



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO.662 OF 2023
WITH
INTERIM APPLICATION NO.14511 OF 2023

- | | | |
|----|--------------------------------------|---------------|
| 1. | Mr. Yadavalli Venkata Gopalam | } |
| | an adult Indian Inhabitant of Mumbai | } |
| | Aged : 58 years Occ: Private Service | } |
| 2. | Mrs. Srilata Venkata Gapalam | } |
| | An adult Indian Inhabitant of Mumbai | } |
| | Aged :52 years Occ : Home Maker | } |
| | Both having address at J-403, | } |
| | Green Wood CHS Ltd., | } |
| | Chakala, A.K. Road, Andheri (E), | } |
| | Mumbai-400093, | } |
| | | .. Appellants |

Versus

- | | | |
|----|--|----------------|
| 1. | M/s. Sai Siddhant Developers | } |
| | Partnership firm Office at 1st Ramkrupa, | } |
| | D.B. Lane, Mathuradas Road, | } |
| | Kandivli West, Mumbai-400 067 | } |
| 2. | D.N. Nagar Shivneri Coop. Hsg. Soc. Ltd, | } |
| | A Coop Hsg. Soc. Ltd, registered under the | } |
| | M.C.S. Act 1960 and having its address | } |
| | at CTS No 195 [P], Opp to Ganesh Chock | } |
| | DN Nagar, Andheri West Village Andheri, | } |
| | Taluka Andheri, Mumbai. | } |
| | | .. Respondents |

...

Mr. J. S. Kini a/w Mr. Aum Kini i/by Ms. Sapna Krishnappa for the Appellant.

Ms. Jennifer Michael a/w Ms. Nikita Ghungarde & Dhvani Rughani i/by Dhiren Shah Advocates for the Respondent No.2.

...

CORAM : SANDEEP V. MARNE, J.
RESERVED ON : 23 OCTOBER 2023
PRONOUNCED ON : 04 NOVEMBER 2023

P.C.

1. By this appeal, Appellants challenge order dated 11 July 2023 passed by City Civil Court allowing Notice of Motion No.1583 of 2023 filed by Defendant No.2-society and returning the Plaint under Order VII Rule 10 of Code of Civil Procedure, 1908 (**Code**) for presentation before Real Estate Regulatory Authority (**RERA**).

2. The Appellants-Plaintiffs have instituted SC Suit No.964 of 2023 before the City Civil Court seeking mandatory direction to Defendant No. 1 (Developer) to adhere to the terms and conditions of the agreement in respect of the suit flat i.e. Flat no. 1105 on the 11th Floor admeasuring 643 Sq. Feet carpet area i.e 772 Sq. feet Built up in the said building known as D.N Nagar Shivneri CHS Ltd., Andheri West, Mumbai and to fulfil statutory obligations as per MOFA. They have also sought injunction to restrain the Defendants from selling, transferring, alienating or creating third party rights in respect of the suit Flat.

3. In the suit filed by the Appellants-Plaintiffs, Defendant No.2-society took out Notice of Motion No.1583 of 2023 seeking return of Plaint under provisions of Order VII Rule 10 of the Code on the ground the suit was barred under provisions of Section 79 of Real Estate (Regulation and Development) Act 2016 ('**RERA Act**'). The City Civil Court has proceeded to allow the motion filed by Defendant No.2-society and by its order dated 11 July 2023, has returned the Plaint for presentation before RERA.

4. Mr. Kini, the learned counsel appearing for the Appellants-Plaintiffs would contend that the Suit is filed by the Plaintiff seeking specific performance of the Agreement for Sale dated 10 June 2015 executed between the developer and Plaintiffs. That under the said agreement Plaintiffs have parted with substantial portion of agreed amount of the consideration and that the developer has failed to perform the contract. That, artificial disputes are sought to be shown between the developer and the society, who are hand in gloves with each other. That, bar of jurisdiction of a Civil Court cannot be readily inferred as held by the Apex Court in its judgment in ***Dhulabhai Vs. State of Madhya Pradesh &***

