

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

**Miscellaneous Application No. 278 of 2024
(Production of Documents)**

In

Appeal No. U-6 of 2022

In

Complaint no. SC10002443

1. Mr. Kunal Kashyap

Age-41 Years, Occ. Business

2. Mr. Kamal Kashyap

Age-77 years, Occ. IPS Retired
Both R/at-Flat No. 701, Building No-B
Leena Garden Co-Ope. Hsg. Society
Lane No. 10, Kalyaninagar, Yerawada
Pune 411006

...Appellants

Versus

1. M/S. Atul Enterprises

(Through its proprietor)

Mr. Hemraj Shankalal Mundada

Office at-Parvati Chambers,
Sangam Press Road,
Off Karva Road, Kothrud,
Pune. 411038

...Respondent

Adv. Leena Kaulgekar for Appellants.

Adv. Amit Patil for Respondent.

S. J. Patil

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

DATE : 10th May, 2024

(THROUGH VIDEO CONFERENCING)

JUDGMENT

[PER : SHRIRAM R. JAGTAP (J)]

1. Being dissatisfied with the order dated 29th April 2022 passed by the learned Chairperson, MahaRERA in Complaint No. SC10002443, the complaints have preferred the captioned appeal to raise grievance that the impugned order has not granted reliefs sought in the complaint.
2. For the sake of convenience, parties to the appeal hereinafter will be referred to as the "Complainants" and "Promoter".
3. The brief facts which led to file the instant appeal are that the land survey No. 208, Final Plot No. 79, Sub Plot Nos. 4+5A+5B-6, Lane No. 10 kalyaninagar Yerwada, Pune was undertaken for development by the respondent somewhere in the year 2000-2006. Pursuant thereto, the promoter had launched a project known as "Leena Garden". The subject project was consisting of three wings viz A, B and C. The subject project was completed way back in 2005-2006 and has 79 flats. Out of the three wings, Wing-B and



Wing-C have received Occupation Certificates. Whereas Wing-A has received part Occupation Certificate during the period 2004-2006. The respondent has handed over the possession of flats to 79 home buyers. The subject project is single composite project/scheme. The respondent has unilaterally executed a registered Deed of Declaration on 06.11.2006. Wing-A was incomplete on the date of commencement of RERA Act, 2016. Besides the respondent has submitted revised plan to concern authority for sanction and succeeded in getting the same on 17.11.2017 without obtaining consent of 79 home buyers i.e. consent of earlier buyers. Since the project was going on the date of commencement of RERA Act, 2016, the respondent was under obligation to make an application to the authority for registration of the subject project. The respondent did not apply to the authority for registration of the subject project and thereby violated the provisions of Section 3 of RERA Act, 2016. The complainants have filed the complaint and sought direction to respondent to register the project with MahaRERA and further prayed to impose heavy penalty for non-compliance of the mandatory provisions of RERA Act, 2016.

4. The respondent has appeared in the complaint and remonstrated the complaint by filing reply contending therein that subject project

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was consisting of 3 wings namely A, B and C. Wing-B was completed and Occupation Certificate was received on 02.03.2004. Wing-C was completed, and Completion Certificate was obtained on 18.02.2003. However, Wing-A has received only part Occupation Certificate and Commencement Certificate for further construction has been applied for. The respondent did not register the subject project with MahaRERA on account of there being civil litigation between the respondent and society of allottees pending in the Civil Court. The respondent has neither made any advertisement nor made any offers for the sale of flats and thus there is no violation of Section 3 of RERA Act, 2016. With these contentions respondent has prayed for dismissal of the complaint.

5. After hearing the parties learned Chairperson MahaRERA was pleased to dispose of the complaint by his order dated 29.04.2022 with the findings that since respondent has made a categorical statement that he has not made any offers nor any advertisements nor any booking which makes him liable for violation of Section 3 of the RERA Act, 2016. However, the complaint has also not adduced any evidence in support of the same. Thus, the respondent is not liable under Section 59 of the said Act.



