

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

**INTERIM APPLICATION NO. 27 OF 2023
IN
APPEAL NO. AT006000000053460 OF 2021**

1) Mira Bhayandar Municipal Corporation.]	
2) The Commissioner,]	
Mira Bhayandar Municipal Corporation.]	
]	...Applicants

IN THE MATTER BETWEEN

Gaurav Aster Co.Op. Hsg. Society Ltd.]	
]	...Appellant

-VS-

1) Ravi Developments]	
2) Narendra Kamlakar Patil]	
3) Narmada Kamlakar Patil]	
4) Mira Bhayandar Municipal Corporation.]	
5) The Commissioner,]	
Mira Bhayandar Municipal Corporation.]	
6) Mr. Ajoy Mehta, Chairperson,]	
Maharashtra Real Estate Authority.]	.Respondents

Adv. Mr. Minil Shah for Appellant.

Adv. Mr. Makarand Raut for Respondent No.1.

None for Respondent Nos. 2 and 3.

Adv. Mr. Mayuresh S. Lagu for Respondent Nos. 4 & 5/Applicants.

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

DATE : 5th October, 2023.

(THROUGH VIDEO CONFERENCING)

ORDER

[PER : SHRIRAM R. JAGTAP, MEMBER (J.)]

The applicants, who are Mira Bhayandar Municipal Corporation and the Commissioner of Mira Bhayandar Municipal Corporation respectively, have moved this application and sought two-fold reliefs viz. (1) to set aside order dated 28.4.2022 passed by this Tribunal whereby it has been ordered that appeal to proceed ex parte against the applicants (respondent nos.4 and 5) and (2) the complaint and the instant appeal be dismissed against the applicants in view of the provisions of Section 31 of RERA Act 2016.

2] The brief facts, which are necessary for disposal of the present application, are that-

The applicants are respondent nos.4 and 5 respectively in complaint filed by the appellant. The appellant did not serve notice of the complaint on the applicants. The impugned order does not disclose that the applicants were served with notice of the complaint. The applicants tried to search the records with respect to complaint in its office, but the applicants could not trace out the same. Therefore, the



applicants did not remain present in the complaint proceedings.

3] So far as the present appeal is concerned, the applicants did not get any opportunity to file its say because the applicants did not receive any email about listing of the appeal till 13.10.2022 when for the first time, the Advocate for the applicants received link for matter scheduled on 14.10.2022. On 14.10.2022 the Advocate for the applicants tried to address the Court, but due to technical glitch i.e. network issue the attempt of the Advocate of the applicants went in vain. On 23.11.2022 the Advocate for applicants had successfully represented the applicants in the appeal, as a result thereof the applicants were allowed to file appropriate application for setting aside exparte order dated 28.4.2022. Because of the aforesaid reasons, the applicants were prevented from appearing in the appeal.

4] It is further contention of the applicants that the complaint as well as the appeal are hit by the principles of misjoinder of parties. The applicants are neither necessary nor proper parties to the complaint and appeal. As per provisions of Section 31 of RERA Act, 2016 the aggrieved person can file complaint only against the promoter, allottee or the real estate agent as the case may be. Therefore, the complaint as well as appeal ought not to have been filed against the applicants. The applicant No.1 is an independent statutory body

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established under the provisions of Maharashtra Municipal Corporation Act, 1949. Therefore, complaint as well as appeal are not maintainable against the applicants.

With these contention the applicants have prayed to allow their Interim Application.

5] The appellant has filed reply to this application and remonstrated the application contending that the application nowhere discloses any sufficient reason preventing the applicants from appearing before this Tribunal on listed dates as the applicants have already filed their vakalatnama on 7.12.2021 through Advocate Mr. Mayuresh S. Lagu in the matter and the act of non-appearance by the applicants is deliberate and intentional. The present application is filed at belated stage having no reason and is liable to be dismissed with exemplary costs. The name of Advocate Mr. Mayuresh Lagu has been displaying on the cause list from very first hearing. The V.C. link of this Tribunal has been shared with learned Advocate for the applicants by email. Apart from this the appellant has also filed affidavit of service on 8.1.2022 which discloses sufficient proof of service upon the applicants. On consideration of affidavit of service, this Tribunal was pleased to pass order dated 28.4.2022. The applicants in collusion with respondents-developer have come to this Tribunal with unclean hands

with an intention to delay the proceedings.

6] The appellant/non-applicant has further contended that so far as the appeal is concerned, pleadings are complete and appeal has reached final hearing stage. The order dated 28.4.2022 is correctly passed by this Tribunal after taking into consideration the proof of service upon the applicants.

7] The appellant/non-applicant further contended that since appeal is filed impugning the order dated 15.9.2021, the applicants cannot take stand for the first time in appeal that they were not served with complaint copy. Besides the applicants have never denied that they were not served with present appeal. Advocate Mr. Mayuresh Lagu who is representing the applicants has shared his contact details with the Tribunal. He has been duly intimated about V.C. hearing by this Tribunal. The applicants had an opportunity to appear in the matter or to enquire about next date of hearing in the matter, but applicants did neither. The applicants had never tried to know the status of the appeal for a period of more than a year which itself proves sheer negligence on the part of the applicants. The appellant and its members have been continuously facing illegal act of the respondent no.1 and applicants.

