

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

**Appeal No. AT006000000042033/2020**

**In**

**Complaint No. CC006000000057230**

**Sagar Sarjerao Nikam** )  
**Pradeep Shivkumar Sharma;** Both Adult )  
M7, Flat No.A602, A Wing, 6<sup>th</sup> Floor, Mauli )  
Co-op. Housing Society Ltd. Near Mala )  
Garden, Pratikshanagar, Sion East, )  
Mumbai 400 022. ) **.. Appellants**

**Versus**

**Spenta Builders Private Limited** )  
3-A/B, Rajabhadur Mansion, 1<sup>st</sup> Floor, )  
20, Ambalal Doshi Marg, Opposite Bombay )  
Stock Exchange, Fort, Mumbai 400 023. ) **.. Respondent.**

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*Adv. Mr. Satish Dedhia for Appellants.*

*Adv. Ms. Sana Khan for Respondent.*

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**CORAM : SHRIRAM R. JAGTAP, MEMBER (J) &  
SHRIKANT M. DESHPANDE, MEMBER (A)**

**DATE : 20<sup>th</sup> December, 2024.**

**(THROUGH VIDEO CONFERENCING)**

**JUDGEMENT**

**[PER : SHRIRAM R. JAGTAP, MEMBER (J)]**

- Sagar*
1. Being dissatisfied with the order dated 3<sup>rd</sup> October 2019 passed by the Member-1/MahaRERA (For short "the Authority") in Complaint No. CC006000000057230, the complainants, who are

allottees, have preferred instant appeal to raise grievance that the impugned order has not granted relief sought in the complaint.

2. For the sake of convenience parties to the appeal hereinafter will be referred to as "the Complainants" and "Developer" respectively.
3. Brief facts, which led to file instant appeal, are that the project known as **Palazzio**" is launched by the developer on Plot bearing CTS No.832B of village Mohili at Saki Naka, Kurla(West), Mumbai. The complainants have booked flats in the subject project. They are the allottees in the project of the developer. The developer has blatantly violated the various provisions of RERA Act, 2016 as well as the terms and conditions of Airport Authority of India (For short "AAI") and also the Competent Authority viz. MCGM. Though the construction of the subject project was started in 2011, the developer has given the different dates of possession to each allottee. Besides the developer has illegally delivered the possession of flats to allottees sans obtaining the occupation certificate from the Authority and thereby violated the provisions of Section 11(4) (b) of RERA Act 2016 and Section 3(2)(i) of MOFA Act. The developer has also violated height restrictions in the project and due to non availability of Occupation Certificate the developer put the lives of the allottees and airline passengers in danger as the project premises is causing obstruction and is hazardous for safe aircraft operation. The complainants claim that this is clear violation of statutory provisions which require revocation of the project registration u/s. 7 of RERA Act 2016 and

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to levy penalty to the developer under Sections 60 and 61 of RERA Act 2016.

4. The complainants further contended that the developer has applied to the Competent Authority for Occupation Certificate in May 2017 inspite of the project being incomplete. The developer gave full confirmation to the Competent Authority for the purpose of obtaining Occupation Certificate. The developer, while applying for Occupation Certificate, has suppressed the fact that building height has violated the height NOC issued by the Airport Authority of India. The MCGM had rejected Occupation Certificate application of the developer around 11 - 12 times due to non-compliance of the conditions required for grant of Occupation Certificate. The developer has imposed new policy (flat visit policy) thereby restricting the complainants to access their flats. This is nothing but infringement of rights of the complainants. Apart from this inspite of complainants' regular follow ups, there is no response from the developer and also there is no clarity on the status of the demolition of unauthorized structure of the building. The developer is claiming benefit under the garb of New Development Control Regulations – DCR. Earlier complaint filed by the complainants was for different cause of action and the same was u/s. 18 of RERA Act 2016. The conduct of the developer redounded the complainants to file the complaint. The complainants sought relief to impose penalty on the developer u/s. 60 and 61 of the RERA Act 2016 for providing false information and contravention of provisions of sections 11(4)(b), 14(i), 19 and various other provisions of RERA Act 2016 and

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Section 3(2) (i) of MOFA Act. The complainants also sought relief of revocation of registration of the project u/s. 7 of the RERA Act 2016.

