IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO. 175 OF 2024

WITH

INTERIM APPLICATION NO. 197 OF 2025

WITH

INTERIM APPLICATION NO. 7009 OF 2024

Rajiv Goel,
Age 64 years,

Yogesh Jadhav,
Age 47 years,

Rahul Jain
Age 35 years
Directors, Sahyog Homes, having it's office
at 321, Morya Estate, New Link Road,
Opp. Infinity Mall, Andheri (West),
Mumbai – 400 053 ..Applicants
(Orig. Defendants)

Versus

Prabhudesai Sulabha Shridhar,
Age 75
Through Power of Attorney Holder
Shri Prabhudesai Sachin Shridhar
Age 75 years, residing at E-103, Dwarkesh
CHS, Opp. Om Jewellers, Lokmanya Tilak
Road, Borivali (West), Mumbai – 400 092. …Respondent
(Org. Plaintiff)

Mr. Makrand Raut, with Bhavika Solanki, for the Applicant.
Ms. Madhubala Kajle, with Sharda Shirsate, for the Respondent.

CORAM: N. J. JAMADAR, J.
RESERVED ON : 22nd APRIL 2025
PRONOUNCED ON: 8th MAY 2025

ORDER:

1. This Revision Application is directed against an order dated 18th December 2023 passed by the learned Judge, City Civil Court, Mumbai, in Notice of Motion No. 4181 of 2022, taken out by the Applicants-Defendants for rejection of the Plaint under Order VII Rule 11(d), and, in the alternative for stay of the proceedings in the said Suit under Section 10 of the Code of Civil Procedure 1908 ("the Code").

2. The Applicants are the directors of Sahyog Homes Limited, a corporate entity. The Applicants are engaged in the business of real estate development. The Applicants had promoted a project ("Verona") at Oshiwara, Andheri, Mumbai.

3. The Respondent-Plaintiff and her husband Shridhar Prabhudesai had booked a one BHK flat admeasuring approximately 540 sq ft for a consideration of Rs.37,90,800/- at an approximate rate of Rs.7020/- sq ft carpet. Upon the Plaintiff having made a payment of Rs.11,37,240/-, the Defendants issued an allotment letter dated 11th December 2009 incorporating the principal terms of contract and, agreed to execute a standard Agreement for Sale at a later date. The Plaintiff alleged the Defendants committed inordinate delay in the development of the said project. The Plaintiff repeatedly pursued the Defendants to execute an Agreement for Sale, but in vain.

4. Belatedly, in the year 2018-2019, the Defendants uploaded a draft Agreement for registration at the Maharashtra Real Estate Regulatory Authority ("Maha RERA") website and asked the Plaintiff to refer to the same. The Plaintiff asserted that the stipulations in the draft Agreement were in derogation of the initial terms of the contract as incorporated in the allotment letter and compromised the basic rights of a home buyer.

5. The Plaintiff thus approached Maha RERA with a complaint of non-execution of the Agreement. By an order dated 23rd April 2019, the learned Member, Maha RERA directed the parties to register the Agreement for Sale within a period of one month in the format prescribed by Maha RERA. It is the claim of the Plaintiff that the Defendants demanded an exorbitant amount of consideration on the premise that there was addition in the area of the flat.

6. The Plaintiff had filed an Appeal against the said order dated 23rd April 2019. The said Appeal was withdrawn on 13th June 2022.

7. Under a couple of days thereafter, the Defendants unlawfully terminated the allotment letter dated 11th December 2009. The Plaintiff thus instituted a Suit before the City Civil Court, Bombay at Dindoshi, seeking declaratory and injunctive reliefs.

8. In the meanwhile, the Defendants-promoters filed a complaint before Maha RERA seeking direction to the Plaintiff to pay the outstanding dues towards the said flat and, in default, allow the Defendants to terminate and cancel the allotment. The learned member Maha RERA was persuaded to dismiss the complaint opining that a dispute has arisen between the parties over the rate at which the consideration is to be computed on account of the purported increase in the area of the flat. The said issue would not fall within the jurisdictional competence of Maha RERA. Since a substantive Suit was already instituted by the Plaintiff, the learned Member was of the view that the dispute could be legitimately adjudicated by the Civil Court.