8] It is further contention of the appellant/non-applicant that if present application is allowed at such belated stage, the appellant,

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who is already suffered for delayed project for more than 10 years, will suffer irreparable loss and injury as the respondent no.1 has failed to complete the project and also failed to provide most fundamental necessity of water connection from the applicants and sanctioned access road. The appellant has made multiple representations before the applicants for water connection and other reliefs, but the applicants intentionally failed to provide satisfactory reply to any of the representations of the appellant. The applicants being Planning Authority, it is their obligation to contest each and every matter whether necessary party or misjoinder of the party. It is further contention of the appellant/non-applicant that the applicants are blowing hot and cold at the same time, the applicants on one hand state that they are not necessary party to the proceedings and there is misjoinder of party. However, on the other hand the applicants are trying to get order dated 28.4.2022 set aside by filing present application. Since the applicants had ample opportunities to put up their contention by filing detailed reply, which the applicants have intentionally ignored and avoided doing so till passing of the exparte order dated 28.4.2022.



With these contentions the appellant/non-applicant has prayed for dismissal of application with exemplary costs.

9] We have heard learned Advocate Mr. Mayuresh Lagu appearing for the applicants and learned Advocate Mr. Minil Shah for appellant/non-applicant.

10] The submissions of the learned Advocates appearing for respective parties are nothing but reiteration of contents of application and reply.

11] After considering the submissions advanced by the learned Advocates for respective parties, material on record and pleadings of the parties only pivotal point arises for our determination is whether appeal as well as complaint are maintainable against the applicants (respondent nos.4 and 5) ? to which our answer is in the negative for the reasons to be followed.

REASONS

12] A plain reading of Section 31 of RERA Act, 2016 reveals that for filing complaint with the Authority or Adjudicating Officer, the aggrieved person must satisfy two imperative conditions viz. (1) there is violation or contravention of the provisions of RERA Act or the Rules and Regulations made thereunder by the respondent and (2) the complaint must be against the promoter, allottee or the real estate agent as the case may be. On scanning the averments made in the complaint as well as grounds put forth by the appellant in the appeal



memo would show that it is specific contention of the appellant that in March 2019 the respondent no.1 had attempted to carry out illegal and unauthorized construction which constrained the appellant Society to address an email to respondent nos.4 and 5 (Applicants) whereby the appellant society requested the applicants to restrain the respondent no.1 from carrying out illegal and unauthorised construction. The applicant no.1 being Planning Authority is empowered to stop illegal work. Despite this there was no response or action from the applicants. It is further case of the appellant that on or around 3.11.2021 the respondent no.1 demolished part of the boundary wall adjoining to the project without any permission, intimation or consent of the appellant which created apprehension in the mind of the appellant that respondent no.1 may carry out amalgamation of the subject project to cause great harm and prejudice to the Members of the appellant by not providing sanctioned access road. Ultimately the appellant has left with no option but to file complaint against the respondents including applicants. The only relief sought against the applicants by the appellant is that the applicants be directed to provide water connection and applicants be restrained from granting any sanctions and permissions with respect to access road pertaining to land Survey No.26, Hissa Nos.4 and 5, Village Ghodbunder, Taluka & District Thane



till respondent no.1 completes subject project in its entirety.

13] It is significant to note that it is not the case of the appellant that the applicants have violated any of the provisions of RERA Act, 2016 or the Rules and Regulations made thereunder. It means that there is no violation or contravention of the provisions of RERA Act, 2016 or the Rules and Regulations made thereunder on the part of the applicants.

14] We would like to reiterate that plain reading of Section 31 of RERA Act 2016 would reveal that there must be violation or contravention of provisions of RERA Act 2016 or the Rules and Regulations made thereunder. On consideration of allegations levelled against the applicants and reliefs sought against them in the complaint, only pivotal question falls for our consideration is whether the learned Authority has competence to entertain the complaint and grant reliefs sought against the applicants, to which our answer is in the negative. The reliefs sought by the appellant as above do not fall within the purview or ambit of RERA Act, 2016. Therefore, we are of the considered view that the learned Authority does not have jurisdiction to entertain the complaint and grant relief sought by the appellant in complaint against the applicants.

15] There is one more reason as to why we are of the



considered view that the complaint as well as the instant appeal are not maintainable against the applicants. Any aggrieved person may file complaint with the Authority or the Adjudicating Officer as the case may be under the provisions of Section 31 of RERA Act, 2016 only against the promoter, allottee or the real estate agent as the case may be. Admittedly, the applicants are not promoters, allottees or the real estate agents. It means the appellant has failed to satisfy two pivotal conditions enumerated in Section 31 of RERA, 2016 to entertain the complaint by the Authority. Considering the reliefs sought by the appellant in the complaint and in the instant appeal, we are of the view that the appellant has efficacious remedy to redress its grievance before appropriate forum. Thus it can be said that applicants are neither necessary nor proper parties to complaint and appeal for determining the controversy between appellant and respondent no.1. The complaint and appeal are hit by misjoinder of parties. Though the learned Authority has no competence to entertain the complaint and to grant reliefs sought in the complaint against the applicants, despite this the learned Authority issued some directions to the applicants while disposing of the complaint. Therefore, we are of the view that impugned order dated 15.9.2021 warrants interference and is liable to be set aside to the extent of applicants.



Therefore, for the foregoing reasons we come to the conclusion that the complaint as well as instant appeal are not maintainable against the applicants. Consequently, we proceed to pass following order –

ORDER

- 1] Application is partly allowed.
- 2] Impugned order dated 15.9.2021 passed in Complaint No.CC006000000078618 of 2019 by the learned Authority is set aside to the extent of applicants.
- 3] The complaint as well as instant appeal stand dismissed against the applicants.
- 4] Parties to bear their own costs.
- 5] A copy of this order be communicated to the parties concerned and the learned Authority as per Section 44(4) of RERA, 2016.


(DR. K. SHIVAJI)


(SHRIRAM R. JAGTAP)

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