



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER (ST.) NO. 27813 OF 2025

1. IBRAHIM BABUBHAI CHOKIYA,
Age: 71 years, Occupation: Retired
residing at Flat No. 1202, EMP 47,
Thakur Village, Near Kotak Mahindra Bank,
Kandivali (E), Mumbai 400 101
2. HANIF BABUBHAI CHOKIYA,
Age: 61 years Occupation: Business
residing at Flat No. 402, 4th Floor,
CJR ORILE CHS, Triveni Nagar,
Malad (East), Mumbai 400 097
3. KASTUR DAMJI GINDRA,
Age: 65 years, Occupation: House-wife
residing at B-11/12, Namrata Building CHS
Opposite Pritam Hotel, Naikwadi,
Goregoan (East), Mumbai 400 063

... Appellants
Org. Plaintiffs

Versus

1. M/S. WESTINRELY DEVELOPERS PVT. LTD.
(CIN: U70109MH2021PTC371125),
a Company duly incorporated under
the provisions of the Companies Act, 1956,
as amended, having its Registered Office
At UB 10-11, Dheeraj Heritage Commercial,
S.V. Road, Santa Cruz (West),
Mumbai 400 054
2. SHREE DIPTI CO-OPERATIVE HOUSING
SOCIETY LIMITED, a society Registered
under the provisions of the Maharashtra
Co-operative Societies Act 1960, having its
registered office at CTS No. 297 of

Revenue Village Pahadi, Goregaon (East),
Lying and situate at Aarey Road, Goregaon
(East), Mumbai 400 063

AND

Office No. 612, Corporate Annex,
Next Udyog Bhavan, Sonawala Road,
Goregaon (East), Mumbai 400 063

3. SHOBHA H BENDE,
Age: adult, Occupation: not known
Secretary of Shree Dipti Co-operative
Housing Society Ltd, having his/her address
Flat No. B/402, Sandeep CHS,
Jay Prakash Nagar, Road No. 5,
Goregaon (East), Mumbai 400 063
4. PREMJI SATRA,
Age: adult, Occupation: not known
Chairman of Shree Dipti Co-operative
Housing Society Ltd, having his address
Flat No. 303, Coral Park CHS, Aarey Road,
Goregaon East, Mumbai 400 063
5. RAJAN D TIJORIWALA,
Age: adult, Occupation: Chartered
Accountant, Treasurer of Shree Dipti
Co-operative Housing Society Ltd, having
his address Office No. 612, Corporate
Annex, Next Udyog Bhavan, Sonawala
Road, Goregaon (East), Mumbai 400 063
6. BISWAJITKUMAR M SINGH,
Age: adult, Occupation: Business
M/C member of Shree Dipti Co-operative

Housing Society Ltd, having his office address Office No. 612, Corporate Annex, Next Udyog Bhavan, Sonawala Road, Goregaon (East), Mumbai 400 063

7. SURESH S MORE,
Age: adult, Occupation: not known
M/C member of Shree Dipti Co-operative Housing Society Ltd, having his address Flat No. 601, Shree Vardhan CHS, VB Phadke Road, Mulund (East), Mumbai 400 081
8. SANDHYA K DALAL,
Age: adult, Occupation: not known
M/C member of Shree Dipti Co-operative Housing Society Ltd, having his address Flat No. 1304, Romell Grandeur Tower, Off Aarey Road, Behind Udipi Restaurant, Gorgaon (East), Mumbai 400 063
9. SURESH V AJMERA,
Age: adult, Occupation: not known
M/C member of Shree Dipti Co-operative Housing Society Ltd, having his address Flat No. 301, Parsh Galaxy CHS, Near Jain Temple, Mamlatdar Wadi, Road No. 1, Malad (West), Mumbai 400 064

... Respondents
Org. Defendants

*Mr. Mayur Khandeparkar a/w. Mr. Saurabh Utangale and Sandeep Maurya i/by Ms. Simran Vishwakarma for the Appellants.
Mr. Sanjiv A. Sawant a/w. Mr. Abhishek Deshmukh and Bhakti Wast for Respondent No.1.*

Coram : Sharmila U. Deshmukh, J.