6. We have heard learned Adv. Leena Kaulgekar for the appellants/complainants and Adv. Amit Patil for respondent.
7. An abridgment of argument of learned Adv. Leena Kaulgekar is that subject project was consisting of three buildings vis. wings-A, B and C. The promoter has completed the construction of wing-C on 18.02.2003 and wing-B on 02.03.2004. The promoter has not completed the construction of wing-A in true sense as a result thereof the concerned authority has issued part occupation certification. This signifies that the project is incomplete.
8. Learned Advocate has further submitted that the respondent has submitted revised plan to Pune Municipal Corporation for sanction and obtained fresh commencement certificate. This shows that the promoter intends to construct 9 flats on building-A. Despite this, building-A is not registered with MahaRERA. It further transpires from the documents that respondent has obtained further commencement certificate with regard to subject project on 17.12.2021. The promoter tried to depict the picture that the area of proposed construction is only 187.71 sq. mtr. However, the sanctioned plan clearly indicates that area of plot is 6644.03 sq. mtr. Section 3 mandates promoter to register an ongoing project. The complainants have placed reliance on the ratio and dictum laid

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down by the Hon'ble Apex Court in ***M/s Newtech promoters and developers Pvt. Ltd. Vs. State of U.P. and others***, wherein the Hon'ble Supreme Court has elaborately discussed the scope of Section 3 and also has explained what is meant by an ongoing project. The respondent has not disputed the fact that after commencement of the RERA Act, 2016, the respondent has obtained commencement certificate twice with regard to proposed construction. Under such circumstances, it was incumbent on the part of promoter to register the project with MahaRERA, but the respondent has not registered the project and thereby, the respondent has contravened the provisions of RERA Act, 2016.

9. Learned Advocate has further poignantly submitted that upon the plain reading of Section 3 of RERA Act, 2016, it is crystal clear that any project which has not obtained a completion certificate requires registration under Section 3, and in the instant case, the material on record clearly indicates that the respondent is attempting to make construction on the building wing-A. Mere submission of respondent that since they are not currently/actively advertising and therefore, registration under Section 3 is not required, cannot be accepted. With these contentions, the learned Advocate has

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submitted that appeal be allowed with cost and the respondent be directed to register the project with MahaRERA.

10. Succinct of argument of learned Adv. Amit Patil for promoter/respondent is that the material on record clearly indicates that the construction of wing-B and wing-C was completed way back in 2003 and 2004. The respondent has also obtained completion certificates with regard to buildings-B and C. So far as building-A is concerned, the promoter has received part occupation certificate. This signifies that building-A is also completed in all respect. The Home buyers are residing in building-A. The material on record clearly indicates that the promoter has completed the subject project in phase wise manner. The certificate of architect dated 27.10.2023 clearly indicates that the proposed ground coverage of building-A is 183.71 sq. mtr. Therefore, the area of proposed construction does not exceed 500 sq. mtr. Under such circumstances, the project is not required to be registered with MahaRERA.

11. Learned Adv. Amit Patil has poignantly submitted that Leena Garden co-operative society Ltd. has filed Regular Civil Suit (RCS) No. 1981 of 2018 against the respondent for declaration and injunction. The said suit is pending before the Civil Court, Pune. By filing the suit,

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society has already challenged revision of sanction plan dated 17.11.2017. Therefore, it can be said that the appellants have no cause of action to file a complaint against the respondent. Learned advocate has further submitted that Civil Court, Pune has already issued an injunction against the respondent restraining the respondent from carrying out any sort of construction on the site pursuant to the sanctioned plan dated 17.11.2017. Apart from this, the respondent has not made any offer nor any advertisement nor accepted any bookings which makes the respondent liable for registration of the said project with MahaRERA. Still injunction is running against the respondent, therefore, the respondent is not attempting to construct new flats on building-A. With these contentions, learned advocate has submitted that appeal be dismissed with cost.

12. After considering the submissions advanced by advocates appearing for respective parties, pleadings of the parties and material on record following points arise for our consideration and we have recorded our findings thereupon for the reasons to follow:

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Sr. No.	Points for consideration	Findings
1.	Whether impugned order warrants interference in this appeal?	As per final order.
2.	What order?	As per final order.

REASONS

13. On ensembling the pleadings of the parties and material on record reveals that the project namely "Leela Garden" consists of three wings viz. A, B and C. The promoter has completed B-wing somewhere in the year 2004 and has already obtained completion certificate on 02.03.2004. The promoter has also completed C-wing way back in the year 2003 and obtained completion certificate on 18.12.2003. So far as wing-A is concerned the promoter has constructed 14 flats in the year 2006 and obtained part completion certificate on 12.04.2006. It is also not in dispute that the respective flat purchasers have already occupied buildings A, B and C.
14. Complainants have claimed that the promoter has submitted

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on 17.11.2017 which indicates the intention of promoter to make further construction on the existing building-A. However, the promoter has not registered the project with MahaRERA. Thereafter, also the promoter has obtained commencement certificate (revalidated) dated 17.12.2021. Therefore, there is reasonable apprehension in the mind of the complainants that the promoter may commence construction at any time without registering the project with MahaRERA.