9. In the Suit, the Defendants took out the Notice of Motion seeking rejection of the Plaint on the ground that the jurisdiction of the Civil Court to entertain, try and decide the issues raised by the Plaintiff was clearly barred by the provisions of Section 79 of the Real Estate (Regulation and Development) Act, 2016 ("RERA Act 2016"). In the alternative, the proceedings in the Suit be stayed till the determination of the above referred complaint lodged by the Defendants before Maha RERA .

10. By the impugned order, the learned Judge was persuaded to reject the Notice of Motion observing, *inter alia,* that since the complaint filed by the Defendants was already dismissed by Maha

RERA, there was no question of application of the provisions of Section 10 of the Code. On the aspect of the bar to the jurisdiction of the Civil Court incorporated under Section 79 of the RERA Act 2016, the learned Judge was of the view that the Authority constituted under RERA Act 2016 had no power to grant declaration and mandatory and perpetual injunction, as claimed by the Plaintiff. If the Plaint is read as a whole, the Suit would not be barred by the provisions contained in Section 79 of RERA Act 2016.

Being aggrieved, the Defendants have invoked the revisional jurisdiction.

11. Mr. Makrand Raut, the learned Counsel for the Applicant, strenuously submitted that the learned Judge, City Civil Court, committed an error in law in returning a finding that the Suit would not be barred by the provisions contained in Section 79 of RERA Act 2016. Taking the Court through the averments in the Plaint, especially the prayer clauses, Mr. Raut would urge all the substantive prayers can be entertained and granted by the Authority under Section 11(5), 13, 19(6) and 18(1) of the RERA Act 2016.

12. Mr. Raut would urge that, where a separate machinery has been setup under a special enactment, with the power to grant the reliefs which can be granted by the Civil Court, the jurisdiction of the Civil

Court stands expressly barred. The Plaint was required to be read as a whole and if the entirety of the reliefs is properly considered, an inference becomes inescapable that the dispute sought to be raised in the instant Suit squarely falls within the exclusive jurisdiction of the Authority constituted under RERA Act 2016.

13. On the merits of the matter, an endeavour was made by Mr. Raut to urge that the Defendants had shown willingness to execute the Agreement in confirmity with the order dated 23rd April 2019 passed by Maha RERA and it was on account of the adamant stand of the Plaintiff, the said Agreement could not be executed. On the contrary, the Plaintiff had filed an Appeal against the said order and kept the said Appeal pending for over two years and, thereafter, withdrew the said Appeal. That reflects upon the *bona fides* of the Plaintiff and the design with which the suit has been filed.

14. To buttress the submission that, if the matter falls within the purview of the Authority constituted under the RERA Act 2016, the bar to the jurisdiction of the Civil Court under Section 79 of the RERA Act 2016 is absolute, a strong reliance was placed on a judgment of this Court in the case of **Yadavali Venkata Gopalam and Anr Vs Sai Siddhant Developers & Anr.**[1]

15. In opposition to this, Ms. Madhubala Kajle, the learned Counsel for the Respondent-Plaintiff, would urge the instant case is a classic

1 2023: BHC-AS:33740.

example of how the unscrupulous developers harass unsuspecting purchasers, in many ways. The Plaintiff had parted a substantial amount of Rs. 11,37,24/- in the year 2009, and for over 10 years the Defendants did not execute Agreement for Sale. Despite a direction by the Maha RERA to execute and register an Agreement, the Defendants attempted to exploit the position by insisting for exorbitant payment towards the balance consideration. Moreover, the Defendants unilaterally and illegally terminated the allotment letter by ascribing wholly unsustainable reasons. It was in this backdrop, the Plaintiff was constrained to approach the Civil Court seeking substantive reliefs of declaration and injunction which the Authority under the RERA Act 2016 is not empowered to grant.

16. Ms. Kajle submitted that, the Notice of Motion was but a link in the chain of oppressive and dishonest actions on the part of the Defendants. No case for rejection of the Plaint is made out, especially after a categorical finding by the Maha RERA, in the order dated 18th August 2023, that the dispute does not fall within the purview of the matters to be determined by Maha RERA.

