

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 1673 OF 2025**

Tuvin Constructions LLP ... Petitioner
vs.
State of Maharashtra,
Through Urban Development Department and another ... Respondents

Mr. Amogh Singh a/w. Mr. Nirav Karia, i/b. Mr. Bhavin Bhatia for petitioner.
Mr. Milind More, Additional GP for Respondent No.1-State.
Mr. A. K. Saxena for Respondent No.2-MahaRERA.

**CORAM : R. I. CHAGLA AND
FARHAN P. DUBASH, JJ
DATE : 09th SEPTEMBER, 2025**

ORDER :

1. By this Writ Petition, the Petitioner is seeking direction to Respondent No.2 to process Petitioner's application for change of name of the promoter of the project in the name of the Petitioner and/or record fresh registration of the project in the name of the Petitioner without the liability of the allottees of the erstwhile developer, by cancelling existing registration of the said erstwhile developer. The Petitioner has further sought to dispense with the condition of obtaining 2/3rd consent or any consent from the allottees of the erstwhile developer if any, to change the name of promoter from the name of erstwhile developer to the name of the Petitioner.

2. The relevant facts are as under:

- (i) A Development Agreement and Power of Attorney was executed by Vilas Vaibhav Co-operative Housing Society Limited ("Society") in favour of M/s. Aditya Developer ("erstwhile developer") on 20.03.2014.

- (ii) An Arbitral Award dated 28.11.2023 was passed in Arbitration Petition No.44 of 2022, terminating the erstwhile developer.
- (iii) Orders dated 01.08.2024 and 12.08.2024 were passed in Interim Application (Lodging) No. 16310 of 2024 in Commercial Execution Application (Lodging) No. 15973 of 2024, directing the erstwhile developer to handover the subject property to the Society and allow the Society to continue and complete the redevelopment.
- (iv) On 03.10.2024, a Development Agreement and Power of Attorney was executed by the Society in favour of the Petitioner.
- (v) The Petitioner applied before Respondent No.2-Maharashtra Real Estate Regulatory Authority ("MahaRERA") for registration of Petitioner's project.
- (vi) An impugned email was addressed by the Legal Department of MahaRERA on 04.03.2025, directing the Petitioner to obtain 2/3rd consent from the allottees of the erstwhile developer for the Petitioner's project to be registered with MahaRERA.

3. Mr. Amogh Singh, learned Counsel appearing for the Petitioner has submitted that in view of the Petitioner being the new developer/promoter of the subject project and having made application before MahaRERA for registration of the Petitioner's project, MahaRERA could not have imposed a condition of obtaining consent of 2/3rd allottees of the erstwhile developer for registration of the Petitioner's project with MahaRERA, under Section 3 of the Real Estate (Regulation and Development) Act, 2016 ("RERA Act").

4. Mr. Singh has further submitted that the issue involved in the present petition as to whether consent of 2/3rd allottees of the erstwhile developer, is required to be obtained by the new developer, is no longer *res integra*. He

has placed reliance upon paragraph Nos.7 to 9 of the judgment of this Court in the case of ***Goregaon Pearl CHSL vs. Dr. Seema Mahadev Paryekar and others*** (2019 SCC OnLine Bom 3274). He has submitted that the learned Single Judge of this Court has considered the definition of “promoter”, contained in clause (zk) of Section 2 of the RERA Act and has also considered the contention of the learned Counsel for Respondent No.1 therein, that it was the Appellant-Society, who had caused to construct a building consisting of apartments for the purpose of selling them to other persons and as much as Respondent No.2-developer, it must be treated as a promoter of the project under the provisions of RERA Act.