Anr.¹ . That, the burden of proving that Civil Court does not have jurisdiction rested heavily on Defendant No.2-society, which failed to discharge the same. That RERA cannot decide the issue of specific performance of the contract between Plaintiff and the developer. That, in the present case, both Defendant No.1 as well as the society are promoters who are jointly developing the property. That, both developer and society have played fraud on the Plaintiff and RERA is not empowered to determine the cases of fraud and collusion. Mr. Kini would submit that the Defendant No.2-society cannot be permitted to give a different nature to the Suit, which essentially is for specific performance. That, the suit of the Plaintiff cannot be thrown out on a semantic exercise of misinterpretation the prayer clauses, which actually seeks specific performance of the agreement. That the valuation of the suit under particular provisions of the Maharashtra Court Fees Act, 1959 (**Court Fees Act**) would not determine the nature of relief sought in the Plaint nor the same can be a guiding factor for deciding the issue of return of Plaint. The normal rule is that Civil Court has jurisdiction to try all suits of civil nature. In support of his contention, he would rely upon the Judgment of the Apex Court in **State of A.P. Vs. Manjeti**

1 **AIR 1969 SC 78**

***Laxmi Kantha Rao & Ors.*²** and of this Court in ***Hill Property Limited Vs. Union Bank of India*³** and ***Hemlata Chandrakant Mirani Vs. Central Bank of India & Ors.*⁴**.

5. *Per contra*, Ms. Jenifer Michael, the learned counsel appearing for Respondent No.2-society would oppose the Appeal and support the Order passed by the City Civil Court. She would submit that the present suit is not for specific performance of the Agreement for Sale between Plaintiff and the developer. That, the suit is for fulfillment of obligations under provisions of the Maharashtra Ownership of Flats [Regulation of the Promotion of Construction, Sale, Management and Transfer] Act 1963 (**MOFA**). That, under Section 3 of RERA Act, the building in question is now governed by the provisions of RERA Act and is no longer amenable to provisions of MOFA. That, thus Plaintiff in fact seeks fulfillment of obligations under RERA Act, for which adequate machinery is created under RERA Act for redressal of Plaintiffs grievances. That, therefore jurisdiction of Civil Court to decide the Suit of Plaintiffs is ousted under Section 79 of RERA Act. That Plaintiffs have remedies of seeking compliance of obligations cast upon the promoter under

2 **2000 3 SCC 689**

3 **2009 SCC OnLine Bom 1669**

4 **Suit LOD. 2797 of 2010 decided on 1st October 2010**

Section 34 (f) of RERA Act. That under Sections 11 (iii)(b) and 19 (3), Plaintiff can seek fulfillment of obligations for completion of construction and delivery of possession.

6. Ms. Michael would further invite my attention to para 36 of the Plaint, under which the Plaintiff has valued the plaint under Section 6(iv)(j) of the Court Fees Act. That, if the suit was indeed for specific performance, the same ought to have been valued under Section 6 (xi) of the Court Fees Act. According to Ms. Michael, even the cause of action pleaded in the plaint would indicate that the suit is filed not for specific performance but on account of alleged apprehension that Defendants were attempting to create third party rights in respect of re-development work. That therefore the suit, by no stretch of imagination, can be treated as the one for specific performance. She would rely upon the judgment of the Apex Court in ***C.S. Ramaswamy Vs. V.K. Senthil & Ors.***⁵ in support of her contention that mere use of the word 'fraud' would not bring a suit within jurisdiction of a Civil Court, which is otherwise barred by express provisions of any enactment. She would also place reliance of Judgment of the Apex Court in ***Imperia Structures Limited Vs. Anil Patni***

and Another ⁶ in support of her contention that the suit is barred under provisions of Section 79 of RERA Act.

7. Rival contentions of the parties now fall for my consideration.

8. It is Appellants-Plaintiffs' contention that the suit is filed for specific performance of agreement for sale dated 10 June 2015. In the light of this assertion of Appellants-Plaintiffs, initially this Court raised a query as to how bar of Civil Court's jurisdiction can be readily inferred and whether every suit seeking specific performance of a contract in respect of a project, which is registered under RERA Act. It is in the light of this contention that Mr. Kini has relied upon the Judgment of the Apex Court in **Dhulabhai** (*supra*), in which Constitution Bench has held that ouster of jurisdiction of Civil Court is not to be readily inferred. The Apex Court held in para 35 as under:-

35. Neither of the two cases of Firm of Illuri Subayya or Kamla Mills can be said to run counter to the series of cases earlier noticed. The result of this inquiry into the diverse views expressed in this Court may be stated as follows:

(1) Where the statute gives a finality to the orders of the special Tribunals the civil courts' jurisdiction must be held to be excluded if there is adequate remedy to do what the civil courts would normally do in a suit. Such provision, however, does not exclude those cases where the provisions of the particular Act have not been complied with or the statutory Tri-

bunal has not acted in conformity with the fundamental principles of judicial procedure.