5. The developer has appeared in the complaint and disputed the claim of the complainants on the ground that the complaint is barred by law of principle of res-judicata since the complainants have filed earlier Complaint Nos.CC006000000012618 and CC006000000000180 for same cause of action. The developer has given fit out possession to the some of the flat purchasers as flat purchasers gave undertaking that they will not occupy premises until Occupation Certificate is obtained. Therefore, if flat purchasers have violated the said undertaking the complainants cannot have any remedy against the developer. So far height restrictions are concerned, the developer has obtained NOC from the Airport Authority of India and therefore allegations of the complainants about height restrictions are totally false.
6. The developer has further contended that he has applied for Occupation Certificate to the Competent Authority on 26.11.2017 after completing the requirements for obtaining Occupation Certificate. The complainants have misconstrued the authority on submissions dated 14.03.2018 filed by MCGM. In the said submissions, it is stated that the developer is required to ensure the compliance of all conditions of IOD, CC and lay out plans. The said submissions of the Competent Authority do not positively state that the developer has not complied with the said conditions. There are some of the flat purchasers, who have illegally occupied flats for which the developer cannot be held

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responsible. There is no substance in the allegations of complainants that there is no disclosure in the plan with regard to the building height. The developer has contended that developer has obtained NOC from Airport Authority of India on 12.05.2011. Thereafter, the Hon'ble Bombay High Court was pleased to pass an order dated 01.09.2016 in PIL No.86/2014, wherein the developer was not a party and was not aware of the said order. Due to the said order, the Competent Authority MCGM stopped granting permission and therefore the developer again filed application to the Airport Authority of India for its NOC on 15.09.2017 which was granted on 21.03.2018. The complainants have made baseless allegations that there are various irregularities in the UTS room, elevation treatment and swimming pools. The applications filed by the developer for Occupation Certificate were repeatedly rejected by the Competent Authority due to non compliance of the some of the requirements. The unauthorized activities carried out by the allottees have been regularized by utilizing available FSI and therefore the Competent Authority has ultimately granted Occupation Certificate for wing B and C. The developer is not at fault for rejection of Occupation Certificate. Since the local Regime governing grant of Occupation Certificate kept on changing from time to time, particularly the staff to give NOC for height restrictions, and new Development Control and Promotion Regulation 2034. With regard to allegations of complainants for visit of the premises are concerned the developer has contended that in order to avoid any untoward accident the developer has initiated the policy



whereby all flat purchasers and not merely complainants were permitted to visit the building between 11.00 a.m. to 5.00 p.m. only because stronger presence of security guard provided during that time. The developer has further contended that the developer has written several letters/e-mails /intimations to the complainants keeping them informed about the status of the project. With these contentions the developer has prayed for dismissal of the complaint.

7. After hearing the parties the learned Authority has dismissed the complaint holding that there is no merit in the complaint.
8. We have heard learned advocate Mr. Satish Dedhia for appellants/ complainants and advocate Ms. Sana Khan for respondent/ developer. The submissions advanced by the parties are nothing but reiteration of the contents of Appeal Memo, affidavit in reply and their written submissions.
9. A careful examination of pleadings of the parties, material produced on record by the parties, impugned order and submissions advanced by the learned counsel appearing for the respective parties only point that arises for our determination is whether the impugned order warrants interference in this appeal to which our answer is negative for the reasons to follow.

| <b>Sr.<br/>No.</b> | <b>Points</b>                                                | <b>Findings</b>    |
|--------------------|--------------------------------------------------------------|--------------------|
| 1.                 | Whether impugned Order warrants interference in this Appeal? | In the affirmative |

|    |            |                    |
|----|------------|--------------------|
| 2. | What Order | As per final Order |
|----|------------|--------------------|

### REASONS

10. On ensemble of the facts as above reveals that appellants have following main grievances against the developer viz. (i) the developer has delivered possession of the flats to some of the home buyers without obtaining Occupation Certificate from the Competent Authority. The letter of own Architect of developer signifies that there is clear violation of section 11(4)(b) of RERA Act, 2016 by the developer (ii) the developer has carried out construction in violation of RERA Act which is causing obstruction and hazardous for safe aircraft operations and also put lives of allottees and/or airline passengers in danger, (iii) despite regular follow ups by the allottees, there is no response from the developer on the status of demolition of unauthorized structure of the building which is in violation of section 14 of RERA Act.
11. Section 11 of RERA Act talks about functions and duties of promoter. This section casts certain duties and functions on the promoter relating to construction and sale of apartment. The promoter has to make certain periodical disclosures and updates of status of the project. These disclosures are to establish symmetry of information between the promoter and purchaser, to enable the intended purchaser to make an informed choice and to prevent any kind of malpractice, misrepresentation and even puffing. One of the responsibilities of the promoter is to obtain completion certificate or occupation certificate, or both from the Competent Authority as per local law or other laws for

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the time being in force and to make it available to the allottees individually or to association of allottees, as the case may be. According to appellants developer has delivered the possession of flats to some of the allottees without obtaining occupation certification from the Competent Authority.

