

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

SECOND APPEAL NO. 432 OF 2023

Dr. Yogesh Keshav Bele

...Appellant

Versus

Maharashtra Real Estate Regulatory
Authority & Ors.

...Respondents

....

Mr. Vidyadhar Bolaikar for the Appellant.
None for the Respondents.

CORAM : JITENDRA JAIN, J.

DATE : 25th AUGUST, 2023.

JUDGMENT (JITENDRA JAIN, J.)

1. This appeal is filed under Section 58 of the Real Estate (Regulation and Development) Act, 2016 (for short “RERA Act”) challenging the order of the Real Estate Appellate Tribunal (Appellate Tribunal).

Brief Facts :

2. The Appellant is an individual having land adjoining to the plot developed by Respondent No.3 known as ‘Blue Heaven’. The Appellant is not an allottee in the said project of Respondent No.3. On 23rd August 2017, the Appellant lodged a written complaint with the Maharashtra Real Estate Regulatory Authority (Regulatory Authority) alleging various illegality committed by the Respondent in the development of building named ‘Blue Heaven’ situated at Palidevad, Sukapur, Tal - Panvel, District-

Raigad including allegation of encroachment by Respondent No.3 on the land of the Appellant. The Appellant complainant also alleged that the said project has been constructed without registration under the provisions of the RERA Act. The Appellant complainant contended that Respondent No.3 has used FSI belonging to his land to develop the project. The Appellant also alleged trespassing by Respondent No.3.

3. On 26th April, 2019, the Regulatory Authority disposed of the above referred complaint on the ground that since the Respondent No.3 has completed the project prior to the commencement of the RERA Act, the project is not required to be registered under Section 3 of the RERA Act. The Regulatory Authority also noted the submission of the Respondent No.3 that since the Appellant is not an “allottee” or “interested person” in the said building. The complaint was dismissed by the Regulatory Authority.

4. Being aggrieved by the aforesaid order of the Regulatory Authority, the Appellant filed an appeal under Section 44 of the RERA Act wherein various irregularities committed by the Respondent were alleged. The said appeal was filed by the Appellant on 25th June, 2019.

5. On 13th February, 2023, the Appellate Tribunal dismissed the appeal on various grounds including on the ground of *locus standi* of the Appellant to take recourse to the proceedings under the RERA Act. The

Appellate Tribunal, however observed that if any other proceedings are filed by the Appellant for the redressal of his grievance then the observation made by the Appellate Tribunal shall have no bearing on those proceedings.

6. It is against the above order of the Appellate Tribunal that the Appellant has filed the present appeal before this Court. Various questions of law have been raised by the Appellant. However, the only question pressed into service and which arises from the order of the Appellate Tribunal is reframed as under :

“Whether the Appellant can be said to have Locus standi in filing the complaint under the RERA Act ?”

7. **Submission of the Appellant :** The Appellant submits that the RERA authority vide Circular dated 24th July, 2017 numbered 9 of 2017 had invited the citizens to inform the authority of the projects which are not registered. The said information was to be given on the e-mail ID of the authority. The Appellant further relied on Circular No.18 of 2018 to contend that the authorities themselves intimated the citizens to inform about the projects which do not have the appropriate approvals of the planning authority. The Appellant, therefore, submitted that it was on the basis of these Circulars that the complaint was lodged by him with the authority and therefore he has a *Locus standi* to pursue the remedies

provided under the RERA Act and he is to be treated as an “aggrieved person” for filing complaint under Section 31 of the RERA Act.

8. We have heard the learned counsel for the Appellant Mr. Bolaikar and with his assistance have perused the records of the appeal paper book filed with this Court.

Analysis & Conclusion :

9. The moot question which requires to be examined in the present appeal is whether the Appellant can be said to be an “aggrieved person” for filing complaint under Section 31 of the RERA Act and pursue his remedies under the said Act.