(2) Where there is an express bar of the jurisdiction of the court, an examination of the scheme of the particular Act to find the adequacy or the sufficiency of the remedies provided may be relevant but is not decisive to sustain the jurisdiction of the civil court.

Where there is no express exclusion the examination of the remedies and the scheme of the particular Act to find out the intendment becomes necessary and the result of the inquiry may be decisive. In the latter case it is necessary to see if the statute creates a special right or a liability and provides for the determination of the right or liability and further lays down that all questions about the said right and liability shall be determined by the Tribunals so constituted, and whether remedies normally associated with actions in civil courts are prescribed by the said statute or not.

(3) Challenge to the provisions of the particular Act as ultra vires cannot be brought before Tribunals constituted under that Act. Even the High Court cannot go into that question on a revision or reference from the decision of the Tribunals.

(4) When a provision is already declared unconstitutional or the constitutionality of any provision is to be challenged, a suit is open. A writ of certiorari may include a direction for refund if the claim is clearly within the time prescribed by the Limitation Act but it is not a compulsory remedy to replace a suit.

(5) Where the particular Act contains no machinery for refund of tax collected in excess of constitutional limits or illegality collected a suit lies.

(6) Questions of the correctness of the assessment apart from its constitutionality are for the decision of the authorities and a civil suit does not lie if the orders of the authorities are declared to be final or there is an express prohibition in the particular Act. In either case the scheme of the particular Act must be examined because it is a relevant enquiry.

(7) An exclusion of the jurisdiction of the civil court is not readily to be inferred unless the conditions above set down apply.

9. In ***State of A.P. Vs. Manjeti Laxmi Kantha Rao & Ors. (supra)*** the Apex Court reiterated the position that the normal rule of law is that Civil Courts have jurisdiction to try all suits of civil nature. Apex Court held in para 5 as under:-

5.The normal rule of law is that civil courts have jurisdiction to try all suits of civil nature except those of which cognisance by them is either expressly or impliedly excluded as provided under Section 9 CPC but such exclusion is not readily inferred and the presumption to be drawn must be in favour of the existence rather than exclusion of jurisdiction of the civil courts to try a civil suit. The test adopted in examining such a question is (i) whether the legislative intent to exclude arises explicitly or by necessary implication, and (il) whether the statute in question provides for adequate and satisfactory alternative remedy to a party aggrieved by an order made under it.

Where a statute gives finality to the orders of the Special Tribunals; jurisdiction of the civil courts must be held to be excluded if there is adequate remedy to do what the civil courts would normally do in a suit and such provision, however, does not exclude those cases where the provisions of the particular Act have not been complied with or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure.

10. Since the Complaint is returned on an application filed by Defendant No.2-society under the provisions of Order VII Rule 10 of the Code, this Court enquired with Ms. Michael as to whether she wants to cite an absolute proposition of law that every suit seeking specific performance of agreement for sale in a project registered under RERA Act would be barred by provisions of Section 79 of that Act. Though Ms. Michael was fair enough in conceding to the position that such absolute

proposition of law may not be cited, she did attempt to convince this Court that in respect of virtually all aspects covered by RERA Act, jurisdiction of a Civil Court is expressly barred. In support of her contention, she has relied upon judgment of the Apex Court in ***Imperia Structure Limited*** (*supra*) in which the Apex Court has held in paras 25 to 28 as under:-

In terms of Section 18 of the RERA Act, if a promoter fails to complete or is unable to give possession of an apartment duly completed by the date specified in the agreement, the promoter would be liable, on demand, to return the amount received by him in respect of that apartment if the allottee wishes to withdraw from the Project. Such right of an allottee is specifically made "without prejudice to any other remedy available to him".

The right so given to the allottee is unqualified and if availed, the money deposited by the allottee has to be refunded with interest at such rate as may be prescribed. The proviso to Section 18(1) of the RERA Act contemplates a situation where the allottee does not intend to withdraw from the Project. In that case he is entitled to and must be paid interest for every month of delay till the handing over of the possession. It is up to the allottee to proceed either under Section 18(1) or under the proviso to Section 18(1). The RERA Act thus definitely provides a remedy to an allottee who wishes to withdraw from the Project or claim return on his investment.