5. The learned Single Judge of this Court has not accepted this contention in view of ***Vaidehi Akash Housing Pvt. Ltd. vs. New D. N. Nagar Co-op. Housing Society Union Ltd. and others*** [2015 (3) ABR 270]. It has been held in the facts of that case, where the landowner of the Society had terminated the agreement on breaches committed by the developer and third party purchasers claiming under the developer, that the Society should be treated as a promoter and be asked to complete the project. This Court held that there was no privity of contract between the Society and third party purchasers claiming through the developer. It was further held that where the Development Agreement is terminated by the Society and the developer is unable to obtain specific performance of the Development Agreement, no third party purchaser, claiming to be the developer, can likewise seek specific performance against the Society.

6. In ***Goregaon Pearl CHSL vs. Dr. Seema Mahadev Paryekar and others*** (*supra*), this Court had considered that MahaRERA had clarified that only such individuals/organizations would fall within the definition of “promoter”

in RERA Act, on account of being landowners, as would be specified as such at the time of online registration with the Authority. It was nobody's case that the Appellant Society was such specified promoter in the online registration.

7. Mr. Singh has submitted that the Petitioner, being the new developer, is the promoter and the responsibility of obtaining consent of 2/3rd allottees of the erstwhile developer cannot be foisted upon the new developer, as a condition for registration of its project. He has submitted that any claim made by the allottees/purchasers against the erstwhile developer, cannot be made against the new developer-promoter. This is in view of there being no privity of contract between the new developer-promoter and the allottees of the erstwhile developer.

8. Mr. Singh has submitted that the view taken by the learned Single Judge in the case of **Goregaon Pearl CHSL vs. Dr. Seema Mahadev Paryekar and others** (*supra*), has been approved by the Division Bench of this Court, in **Deepak Prabhakar Thakoor and others vs. Maharashtra Housing and Area Development Authority (MHADA) and others** (2023 SCC OnLine Bom 2234). Mr. Singh has accordingly submitted that the present petition be allowed.

9. Mr. Saxena, learned counsel appearing for Respondent No.2-MahaRERA has placed reliance upon the Affidavit-in-Reply dated 01.08.2025 filed by the said Respondent, which is tendered and taken on record. He has submitted that the Society was the co-promoter along with the erstwhile developer in respect of the subject project. He has submitted that the erstwhile promoter had sold 18 units to the allottees. The petitioner-new developer was called upon to obtain consent of 2/3rd allottees of the

erstwhile developer, pursuant to the application submitted by the Society, under Section 15 of the RERA Act. He has submitted that the said Section provides that the promoter shall not transfer or assign his majority rights and liabilities in respect of a real estate project to a third party, without obtaining prior written consent from 2/3rd allottees and prior written approval of the Authority. He has submitted that in the present case, the Society, being the co-promoter, could only have transferred the majority rights and liabilities in respect of the subject project to the Petitioner by obtaining prior written consent from 2/3rd allottees and without prior written approval of the Authority.

10. Mr. Saxena has submitted that as per Section 2(zk) of the RERA Act, “promoter” means a person who constructs or causes to be constructed an independent building. The Society, being the landowner of the subject property, is the co-promoter of the project and since the Society has transferred the development rights in favour of the Petitioner, the mandate of Section 15 of the RERA Act has to be complied with for change of promoter and hence, consent of 2/3rd allottees of the erstwhile developer has to be obtained.

11. Mr. Saxena has submitted that the issues whether the contract between the complainant and the developer can be termed as privity of contract between the complainant and the Society, on the ground that the developer has acted based on the Development Agreement executed by the Society and whether the complaint filed by the purchaser through the developer is maintainable under the provisions of RERA Act, was expressly framed in *M/s. New Sangeeta CHS Ltd vs. Mr. Kaushal M. Haria* in Second Appeal No.148 of 2025 with Interim Application No.1853 of 2025 and by an

order dated 19.03.2025, these issues are being considered. He has submitted that these issues also arise in the present case and in view thereof, the matter be adjourned, pending determination of these issues.

