

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION LODGING NO. 2023 OF 2017

Ismail Ibrahim Patel and ors. .. Petitioners

Vs.

State of Maharashtra and ors. .. Respondents

Mr.Girish Godbole a/w. Lakshmi Murli i/b. V.S. Kapse for the petitioners in wp(l) 2023/17.

Mr. A.A. Kumbhakoni, learned Advocate General a/w. Geeta Shastri, Addl. Govt. Pleader and Akshay Shinde for the State.

Mr. A.A. Kumbhakoni, Learned Advocate General i/b. Mr. Akshay Shinde & Shardul Singh for respondent no.2 RERA.

**CORAM : NARESH H. PATIL AND
R.G. KETKAR, JJ.**

14th November, 2017.

P.C.

The petitioner had questioned and challenged the validity of office order dated 11th May, 2017 passed by the Secretary, Maharashtra Real Estate Regulatory Authority (hereinafter referred

to as Maha-RERA for short). In the impugned order the Maha-RERA observed that since the term 'Co-promoter' is not defined in the Act, Rules or Regulations, it was necessary to clearly define the term 'Co-promoter'. Therefore, in exercise of powers vested in MahaRERA under Regulation No.38 of the Maharashtra Real Estate Regulatory Authority (General) Regulations 2017, definition of 'co-promoter' was notified as below:-

“Co-Promoter means and includes any person(s) or organization(s) who, under any agreement or arrangement with the promoter of a Real Estate Project is allotted or entitled to a share of total revenue generated from sale of apartments or share of the total area developed in the real estate project. The liabilities of such Co-Promoters shall be as per the agreement or arrangement with the Promoters, however for withdrawal from designated Bank Account, they shall be at par with the Promoter of the Real Estate Project.”

2. The learned Counsel Mr. Godbole submitted that on the first

day of hearing of this petition, an order was passed on 31st July, 2017 and consequent thereto the petitioner got registration of their project under Section 3 of the Real Estate Regulatory Authority (hereinafter referred to as RERA for short). The order passed by this Court reads as under:-

“Mr. A.A. Kumbhakoni learned Advocate General seeks time to file Reply within two weeks. The Petitioner shall at liberty to register the Petition, without prejudice to the rights and contention, if any. Stand over to 31st August, 2017.”

3. Learned Counsel further submitted that RERA provisions do not define term 'co-promoter'. Instead the term defined by the provisions of RERA is under Section 2(zk) which refers to 'promoter'. Regulation 38 of Maharashtra Real Estate Regulatory Authority (General) Regulations 2017 refers to orders and directions by MahaRERA which reads as under:-

“Issue of orders and directions.

38. Subject to the provisions of the Act, Rules and

Regulations, the Authority may, from time to time issue orders and directions in regard to the implementation of the Regulations and procedure to be followed.”

4. In the submissions of the Counsel even under the Regulation 38 the RERA authority is not empowered to coin a new definition of 'promoter' and notify the same in absence of statutory provisions under RERA. The State RERA authority is not empowered to interpret the provisions of Central enactment in defining the term co-promoter. Such a definition would add to confusion which is not permissible.

5. On behalf of Maha-RERA authority, 2nd respondent Dr. Vasant Prabhu, Secretary filed affidavit-in-reply. The deponent tried to support the impugned order passed by Maha-RERA. Paragraph 2 of the affidavit reads as under:-

“The 2nd Respondent has filed an affidavit-in-reply dated 21.08.2017 and has thereby clearly explained that the impugned Office Order has been issued only

as and by way of clarification in order to elaborate the definition of the term 'Promoter' already defined by the said Act. It is also specifically pointed out that the said exercise was undertaken by the 2nd Respondent to bring in more clarity over the said definition. I once again at the cost of repetition say that the impugned action was taken only and only to bring about more transparency in the process of registration, ease of maintenance of accounts, so also towards the discharge of statutory duty of the answering authority to educate general public, bring about awareness regarding the scope, applicability and the implications of the said Act with more precision etc.”

6. Learned Advocate General Mr.Kumbhakoni appearing for respondents 1 and 2 submitted on the last occasion the purpose and intention behind passing of the impugned order. Learned Counsel had

sought for some more time to elaborate upon the issue and take further instructions in this regard. Today the learned Advocate General has presented an affidavit-in-reply filed by the Secretary of the Maha-RERA. We have perused the said affidavit. The Secretary had tried to explain the reasons and necessity for notifying definition of 'co-promoter'. At the end in Paragraph-8 it was submitted as under:-

“ In the light of the aforesaid, in order not to disturb the various steps that are already taken by all stake holders and the answering statutory authority only and only so as to dispel various apprehensions expressed by the Petitioner during the course of the arguments of the present Petition the 2nd Respondent has decided to undertake the following exercise:

(a) to supersede the impugned Office Order dated 11.05.2017 bearing No. Maha-RERA/LA/32/2017 by withdrawing the same and replacing the same appropriately with effect from the same date.

(b) to complete such action within as expeditiously as possible, preferably within a period of three weeks from the date of final disposal of this Writ Petition.

(c) Such an exercise shall cover and govern all the steps taken by all the concerned in pursuance and in accordance with as also in response to the impugned Office Order dated 11.05.2017 bearing No. Maha-RERA/LA/32/2017.”

7. Learned Advocate General submits that in view of the explanation, the petition itself can be disposed of as the grievance of the petitioner is taken care of.

8. The Counsel appearing for petitioner submits that without dealing with the explanatory part of the affidavit in respect of the notification of the term 'co-promoter' the stand adopted by the respondents seeking to withdraw impugned order is accepted and in

that view of the matter the petitioner be permitted to withdraw the matter.

9. We make it clear that we have not dealt with the averments made in the affidavit explaining the circumstances and reasons behind passing of the impugned order. In the facts, we would accept the request made by the respondents to dispose of the petition in view of the decision taken by the 2nd respondent to withdraw the order and undertake/exercise as explained in clauses (a) to (c) in paragraph-8 of affidavit submitted today. In other words, the 2nd respondent had taken a decision to supersede the impugned office order dated 11th May, 2017 by withdrawing the same and replacing the same appropriately with effect from the same date.

10. In view of the aforementioned decision by the 2nd respondent, we allow the petitioner to withdraw this petition.

11. The petition is accordingly disposed of.

12. Learned Counsel for the petitioner undertakes to remove the office objections.

(R.G. KETKAR, J)

(NARESH H. PATIL, J.)

L.S. Panjwani, P.S.

