

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

**Misc. Application No. 710/2021  
(Production of Documents)**

**In**

**Appeal No. AT006000000031666 of 2019**

**In**

**Complaint No. CC006000000055363 of 2018**

M/s. Mukund ARSS Developers & Ors. ... Applicants  
Versus

Mr. Jitendra Shivraj Thakur & Anr. ... Non-applicants

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*Adv. Rajesh Singh for Applicants.*

*Adv. Rajesh Thakur for Non-applicants.*

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

**DATE : 09<sup>th</sup> November, 2023**

**(THROUGH VIDEO CONFERENCING)**

**ORDER**

**[PER : SHRIRAM R. JAGTAP (J)]**

1] The applicants have moved this application for production of documents on the grounds set out in the application, mainly on the grounds that barring a few documents, most of the documents were neither in existence nor in the

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custody or in possession of the applicants at the time of hearing of the complaint.

2] Applicants are the promoters, Non-Applciant No. 1 is an Allottee and Non-Applciant no. 2 is a Private Limited Company. Being dissatisfied with the impugned order dated 19.06.2019 passed by learned Authority in Complaint no. CC006000000055363 of 2018; whereby, the learned Authority directed the Applicants herein to pay interest to allottee from 01.07.2018 till the actual date of possession, the applicants have filed the appeal.

3] The complaint was filed by allottee for interest on account of delayed possession of the subject flat. The applicants claimed that they could not complete the project within stipulated period because of *force majeure* factors which were beyond the control of applicants.

4] The City and Industrial Development Corporation of Maharashtra Limited (CIDCO) and the Maharashtra Coastal Zone Management Authority (MCZMA) and Coastal Zone Regulation Authority (CZRA) have the powers to take necessary measures for protecting and improving the quality of the coastal environment and preventing, abating and controlling environmental pollution in

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the coastal areas. Besides they have to deal with environmental issues relating to Coastal Regulation Zone.

5] On compliance of all the requisite procedures and regulations, the CIDCO has approved the plans and granted necessary permissions to the applicants for constructing the building on the property in question. There was long standing correspondence between applicants and these authorities while developing the subject project. The applicants have completed the construction of the residential-cum-commercial building in accordance with approved plans on the said property. The applicants have applied for occupation certificate but the CIDCO has refused to grant the occupation certificate on the ground that applicants have not submitted NOC of CRZ, as a result thereof, the applicants have no alternative but to approach MCZMA for NOC. However, at this juncture the applicants are unable to get NOC, as under new CRZ notification, the said property is affected under the CRZ zone. Though, the building is ready for occupation; however, in absence of occupation certificate, various home buyers have already commenced litigations against applicants before various authorities, including before the RERA.

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6] The applicants are willing to place on record the unfair and biased approach of officers of CIDCO as to the various projects which are also affected under the said new CRZ notification 2011 and new CZMP, the concerned builders and developers were granted occupation certificate, without insisting them the NOC of CRZ. There are various other adjoining projects which are directly affected under the new CRZ notification 2011; however, they have been granted the occupation certificates but at the same time and in similar case, in spite of repeated request; the officers of CIDCO mala-fidely are not granting occupation certificate to the project of the applicants.

7] It is further contention of the Applicants that they are also in possession of 143 minutes of meeting of Maharashtra Coastal Regulation Zone held on 04.02.2020; wherein, at Item No. 4 which was discussed about grant of OC to M/s. Vagad builders and developers Pvt. Ltd. having their project at plot no. 41, sector 47, Dronagiri and it was held that the commencement certificate to the said project was granted on 28.12.2012, when the said plot as per approved CZMP 1991 was outside of CRZ area. Admittedly, the subject project of applicants is much prior to the aforesaid project and in spite of this neither the CIDCO nor

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concerned Authorities have considered the request of the applicants to grant the occupation certificate in respect of the subject project.

8] It is further contention of the applicants that being aggrieved by the aforesaid unfair, bias and prejudicial approach of the officers of the CIDCO and MCZMA, towards applicants in granting occupation certificate to the subject project, on the ground of non-furnishing of NOC of CRZ, the applicants have preferred Civil Writ Petition (stamp) no. 12951 of 2021 before the Hon'ble High Court of judicature at Bombay seeking reliefs *inter alia* to direct the concerned Authorities to dispense with or not to insist for CRZ NOC in respect of the subject project and to issue occupation certificate to the project of the applicants. The said Civil Writ Petition is pending before the Hon'ble High Court.

9] It is further contention of the applicants that during the course of hearing of the complaint, the applicants had filed affidavit in reply dated 13.11.2018 and placed all the material on record thereby demonstrating that due to no fault of the applicants, the Authorities concerned are not issuing the OC to the subject project. However, the issue related to CRZ-NOC has come up thereafter, therefore due to all due diligence the

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documents related therewith could not been submitted before the learned Authority. Notwithstanding, the exercise of due diligence, the additional evidence, as sought herein to be produced, was not within the knowledge and control of the applicants; therefore, the applicants could not produce the same at the time of adjudication of the complaint. Even otherwise the documents which are required to be produced are essential for determining the controversy between the parties and the same would enable this Tribunal to pronounce the judgment.

10] The applicants have further contended that except few documents, almost all the documents were not in the custody of the applicants at the time of hearing of the complaint. Therefore, the same could not be produced before the learned Authority. However, the documents relied upon by the applicants are relevant for deciding allegations levied by the Allottee in his complaint about negligence on the part of the applicants for obtaining the occupation certificate in respect of the subject project. Hence, the same are necessary to be taken on record. The applicants have placed their reliance on following citations.

