

**In the High Court at Calcutta
Constitutional Writ Jurisdiction
Original Side**

The Hon'ble Justice Sabyasachi Bhattacharyya

**WPO No. 2325 of 2022
IA No: GA 1 of 2023**

**Sunny Rock Estates & Developers Private Limited
Vs.
Competent Authority and others**

For the petitioner	:	Ms. Manju Agarwal, Adv.
For the respondent no.3	:	Mr. Devajyoti Barman, Adv. Ms. Sanjukta Basu Mallick, Adv.
Hearing concluded on	:	08.09.2023
Judgment on	:	06.10.2023

Sabyasachi Bhattacharyya, J:-

1. The petitioner is a developer of a residential housing complex. The respondent no.3 is one of the flat owners in the said complex.
2. In the writ petition, the developer has challenged an order passed by the Competent Authority under the West Bengal Apartment Ownership Act, 1972 (hereinafter referred to as "the 1972 Act"), whereby the Competent Authority accepted a declaration in Form A submitted by the respondent no.3 on behalf of some of the flat owners and calling upon them to submit the accepted Form A for registration within 120 days from the return of Form A.
3. Learned counsel for the petitioner argues that the plot of land where the disputed apartment has been constructed was allotted to the National Cooperative Consumer Federation of India Limited (NCCF)

vide letter dated February 27, 2006 for the exclusive purpose of constructing building for residential housing complex for cooperative societies in terms of the agreement dated May 30, 2006 and deed of conveyance dated December 26, 2006, entered into between the NCCF and the West Bengal Housing Infrastructure Development Corporation Limited. The NCCF (respondent no.2) was granted exclusive right to develop the land for the purpose of constructing a residential complex for cooperative societies. Learned counsel places reliance on the relevant agreement and deed to highlight such contention.

4. The exclusive right to develop the property was given to the petitioner. A deed of rectification was executed on September 5, 2008 for rectifying the principal deed in respect of certain minor corrections. In terms of one of the rectified clauses, “purchasers belonging to various walks of life other than member of NCCF” was also incorporated, to be read in consonance with Section 87 of the West Bengal Cooperative Societies Act, 2006 (in brief, “the 2006 Act”) and Rule 131 of the West Bengal Cooperative Societies Rules, 2011 (for short, “the 2011 Rules”). The said rectification, it is argued, was clarificatory in nature and did not alter the basic purpose of the cooperative society.
5. The petitioner contends that, apart from paying the entire consideration in terms of the agreement, the petitioner constructed a separate building containing LIG/MIG flats far below cost price. In terms of the development agreement, the petitioner got the plan

sanctioned, after which the NCCF handed over vacant possession of the land to enable the construction. The entire housing project was completed in the year 2015 and a completion certificate issued.

6. Learned counsel for the petitioner argues that the petitioner sold and delivered the flats to various persons on the terms and conditions as contained in the Standard Terms and Conditions (STC). The STC is binding on all purchasers, but some of them have refused to pay full consideration amount and other required charges for monthly maintenance. Instead, such flat owners, ignoring the repeated requests of the petitioner to form a cooperative society, are seeking to take control of the management of the premises without clearing all dues of the petitioner by forming a Owners' Welfare Association which is not a cooperative society at all.
7. It is argued that it was the incumbent duty of the respondent no.1-authority to enquire whether the formation of the owners' association was sanctioned by the 1972 Act, before accepting for registration the Form A submitted by respondent no.3, acting at the behest of the recalcitrant flat owners.
8. Learned counsel submits that the premises contain more than 285 flats and the respondent no.3 represents only a few of them who have vested interest in the premises.
9. The attempt to form such association, it is argued, is *de hors* the 2006 Act as well as the 1972 Act.
10. A group of people led by the respondent no.3 filed a case in the Consumer Forum against the developer/petitioner, provoking other

flat owners against the petitioner towards non-payment of maintenance charges. The same group of people, it is alleged, have unitedly started a movement against the formation of a cooperative housing society, going against the documents which are the genesis of the rights of the flat owners.

