

**CASE STUDY OF MR. JAY THAKURAL MR. RAJEN DHURUV, BEFORE
MAHARASHTRA REAL ESTATE APPELLATE TRIBUNAL MUMBAI APPEAL
No. U-6/2021**

Jyoti Mone*

INTRODUCTION

THE Present appeal has been preferred under section 44 of the Maharashtra Real Estate (Regulation and Development) Act, 2016 ("the Act"/"RERA") against the order dated 9th July 2021 passed by the learned Chairperson, Maharashtra Real Estate Regulatory Authority, (MahaRERA) in Complaint No. SC100-2298. The Maharashtra Real Estate Appellate Tribunal (MREAT) vide the above judgment dated 12th August 2022, held that the rehabilitation part of a redevelopment project does not require registration under the provisions of the Act, if it does not involve marketing, advertising, or selling.

FACTS OF THE CASE

- The Appellant is the original Complainant before MahaRERA. The respondent is the developer. The Respondent is constructing a building known as "Waterfront Towers" at Bandra (West), Mumbai ("said Project"). No one was present for the Respondent.
- In this case for convenience, the Appellant and Respondent have been addressed as Complainant and Respondent respectively in their original status before MahaRERA. Hence, they have been similarly addressed in this case comment as well.
- The complainant's father was an original member of a Society known as "The New Panchsheel Cooperative Housing Society" ("the Society") and the owner of a flat therein. Respondent executed a development agreement with the society and also executed a Permanent Alternative Accommodation Agreement ("PAAA") with the complainant's father. The complainant's father gifted the said flat to the complainant by registered deed on 7th August 2017. The complainant's flat is situated on the 9th floor of the proposed building.
- The Respondent could not secure a completion certificate. The project was stalled over various stages and at intervals. It is the case of the complainant that the project is

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ongoing and still not been registered, appellant filed the captioned complaint before MahaRERA, seeking inter alia direction to the Respondent to register the said project.

- This Complaint was rejected by MahaRERA vide impugned order dated 9th July 2021, on grounds inter alia that said the project has been stalled and cannot be termed as an ongoing project under Section 3 of the Act and dismissed the captioned complaint, being not maintainable.
- Being aggrieved by the order, the Complainant challenged the legality, propriety, and correctness of the decisions in this Appeal.

ARGUMENTS OF THE COMPLAINANT

- That the complainant's flat is in the Rehabilitation Component of the redevelopment project. Hence, it is guided by the Permanent Alternative Accommodation Agreement.
- MahaRERA failed to consider the revised commencement certificate issued on 26th April 2019 and has not taken note of the revised updated commencement certificates. Due to the non-receipt of the completion certificate, the project should be considered an ongoing project and requires mandatory registration with MahaRERA under Section 3 of the Act.
- MahaRERA has erred in holding that the said project is stalled and is not an ongoing project. Therefore, it is necessary to set aside the impugned order dated 9th July 2021.
- That the Respondent be directed to register the project on the RERA website within a stipulated time and levy penalty under Section 59 of the Act.³⁸
- None present for the Respondent.

ISSUES BEFORE THE TRIBUNAL

- Whether the Permanent Alternative Accommodation Agreement/Rehabilitation Component of the redevelopment project would fall within the ambit of the provisions of the Act of 2016.
- Whether the complainant has the locus and legal right to seek relief through the above complaint under the provisions of the Act of 2016.
- Whether the complaint is maintainable and whether the appeal deserves to be allowed.

JUDGMENT

This case was heard by the Honourable CHAIRPERSON INDIRA JAIN J, & the Honourable MEMBER DR.K. SHTVAJT. Admittedly, the Complainant's flat is in the rehabilitation component of the redevelopment project and is guided by the Permanent Alternative Accommodation Agreement. The rehabilitation project has been undertaken by Respondent after securing the commencement certificate on 25th April 2019. The project was stalled and had not received a completion certificate. The complaint before MahaRERA proceeded *exparte* against Respondent.

The redevelopment projects are normally of two types, (a) Self-development in which the occupants of the building themselves undertake redevelopment activities or through some contractor but intended for the exclusive use of the erstwhile inhabitants only. (b) Redevelopment projects have two components namely the Rehabilitation component and the Sale component. In case the redevelopment is of type (b) then the developer normally provides free-of-cost permanent alternative accommodation to erstwhile inhabitants and in lieu of that, the developer gets additional FSI/TDR, which cross-subsidizes the cost of rehabilitation components and reduces the cost to occupants of rehabilitation component.

The Tribunal has held that Section 3(2)(c) of the Act, has specifically and expressly exempted the rehabilitation part of a redevelopment project from the requirement of registration under RERA if it does not involve marketing, advertising, or selling. The relevant abstract of Section 3 of the Act as under is reproduced hereunder:

"3. Prior registration of real estate project with Real Estate Regulatory Authority.

