which the redevelopment project, society intends to complete. The impugned order is in the nature of keeping the matter in abeyance and of providing an opportunity for the stakeholders like society to come up with a clear road map in order to proceed further and decide in terms of the provisions for which, the MahaRERA has already provided this liberty. However, learned Counsel has confirmed today that she has not availed of this liberty so far despite clear window of liberty provided to the complainant society.
- f) In view of peculiar facts and circumstances of the case as elaborated hereinabove, we are of the considered view that the reliefs sought in the captioned Misc. Application which are more synonymous with the reliefs sought in the Appeal, it will be only proper that it needs to be decided alongwith Appeal and accordingly, the Misc. Application is liable to be dismissed being devoid of merits and lack of substance and we proceed to pass the following Order.



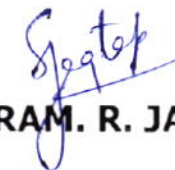
**ORDER**

- 1) Captioned Misc. Application No.698/2023 stands dismissed
- 2) No costs.

**In Appeal**

1] Pursuant to the Order of the Hon'ble High Court and to expedite the matter for final hearing, stand over to 10<sup>th</sup> June, 2024 for final hearing.

  
(DR. K. SHIVAJI)

  
(SHRIRAM. R. JAGTAP)

MBT