17. I have given careful consideration to the submissions canvassed across the bar. With the assistance of the learned Counsel for the parties, I have also perused the material on record. The facts, as narrated above, are rather incontestable. The question, which comes to fore is, whether the instant Suit is barred by the provisions contained in Section 79 of the RERA Act 2016? Section 79 reads as under:

> “**79. bar of jurisdiction:**
>
> No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Authority or the adjudicating officer or the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.”

18. A bare perusal of the text of the aforesaid Section would indicate that the Section begins with a negative word and also uses the word “shall”, thereby underscoring the peremptory nature of the said bar to the jurisdiction of the Civil Court. The bar would, however, be attracted upon fulfillment of essential conditions incorporated therein, namely, the Suit or Proceeding must be in respect of any matter which the Authority or the adjudicating officer or the Appellate Tribunal is empowered by or under the said Act to determine. Of necessity, the enquiry would revolve around the question as to whether the Suit is in respect of any matter which is within the jurisdictional province of the Authority constituted under the Act.

19. Before adverting to appreciate the aforesaid question, it may be apposite to keep in view the well-recognized position in law that the normal rule of law is that the Civil Courts have jurisdiction to try all suits of civil nature except those of which cognizance by them is barred either expressly or impliedly. Such exclusion of jurisdiction is, however, not to be readily inferred. On the contrary, the initial presumption must be in favour of existence of the jurisdiction rather than exclusion thereof.

20. In a case where an express bar to the jurisdiction of Civil Court, on the strength of special enactment, like the bar contained in Section 79 of the RERA Act, 2016, is pressed into service, an examination of the scheme of the special enactment to judge the adequacy or sufficiency of the remedies, which can be granted under such special enactment, becomes necessary though that may not be the decisive consideration. It has to be seen whether the machinery created under the special enactment can do all that can be done by the Civil Court. In any event, if the statutory Tribunal acts in derogation of the provisions of the particular act or fundamental principles of judicial procedure, the Civil Court's jurisdiction is not barred.

21. A useful reference can be made to the Constitution Bench judgment of the Supreme Court in the case of ***Dhulabhai vs. State of***

Madhya Pradesh and anr.*[2]*, wherein the principles were expounded as under:

> "32. Neither of the two cases of Firm of Illuri Subayya, 1964-1 SCR 752 = (AIR 1964 SC 322) or Kamla Mills 1966 (1) SCR 64= (AIR 1965 SC 1942) can be said to run counter to the series of cases earlier noticed. The result of this inquiry into the diverse views expressed in this Court may be stated as follows :-
>
> (1) Where the statute gives a finality to the orders of the special tribunals the Civil Courts' jurisdiction must be held to be excluded if there is adequate remedy to do what the Civil Courts would normally do in a suit. Such provision, however, does not exclude those cases where the provisions of the particular Act have not been complied with or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure.
>
> (2) Where there is an express bar of the jurisdiction of the court, an examination of the scheme of the particular Act to find the adequacy or the sufficiency of the remedies provided may be relevant but is not decisive to sustain the jurisdiction of the civil court.
>
> Where there is no express exclusion the examination of the remedies and the scheme of the particular Act to find out the intendment becomes necessary and the result of the inquiry may be decisive. In the latter case it is necessary to see if the statute creates a special right or a liability and provides for the determination of the right or liability and further lays down that all ques- tions about the said right and liability shall be determined by the tribunals so constituted, and whether remedies normally associated with actions in Civil Courts are prescribed by the said statute or not.
>
> (3) Challenge to the provisions of the particular

2 AIR 1969 SC 78.

> Act as ultra vires cannot be brought before Tribunals constituted under that Act. Even the High Court cannot go into that question on a revision or reference from the decision of the Tribunals.
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> 4) When a provision is already declared unconstitutional. or the constitutionality of any provision is to be challenged, a suit is open. A writ of certiorari may include a direction for refund if the claim is clearly within the time prescribed by the Limitation Act but it is not a compulsory remedy to replace a suit.
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> (5) Where the particular Act contains no machinery for refund' of tax collected in excess of constitutional limits or illegally collected a suit lies.
>
> (6) Questions of the correctness of the assessment apart from its constitutionality are for. the decision of the authorities and a civil suit does not lie if the orders of the authorities are declared to be final or there is an express prohibition in the particular Act. In either case the scheme of the particular Act must be examined because it is a relevant enquiry.
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> (7) An exclusion of the jurisdiction of the Civil Court is not readily to be inferred unless the conditions above set down apply."