11. It is argued that the flat owners are bound by the clauses of the STC and formation of a cooperative society is an integral part of the same.
12. Learned counsel for the respondent no.3 opposes the submissions of the petitioner and argues that formation of a cooperative society is not integral to the purchase of the flats. In fact, by a rectification, the Standard Conditions incorporated sale of the flats to persons from all walks of life.
13. It is argued that the formation of a cooperative society in West Bengal requires the flat owners to satisfy certain pre-requisites. However, the flats were sold indiscriminately to people from all walks of life, many of whom do not satisfy such pre-conditions. Hence, the formation of a cooperative society was deliberately waived by the petitioner while selling the flats to third parties. It is further argued that there is no contravention of the 1972 Act in the acceptance of the Form A submitted by the respondent no.3 by the Competent Authority.
14. Learned counsel for the respondent no.3 submits that the said respondent represents the majority of the flat owners and, as such, is entitled in law to seek registration of an association. The petitioner or its predecessor-in-title never intended to form a cooperative society

in the subject-property, for which neither the HIDCO nor NCCF ever devised any mechanism to ensure that the flats are sold only to persons eligible to become members of a cooperative society. It is submitted that a large number of the present flat owners are from outside West Bengal and foreign passport holders.

15. The NCCF (respondent no.2), it is contended, only intended to commercially exploit the property, for which it was to get all sale proceeds from the sale of flats by the developer/writ petitioner, to be deposited in a separate bank account of the respondent no.2. However, the same was never done or followed. On the contrary, a total of Rs.10 Cr. on account of consideration of the sale of land was paid by the writ petitioner to the HIDCO on behalf of respondent no.2. To facilitate smooth sale of the flats, a deed of rectification was executed, incorporating the lines “people from all walks of life” in the eligibility criteria to buy the proposed flats. The allegations of arrears of maintenance are disputed. It is submitted that the same is not a subject-matter of dispute in the present writ petition. In fact, it is argued by the respondent no.3 that the flat owners wrote countless letters of complaints as to how the writ petitioner, even after collecting huge maintenance amount, has kept the whole complex in shambles and disarray, depriving the flat owners of the basic amenities and kept a sinking fund of Rs. 2.4 Cr. with it for unlawful gain.
16. Learned counsel for the respondent no.3 argues that a conjoint reading of Sections 2, 10, and 10A of the 1972 Act makes it evident

that no part of the applicability of the act necessary for acceptance of Form A was infringed in the instant case. The respondent no.3 and the other applicants, being owners of the subject-property in majority, are entitled to apply for acceptance of Form A.

17. It is argued that the word 'inquiry' as envisaged in Section 10A (2) (a) of the 1972 Act relates only to details of declaration made under Section 10. After several trials and errors since the year 2021, the corrected Form A was finally accepted on May 18, 2022 by the respondent no.1-Authority. Previous similar applications were rejected for technical defects.
18. The said process is being sought to be frustrated by the petitioner. It is reiterated that the 1972 Act squarely applies. Hence, there is no scope of applicability of the 2006 Act. Moreover, most of the flat owners are not eligible to come within the meaning of Section 87 of the 2006 Act. Hence, the clock cannot be set back by insisting upon formation of a cooperative society.
19. The plinth of the petitioner's argument is the provisions in the initial agreements containing clauses for formation of cooperative societies. The agreement dated May 30, 2006, entered into between respondent no.2 and the petitioner, in Clause 3.1, incorporates that the exclusive right of development was conferred for construction of residential housing complex for cooperative group housing societies to be formed.
20. Again, in the indenture of sale dated December 26, 2006 between the West Bengal Housing Infrastructure Development Corporation

Limited and the respondent no.2, it was stipulated that a building was to be erected for residential housing complex for the cooperative societies of the respondent no.2. Clause 2 thereof stipulated that the purchaser was to use the said demised land exclusively for the purpose of constructing building for residential housing complex for its cooperative societies at the cost of the purchaser.

- 21.** The ‘purchaser’ under the said deed was respondent no.2, the NCCF.
- 22.** Thus, the NCCF definitely had an obligation to its vendor to construct the building for residential housing complex for its cooperative societies. However, by the deed of rectification executed between West Bengal Housing Infrastructure Development Corporation Limited (the vendor) and the respondent no.2, it was, *inter alia*, specifically incorporated that purchasers belonging to various walks of life other than members of the NCCF would also be entitled to purchase. After rectification, Clause 2 of the deed read to mean that the purchaser (respondent no.2) shall use the demised land exclusively for the purpose of constructing building for residential housing complex for its cooperative societies to be formed by the purchasers belonging to various walks of life other than members of the respondent no.2 of the residential flats after their purchase.
- 23.** Respondent no.3 argues that the expression “various walks of life other than members of NCCF” waives the cooperative clause in the deed.
- 24.** However, the said argument, on a plain reading of the said provision,

has to be taken with a pinch of salt. The expression “purchasers belonging to various walks of life” referred to persons other than members of the respondent no.2. However, the parent Clause 2 remained as it is, stipulating that the land has to be used exclusively for the purpose of constructing building for residential complex for its cooperative societies at the cost of the respondent no.2, which cooperative societies, as per the rectification, are to be formed by purchasers belonging to various walks of life other than members of the respondent no.2.

