

Ganesh

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 1261 OF 2024

Ratna Sindhu SRA Co-operative Housing Society
Ltd ...Petitioner
Versus
The State of Maharashtra & Ors ...Respondents

WITH
INTERIM APPLICATION (L) NO. 2577 OF 2024
IN
WRIT PETITION NO. 1261 OF 2024

Omkar Realtors & Developers Pvt Ltd ...Applicant
In the matter between
Ratna Sindhu SRA Co-operative Housing Society
(Proposed) ...Petitioner
Versus
The State of Maharashtra & Ors ...Respondents

Mr SS Kanetkar, i/b VH Narvekar, for the Petitioner.
Mr Milind More, Addl GP, for the Respondent-State.
Mr Mayur Khandeparkar, i/b Uma Palsuledesai, for Respondent No
4-SRA.
Mr Shyam Mehta, Senior Advocate, with Shakeeb Shaikh, Jamshed
Master & Haaris Reshamwala, i/b Diamondwala & Co, for
Respondent No 6-Developer.
Ms Pooja Yadav, for the Respondent-BMC.
Mr Babulal Varma, Director of Respondent No 6, present.

CORAM G.S. Patel &
Kamal Khata, JJ.

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signed by
GANESH
SUBHASH
LOKHANDE
Date:
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DATED: 22nd March 2024

PC:-

1. After some discussion in Court, we believe it is possible to have part of the dispute resolved. We say ‘part’ because there is one element that is yet pending adjudication before the learned single Judge (Sandeep Marne J). We will not be addressing the issue/s that are before Marne J. Some portion of what follows in this order, and which has emerged after considerable discussion in Court, will be affected by the decision of Marne J.

2. Some context is necessary. The developer, Omkar Realtors & Developers Pvt Ltd (“**Omkar**”) represented by Mr Mehta before us, is engaged in the development of a very large property in the Parel-Sewri Division. The size is several tens of thousands of square meters. The ownership of the property is not our concern today but, and this should be familiar to anybody in law in this Court, merely saying that the property was once held by a Pittie family entity will give some idea of the sheer dimensions of the land holding.

3. As a simple illustration, the total number of tenements involved is over 4500. These are just the rehab tenements. The free-sale component is separate.

4. On previous occasions, when there were allegations of Omkar being in arrears of transit rent, we accepted a figure conveyed to us by the Slum Rehabilitation Authority (“**SRA**”) that the amount in arrears was Rs 22.39 crores and we required that to be brought into Court. That was never done until as recently as the day before

yesterday. We held that there could not be continued non-compliance. We asked that the principal officers of Omkar be in Court. They came. There was a discussion and a possible solution emerged. They are at our directions present in Court even today and have instructed Mr Mehta in our presence.

5. We have no hesitation in saying that an overly doctrinaire and rigid approach to previous orders sometimes ill-serves and even defeats the more desirable objective of fashioning an appropriate resolution to the disputes. It is true that we had demanded a deposit. It is true that there was non-compliance. But if a solution presents itself today, there is no reason for the Court to turn away from that resolution of all disputes by simply insisting on the deposit and compliance with the previous orders. It is always within the power of a Court to modify a previous order if this is in the interest of both sides and serves the cause of justice.

6. Accordingly, we immediately recall our previous order of a deposit of Rs 22.39 crores. It will be substituted by the present order.

7. The rupee amounts that we are mentioning in this order today have come after discussion in Court and we are basing these on statements made by Mr Mehta on instructions from Omkar's directors who are present in Court before us.

8. We also immediately clarify that this is in the peculiar facts and circumstances of this case pertaining to this Society, this

particular rehab building (as noted below) in this particular project, for Omkar may well have other projects ongoing elsewhere (or other rehab buildings for other society in this very scheme). We do not intend this order to serve as a framework or as a template for other projects, nor will our order today be read as absolving Omkar of its responsibilities and liabilities elsewhere. We confine ourselves to the present Petitioner Society and its rehab building.

9. On this vast project site there are several societies. The only society that is before us is the present Petitioner the Ratna Sindhu SRA Co-operative Housing Society Ltd (“**Ratna Sindhu**”). The total number of members of the society is 228. This is not contentious either.