The remedy so provided under the RERA Act to an allottee is not the only and exclusive modality to raise a grievance and the provisions of the RERA Act do not bar consideration of the grievance of an allottee by other fora. Section 79 of the RERA Act bars jurisdiction of a civil court to entertain any suit or proceeding in respect of any matter which the Authority or the adjudicating officer or the Appellate Tribunal is empowered under the RERA Act to determine. Section 88 of the RERA Act specifies that the provisions of the RERA Act would be in addition to

and not in derogation of the provisions of any other law, while in terms of Section 89, the provisions of the RERA Act shall have effect notwithstanding anything inconsistent contained in any other law for the time being in force.

On plain reading of Section 79 of the RERA Act, an allottee described in Clause (B) i.e. if he did not fulfil the requirements of being a "consumer", and could initiate and avail only normal civil remedies, would stand barred from invoking the jurisdiction of a civil court. However, as regards the allottees who can be called "consumers" within the meaning of the CP Act, (a) the bar specified under Section 79 of the RERA Act does not apply to proceedings initiated under the provisions of the CP Act; and (b) there is nothing inconsistent in the provisions of the CP Act with that of the RERA Act.

11. In *Imperia Structure*, The Apex Court was essentially concerned with jurisdiction of consumer forum vis-à-vis specific remedies under RERA Act. Therefore, the judgment would not throw any light on the issue whether every suit for specific performance of agreement covered by RERA Act would be barred under Section 79. However, Ms. Michael would submit that this Court need not decide the board issue of absolute bar of Civil Court's jurisdiction to entertain all suits for specific performance of RERA agreements and strenuously contends that the present suit is actually not for specific performance. The issue of bar of Civil Court's jurisdiction to decide every Suit for specific performance of RERA agreement is therefore left open to be decided in an appropriate case.

12. Since it is the case of Defendant No. 2-society that, the Suit is not for specific performance, it is necessary to examine

this contention raised by Ms. Michael. The prayers made by Plaintiff in suit are as under:-

[a] That this Hon'ble Court be pleased to pass a mandatory order and direct the Defendant No. 1 to adhere to the terms and conditions of the agreement entered into between the parties in respect of the suit flat ie Flat no. 1105 on the 11th Floor admeasuring 643 Sq. Feet carpet area i.e 772 Sq. feet Built up in the said building known as D.N Nagar Shivneri CHS Ltd., Andheri West, Mumbai which is at Exhibit A hereto and to fulfil statutory obligations as per MOFA.

[b] That this Hon'ble Court be pleased to pass a Permanent Order and injunction restraining the Defendants from selling, transferring, alienating or creating third party rights of any nature whatsoever in respect of the suit Flat i.e Flat no. 1105 on the 11th Floor admeasuring 643 Sq. Feet carpet area i.e 772 Sq. feet Built. up in the said building known as D.N Nagar Shivneri CHS Ltd., Andheri West, Mumbai.

[c] That pending the hearing and final disposal of this suit this Hon'ble Court be pleased to appoint Court Receiver as Receiver in respect of the suit flat ie Flat no. 1105 on the 11th Floor admeasuring 643 Sq. Feet carpet area i.e 772 Sq. feet Built up in the said building known as D.N Nagar Shivneri CHS Ltd. Andheri West, Mumbai. with all powers under Order 40 Rule 1 of the C.P.C. and be directed to put the Plaintiffs in possession of the said suit flat as its agent, on such terms and conditions as this Hon'ble Court deems fit and proper.

[d] Pending the hearing and final disposal of the above suit the Defendants No. 1 be directed by an order of this honourable court to deposit the amount of Rs.68,78,890 /-[Rupees sixty eight lakhs seventy eight thousand eight hundred and ninety rupees Only] with interest at the rate of 18% till date of payment in this honourable court to secure the moneys paid by the plaintiff.

[e] In the alternative, pending the hearing and final disposal of the Suit, the Defendants No 1 be directed to disclose on oath all the personal properties/all properties in which the Partners of the

Defendant No 1 are interested in any manner and the liabilities that they are required to pay.

[f] That pending in hearing and final disposal of the suit, the Defendant No.1 and 2 be restrained by an order and injunction of this court from selling, alienating, encumbering or creating any third party rights of any nature whatsoever or changing status quo in respect of any of their properties till the claims of the Plaintiff herein are secured to the satisfaction of this Hon'ble Court.