(1) 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 this Act:

Provided that projects that are ongoing on the date of commencement of this and for which the completion certificate has not been issued, the promoter shall make an application to the Authority for registration of the said project within a period of three months from the date of commencement of this Act:

Provided further that.....

(2) Notwithstanding anything contained in sub-section (1) no registration of the real estate project shall be required-

(a).....

(b) where the promoter has received a completion certificate for a real estate project prior to the commencement of this Act,

(c) for the **purpose of renovation or repair or re-development, which does not involve marketing, advertising selling** new allotment of any apartment, plot or building, as the case may be, under the real estate project."

The Tribunal has held that Section 3 of the Act, makes it amply clear that the element of sale is the main point of consideration for the interrelation between the allottee and promoter. In case of a sale, the allottee and promoter necessarily execute an agreement for the sale of the premises. The RERA Act makes it mandatory that prior to undertaking any kind of advertisements, publicity, etc., for effecting the sale, the project has to be mandatorily registered under the Act on the RERA website. Thus it can be inferred that unless there is a sale, the registration of the rehabilitation project is not required and hence, provisions of RERA will not be applicable for such projects which do not involve the sale of premises.

The Tribunal has held that "Contrary to the above requirements specified under the Act, the element of sale or publicity or advertisement, etc., is completely non-existent in the transactions relating to the rehabilitation part of the project component between appellant and respondent of the captioned appeal. As such, advertisement, publicity or marketing, etc., are not required to be undertaken because no sale is contemplated under the rehabilitation part of such redevelopment projects. So, the question of the agreement for sale is inconceivable in relation to the rehabilitation component of these projects and there is no sale/advertisement/marketing of the real estate in the present case. Thereby, it cannot be construed as an agreement for sale to expand benefits under the Act. The sale forms key ingredients for holding a real estate project liable for registration and bringing it within the purview of the provisions of the Act. The intent of the legislature to this effect is also manifestly enshrined in the preamble and in the statement of objects, which clearly demonstrates the requirement of the sale as a key prerequisite."

In view of the above, it can be inferred that the element of sale/advertisement/marketing, etc., are contemplated only for the sale component of the rehabilitation project and the requirement of project registration arises only on account of the sale component.

It is pertinent to note that, normally the sanction is granted to the entire project consisting of both these two components the Rehabilitation component and the Sale Component. As a result, there is a possibility of the misconception that registration applies to the entire project including the rehabilitation component, which is not the correct legal interpretation of the provisions of the Act.

It is necessary to understand the fact that there is no element of the sale in the rehabilitation component of the redevelopment projects. It merely involves the exchange of the old premises with the newly developed premises. Section 3 (2)(c) expressly provides an exemption from registration under RERA for the rehabilitation component of the redevelopment projects, which is the subject matter of dispute in this case. It should be noted that permanent alternative accommodation presupposes that in lieu of pre-existing premises, alternative accommodation is to be provided, which is nothing but only an exchange of premises. A similar view is taken by the Tribunal in *Shrawana Kumar Pardeshi vs. M/s Sagar Shopping Developers*. Therefore, the Tribunal has held that flat takers in the rehabilitation component of redevelopment projects are not covered under the provisions of the Act.

Upon harmonious consideration of the various provisions, objects, and purposes enshrined in the Act, the Tribunal has taken the view that the appellant being a flat taker in the rehabilitation component of the redevelopment project, is not entitled to the relief sought under the provisions of the Act. Therefore, the respondent cannot be directed to register the project under the Act.

The Tribunal was pleased to hold that “Redevelopment projects are of hybrid nature and rehabilitation component (PAAs) do not fall within the purview of the RERA. Thereby, the flat taker appellant being in the rehabilitation component, is not entitled to any relief under the provisions of the RERA, and as such, the complainant has no locus under the provisions of the Act.”

In view of the above observations, the appeal was dismissed by the Honorable Tribunal.

CASE ANALYSIS

Given that redevelopments account for more than 85% of all building projects in Mumbai, the above order has broad ramifications. In view thereof, RERA would not provide relief for thousands of landowners stuck for years because their redevelopment projects are delayed. Many times even the redevelopment projects are abandoned. This is a noticeable loophole because it is quite possible that some developers would take advantage of this weakness and the society members may continue to suffer for years. Hence, it is necessary that the Redevelopment projects be brought under the ambit of RERA to provide the most coveted protection to the helpless members of society who are left to the mercy of the developers for the redevelopment of their buildings.

CONCLUSION

In a redevelopment, there can be two components- namely Rehabilitation component and the Sale component. In the case of the Rehabilitation component, there is a mere exchange of the old flats/units in the society against the new flats/units in the redeveloped project which does not amount to a sale transaction. In the Sale component, there is an actual sale of the flats/units for valuable consideration to the new purchasers. Registration under RERA is not required for the Rehabilitation part of the Redevelopment projects since the Rehabilitation part does not involve any sale of the premises as per the provisions of Section 3 (2) (c) of RERA.