10. Admittedly, the Appellant is not an “allottee” in the project under consideration which is developed by the Respondent No.3 because he has not booked any flat/property in the said project. The grievance of the Appellant is with respect to the allegation that the Respondent No.3 has violated various laws in the development of the said building including the challenge to the manner in which the occupation certificate was received by the developer. The plot of land of the Appellant is adjoining to the said project developed by the Respondent No.3. On the basis of this fact, the grievance of the Appellant appears to be various violations alleged to have been committed by the Respondent No.3 in

developing the project including allegation of encroachment by the Respondent No.3 on the land of the Appellant.

11. In this context, it is necessary to examine the scheme of the RERA Act to ascertain whether a person who is not an “allottee” or “interested in the project” can be said to be an “aggrieved person” under Section 31 of the RERA Act for lodging the complaint of the violations alleged by the Appellant against Respondent No.3.

12. The preamble of the RERA Act provides for establishment of the Regulatory Authority to protect the interest of consumers in the real estate sector and to establish an adjudicating mechanism for speedy dispute redressal of matters connected with the sale of plot, apartment, buildings or sale of real estate project. Section 2(d) defines “*allottee*” in relation to a real estate project to mean a person to whom a plot, apartment or buildings has been allotted, sold or otherwise transferred by the promoter and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or buildings as the case may be is given on rent. Section 3 of the Act provides for prior registration of real estate project with the Regulatory Authority and it provides that no promoter shall advertise, market, book, sell or offer for sale or invite person to purchase in any manner any plot, apartment or buildings in any real estate project

without registering the real estate project with the Regulatory Authority. The proviso to Section 3(1) provides for registration of the project pending on the date of commencement of the Act. Section 3(2)(b) provides that no registration of real estate project shall be required where the promoter has received completion certificate for a real estate project prior to the commencement of this Act. Section 4 to 8 provides for application for registration of real estate projects, grant of registration and revocation of registration. Sections 9 and 10 deals with registration and functions of real estate agents. Section 11 deals with functions and duties of promoter. Section 13 provides that a promoter shall not accept a sum more than ten percent of the cost of the apartment, plot or building without first entering and registering the agreement for sale. Section 14 provides for development of the project by the promoter in accordance with the sanction plans, layout and specification as approved by the competent authority. Section 19 of the RERA Act provides for rights and duties of allottees. Sections 20 to 30 provides for establishment of Real Estate Regulatory Authority. Section 31 deals with filing of complaints by an “aggrieved person” with the authority or the adjudicating officer for any violation or contravention of the provisions of this Act or the rules and regulations made thereunder against any promoter, allottee or real estate agent as the case may be. The Explanation to Section 31(1) provides that for the purposes of sub-section (1) ‘person’ shall include the association of

allottees or any voluntary consumer association registered under any law for the time being in force. Section 35 empowers the authority to call for information from any promoter, allottee or real estate agent and conduct investigation. Section 38 empowers the Authority to impose penalty or interest in regard to any contravention of obligation cast upon the promoter, allottees and real estate agent. Sections 43 to 57 deals with establishment of the Appellate Tribunal. Sections 59 to 72 provides for offences, penalties and adjudication for any contravention by the promoter, allottee or real estate agent.

13. On a harmonious and holistic reading of various abovereferred provisions of the RERA Act, in my view, a person who is not at all connected with the project of the promoter since he had not booked any flat in the said project cannot be said to be an “aggrieved person” under Section 31(1) for filing complaint. The Explanation to Section 31(1) provides that “person” shall include the association of allottees or any voluntary consumer association registered under any law for the time being in force. The “aggrieved person” under the RERA Act could be an allottee or real estate agent or promoter or association of allottees or any voluntary consumer association registered under any law for the time being in force. A person who is not at all connected or interested in the project but seeks to redress his private grievances as a person occupying