10. Omkar presently faces a difficulty because on the allegation of arrears of transit rent it has received two stop work notices relating to this Society. The consequence is that work on the corresponding free-sale component is at a halt. The rehab work alone is going on. But in slum projects, what can be built in the free-sale component is determined by what has been built in the rehab component. The free-sale component is an important source of funding and financing for any developer, even for the rehab component. This is the simplest and most direct explanation for the complex financial cash flow planning that goes into such large-scale real estate development projects.

11. In this order we are, therefore, separating the two components, namely the dispute as to the arrears and the rate of

transit rent from the question of construction and completion of Ratna Sindhu's rehab building. The reason is self-evident. Ratna Sindhu has two demands. One is of course in regard to the transit rent. But it is equally concerned that the rehab wings in its building must be completed as soon as possible, and eligible members must be put in possession of their rehab units. It seems to us self-defeating for Ratna Sindhu to hold up the rehab redevelopment because of its disputes relating to transit rent with Omkar. Our endeavour today is to find a workable solution or a bridge between these two competing demands and we believe we have been able to achieve that purpose.

12. The dispute regarding the financials is at two levels. Omkar claims that it is entitled to some form of an amnesty i.e., that it is not required to pay periodic increments in the agreed amount of transit rent. It also says that it has paid without increments until December 2023 but has not been given credit by Ratna Sindhu fully for these past payments and there is therefore an accounting discrepancy.

13. The question of the rate and the so-called amnesty is the one that is pending before Marne J. Much will depend on the outcome of that. If Omkar is found to be correct that it is entitled to the benefit of an amnesty, then the rate payable to Ratna Sindhu's members will be different. If it is bound to pay the annual increment and there is no amnesty, its financial exposure will be higher. Incidentally, when we say 'amnesty', this is only intended to convey Omkar has merely sought to give itself a holiday or an exemption from paying increments. There is no amnesty scheme or policy from

SRA or the Government. It is Omkar's self-endowed amnesty that is under challenge. We are saying nothing further in that regard.

14. It is also not in dispute that there is today with SRA a deposit of Rs 5.60 crores, made on behalf of Omkar with SRA specifically for Ratna Sindhu members. Today Mr Mehta has instructions to state that on a rough and ready calculus, and in what he describes as a worst-case scenario for Omkar, an additional amount of Rs 6.62 crores may be found ultimately payable. His instructions are to state that this amount will be deposited by or on behalf of Omkar with SRA by 10th April 2024. We do not require Omkar to file an Affidavit to this effect since these instructions have been conveyed through Mr Metha to us in open Court by Omkar's directors.

15. With this, the financial claims of the Ratna Sindhu members can thus be isolated from the ongoing construction of the Ratna Sindhu rehab building (and corresponding free-sale) which can then be unlocked and opened up for further development.

16. Before we proceed to those directions, there is one final element that needs to be taken into account and that is the question of ongoing transit rent. Necessarily, the amount payable by Omkar depends on the outcome of the litigation before Marne J. Today, therefore, we do not need to make a specific direction in regard to a rupee amount for future ongoing transit rent but we will set out a working protocol by which this will be taken care of after the decision of Marne J so that parity is maintained between all eligible members of Ratna Sindhu.

17. We proceed now to the question of the ongoing development. Obviously, the two stop work notices will stand quashed and withdrawn. With this Omkar will be at liberty to proceed with the construction of the Ratna Sindhu rehab building and the corresponding free sale component.

18. Mr Khandeparkar for the SRA states that only the two stop work notices that are involved in this Petition can be released by this Court. If there are any other stop work notices relating to other societies, those cannot be affected. There are some challenges in a PIL before the First Court where Omkar is a respondent. Mr Khandeparkar is correct. Omkar is entitled to continue construction of the rehab buildings and of the sale component in terms of the Letter of Intent (“LoI”) for the Ratna Sindhu component but we make it clear that we have not addressed the question of any other stop work notice regarding that may have been issued regarding any other societies on the same project site. Obviously, we cannot. We are today concerned with the Ratna Sindhu society. No other society is before us. The present order is not to be read as vacating any orders that the SRA may have passed or notices that it may have issued in relation to or arising out of disputes with other societies, if any. Equally, what we are setting out today is peculiar to the facts and circumstances of the Ratna Sindhu component of the project. In any case, we do not believe that when this Petition is before us, we are prevented from finding a workable solution that presents itself.