12. It is significant to note that averments made in the complaint clearly indicate that the developer has applied to concerned authority from time to time for obtaining occupation certificate. According to developer he has simply given the possession to some of the allottees only for fit out purpose and he has not delivered physical possession of subject flats to respective allottees. It is not in dispute that developer has applied to concerned authority for occupation certificate or completion certificate. Under such circumstances, it is difficult to digest that developer has violated the provisions of section 11(4) (b) of RERA Act 2016. Apart from this if any allottee is illegally occupying a flat/premises, MCGM is empowered to take action against such allottee as well as developer. We would like to state that developer has applied to concerned authority for occupation certificate, it means that developer is discharging his lawful duty. Under such circumstance, by any stretch of imagination it cannot be said that developer has violated the provisions of section 11(4)(b) of RERA Act.

13. Next contention of the complainant/appellant is that developer has carried out construction in violation of provisions of RERA Act which is causing maleficent and hazardous for safe aircraft operations and also put lives of allottees and/or airline

passengers in danger. The material placed on record revealed that original NOC of AAI was dated 25.04.2011 which had provided a period of 5 years for completing the project and maintaining height restrictions but promoter did not meet with the requisitions. In Complaint No.006000000012618 filed by Pradeep Sharma and Sangita Sharma against the present promoter, a report from the Competent Authority i.e. MCGM and GVK was called by the learned Authority which showed that the promoter had failed to follow the directives issued by the Airport Authority of India imposing restrictions on the height of the buildings. The report of Senior Manager, Aircraft Operation Services (Page No.48) clearly indicates that building constitute obstructions and are hazardous for safety aircraft operations. This signifies that the promoter has violated height restrictions imposed by the Airport Authority of India. The conduct of the promoter indicates that without proper authorization a high rise building came to be erected in a restricted area.

14. Section 14 of RERA Act talks about the adherence to sanctioned plans and project specifications by the promoter. Section 14 of RERA Act 2016 lays down that the proposed project shall be developed and completed by the promoter in accordance with the sanctioned plans, layout plans and specifications approved by the competent authorities. In the instant case, material produced on record clearly reveals that the promoter has constructed a high rise building in a restricted area and thereby violated height restrictions. It means the promoter has violated the provisions of section 14 of RERA Act 2016.

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15. It is specific contention of the promoter that promoter has applied to concerned authority for height clearance certificate and the same is pending before the authority for consideration. The material on record indicates that MCGM has taken action against the promoter for violation of height restriction/ for unauthorized construction. This itself is sufficient to show that promoter has violated the provisions of section 14 of RERA Act. This conduct of the promoter attracts the provisions of section 61 of RERA Act. However, learned Authority has arrived at wrong conclusion by holding that the issue raised by the complainant in the present complaint with regard to violation of height restrictions had been adequately dealt with in earlier complaint and therefore MahaRERA cannot reagitate the said issue. We reiterate that there is clear violation of section 14 of RERA Act by promoter. Under such circumstances, the promoter is liable to pay penalty for contravention of provisions of section 14 of RERA Act.

16. Section 61 of RERA Act talks about penalty for contravention of other provisions of the Act. Section 61 of RERA Act reads as under:

**61. Penalty for contravention of other provisions of this Act.-** *If any promoter contravenes any other provisions of this Act, other than that provided under section 3 or section 4, or the rules or regulations made thereunder, he shall be liable to a penalty which may extend upto five per cent of the estimated cost of the real estate project as determined by the Authority.*



The Authority may impose penalty on the promoter which may extend to 5% of the estimated costs of real estate project as determined by the Authority. It means it is the discretion of the Authority to impose penalty on the promoter for contravention of any other provisions of RERA Act upto five percent of the estimated costs of the project. The Authority is empowered to impose penalty by considering peculiar circumstances of the case less than 5% of the estimated costs of real estate project. Therefore, considering the peculiar circumstances of the case, we are of the view that it is appropriate to impose penalty of Rs.5 lakh on the promoter for violation of section 14 of RERA Act.

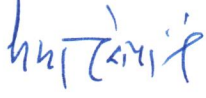
17. So far as rest of the grievances are concerned we are of the view that the learned Authority has dealt with those issues adequately and there is no need to interfere in the findings given by the learned Authority with regard to the rest issues/ rest grievances agitated by the complainant in the complaint. Therefore for the foregoing reasons, we have come to the conclusion that the impugned order warrants interference to some extent. Consequently we proceed to pass following order.

#### ORDER

1. Appeal No.AT006000000042033/2020 is partly allowed.
2. Respondent/developer is ordered to pay penalty of Rs.5 lakh under section 61 of RERA Act and shall deposit the same in the Tribunal within 30 days from the date of the order for violation of section 14 of RERA Act
3. Rest part of the impugned order is upheld.

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4. Respondent shall pay costs of Rs.10,000/- to appellant.
5. Copy of this order be communicated to the Authority and respective parties as per Section 44(4) of RERA Act 2016.



( **SHRIKANT M. DESHPANDE** )



( **SHRIRAM R. JAGTAP** )