22. In the case of ***State of A.P. vs. Manjeti Laxmi Kantha Rao and ors.***[3]***,*** the Supreme Court reiterated the principles as under:

> "5. The normal rule of law is that civil courts have jurisdiction to try all suits of civil nature except those of which cognizance by them is either expressly or impliedly excluded as provided under Section 9 of the Code of Civil Procedure but such exclusion is not readily inferred and the presumption to be drawn must be in favour of the existence rather than exclusion of jurisdiction of the civil courts to try civil suit. The test adopted in examining such a question is (i) whether the legislative intent to exclude arises explicitly or by necessary implication, and (ii) whether the statute in

3 (2000) 3 SCC 689.

question provides for adequate and satisfactory alternative remedy to a party aggrieved by an order made under it.

In *Dhulabhai & Ors. vs. The State of Madhya Pradesh & Anr., 1968 (3) SCR 662*, it was noticed that where a statute gives finality to the orders of the special tribunals jurisdiction of the civil courts must be held to be excluded if there is adequate remedy to do what the civil courts would normally do in a suit and such provision, however, does not exclude those cases where the provisions of the particular Act have not been complied with or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure."

23. On the aforesaid touchstone, reverting to the facts of the case, since considerable submissions were canvassed by Mr. Raut with reference to the prayers in the plaint, it may be expedient to extract the prayers. They read as under:

> "A. Leave under Order II, Rule 2(3) of CPC be granted in favour of Plaintiff.
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> B. That the Hon'ble Court be pleased to set aside the "Termination/Cancellation letter" Dated 16th June 2022, issued by the defendants-Promoters of project VERONA and declare the same as null and void.
>
> C. That the Hon'ble Court be pleased to pass decree of stay order perpetual injunction restraining the defendant to transfer the said Flat No. 1302, Tower S4, in Project VERONA to any third party or to create any third party rights, and from dealing with the said unit whatsoever other than with the Plaintiff herself and her representative.

D. This Hon'ble Court be pleased to pass an order directing the Defendants-the promoters of the project VERONA, to issue a revised allotment letter of Flat No. 1302, Tower S4, VERONA, reflecting the revised carpet area of 612 sq feet as per the approved plans, with the rate as was agreed at the time of purchase (Rs.7020/- Sq Feet Carpet) on the name of the plaintiff, homebuyer, Mrs. Prabhudesai Sulabha Shridhar and her representative in lieu of her husband Late Sh. Prabhudesai Shridhar Balkrishna.

E. This Hon'ble Court be pleased to pass an order directing the Defendants-to not to charge/levy any interest on the instalments, for the pay-out that may be outstanding as of date, since the defendants till date never provided with an opportunity to register an agreement at the predefined cost of Rs.7020.00 per square feet of carpet area, in line with the allotment/reservation letter dated 11th December 2009, and therefore, the delay in registration of the tenement remains solely on account of the defendants themselves, who made it impossible for the plaintiff to register the agreement which would have made possible to the plaintiff to make slab wise payments, hence, the defendant – Director, Sahyog Homes, is not entitled to demand interest for the delay which they themselves were liable to have imposed on the home buyer plaintiff.

F. That given the delay of over 13 years in constructing the home, the Hon'ble Court be pleased to pass an order directing the defendants to pay interest to the home buyer plaintiff on the amount paid so far, with the same formula which the defendants charge for delayed payments from home buyers in case of delay in payments, and to charge only the remaining pay-out, if any.

G. This Hon'ble Court be pleased to pass an order directing the Defendants, to use the revised allotment letter stated carpet area of 612 Sq feet and the rate of Rs.7020/- Sq. feet carper to execute the format of the Agreement that would get arrived post the MAHARERA proceedings with regards to the RERA model agreement draft.

H. That the Hon'ble Court be pleased to order to pay the cost of the present suit by the defendants to the Plaintiff and further relief/order as in nature & circumstances of the case as this Hon'ble Court may deem fit and proper be granted to the Plaintiff."