19. There is a chart tendered by Mr Mehta. It is marked “X1” for identification with today’s date. A scan is annexed to this order. It

shows the construction progress of various rehab buildings. We are concerned with the table at the very foot which shows the proposed plan for reaccommodation of 228 Ratna Sindhu members. Sixty of them are to be accommodated by August 2024, in two wings called R4C and R4A1 in a rehab tower called Rehab Tower R3 with two wings A and B. By June 2025, 44 Ratna Sindhu eligible members are to be reaccommodated in R3A and by May 2026 124 eligible members will be accommodated in R3D.

20. The process of allotment is not in Omkar's hands. This follows a stated SRA policy. Those who were vacated first will be in the first round of lottery to be conducted by the SRA. This will then be repeated for the June 2025 phase and for the May 2026 phase.

21. Obviously, this means that there is now a difference in the transit rent (if not the rate, then at least the period) for the Ratna Sindhu members depending on the phase in which they are to be put in possession. Transit rent will stop on the date of possession. Thus, the 60 members who are to be reaccommodated in August 2024 will not get transit rent beyond August 2024 when they are put in possession but those who are to be reaccommodated in June 2025 and May 2026 will continue to get transit rent until their turn for allotment and reaccommodation arises.

22. But the names of these 60 people are again not for Omkar to decide. That record is maintained by SRA. Mr Khandeparkar states that a draft list of the 60 persons to be taken up in the first round of allotment will be notified. The SRA will set up a schedule for

hearing any disputes or objections to that list or assessing priorities. Ultimately, the SRA will indicate to the members of the Society which of the 60 persons are being taken up in the first lottery for Phase 1.

23. All transit rent will have to be deposited with SRA, and the SRA will make disbursements to the individuals entitled to transit rent (i.e., not to the Society). This is important because there should not be an accounting error going forward and the SRA for the purposes of monitoring transit rent must have an accurate record of which member is entitled to how much transit rent and until what date. If accuracy is not maintained, there may be disputes internally within the Society. We demand complete accuracy and transparency and proper record keeping in the matter of disbursement of transit rent, at all times..

24. The exact amount of the transit rent that is payable would be known after the decision of Marne J. We accept Mr Mehta's undertaking that once that amount is made known, if there is any higher rate that is payable for the past, any addition after adjusting for the deposit that is with the SRA (including Rs 6.62 crore) is to come in by 10th April 2024 and that amount will be paid by or on behalf of Omkar. We also accept his undertaking that ongoing transit rent will be paid quarterly in advance. It will not presently be required to deposit two years' transit rent in advance, because the issue of arrears has been addressed.

25. With these provisions in place, what will remain is a determination depending upon the outcome of the litigation before Marne J of the exact financial liability of Omkar in regard to the arrears, the clearance of those arrears (covered by the deposits and the undertaking) and the payment quarterly in advance of future ongoing transit rent (also covered by the undertakings that we are accepting today as undertakings to the Court).

26. There was one other dispute which we will get rid of immediately. At some point Mr Kanetkar for the Society was encouraged to submit that the areas of the flats were to be 335 sq ft. There is no question of us rewriting any provision of a contract. The contractual documents provide for 225 sq ft for commercial and 269 sq ft for residential. Mr Khandeparkar states that the requirement is a minimum of 300 sq ft. Mr Mehta agrees and states that residential tenements are being provided of 300 sq ft each and not less. We accept that statement. We are returning no finding in regard to this submission by Mr Kanetkar. It is not possible for us to pass what are effectively decrees for specific performance in our writ jurisdiction..

