



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

CIVIL REVISION APPLICATION NO. 606 OF 2024

Sana Hospitality Services Pvt. Ltd.

...Applicants
(Org.Deft.No.2)

Versus

Madan Kishan Gurow and ors.

...Respondents/
Ori. Plaintiffs

Mr. M. A. Memon, i/b Lexim Associates, for the Applicants.
Mr. Vishal Phal, i/b Mr. Kunal Damle, for Respondent Nos.1
and 2.

**CORAM: N. J. JAMADAR, J.
RESERVED ON: 11th NOVEMBER, 2025
PRONOUNCED ON: 25th NOVEMBER, 2025**

JUDGMENT :

1. This revision application is directed against an order dated 22nd March, 2023, passed by the learned Civil Judge, Belapur, whereby an application filed by the applicant – defendant No.2 for rejection of the plaint under the provisions of Order VII Rule 11 of the Code of Civil Procedure, 1908 (“the Code”), came to be rejected.

2. Shorn of necessary details, the background facts can be stated as under:

2.1 For the sake of convenience and clarity, the parties are hereinafter referred to in the capacity which they are arrayed before the Civil Court.

2.2 Defendant No.2 is a company registered under the Companies Act, 2013. Mrs. Sushila Malge is the Proprietress of M/s. Mount Mary Builders - defendant No.1. A real estate project, “Green World” was developed by defendant No.1 (“the promoter”). Under a Sale Deed dated 23rd March, 2016, defendant No.1 sold a flat being Flat No.1703 situated on the 17th floor in “G” Wing of the said project for a consideration of Rs.44,00,000/-.

2.2 As defendant No.1 did not deliver the possession of the subject flat in accordance with the terms of the contract, defendant No.2 was constrained to file a complaint before Maharashtra Real Estate Regulatory Authority (“MahaRERA”) being Complaint No.89795. By an order dated 5th November, 2019, the MahaRERA directed defendant No.1 to pay interest for the delay in delivery of possession. However, as MahaRERA did not issue a direction for delivery of possession of the subject flat, defendant No.2 filed an appeal before the Maharashtra Real Estate Appellate Tribunal (“the Appellate Tribunal”). By an order dated 10th December, 2021, the Appellate Tribunal

disposed the appeal by issuing directions to defendant No.1 to hand over the possession of the subject flat to defendant No.2 within a period of 60 days, with a stipulation for payment of interest in the event of default.

2.4 In the meanwhile, defendant No.2 caused a title search of the subject flat. It transpired that defendant No.1, allegedly in connivance with respondent Nos.1 and 2 – the plaintiffs, had created third party rights in respect of the subject flat in favour of Plaintiffs under a registered Agreement dated 7th August, 2017, subsequent to the execution of the Sale Deed in favour of defendant No.2.

2.5 Defendant No.2 apprised the plaintiffs about the order passed by the Appellate Tribunal, and called upon the plaintiffs to deliver possession of the subject flat. As defendant No.1 did not comply with the orders of the Appellate Tribunal, defendant No.2 filed Execution Application No.16 of 2022 for execution of the order dated 10th December, 2021 passed by the Appellate Tribunal. The plaintiffs came to be impleaded as parties in the said execution application.

2.6 The plaintiffs, in turn, approached the Civil Court by instituting a suit for declaration that, the agreement dated 7th August, 2017 executed by and between defendant No.1 and

plaintiffs is valid and subsisting, the plaintiffs are *bona fide* purchasers of subject flat without notice and the Sale Deed dated 23rd March, 2016 executed between defendant Nos.1 and 2 was null and void and not binding upon the plaintiffs. Consequential injunctive reliefs were also sought.

2.7 The plaintiffs assert that, they had parted with valuable consideration, *inter alia*, by availing loan from HDFC Bank. They were unaware of the execution of the Sale Deed by defendant No.1 in favour of defendant No.2. Upon being confronted, defendant No.1 assured them that, defendant No.2 was an investor and defendant No.1 would return the amount invested by defendant No.2. Thus, the plaintiffs were constrained to institute the suit for declaration and injunction.

2.8 Defendant No.2 filed an application for rejection of the plaint on the ground that, in view of the exclusive jurisdiction conferred on the authorities under The Real Estate (Regulation and Development) Act, 2016 ("the RERA, 2016") the Civil Court's jurisdiction was expressly barred. Therefore, the plaint was liable to be rejected under the provisions of Order VII Rule 11(d) of the Code.

