

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE CIVIL JURISDICTION**

WRIT PETITION NO.7189 OF 2019

Clover Developers Private Limited

Th.its Director

Raj Kanaksden Bhansali and

Dhiren Nadu

.. Petitioners

vs

Clover Highlands Co-op

Housing Society Limited & anr.. Respondents

..

Mr.Y.S.Jahagirdar Sr.Counsel with Mr.Milind S.Prabhune

I/b Mr.S.S.Aradhya for Petitioners

Mr.S.S.Panchor Asst.Govt.Pleader for State-Respondent nos.2 & 3

CORAM : NITIN W.SAMBRE, J.

DATE: 15 July 2019

P. C.

1. The respondent no.1-Co-operative Housing Society moved an Complaint/Application under the provisions of section 11 before the Registrar under the provisions of the Maharashtra Ownership of Flats, Act, 1963 for ordering deemed conveyance.

2. The petitioner raised a preliminary objection of maintainability of such an application, on the ground that the respondent-society initially approached the Consumer Disputes Redressal Forum

which complaint was withdrawn on 15 November, 2017 and was returned to the respondent no.1 for its presentation, before the appropriate Forum. The objection before the Registrar was that, instead of presenting such a complaint before the proper forum, a fresh complaint under section 11 be taken out, which will act as a estoppel against the respondent no.1. As such, this petition.

3. Heard Mr.Y.S.Jahagirdar learned senior counsel for the petitioner at length.

4. The perusal of the order impugned, thereby rejecting the preliminary objection preferred by the petitioner *prima facie* demonstrates that the petitioner-developer since has failed to execute the conveyance deed, the same has prompted the respondent no.1 to take out proceedings before the District Consumer Redressal Forum. In the said proceedings, the complaint was returned to the respondent no.,1 for presentation of the same, before the appropriate Forum/Authority. In the order granting return of the complaint, the authority has specified that such a complaint was to be presented to the appropriate Forum/Authority.

5. The fact remains that the respondent no.1 has every statutory remedy to approach the Registrar with a prayer for grant of deemed Conveyance under section 11 of the Act. If the respondent no.1 has chosen a remedy available to it under the statute, in such an eventuality, estoppel will not operate. There is no substance in the petition. It is dismissed in-limine.

6. Apart from the aforesaid issue, on an order of return of the complaint and presenting of the same before the appropriate Forum/Authority, certain other issues as regards pendency of the Suit, proceedings initiated by the parties herein against each other, are also brought to the notice of the said authority. The decision on the present petition, will not preclude the petitioner from raising an objection/defence as is permissible under the law.

(NITIN W.SAMBRE, J)