**i. Kurian Chacko Vs. Varkey Ouseph (AIR 1969  
Kerala 316)**

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- ii. **Santosh Hazari v. Purushottam Tiwari  
(Deceased) by L.Rs. (AIR 2001 SC 965**
- iii. **Union of India Vs. K.V. Lakshman & Ors. (AIR  
2016 SC 3159)**
- iv. **K. Venkataramiah Vs. A. Seetharama Reddy &  
Ors. (AIR 1963 SC 1526)**
- v. **Shyam Gopal Bindal & Ors. Vs. Land Acquisition  
Officer & Anr. (AIR 2010 SC 690)**
- vi. **North-Eastern Railway Administration,  
Gorakhpur Vs. Bhagwan Das (D) by L.Rs. (AIR  
2008 SC 2139)**
- vii. **Satyavati Ramprasad Ruia Vs. New India  
Assurance Co. Ltd. (AIR 2017 SC 2596)**
- viii. **Jiten K. Ajmera and Anr. V. M/s. Tejas Co-  
operative Housing Society (AIR 2019 SC 2311)**

With these contentions the applicants have prayed for  
production of documents.

11] The non-applicant no. 1 has remonstrated the application  
by filing reply contending therein that the application is  
mischievous and moved with sole dishonest intention to delay the  
hearing of appeal. The appeal came to be filed in November,

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2019. After two years of filing of appeal, the applicants are trying to produce additional documents. Record reveals that pleadings are complete, both the parties have filed written submissions and matter ripe to the stage of final hearing. This is sufficient to show the malafide intention of the applicants. The Application is false, frivolous and devoid of merits. The applicants have miserably failed to establish that the documents sought to be produced on record by the applicants were not within their knowledge or could not be produced in the complaint by them after the exercise of due diligence. The application for occupation certificate with respect to subject building has been submitted by the applicants to CIDCO on 14<sup>th</sup> March 2019; whereas, the impugned order came to be passed by learned Authority on 19.06.2019. The applicants could have easily placed on record the copy of said application before the learned Authority prior to 19.06.2019; but, no attempt was made by the applicants to produce the same before the learned Authority. The applicants have failed to give satisfactory explanation for non-production of said application before the learned Authority.

12] The non-applicant no. 1 has further contended that the documents, which are sought to be produced on record, are own

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documents of the applicants and were within the knowledge of the applicants. The documents were also in the custody of the applicants since inception, but the applicants did not produce the same in the complaint proceeding before the learned Authority and the applicants have not put forth the circumstances which prevented the applicants from producing the said documents before the learned Authority.

13] It is further contention of non-applicant no. 1 that the applicants have developed their case in appeal which is in consistent with the plea taken by them before the learned Authority. The documents sought to be produced on record are nothing but correspondence between the applicants and CIDCO which are subsequent to the impugned order dated 19.06.2019 and therefore, the applicants cannot be allowed to produce the said documents on record. The Civil Writ Petition no. 12951 of 2021 has no relevancy with instant appeal. The applicants are trying to influence this Tribunal by producing the copy of said writ petition on record. Most of the documents are in existence prior to 19.06.2019 and those were within the knowledge of applicants and despite this, the applicants did not produce the same in the complaint proceeding before the learned Authority. The

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documents are not relevant to determine the controversy between the parties. The documents will not help this Tribunal to adjudicate the matter in issue and therefore, application is liable to be rejected with cost.

14] We have heard learned counsel for respective parties. The submissions advanced by learned counsel for respective parties are nothing but reiteration of the contents of application and reply.

15] Section 53 of RERA talks about powers of Tribunal. Sub-section (1) of Section 53 of RERA lays down that appellate Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908, but shall be guided by principles of natural justice. Sub-section 4 of Section 53 empowers the Tribunal to take recourse to the Code of Civil Procedure in respect of the matters mentioned in clause (a) to (g) and the clause (b) talks about requiring discovery and production of documents. It is significant to note that the respondent has not disputed the fact that most of the documents were not in existence prior to impugned order dated 19.06.2019 and those documents came into existence after the impugned order dated 19.06.2019. It means those documents were neither in custody nor within the

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knowledge of applicants and therefore, the applicants could not produce those documents in the complaint proceedings.

16] On examination of application would show that the documents sought to be produced on record are nothing but correspondence between the applicant and the concerned authorities for obtaining occupation certificate. It is specific contention of the applicants that though the project was completed but the applicants could not obtain occupation certificate due to lackadaisical approach of concerned authorities and to substantiate their contention the applicants want to bring the correspondence on record. Therefore, we are of the view that the Tribunal can take recourse to the powers which are vested in Civil Court under the Code of Civil Procedure in order to meet the ends of justice. Apart from this Order 41 Rule 27 clause 1(b) of Code of Civil Procedure gives discretion to court to allow the production of documents so as to enable the court to pronounce judgment or for any other substantial cause. In our considered view, if the production of documents is allowed subject to admissibility and relevancy of the documents with regard to matter in issue at the time of final hearing, no prejudice or harm will cause to the respondent. We are of the view that merely

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because the production of documents is allowed does not mean that the documents are admissible in evidence or can be read in evidence. Admissibility and relevancy of the documents can only be tested at the time of final hearing of the matter.

17] For the foregoing reasons we are inclined to allow the application to produce documents on record. Consequently, we proceed to pass following order.

**ORDER**

1. Miscellaneous Application no. 710 of 2021 is allowed.
2. The production of documents is allowed subject to keeping contentions of the parties open regarding admissibility and relevancy of the documents to the matter in issue and subject further to the view of this Tribunal that the evidence sought to be adduced would enable it to pronounce judgment.
3. Cost will abide in main cause.

  
(DR. K SHIVAJI)

  
(SHRIRAM R. JAGTAP)

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