- 25.** However, a plain reading would not suffice in the context, since there is a mutual contradiction in terms between the rectified Clause and the original Clause.
- 26.** The moment purchasers belonging to “various walks of life” are invited, without any rider to screen out persons ineligible to form cooperative societies, there has to be an influx of persons who are not eligible to form cooperative societies.
- 27.** In fact, the rectification also stipulates that the purchasers may be people other than members of the respondent no.2, which opens the floodgate. The moment a person who is not a member of respondent no. 2 purchases a flat, there remains nothing to bind such person to form a cooperative society.
- 28.** In the supplementary agreement executed between the respondent no.2 and the petitioner/developer on January 2, 2009, it was specifically mentioned that in consideration of the developer having agreed to incur all costs, charges, etc., for promoting the said

housing project, the respondent no.2, through the developer, shall sell and/or transfer the saleable area in the said project to any intending buyer upon agreeing the price on account of such sale of the flat and/or unit at the declared rate.

29. Nowhere within the four corners of the agreement is there any restriction against persons ineligible to form a cooperative society to purchase a flat in the housing society, apart from Clause 11.4 which stipulates, *inter alia*, that the developer shall arrange for periodical payment by the intending and/or prospective buyers for the formation of a cooperative housing society in consultation with the respondent no.2 as per the Board-approved proposals that the intending buyers of residential flats in the above project, other than the existing members of the respondent no.2, may be allowed to purchase such residential flats and/or apartments subject to the undertaking to form a new cooperative housing society as per the norms of cooperation of the department of cooperative societies.
30. In terms of the agreement dated July 27, 2012 between the respondent no.2 and the developer/petitioner, the developer was entitled, upon making the payment as stipulated in Clause 1(a) of the agreement, to freely negotiate, finalise and conclude the sale of the entirety or any part thereof of the total saleable area at approved rate including car parking places as per sanction plan and to execute and register all agreements for sale and/or deeds of conveyance and receive and appropriate the proceeds thereof directly in its name without any hindrance, obstruction, claim or demand from the

Federation/respondent no.2.

31. In the said agreement, there is no whisper about formation of cooperative society.
32. The deed of conveyance executed in favour of the respondent no.3, Clause (e) stipulates, *inter alia*, that the amount deposited by the respondent no.3 shall remained deposited with the developer/petitioner till the formation of the cooperative housing society of which the purchaser shall become a member and the same shall carry no interest. On formation of the cooperative housing society, the developer shall make over to the society the amounts of sinking fund or the balance amount thereof.
33. Clause (f) stipulates that the cooperative housing society to be formed as envisaged therein shall manage and administer the maintenance of the common parts and essential services at the building including those mentioned in 3rd Schedule.
34. Thus, a full-blown arguable issue has been raised by both sides as to whether the purchasers of the flats are bound by their deeds of conveyance to become members of a cooperative society to be formed in respect of the apartments.
35. The question is arguable, subject to interpretation of the various provisions of the deeds/agreements and adjudication of the issue as to whether the said condition of becoming a member of a cooperative society is an integral and essential part of the agreement and the purchase deeds of the flat owners. Along with such questions, it is also to be decided whether, by opening up the purchase of flats to

persons from all walks of life who are non-members of the respondent no.2 and need not necessarily be eligible to form a co-operative in the first place, the petitioner can now enforce the cooperative clause, since many of the purchasers may be ineligible to form a cooperative society in law. The issue revolves around the conduct of the parties as well. Whether the petitioner, after having permitted such sale to ineligible persons, can now insist upon formation of a cooperative society *de hors* the cooperative law is another issue which is to be decided between the parties.