27. Mr Kanetkar submits that the withdrawals ought to be permitted by the society. We are not allowing this. The society may have eligible and ineligible members. The last thing that anybody needs is for an internal dispute in the society about who has received how much transit rent to be raised because this will only interfere with the orderly progress of the project and will cause endless trouble for the SRA. Mr Khandeparkar is therefore correct in demanding that the society must furnish the SRA with a list of all

eligible members and their names, their bank account details and the corresponding IFSC codes. We have had an experience before where payments have been demanded by persons other than eligible members on the basis that a son or a daughter or a son-in-law should be paid on behalf of the eligible member. We are not permitting this at all. The payment will go to and only to the account of an eligible member of the Ratna Sindhu Society. If a member has passed away, then the SRA must be informed who the heirs are and there must be enough documentation provided to the satisfaction of the SRA about which of these heirs is entitled to receive that transit rent. If there is any dispute amongst any member's heirs, the SRA will not distribute that amount but will keep the same in deposit invested in a reasonable manner so that when the heirs are able to resolve their disputes or obtain appropriate representation they can then receive the amount from the SRA.

28. Whenever the SRA makes disbursements, it will ensure that a tabulated statement is kept ready and the copy of this is sent by email to the society and to the Advocates for Omkar. The last thing that we want is for individual members to claim that they have not been paid certain amounts in transit rent and then for this Court to have to go through an exercise of a reconciliation of respective accounts. We stress that accuracy and transparency in financial record keeping is absolutely critical to keeping matters on an even keel going forward.

29. With these safeguards and directions, the construction on the Ratna Sindhu rehab building (all wings) and the corresponding free sale component can re-commence.

30. We do not believe any further orders are required.

31. For the assistance of the learned Single Judge, and should he find it necessary, a copy of this order may be placed before him. We say this because if Omkar does not succeed in its case before the learned Single Judge there may be an additional amount that is payable and quite conceivably the learned Single Judge may need to make appropriate directions as to when that additional amount has to be brought in. We believe it would be improper for us to make any directions in that regard today since we are not hearing the matter that is before the learned Single Judge.

32. The Petition is disposed of in these terms.

(Kamal Khata, J)

(G. S. Patel, J)

CORAM: SHRI G. S. PATEL J &
Shri Kamal Khute
 Date: 22/03/2024

"X-1"

X-1
 22/3/2024

22/03/24

Bhoiwada					
Bldg. Name	Wings	Floors	OC Obtained	OC Obtained Date	OC obtained for total no of Residential , commercial , Residential cum commercial and existing amenities
Rehab Bldg. 1	Wing A	Grd to 23rd floor	Full OC Obtained	05.09.2019	329
	Wing B	Grd to 23rd floor			319
	Wing D	Grd to 22nd floor			393
	Wing F	Grd to 1st, 3rd to 22nd floor			142
	Wing C	Grd to 23rd floor	Full OC Obtained	04.11.2020	361
	Wing E	Grd to 22nd floor			433
Total - A					1977
Rehab Bldg. 2		Grd to 18th Pt floor	Full OC Obtained	17.11.2020	56
Total - B					56
Composite Bldg. 1_Rehab	Wing A	Grd to 23rd floor	Full OC Obtained	04.11.2020	159
	Wing B	Grd to 23rd floor			175
	Wing C	Grd to 23rd floor			162
Total - C					496
Rehab Bldg. 3 (Part A)	Part Wing A	2nd to 23rd floor	Part OC Obtained	02.06.2022	403
	Part Wing A	Base to 1st & 24th to 40th part floor	Part OC Obtained	20.06.2022	346
Total - D					749
Total - A+B+C+D					3278
Bldg. Name					Balance OC to be obtained for total no of Residential , commercial , Residential cum commercial and existing amenities
Rehab Bldg. 3 (Wing A & B Balance)					934
Rehab Building No. 4					309
Existing amenities in layout					13
Total Balance for OC (E)					1256
Total - A+B+C+D+E					4534
Disclaimer :Out of the total 4534 units we have allotted 3278 units and balance 1256 units shall be allotted to slum dwellers as per the lottery conducted by the SRA					
Ratnasindhu - Expected Rehab Handover timeline*					
		R3A & R3B			Grand Total
		R4C & R4A1	R3A	R3D	
Ratnasindhu Tenants		60	44	124	228
Handover timeline		Aug-24	Jun-25	May-26	
* Subject to SRA lottery					