2.9 By the impugned order, the learned Civil Judge was persuaded to reject the application opining, *inter alia*, that the

remedies under the RERA, 2016 were in addition to the other remedies and the Authorities under the RERA, 2016 had no power either to decide a title dispute between two allottees or to grant the reliefs of declaration as sought by the plaintiffs. It was required to be seen, whether the Authorities under the RERA, 2016 are competent to grant reliefs, which the Civil Court would normally grant in a suit, and finding that the Authorities under the RERA, 2016 cannot grant the reliefs claimed by the plaintiffs, the application came to be rejected.

3. Being aggrieved, defendant No.2 has invoked the revisional jurisdiction.

4. I have heard Mr. Memon, the learned Counsel for the applicant – defendant No.2, and Mr. Phal, the learned Counsel for respondent Nos.1 and 2 – plaintiffs, at some length. With the assistance of the learned Counsel for the parties, I have perused the material on record especially the averments in the plaint in Special Civil Suit No.774 of 2023.

5. Mr. Memon, the learned Counsel for the applicant, submitted that the learned Civil Judge completely misconceived the nature of the suit. The essential dispute was between two sets of “allottees” and the promoter. Therefore, the view of the trial Court that, the bar under Section 79 of the RERA, 2016

was not attracted, was clearly erroneous. Mr. Memon laid emphasis on the fact that the Appellate Tribunal has directed defendant No.1 to deliver the possession of the subject flat. A second appeal preferred by defendant No.1 against the said order came to be dismissed by the High Court with costs. In these circumstances, when the plaintiffs, who are in possession of the subject flat, assert independent rights in the subject flat, emanating from the same promoter - the defendant No.1, the dispute clearly falls within the realm of the jurisdiction of the Authorities under the RERA, 2016.

6. Mr. Memon would urge that, the question, whether the plaintiffs are entitled to protect their possession can also be legitimately decided by the Appellate Tribunal in the execution proceeding. Attention of the Court was invited to the provisions contained in Section 57 of the RERA, 2016, which provides that, every order made by the Appellate Tribunal shall be executable by the Appellate Tribunal as a decree of Civil Court, and for the said purpose, the Appellate Tribunal shall have all the powers of a Civil Court. Therefore, the learned Civil Judge, according to Mr. Memon, committed an error in returning a finding that the Appellate Tribunal does not have the power to do what the Civil Court would do in a civil suit. It was submitted that though the

said contention in the context of the provisions contained in Section 57 of the RERA, 2016, was specifically raised, the learned Civil Judge did not deal with the same adequately.

7. In opposition to this, Mr. Phal, the learned Counsel for the plaintiffs – defendant Nos.1 and 2, would urge that, the defendant No.2 cannot be permitted to draw any mileage from the orders passed by the Authorities under the RERA, 2016, as the plaintiffs were not impleaded as parties to the proceedings before MahaRERA and the Appellate Tribunal. It was submitted that the plaintiffs were put in possession of the subject flat in the year 2019, itself. It is only after the execution of the Agreement to Sale in favour of the plaintiffs and the plaintiffs having been put in possession of the subject flat, orders were obtained from the Authorities under the RERA, 2016.

8. Mr. Phal submitted that, the Authorities under the RERA, 2016 have no jurisdiction to inquire into and determine the dispute *inter se* allottees. Therefore, the learned Civil Judge was fully justified in holding that the reliefs claimed by the plaintiffs in the instant suit cannot be granted by the Authorities under the RERA, 2016 and, therefore, the bar under Section 79 of the RERA, 2016, was not attracted.

9. The facts appear to be, by and large, incontrovertible. Firstly, defendant No.1 is the promoter of the project. Initially defendant No.1 entered into transaction with defendant No.2 in respect of Flat No.1703 and executed a Sale Deed on 23rd March, 2016. Subsequently, defendant No.1 entered into an Agreement for Sale of the subject flat in favour of the plaintiffs on 7th August, 2017. The plaintiffs were put in possession of the subject flat on 10th June, 2019. Conversely, as defendant No.1 did not deliver the possession of the subject flat, defendant No.2 filed complaint before MahaRERA, and dissatisfied with the order passed by the MahaRERA preferred an appeal before the Appellate Tribunal and, eventually, the Appellate Tribunal by an order dated 10th December, 2021 directed defendant No.1 to deliver the possession of the subject flat. A second appeal preferred thereagainst was dismissed by this Court. Since the order passed by the Appellate Tribunal was not complied with, defendant No.2 took out execution application. Upon being impleaded as the party in the said execution application, the plaintiffs have instituted the instant suit for the reliefs of declaration and injunction.