36. However, the said disputes are civil in nature and are required to be canvassed before a competent civil court. The conspectus of the present writ petition is extremely constrained. The writ petitioner has impugned an order dated May 18, 2022 passed by the Competent Authority under the 1972 Act. By virtue of such order, the respondent no.1 accepted the declaration submitted by respondent no.3 in Form A and endorsed the same on the body of the Form A. The accepted Form A was returned with enclosures for registration to be done within 120 days of the date of return of Form A.
37. Thus, by the impugned order, the Form A submitted by the respondent no.3 has merely been accepted.
38. The ambit and scope of consideration by the Competent Authority while so accepting, as rightly argued by the respondent no.3, dwells around the duties of the Competent Authority under the 1972 Act.
39. Under Section 2 of the 1972 Act, the Act shall apply to every property

“having residential units or both residential and commercial units” and the sole owner or all the owners or majority of the owners of every such property shall submit the same within such period as may be prescribed by the provisions of the Act by duly executing and registering a declaration setting out particulars referred to in Section 10.

40. Section 10 merely stipulates the contents of the declaration and that it may be amended subsequently.
41. Section 10A provides that any declaration referred to in Section 2 or any amendment thereto shall in the first instance be submitted by the sole owner or all owners or the majority of owners within 30 days from the date of execution to the Competent Authorities.
42. Under Clause (2) of Section 10A, on receipt of a declaration or amendment, the Competent Authority shall, after issuing notice to the parties concerned and holding “such enquiry”, if any, as it may consider necessary for the purpose, examine the declaration or the amendment of the instrument, as the case may be, to ascertain whether:
 - i) The property concerned comes within the purview of Act; and
 - ii) The declaration, amendment or the instrument is in order.
43. The limited question to be considered in the present context by the Competent Authority is under Section 10A(2)(a)(i) which is to ascertain whether the property comes within the purview of the Act.
44. “Property” under the 1972 Act has been defined in Section 3(k) to comprise of the land, the building and the common areas and

facilities and in case of complexes having different types of apartments meant for selling to people of different income groups, property shall mean the land, building and common area and facilities for that particular type of apartment.

45. Section 2 stipulates that the Act shall apply to every property having residential units or both residential and commercial units. Thus, under Section 10A(2)(a)(i), the limited enquiry of the Competent Authority will be whether the property concerned comes within the Act, being a property comprising land, building and common areas and facilities having residential units or both residential and commercial units.
46. Even such enquiry, as per Section 10A(2)(a), is at the discretion of the Competent Authority in view of the expression “if any” which follows the expression “holding such enquiry”. Nothing in the above provision involves any detailed enquiry as to whether the owner or majority of owners applying for declaration under Form A have honoured the purchase deed under which they have acquired title and/or any right or liability arising out of their purchase deed and/or the preceding documents of title.
47. Such enquiry falls within the domain of the civil court. In fact, the issues discussed in the first part of this judgment, which are essential to resolve the questions raised by the petitioner herein, are all required to be adjudicated by a competent civil court, being pure civil disputes between the parties. At best, if any of the parties are of the opinion that there is any service deficiency, they may approach

the appropriate consumer forum. However, nothing within the four corners of Section 10A of the 1972 Act empowers or obliges the Competent Authority to enter into such disputed question of fact and law at all.

48. In the present case, the Competent Authority, by its impugned order dated May 18, 2023 has sufficiently discharged its duties under the 1972 Act. Hence, it cannot be said from any point of view that the said order is vitiated by any contravention of law or legal procedure. Hence, there is no scope of interference within the limited ambit of the present writ petition.
49. Accordingly WPO No. 2325 of 2022 is dismissed on contest without any order as to costs.
50. However, nothing in this order shall preclude the parties from approaching the competent civil court and/or any other legal forum having jurisdiction to resolve the issues raised by the parties *inter se*. If so approached, the observations made herein shall not prejudice the rights and contentions of any of the parties before such forum/court in any manner.
51. GA 1 of 2023 is accordingly disposed of.
52. Urgent certified server copies, if applied for, be issued to the parties upon compliance of due formalities.

(Sabyasachi Bhattacharyya, J.)

Later:

After the judgment is passed a prayer for stay of operation of the order is made.

However, since the writ petition has been dismissed, the stay, as prayed for even if granted would serve no purpose whatsoever, since the writ petition could not thereby be revived. Accordingly, such prayer is refused.

(Sabyasachi Bhattacharyya, J.)