12. Having considered the submissions, Section 3 of RERA Act provides for prior registration of a real estate project with RERA. It is provided therein that no promoter shall advertise, market, book, sell or offer for sale, or invite persons to purchase in any manner any plot, apartment or building, as the case may be, in any real estate project or part of it, in any planning area, without registering the real estate project with the Real Estate Regulatory Authority established under the RERA Act. Hence, it is mandatory for the promoter to obtain registration of their project with RERA prior to any act on their part, insofar as the subject project is concerned.

13. In the present case, the communication dated 04.03.2025 issued by MahaRERA, which has been impugned by the Petitioner was in pursuance of the Petitioner's application for change of promoter from the erstwhile developer to the Petitioner-new promoter. MahaRERA, by the impugned communication, had imposed the condition of obtaining consent of 2/3rd allottees as well as Declaration Form-B showing date of completion of project as 27.10.2022 and not as 31.12.2027. Such condition has been imposed for registration of the Petitioner's project with MahaRERA.

14. We are of the considered view that such a condition imposed by MahaRERA vide the impugned communication, is contrary to the settled law, as laid down by this Court in **Vaidehi Akash Housing Pvt. Ltd. vs. New D. N. Nagar Co-op. Housing Society Union Ltd. and others** (*supra*), **Goregaon Pearl CHSL vs. Dr. Seema Mahadev Paryekar and others** (*supra*) and as confirmed

by the Division Bench of this Court in **Deepak Prabhakar Thakoor and others vs. Maharashtra Housing and Area Development Authority (MHADA) and others** (*supra*). It has been the consistent view of this Court that there is no privity of contract between the Society or new developer, as in the present case, with third party purchasers claiming through the erstwhile developer. Where the Development Agreement is terminated by the Society and the erstwhile developer is unable to obtain specific performance of the Development Agreement against the Society, no third party developer can seek specific performance against the Society or new developer, as in the present case.

15. In the present case, the promoter is the Petitioner-new developer, who has made the application for registration of the Petitioner's project with MahaRERA. The contention on behalf of Respondent No.2-MahaRERA that the Society is the co-promoter and in view of the Society having transferred its majority rights in the RERA project to the new developer, prior written consent from 2/3rd allottees is mandated is in our view, misconceived. The Society cannot be considered as co-promoter as it is the erstwhile developer, who alone can be considered as the erstwhile promoter of the project and upon termination of the erstwhile developer vide Arbitral Award dated 28.11.2023 passed in Arbitration Petition No.44 of 2022, any allottee of the erstwhile developer cannot make a claim against the new developer, who is appointed pursuant to the Development Agreement and Power of Attorney executed by the Society on 03.10.2024.

16. In view thereof, the petitioner is entitled to dispensation of the condition of obtaining consent of 2/3rd allottees of the erstwhile developer for changing the name of the promoter i.e. from the erstwhile developer to

that of the Petitioner.

17. Hence, the petition is allowed in terms of prayer clauses (a) and (b) which read thus:

- “a) This Hon'ble Court be pleased to issue Writ of Mandamus or Writ in the nature of Mandamus or any other appropriate Writ, Order or Direction under Article 226 of the Constitution of India, directing Respondent No.2 to process the application of Petitioner for change of name of the promoter of the project in the name of the Petitioner and/or record fresh registration of the project in the name of the Petitioner without the liability of the allottees of the erstwhile developer, by cancelling the existing registration of the said erstwhile developer.
- b) that this Hon'ble Court be pleased to dispense with the condition of obtaining 2/3rd consent or any consent from the allottees of the erstwhile developer if any, to change the name of the promoter from the name of the erstwhile developer to the name of Petitioner.”

18. The writ petition is accordingly disposed of. There shall be no order as to costs.

19. The learned Counsel appearing for Respondent No.2 has sought for stay of this order for a period of four weeks. Considering the findings in this order that the condition of obtaining written consent of 2/3rd allottees of erstwhile developer, imposed by MahaRERA, being contrary to settled law, as well as the provisions of RERA Act, the application for stay is rejected.

(FARHAN P. DUBASH, J)

(RIYAZ I. CHAGLA, J.)