24. Co-relating the prayers with the provisions of the RERA Act, 2016, Mr. Raut would urge that the substantive prayer in prayer clause (B) can be granted by RERA under Section 11(5), prayer clause (D) falls within the ambit of Section 13, prayer clause (E) within the ambit of Section 19 and prayer clause (F) under Section 18(1) of the RERA Act, 2016. Therefore, the entirety of the claim of the plaintiff falls within the jurisdictional umbrella of RERA Act, 2016, urged Mr. Raut.

25. The aforesaid submission is required to be appreciated in the light of the peculiar facts of the case. The applicants issued the letter of allotment on 11th December, 2019. Incontrovertibly, the applicants did not execute and register Agreement for Sale. The purchaser was required to knock the doors of MahaRERA seeking direction to execute and register the agreement. Yet, the Agreement for Sale could not be executed. Eventually, as noted above, the applicants professed to terminate the very letter of allotment vide communication dated 16th June, 2022.

26. The provisions contained in Section 13(1), 18 and 19 of the Act 2016 are premised on existence of an Agreement for Sale between the parties and the enforcement of rights and obligations which emanate therefrom. In the case at hand, as noted by the learned Member MahaRERA in the order dated 13th October, 2023, a dispute has arisen between the parties with regard to the very consideration for the contract for sale. The essential dispute between the parties is over the rate per square feet at which the purchaser shall pay the consideration. The learned Member notes, as per the computation by the applicants, the cost of the flat comes to Rs.98,51,000/-. Conversely, as per the computation of the respondent, the cost comes to Rs.43,00,241/- only.

27. Such dispute as to the very terms of the contract between the parties cannot be effectively and completely adjudicated by the Tribunal constituted under the RERA Act, 2016. Whether the rights and liabilities of the parties stood crystallized under the letter of allotment dated 11th December, 2009 and, on that strength, is the plaintiff entitled to declaration and injunction as sought, can be legitimately decided by the Civil Courts only. The learned Judge, City Civil Court, was thus justified in returning a finding that all the reliefs which are claimed by the plaintiffs in the instant suit cannot be granted by the Tribunal under RERA Act, 2016.

28. The matter can be looked at from a slightly different perspective. The RERA Act, 2016 was enacted with the object of, *inter alia,* ensuring that the sale of the real estate is in an efficient and transfer manner and to protect the interest of the consumer in the real estate sector. To advance this object, the RERA Act, 2016 has established an adjudication mechanism for speedy dispute resolution. The powers and duties of the authorities under the Act are all attuned to the avowed object of the RERA Act, 2016. Where a promoter allegedly does not commence and complete the project even after a decade of issue of allotment letter and parting of valuable consideration by the purchaser and demands the consideration which is alleged to be in excess of the agreed consideration, can such a promoter be permitted to take advantage of the provisions which confer exclusive jurisdiction on the Tribunal with the object of securing the interest of consumer. The provisions of the Act, 2016 thus cannot be so construed as to defeat the very object of the enactment.

29. The reliance placed by Mr. Raut on the decision in the case of ***Yadavalli Gopalam*** (supra) does not seem to advance the cause of the submission on behalf of the applicant as, in the said case, the Court categorically recorded that the cause of action pleaded therein was not about failure to perform agreement but the proposed action of defendant No.2 Society therein in creating third party rights. The plaintiff had sought to bring the case within the general jurisdiction of the Civil Court by vaguely asserting that there was collusion between the developer and the society. In that context, the applicability of the provisions contained in Section 79 of the RERA Act, 2016 to the facts of the said case was upheld and the order of return of the plaint for presentation before RERA sustained.

30. Plainly the facts of the case are materially distinct. The aforesaid pronouncement would not, thus, govern the facts of the case at hand. In the circumstances of the present nature, the entitlement to declaration as to legality and validity of the termination of the allotment letter and the consequential reliefs of injunction can be legitimately adjudicated by the Civil Courts only. Therefore, this Court does not find any justifiable reason to interfere with the impugned order.

31. Hence the following order:

(i) The Civil Revision Application stands rejected.

(ii) In view of the dismissal of the Civil Revision Application, Interim Applications also stand disposed of.

(iii) No costs.

[N. J. JAMADAR, J.]

32. At this stage, the learned Counsel for the Applicant seeks continuation of the ad-interim order.

33. In the backdrop of the view taken by this Court, the prayer for continuation of the ad-interim order does not merit acceptance. Thus the oral Application for stay stands rejected

[N. J. JAMADAR, J.]