[h] For ad-interim and interim reliefs in terms of (a) (b) & (c)

[j] For costs

[i] For such further other reliefs as the facts and circumstances of the case

13. Thus, there is no prayer for specific performance of the agreement for sale dated 10 June 2015. The suit is filed for adherence to the terms and conditions of the agreement and/or fulfillment of statutory obligations under MOFA. The provisions chosen by Plaintiffs for valuation of the suit and for payment of Court Fees would also give some idea about the exact relief sought by them. Plaintiffs have valued the suit under provisions of Section 6 (iv) (j) of the Court Fees Act. Para 36 of the Plaint relating to valuation reads thus:

36. The Plaintiffs states that the prayers prayed for in the suit are not capable of monetary valuation as what is being sought for is enforcement of statutory obligations of the Defendant builder under the provisions of MOFA and

therefore the Plaintiffs prays fixed Court fees under Clause 6 iv (j) of the Bombay Court Fees Act.

14. Thus Plaintiffs have valued the suit under provisions of Section 6 (iv) (j) of the Court Fees Act, which reads thus:-

6. (iv) (j) for other declarations

In suits where declaration is sought, with or without injunction or other consequential relief and the subject-matter in dispute is not susceptible of monetary evaluation and which are not otherwise provided for by this Act [ad valorem fee payable, as if the amount or value of the subject-matter was [one thousand rupees;]

In all suits under clauses (a) to (i) the plaintiff shall state the amount at which the values the relief sought, with the reasons for the valuation;

15. As rightly contended by Ms. Michael, suit for specific performance is to be valued under Section 6 (xi) of the Court Fees Act, which reads thus:

**6.Computation of fees payable in certain suits.
(xi) for specific performance**

In suits for specific performance —

(a) of a contract of sale — according to the amount of the consideration,

(b) of a contract of mortgage - according to the amount agreed to be secured,

(c) of a contract of lease - according to the aggregate amount of the fine or premium (if any) and of the rent agreed to be paid during the first year of the term,

(d) of an award - according to the amount or value of the property in dispute;

16. Thus Plaintiffs themselves admit in para 36 of the Plaint that the suit is only for a general declaration which is not covered by Section 6 (xi) of Court Fees Act. The cause of action pleaded is also not about failure to perform the agreement on the part of Defendant No.1 but the proposed action of Defendant No.2-society in creating third party rights. In this regard, the pleadings in para 24 and 40 of the plaint read thus:

24. The Plaintiffs have now been informed that the defendant No. 2 is intending to create 3rd party rights in respect of the said redevelopment work and intending to put one more developer in the picture, possibly with the consent of the Defendant no 1.

40.

[a] That this Hon'ble Court be pleased to pass a mandatory order and direct the Defendant No. 1 to adhere to the terms and conditions of the agreement entered into between the parties in respect of the suit flat i.e Flat no. 1105 on the 11th Floor admeasuring 643 Sq. Feet carpet area i.e 772 Sq. feet Built up in the said building known as D.N Nagar Shivneri CHS Ltd., Andheri West, Mumbai which is at Exhibit A hereto and to fulfil statutory obligations as per MOFA.

[b] That this Hon'ble Court be pleased to pass a Permanent Order and injunction restraining the Defendants from selling, transferring, alienating or creating third party rights of any nature whatsoever in respect of the suit Flat i.e Flat no. 1105 on the 11th Floor admeasuring 643 Sq. Feet carpet area i.e 772 Sq. feet Built. up in the said building known as D.N Nagar Shivneri CHS Ltd., Andheri West, Mumbai .

[c] That pending the hearing and final disposal of this suit this Hon'ble Court be pleased to appoint

Court Receiver as Receiver in respect of the suit flat I.e Flat no. 1105 on the 11th Floor admeasuring 643 Sq. Feet carpet area i.e 772 Sq. feet Built up in the said building known as D.N Nagar Shivneri CHS Ltd.Andheri West, Mumbai. with all powers under Order 40 Rule 1 of the C.P.C. and be directed to put the Plaintiffs in possession of the said suit flat as its agent, on such terms and conditions as this Hon'ble Court deems fit and proper.

[d] Pending the hearing and final disposal of the above suit the Defendants No. 1 be directed by an order of this honourable court to deposit the amount of Rs.68,78,890 /-[Rupees sixty eight lakhs seventy eight thousand eight hundred and ninety rupees Only] with interest at the rate of 18% till date of payment in this honourable court to secure the moneys paid by the plaintiff.