10. In the backdrop of the aforesaid facts, the question as to whether the suit is barred by the provisions contained in the

RERA, 2016, especially Section 79, which bars the jurisdiction of the Civil Court, arises for consideration.

11. To explore an answer, it may be apposite to consider the object and scheme of RERA and the nature of the jurisdiction of the Civil Court. The statement of Object and Reasons of the RERA, 2016 read as under:

“The Statement Of Objects And Reasons.- The real estate sector plays a catalytic role in fulfilling the need and demand for housing and infrastructure in the country. While this sector has grown significantly in recent years, it has been largely unregulated, with absence of professionalism and standardisation and lack of adequate consumer protection. Though the Consumer Protection Act, 1986 is available as a forum to the buyers in the real estate market, the recourse is only curative and is not adequate to address all the concerns of buyers and promoters in that sector. The lack of standardisation has been a constraint to the healthy and orderly growth of industry. Therefore, the need for regulating the sector has been emphasised in various forums.

In view of the above, it becomes necessary to have a Central legislation, namely, the Real Estate (Regulation and Development) Bill, 2013 in the interests of effective consumer protection, uniformity and standardisation of business practices and the transactions in the real estate sector. The proposed Bill provides for the establishment of the Real Estate Regulatory Authority (the Authority) for regulation and promotion of real estate sector and to ensure sale of plot, apartment or building, as the case may be, in an efficient and transparent manner and to protect the interest of consumers in real estate sector and establish the Real Estate Appellate Tribunal to hear appeals from the decisions, directions or orders of the Authority.”

12. Under Section 2(c)(d), “allottee”, in relation to a real estate project, means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter,

and includes the person who subsequently acquires the said allotment through the sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent.

13. Section 18 of the RERA, 2016, provides the remedy of refund with interest and compensation to allottees, when a developer fails to complete the construction or give possession as per the Agreement for Sale. However, remedies under Section 18 are “without prejudice to any other remedy” available to the allottee.

14. The rights and duties of allottees are enshrined in Section 19. Under sub-section (3) of Section 19, the allottee shall be entitled to claim the possession of apartment, plot or building, as the case may be, and the association of allottees shall be entitled to claim the possession of the common areas. Under sub-section (4) of Section 19, the allottee shall be entitled to claim the refund of the amount paid along with interest at such rate as may be prescribed and compensation in the manner as provided under this Act, from the promoter, if the promoter fails to comply or is unable to give possession of the apartment, plot or building, as the case may be, in accordance with the terms of agreement for sale or due to discontinuance of his business as a

developer on account of suspension or revocation of his registration.

15. Section 79 incorporates the bar of jurisdiction as under:

“Section 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.”

16. Section 88 declares that the provisions of the said Act shall be in addition to, and not in derogation of, the provisions of any other law for the time being in force.

17. Section 89 gives overriding effect to the provisions of the said Act by providing that, the provisions of the said Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force.

18. A conjoint reading of the aforesaid provisions in the light of the statement of objects and reasons of RERA, 2016 would indicate that a special machinery is provided for enforcement of the rights and liabilities of both the allottees and promoter in relation to real estate transactions. RERA, 2016 defines the right and liabilities of the promoter and the allottees and remedies for enforcement of those rights and liabilities. Yet,

Section 87 of the RERA, 2016, declares that the provisions of the said Act, shall be in addition to and not in derogation of the provisions of any other law for the time being in force.

19. In the case of **Imperia Structures Ltd. V/s. Anil Patni and Anr.**¹, the Supreme Court had an occasion to consider the availability of remedies before the other forums, like Consumer Fora, in the face of the bar under Section 79 of the RERA. The Supreme Court expounded the legal position in the following words :

“24. Before we consider whether the provisions of the RERA Act have made any change in the legal position stated in the preceding paragraph, we may note that an allottee placed in circumstances similar to that of the Complainants, could have initiated following proceedings before the RERA Act came into force.

(A) If he satisfied the requirements of being a “consumer” under the CP Act, he could have initiated proceedings under the CP Act in addition to normal civil remedies.