15. It is specific contention of the promoter that though the promoter has obtained commencement certificates, but the promoter has never advertised, marketed, sale or offer for sale or invited persons to purchase the flats and therefore, the project is not required to be registered with MahaRERA. It is further contention of the promoter that Leela Garden co-operative society Ltd. has filed Regular Civil Suit (RCS) No. 1981 of 2018 against the promoter for declaration and injunction and the same is pending before the Civil Court, Pune. Besides, the learned Civil Judge Senior Division, Pune has issued an injunction order restraining the promoter from carrying out any additional construction on the existing building. Still the injunction order is running against the promoter and therefore, the question of registration of project does not arise.

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16. It is significant to note that Civil Suit bearing (RCS) No. 1981 of 2018 is still pending in the Court of Civil Judge Senior Division, Pune. Matter in issue in the said suit, whether respondent is entitled to make construction on the existing building-A on the basis of commencement certificate dated 17.11.2017 and further commencement certificate (revalidated) dated 17.12.2021 is subjudice before the learned Civil Judge Senior Division, Pune. Apart from this, order passed by Civil Judge Senior Division, Pune in the said suit restraining the respondent from carrying out any sort of construction on the basis of commencement certificate dated 17.11.2017 is still in force.
17. It is not in dispute that after obtaining the commencement certificate dated 17.11.2017 by promoter, Leela Garden co-operative society Ltd. has filed suit bearing RCS No. 1981 of 2018 against the promoter for declaration and injunction. The material on record clearly indicates that the learned Civil Judge Senior Division, Pune has issued order against the promoter restraining the promoter from carrying out any additional construction on the existing building on the basis of revised plan dated 17.11.2017. It is also not in dispute that the said injunction order is still in force.

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18. It is also significant to note that during the course of the hearing, learned counsel for respondent Mr. Amit Patil has made a statement upon instructions that respondent is not going to make any sort of construction on the existing building because the order passed by Civil Judge Senior Division, Pune is not yet set aside.
19. Upon consideration of the above, moot question falls for our consideration herein is that in view of the injunction order issued by the Civil Court Pune, being already in operation and promoter will not undertake any further construction on the subject project, whether promoter can be directed to register the project at this stage as prayed for in the appeal and to which our answer is negative.
20. Considering the pleadings of the parties, material on record and injunction order passed against the respondent by a competent court we are of the view that without going into the merits of the case, the controversy between the parties can be set at rest to some extent. We would like to reiterate that injunction order issued by the Civil Court, Pune is in operation and learned Adv. Amit Patil appearing for respondent has made a categorical statement that respondent is not going to make any sort of construction on the existing building in view of injunction order passed by learned Civil

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Judge Senior Division, Pune. Therefore, In view of above, we are of the view that it is premature as on today, to decide and adjudicate the prayers made in the appeal inter alia for direction to respondent for registration of the subject project. Whenever promoter commences construction on the existing building-A that would give new cause of action to complainants to redress their grievance and to approach appropriate forum for appropriate relief. Therefore, we are of the view that liberty can be granted to complainants to approach to appropriate forum including to MahaRERA Authority to file fresh complaint for redressal of grievances if any, in the event, promoter commences construction on the existing building-A in future after the said injunction order is vacated/set aside/modified by the learned Civil Judge Senior Division, Pune or otherwise.

21. For the foregoing reasons, we have come to the conclusion that the captioned appeal cannot be adjudicated at this stage and thus impugned order does not warrant interference at this stage. Accordingly, we proceed to pass following order: -

ORDER

- a) Captioned Appeal No. U-6 of 2022 stands disposed of with a liberty to complainants to approach to appropriate forum including MahaRERA for redressal of their grievances, in the



event, promoter commences construction on the existing building-A in future after the injunction order is vacated/set aside/modified by the learned Civil Judge Senior Division, Pune or otherwise.

- b) Parties shall bear their own costs.
- c) Pending Miscellaneous Application, if any, stands disposed of.
- d) Copy of this order be communicated to learned Authority and the respective parties as per Section 44(4) of RERA Act, 2016.


(DR. K SHIVAJI)


(SHRIRAM R. JAGTAP)

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