

**BEFORE THE MAHARASHTRA REAL ESTATE  
APPELLATE TRIBUNAL, MUMBAI**

**Appeal No. AT006000000010465**

Mr. Aspandiar Rashid Irani

Irani Baug, Pokhran Road No.1, Jekegram,

Next to Cadbury Co. Thane (W)400 406

..Appellant

Versus

1. M/s. SSV Realtors

2. M/s. Sai Estate Consultants Chembur Pvt.Ltd.

705-706, 7<sup>th</sup> Floor, Krushal Commercial Tower,

Above Shopper's Stop, M.G. Road,

Amar Mahal Junction, Chembur (W),

Mumbai 400 071.

.. Respondents

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*Shri S.S. Mhaispurkar a/w. Shri Sameer Mangaonkar, Advocates for Appellant.*

*None for Respondent No.1.*

*Shri Sanjay Chaturvedi, Advocate for the Respondents.*

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**CORAM : INDIRA JAIN J.,CHAIRPERSON &  
S.S. SANDHU, MEMBER(A)**

**DATE : 11th APRIL, 2019.**

**JUDGMENT (PER : INDIRA JAIN, J.)**

This appeal arises from the order dated 11<sup>th</sup> May, 2018 passed by Learned Chairperson, MahaRERA in Complaint No. CC006000000023369.

2. For the sake of convenience, we would refer the appellant and respondents in their original status as complainant and respondents as referred before the Authority.
  
3. The facts giving rise to the present appeal may be stated in brief as under:
  - i] Complainant is the owner of land admeasuring 729.10 sq.mtrs. bearing Final Plot No. 237 of T.P. Scheme, Ghatkopar III, situated at Village Kirol, Taluka Kurla (hereinafter referred to as "the said plot").
  - ii] Respondent no.1 is the developer and respondent no.2 is registered Estate Agent. Respondent no.1 is carrying out composite Slum Rehabilitation Scheme on seven plots including plot of the complainant. The project is registered as ongoing real estate project.
  
4. Complainant sought multiple reliefs in the complaint on the following grounds :
  - i] Suppression of civil litigation before the Civil Court and the Hon'ble Bombay High Court;
  - ii] Failure to upload agreement on the portal;
  - iii] Omission to display the names and photographs of all the Promoters;
  - iv] Non-disclosure of name and address of respondent no. 2;
  - v] Failure to upload the requisite mandatory certificates;
  - vi] Incorrect disclosure of name of Village as Kurla instead of Ghatkopar, Kirol;

vii] Contravention of directions in Circular no.12 of 2017 dated 4/12/2017.

viii] Disclaimer by respondent no.2 in the advertisement on page 5 of Property times dated 14/10/2017.

5. Another grievance of complainant raised in the complaint is that partner of respondent no.1 himself is 'Project Architect' leading to conflict of interest prejudicially affecting the obligations of Architect in submitting forms under Regulation 3.

6. Based on the above grounds, complainant sought that respondent no.1 be directed to comply with the rules and Circular and penalty be imposed for getting registration done on false information. In addition, complainant sought restraintment order against the respondents from issuing any advertisement, offering for sale any apartment or building to be constructed on or utilizing the FSI of Plot No. 237.

7. The respondent no.1 remained absent and complaint proceeded ex-parte against respondent no.1. Respondent no.2 appeared and resisted the complaint.

8. Upon hearing the complainant and respondent no.2, Authority directed respondent no.1 to upload full and complete disclosures specifically litigation mentioned by the complainant in their MahaRERA registration as required under Section 4 of the Act and rules and regulations made thereunder within 15 days from the date of order. Consequently, complaint came to be disposed of.

9. Being dissatisfied, complainant has assailed the impugned order in this appeal on the following grounds:-

i] After order dated 12.02.2016 by the Chief Executive Officer, Slum Rehabilitation Authority, respondent no.1 ceased to fall within the definition of Promoter;

- ii] The registration as ongoing project sought by respondent no.1 was in violation of Section 4 of the Act;
  - iii] Respondent no.2 contravened the provisions of Section 10(c) (B) by unfairly publishing advertisement in 'Property Times' dated 14.10.2017 in the absence of any approval or permission from respondent no.1;
  - iv] Violation of Section 14(2) by respondent no.2 claiming disclaimer in the advertisement was ignored by the Authority;
  - v] The challenge on conflict of interest as the partner of respondent no.1 himself is the Project Architect;
10. On the basis of the above, appellant sought the following reliefs in appeal :
- i] Project Registration Certificate of respondent no.1 qua Final Plot No. 237 to be revoked;
  - ii] Revocation or suspension of certificate of respondent no.2 as real estate agent;
  - iii] Direction to respondent no.2 to amend the disclosure on MahaRERA website by correcting the name of Village;
  - iv] To restrain Architect partner of respondent no.1 from acting prejudicially affecting his obligations of Architect in submitting the requisite forms;
  - v] To restrain respondents from issuing any advertisement or Prospectus offering for sale any apartment or building to be constructed or utilising the FSI of Plot No. 237;
  - vi] Penalty under Sections 60, 61 and 62 of RERA Act.

11. During pendency of appeal, an application for amendment to pleadings raising additional grounds for seeking reliefs in complaint, came to be filed by the appellant. According to the appellant, he had no knowledge of the events took place before passing the impugned order. It is submitted that on 04.07.2018 when he checked on the website of MahaRERA, he came to know that respondent no. 1 had uploaded ad-interim order dated 10.05.2018 passed by the Apex Grievance Redressal Committee staying the order dated 12.02.2016 passed by C.E.O. / SRA whereby appointment of respondent no.1 as a developer of the entire project was terminated. It is further submitted that application filed by respondent no.1 with the Apex Grievance Redressal Committee was dismissed on 16.02.2019.

12. So far as date of knowledge of appellant regarding the events mentioned in the application for amendment is concerned, there is no specific denial on the part of respondent no.2. Respondent no.1 remained absent despite due service of the notice and did not contest the appeal.

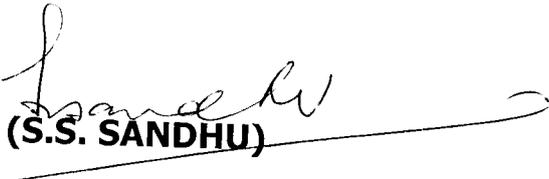
13. As the facts brought forth by way of proposed amendment go to the root of controversy between the parties and essential to decide the dispute effectively, matter needs to be remanded for fresh decision on merits.

14. Accordingly without touching the merits of the case, we proceed to pass the following order :

**--:ORDER:--**

- i] Appeal is allowed;
- ii] Impugned Order dated 11<sup>th</sup> May, 2018 passed in Complaint No. CC006000000023369 is hereby set aside;

- iii] Matter is remanded to the Authority for its decision afresh on merits within six weeks from the date of communication of this order;
- iv] Parties are at liberty to file additional pleadings and evidence / material in support thereof;
- v] Parties to appear before the Authority on 22<sup>nd</sup> April, 2019.
- vi] Notice of appearance before the Authority stands dispensed with;
- vii] No costs.
- viii] Inform the Authority accordingly.

  
**(S.S. SANDHU)**

**(INDIRA JAIN J)**

ed.