(B) However, if he did not fulfil the requirements of being a “consumer”, he could initiate and avail only normal civil remedies.

(C) If the agreement with the developer or the builder provided for arbitration:-

(i) in cases covered under Clause ‘B’ hereinabove, he could initiate or could be called upon to invoke the remedies in arbitration.

(ii) in cases covered under Clause ‘A’ hereinabove, in accordance with law laid down in *Emaar MGF Ltd and anr. Vs. Aftab Singh*, he could still choose to proceed under the CP Act.

.....

26. It is, therefore, required to be considered whether the remedy so provided under the RERA Act to

1 (2020) 10 SCC 783

an allottee is the only and exclusive modality to raise a grievance and whether the provisions of the RERA Act bar consideration of the grievance of an allottee by other fora.

.....

28. On plain reading of Section 79 of the RERA Act, an allottee described in category (B) stated in paragraph 22 hereinabove, would stand barred from invoking the jurisdiction of a Civil Court. However, as regards the allottees who can be called “consumers” within the meaning of the CP Act, two questions would arise; a) whether the bar specified under Section 79 of the RERA Act would apply to proceedings initiated under the provisions of the CP Act; and b) whether there is anything inconsistent in the provisions of the CP Act with that of the RERA Act.

.....

34. It is true that some special authorities are created under the RERA Act for the regulation and promotion of the real estate sector and the issues concerning a registered project are specifically entrusted to functionaries under the RERA Act. But for the present purposes, we must go by the purport of Section 18 of the RERA Act. Since it gives a right “without prejudice to any other remedy available”, in effect, such other remedy is acknowledged and saved subject always to the applicability of Section 79.

35. At this stage, we may profitably refer to the decision in Pioneer Urban Land and Infrastructure Limited and another vs. Union of India and another⁷, where a bench of three Judges of this Court was called upon to consider the provisions of Insolvency and Bankruptcy Code, 2016, RERA Act and other legislations including the provisions of the CP Act. One of the conclusions arrived at by this Court was:-“100. RERA is to be read harmoniously with the Code, as amended by the Amendment Act. It is only in the event of conflict that the Code will prevail over RERA. Remedies that are given to allottees of flats/apartments are therefore concurrent remedies, such allottees of flats/apartments being in a position to avail of remedies under the Consumer Protection Act, 1986, RERA as well as the triggering of the Code.

36. We, therefore, reject the submissions advanced by the Appellant and answer the questions raised in paragraph 26 hereinabove against the Appellant.”

(emphasis supplied)

20. The aforesaid judgment was followed with approval by a three Judge bench of the Supreme Court in the case of **Ireo Grace Realtech Pvt. Ltd. V/s. Abhishek Khanna**².

21. The aforesaid pronouncements indicate that the remedies available to the allottee under Section 18 of the RERA, 2016 are without prejudice to any other remedies available in law. If the provisions of Section 18 of the RERA, 2016 are read in juxtaposition with Section 88 of the Act, an inference becomes justifiable that Section 18 of the RERA, 2016, is not sole repository of the rights and remedies of an allottee, in all situations. Remedies therein are without prejudice to any other remedy available in law.

22. The aforesaid position is required to be borne in mind, while appreciating the bar under Section 79 to the jurisdiction of the civil court. On its plain terms, the bar under Section 79 of the RERA, 2016 to the suit or proceeding before the Civil Court is only in respect of any matter, which the authority or adjudicating officer or the Appellate Tribunal is empowered by or under the said Act, to determine.

23. It, therefore, becomes imperative to examine whether the Appellate Tribunal is empowered to determine the issues that

² (2021) 3 SCC 241

arise for consideration and the reliefs which the Plaintiffs seek in the instant suit. That brings to the fore the nature of the jurisdiction of the Civil Court.

24. Under Section 9 of the Code, the Civil Courts have jurisdiction to try all suits of a civil nature, excepting suits of which their cognizance is either expressly or impliedly barred. The jurisdiction of the Civil Court is, therefore, of widest amplitude. In a sense, it is plenary and residuary. Fetters can be put on the jurisdiction of the civil court only where the statute expressly or impliedly bars the jurisdiction. Even in cases where the statute imposes fetters on the civil court's jurisdiction, the jurisdiction of the civil court to entertain and try the suit or proceeding has to be decided on the touchstone as to whether the statute which has created rights, provides the remedies for the same. It is necessary to examine whether an effective mechanism to provide adequate and sufficient remedies has been enshrined under such statute. There is always presumption in favour of the existence of the jurisdiction of the Civil Court and against the exclusion thereof.