[e] In the alternative, pending the hearing and final disposal of the Suit, the Defendants No 1 be directed to disclose on oath all the personal properties/all properties in which the Partners of the Defendant No 1 are interested in any manner and the liabilities that they are required to pay.

[f] That pending in hearing and final disposal of the suit, the Defendant No.1 and 2 be restrained by an order and injunction of this court from selling, alienating, encumbering or creating any third party rights of any nature whatsoever or changing status quo in respect of any of their properties till the claims of the Plaintiff herein are secured to the satisfaction of this Hon'ble Court.

[h] For ad-interim and interim reliefs in terms of (a) (b) & (c)

[i] For costs

[i] For such further other reliefs as the facts and circumstances of the case may

17. Thus, prayer in the plaint read with pleadings in para 24, 36 and 40 would leave no manner of doubt that the suit is not for specific performance of the agreement for sale dated 10 June 2015.

18. Mr. Kini has attempted to invoke the jurisdiction of the Civil Court by alleging fraud and collusion on the part of the society and the developer. However, as rightly pointed out by Ms. Michael the word 'fraud' is not even pleaded in the entire suit by Plaintiff. Though they have used the 'collusion' at some places, the said pleading is without any material. In this connection, reliance of Ms. Michael on the Judgment of the Apex Court in **C.S. Ramaswami** is apposite, wherein the Apex court in paras 30 and 31 as under:-

30. Even the averments and allegations with respect to knowledge of the plaintiffs averred in paragraph 19 can be said to be too vague. Nothing has been mentioned on which date and how the plaintiffs had the knowledge that the document was obtained by fraud and/or misrepresentation. It is averred that the alleged fraudulent sale came to the knowledge of the plaintiffs only when the plaintiffs visited the suit property. Nothing has been mentioned when the plaintiffs visited the suit property. It is not understandable how on visiting the suit property, the plaintiffs could have known the contents of the sale deed and/or the knowledge about the alleged fraudulent sale.

31. Even the averments and allegations in the plaint with respect to fraud are not supported by any further averments and allegations how the fraud has been committed/played. Mere stating in the plaint that a fraud has been played is not enough and the allegations of fraud must be specifically averred in the plaint, otherwise merely

by using the word "fraud", the plaintiffs would try to get the suits within the limitation, which otherwise may be barred by limitation. Therefore, even if the submission on behalf of the respondents - original plaintiffs that only the averments and allegations in the plaints are required to be considered at the time of deciding the application under Order VII Rule 11 CPC is accepted, in that case also by such vague allegations with respect to the date of knowledge, the plaintiffs cannot be permitted to challenge the documents after a period of 10 years. By such a clever drafting and using the word "fraud", the plaintiffs have tried to bring the suits within the period of limitation invoking Section 17 of the limitation Act. The plaintiffs cannot be permitted to bring the suits within the period of limitation by clever drafting, which otherwise is barred by limitation.

19. Mr. Kini did attempt to canvass that the Defendant No.2-society is playing with words for drawing inference that the suit is not for specific performance. I am unable to agree. The suit is filed for seeking performance of obligations by developer under MOFA. On account of first Proviso to sub-Section 1 of Section 3 of RERA Act, all projects, for which completion certificate has not been issued on the date of commencement of RERA Act, are covered by the provisions of RERA Act and the promoter is under obligation to apply to the Authority for registration of the project under RERA Act. In the present case, Respondent No.1 has got the project registered with MahaRERA vide Registration No. P 51800004197 dated 08 August 2017. Thus Plaintiffs can actually seek performance of obligations under RERA Act. They have several remedies under RERA Act such as seeking

refund with interest, or to seek fulfillment of obligations of promoter or seek possession of the flat under Section 19 (3). In my view therefore the finding recorded by City Civil Court about bar of jurisdiction provided under Section 79 of RERA Act cannot be found fault with. Section 79 reads thus:

79. Bar of jurisdiction. —No civil Court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Authority or the adjudicating officer or the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any Court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.

20. Thus the bar under Section 79 is absolute and adequate mechanism is created for Plaintiffs to get the obligations of developer/promoter fulfilled by adopting remedies under the RERA Act.

21. I therefore do not find any patent error in the order passed by the City Civil Court. Appeal being devoid of merits is dismissed without any order as to costs.

22. In view of dismissal of Appeal, Interim Application does not survive and the same is also disposed of.

SANDEEP V. MARNE, J