



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 13468 OF 2023.
WITH
WRIT PETITION NO. 13469 OF 2023.

Jay View Co Op Hsg. Soc Ltd. Thr Its
Chairman

...Petitioner.

Versus

State Of Maharashtra And Ors.

...Respondents.

Mr. Vijay D. Patil i/b Mr. Kalpesh Patil for the Petitioner in both Writ Petitions.

Mr. B. B. Dahiphale, AGP for the Respondent-State.

Ms. Aseem Naphade a/w. Mr. Shreyans Baid for respondent Nos.4 and 5 in WP Nos.13468/2023.

Mr. Anil G. Shah -Respondent No.4-in-person.

Mr. Gavraj Shah i/b Omar Khaiyam Shaikh for Respondent Nos.5 and 6.

Coram : Sharmila U. Deshmukh, J.

Date : 9th September, 2024.

P. C. :

1. Heard.
2. The present petition challenges the order passed by the Deputy Registrar and Additional Joint Registrar directing the Respondent Nos.3 to 6 to be admitted as members of the Society.
3. Mr. Patil, learned counsel for the Petitioner would submit that pursuant to execution of the development agreement, there was



redevelopment of original building consisting of 84 members and as per the sanctioned plan the free sale component from 12th to 18th floors was to be constructed as Duplex/Triplex units. He submits that however the Developer in violation of the sanctioned plan constructed single units and thereby increased the number of units from 24 to 28 units. He submits that the Respondent Nos.4 to 6 are the purchasers of one such unit on the 16th floor and considering the provisions of Section 154(B)(5) of Maharashtra Co-operative Societies Act (for short, MCS Act) the application for membership was refused. He submits that similarly placed free sale purchasers had filed civil proceedings in which compromise was entered into whereby it was agreed that only when full occupation certificate was received the flat purchasers will be admitted as members of the society. He submits that the sanctioned plan as well as all the relevant issues were raised for consideration before the Authority. However the Authority has failed to give any findings. He would further submit that although the Authority cannot go into the issue of the validity of the title of the suit premises the fact remains that in view of Section 154 (B)(5) of MCS Act Society cannot admit members in excess of the units and in the present case as per the sanctioned plan only 24 units were permitted to be constructed. He would further submit that present Respondent Nos.4 to 6 had approached RERA Authority against the Developers seeking refund of



the price for the reason that the flat was not as per the sanctioned plan and therefore there was admitted position of the subject premises being constructed in violation of the sanctioned plan.

4. *Per contra*, learned counsel for Respondent Nos. 4 to 6 would submit that in the proceedings before this Court in Writ Petition 2212/2021 the developer had accepted the flat purchasers to be the owner of the premises to which the Society was also a party. He would submit that the issue as regards the unauthorized construction is beyond the purview of the Authority under the Maharashtra Cooperative Societies Act. He draws support from the decisions in the case of ***Harish Commercial Premises Co-op Soc. Ltd. vs. Varsha Dinesh Joshi and Ors., [2005 SCC Online Bom 1370]*** and ***Punam Co-operative Housing Society Ltd. vs. Alok Agarwal and Others [2019 SCC Online Bom 1687]***. He would further submit that the Authority is only required to be satisfied that there is due compliance of the statutory provisions as envisaged under Section 23 of MCS Act and thereafter the membership cannot be refused. He further submits that Respondent Nos.4 to 6 are not averse to bear the cost of regularization, if any. However, he would point out that some of the flats which are allegedly constructed in violation of the sanctioned plan have been purchased by the managing committee members.



5. I have perused the sanctioned plan annexed at page 594 to the petition. The sanctioned plan *prima facie* discloses that sanction was granted for construction of duplex/triplex flats. From the material which has come on record it appears that the developer instead of constructing Duplex/Triplex units has constructed single units by reason of which a duplex flat which would be located on 16th and 17th floor is now a single unit on 16th floor and another unit on 17th floor. Similarly in case of triplex flat instead of one combined unit on three floors there would be a single unit on 16th floor, 17th floor and 18th floor. The example is by way of illustration which has been given for the purpose of demonstrating the manner in which by non-adherence to the sanctioned plan the original 24 units have thereafter being enhanced to 28 units and thus it is those this enhanced units which according to Mr. Patil are now seeking membership.

6. Arguable questions are raised. Hence **Rule**. Learned counsel for respondents waives service of notice.

7. Considering the issue involved, *prima facie* case of grant of interim relief is made out. Interim relief in terms of prayer clause (c).

[Sharmila U. Deshmukh, J.]