the adjoining land next to the project cannot be said to have any locus to file a complaint and redress his private grievances by taking recourse to the RERA Act. The remedy of such a person lies somewhere else and not before the Regulatory Authority under the RERA Act. The said view is based on a holistic reading of preamble to the Act and the various provisions which have been analysed above, which clearly point out that the phrase “aggrieved person” in Section 31(1) of the Act would be an allottee, promoter or real estate agent or association of allottees or registered voluntary consumer association. The phrase “aggrieved person” has to be construed in the context and purpose of RERA Act and would encompass a person whose rights as an allottee, promoter or real estate agent or person governed by the Act is infringed. The phrase “aggrieved person” cannot be stretched on harmonious reading of all the provisions of the Act and objective of the Act to mean that any person who alleges violation of various laws by the developer can approach the Regulatory Authority under Section 31(1) of the Act. Rule 6(1) of the Maharashtra Real Estate (Regulation and Development) (Recovery of Interest, Penalty, Compensation, Fine Payable Forms of Complaints etc.) Rules, 2017 also indicates that “aggrieved person” is a person having interest in the project. At the most an unconnected or unrelated person may bring to the notice of the Regulatory Authority the alleged violation and then it is for the said authority to take action based on the information received (which the

Appellant claims to have done relying on Circulars issued by the Authority), but that would not bring such a person giving information within the phrase “aggrieved person” for the purpose of Section 31(1) of RERA Act. If such a person is not satisfied with the action taken by the Regulatory Authority then the remedy of such a person would lie somewhere else and not under the RERA Act.

14. Section 31(1) of the RERA Act uses the expression “any aggrieved person”. The word “person” is defined under Section 2(28) but in Section 31(1) the said word “person” is further qualified by “aggrieved”. It is a settled legal proposition that a stranger cannot be permitted to meddle in any proceedings unless he satisfies that he falls within the category of “aggrieved person”. Only a person who has suffered legal injury can challenge the act/action/order in a Court of law. A “legal right”, means an entitlement arising out of legal rules. The phrase “aggrieved person” used in Section 31(1) of the RERA Act would mean a person who is regulated or governed by the said Act and there is an injury of the right conferred under the said Act. The phrase used in Section 31(1) is “any aggrieved person” and not “any person”. The Appellant is not covered by the RERA Act and therefore he cannot be said to be an “aggrieved person” to take recourse to Section 31(1) of the RERA Act. The Appellant complainant can at the most lead evidence as witness but

he cannot claim the status of an adversarial litigant. The Appellant complainant cannot be a party to the lis because no legal right is conferred on him by the RERA Act. Thus from the above analysis it is evident that the Appellant having no concern whatsoever cannot be said to have any *locus standi* to knock the doors of the RERA Act. The Appellant has knocked wrong door by taking recourse to RERA for redressal of his grievances.

15. In the instant case, admittedly the Appellant is not an “allottee” in the project being developed by the Respondent No.3. The allegation made by the Appellant are with respect to violation of various laws by the developer in the development of the project. The grievance appears to be made in the nature of private or public interest and not what is governed and regulated by the RERA Act.

16. Therefore, in my view, the Appellant cannot be said to be a “person aggrieved” to make a complaint under Section 31(1) of the Act and take recourse to the provisions of RERA Act for redressal of his grievances.

17. Even otherwise, the Regulatory Authority has given a finding of fact that the project developed by the developer was already completed and the occupation certificate was also obtained and possession handed

over to the allottees prior to the commencement of the said Act and therefore, as per Section 3(2)(b), the project does not require registration and same would not be governed by the RERA Act. This issue is now no more *res integra* and covered by Paragraphs 52 and 54 of the decision of the Supreme Court in the case of ***Newtech Promoters and Developers Pvt. Ltd. V/s. State of U.P. and Others***¹. Furthermore this is also a finding of fact. If the Appellant has any grievance with respect to the manner in which prior to the coming into force of the Act, permissions were obtained by the developer then remedy would lie not under the RERA Act but somewhere else.

18. In view of above, the appeal of the Appellant is dismissed and the question of law framed is answered against the Appellant. No order as to cost.

[JITENDRA JAIN, J.]

¹ 2021 SCC Online 1044.