25. Often the decision of the Constitution Bench in the case of **Dhulabhai v/s. State of Madhya Pradesh**³ is consulted when

³ AIR 1969 SC 78

the courts are confronted with the question as to whether the jurisdiction of the civil court is excluded. The following propositions enunciated therein are instructive, and, hence, extracted below :

“(1) Where the statute gives a finality to the orders of the special tribunals the civil court's 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 questions 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.

.....

(7) An exclusion of the jurisdiction of the Civil Court is not readily to be inferred unless the conditions above set down apply.”

(emphasis supplied)

26. In the case of State of Tamil Nadu v/s. Ramalinga Samigal Madam⁴, the Supreme Court further elucidated the propositions in the case of Dhulabhai (supra), as under :

“13. Secondly, the principle indicated in the second proposition enunciated in Dhulabhai's case requires that the statute: when it creates a special right or liability and provides for its determination, should also lay down that all questions about the said right or liability shall be determined by the Tribunal or authority constituted by it, suggesting thereby that if there is no such provision it will be difficult to infer ouster of the Civil Court's jurisdiction to adjudicate all other questions pertaining to such right or liability.

14. Thirdly, having regard to the principle stated by the Supreme Court while enunciating the first proposition in Dhulabhai's case, it is clear that even where the statute has given finality to the orders of the special tribunal the civil Court's jurisdiction can be regarded as having been excluded if there is adequate remedy to do what the Civil Court would normally do in a suit. In other words, even where finality is accorded to the orders passed by the special tribunal one will have to see whether such special tribunal has powers to grant reliefs which Civil Court would normally grant in a suit and if the answer is in the negative it would be difficult to imply or infer exclusion of Civil Court's jurisdiction.”

27. In the light of the aforesaid position in law, re-adverting to the facts of the case, it becomes abundantly clear that the essential dispute is now between the

4 (1985) 4 SCC 10

Plaintiffs and defendant No.2, albeit on account of the execution of the two instruments by the Defendant No.1 in respect of one and the same flat. The Plaintiffs seek declarations that the agreement to sale executed in their favour is legal and valid; the Plaintiffs are the bonafide purchasers of the subject flat without notice and the sale deed dated 23 March 2016 executed by Defendant No.1 in favour of Defendant No.2 is null and void and not binding upon the Plaintiffs.

28. Thus the core issue that arises for determination as to whether the Plaintiffs are bonafide purchasers for value without notice of the prior instrument between Defendant Nos.1 and 2, would warrant investigation into a host of facts. Dispute would, thus, partakes the character of a lis between the two sets of allottees. Such a dispute between the allottees, nay which of the two instruments is legal and valid, is not a matter which the authorities under the RERA are empowered to adjudicate. Consequently, the reliefs of declaration and injunction sought by the Plaintiffs in the instant suit, may not be granted by authorities under RERA.

29. The endeavour of Mr. Memon to draw home the point that since the order made by the Appellate Tribunal can be executed as a decree of a Civil Court and, for that purpose, the Appellate

Tribunal shall have all the powers of a Civil Court, and, therefore, the legality and validity of the claim of the Plaintiffs can also be decided by Appellate Tribunal, does not merit acceptance unreservedly.

30. Undoubtedly, Section 57 cloths the order passed by the Appellate Tribunal with the status of a decree, and, for the purpose of execution of such order, the Appellate Tribunal has been conferred the powers of a Civil Court. However, that by itself, does not make the Appellate Tribunal a Civil Court. At best, it can be said that, while executing an order, the Appellate Tribunal may have the trappings of the civil Court, but it cannot be called a Civil Court, in the sense that, it can grant reliefs which can be granted by the Civil Court as the court of plenary and residuary jurisdiction while determining a suit of civil nature.

31. In the aforesaid view of the matter, learned Civil Judge was justified in declining to reject the plaint on the ground that the suit was barred by the provisions contained in Section 79 of the RERA. Resultantly, this Court does not find any patent illegality or material irregularity in the exercise of jurisdiction by the Civil Court, which would warrant correction in exercise of revisional jurisdiction.

32. Hence, the following order:

: O R D E R :

The application stands rejected.

No costs.

[N. J. JAMADAR, J.]