Date : July 01, 2026

JUDGMENT :

1. Heard. **Admit.** With consent taken up for final disposal.
2. The Appeal is preferred against the order dated 23rd July, 2025 passed by the City Civil Court at Bombay in Notice of Motion No. 929 of 2025, filed by the Defendant No.1 seeking rejection of the plaint under Order VII Rule 11 (a) and (d) of the Code of Civil Procedure, 1908 (for short, "**CPC**"). The Trial Court held that the Civil Court did not have the jurisdiction in view of Section 79 of the Real Estate (Regulation and Development) Act, 2016 (for short, "**RERA Act**") and returned the plaint for presentation to the proper forum.
3. S.C. Suit No.433 of 2025 came to be filed by the Plaintiffs, who are the members of the Defendant No.2-Society seeking *inter alia* declaration that the allotment of shop no.1 jointly to Plaintiff Nos.1 and 2 and shop No.2 to the Plaintiff No.2 both on the first floor of the proposed new building allegedly under the minutes and resolutions of Special General Meeting dated 18th December, 2022, has been done fraudulently and is null and void including for the reason of illegally switching over from Regulation 33 (7) to 33(11)

of the Development Control & Promotion Regulation 2034 (for short, “**DC Regulation**”) and that the Plaintiff Nos.1 and 2 are entitled to one shop for business office admeasuring 307 sqr. feet and the Plaintiff No.3 is entitled to one shop or business office admeasuring 375 sqr. feet subject to payment of money by the Plaintiffs to the Defendant for the additional area i.e. being in excess of their entitlement on the ground floor of the proposed new building to be constructed.

4. The Plaintiffs came with a case of being members in respect of shops located on the ground floor of Defendant No.2-Society. The Defendant No.1 was appointed as developer for re-development of Defendant No.2-Society. The plaint sets out the facts prior to the execution of the development agreement and pleads that re-development was proposed under DC Regulation 33(7). The development agreement was executed on 20th March, 2023 with Defendant No.1. The tentative floor plans of the proposed building were shared with the members during the special general body meetings and it was informed that final plans were not received by the Defendant No 1. It was orally represented to the members of the Defendant No.2–Society that as the plot to be developed is a small plot, it would not be possible to construct

ground floor with shops and commercial offices and the developer would be constructing parking spaces on the ground floor of the proposed building. The Plaintiffs had not given consent for re-development, which was to be given after finalisation of issue of allotment of new shops on ground floor.

5. Subsequently, the Plaintiffs learnt about the plans uploaded on RERA and SRA websites which indicated shifting the development to DC Regulation 33(11) illegally. It was further found that the Defendant No.1 would be constructing one business office with lounge on the ground floor of the proposed building and not parking spaces. The cause of action pleaded is the refusal of Defendant Nos. 1 and 2 to allot the shops to the Plaintiffs on the ground floor. Hence, the civil suit came to be filed seeking substantive relief of allotment of shops on the ground floor with the willingness to pay for the additional area.

6. In these proceedings, an application came to be filed under Order VII Rule 11 (a) and (d) of CPC seeking rejection of the plaint claiming non disclosure of cause of action and raising an objection to the jurisdiction on the ground that the project is registered under the provisions of RERA Act and in view of under Section 79 of RERA Act, the Civil Court will not have the jurisdiction.

7. The application was resisted by the Plaintiffs contending that the dispute arising between the parties falls within the jurisdiction of the Civil Court as it arises out of the registered development agreement.

8. The Trial Court perused the pleadings in the plaint to hold that the plaint discloses cause of action. The bar of jurisdiction of Civil Court was considered against the background of statutory provisions of RERA Act. The Trial Court noted that the project is registered under RERA Act and includes sale component. It opined that the main grievance of the Plaintiffs is that Defendant No.1 has changed the sanctioned plans, project specifications and is proposing shops on the ground floor. Noting the provisions of Section 14 of RERA Act, the Trial Court opined that the aggrieved person can approach RERA Authority. Vide the impugned order dated 23rd July, 2025, the application was partly allowed and the plaint was directed to be returned to the Plaintiffs under Order VII Rule 10 of the CPC for presentation to the proper forum.

9. Mr. Khandeparkar, learned counsel appearing for the Appellants would submit that the rejection is under Order VII Rule 11(d) of the CPC. He submits that the project in question is a redevelopment project and the Plaintiffs sought the relief of

declaration that the allotments to the Plaintiffs have been done fraudulently, that the switching over from Regulation 33(7) to 33(11) of the D.C. Regulations is not binding on the Plaintiffs, and, the entitlement of the Plaintiffs to shops on the ground floor. He submits that under Section 3(2)(c) of RERA Act, no registration of the real estate project is required for redevelopment of the building, and the RERA registration is only *qua* the free-sale component. He submits that as the Appellants are the original members of the society, their entitlement is in respect of the rehab component, to which RERA Act would have no application. He would submit that even otherwise, under Section 88 of RERA Act, the provisions of RERA Act are in addition to and not in derogation of other enactments, and hence, it is open for the Appellants to adopt other remedies, especially civil remedies. He submits that the bar contained under Section 79 of RERA Act would have no application, as the Appellants, who are original members of the society, do not fall within the definition of allottee under Section 2(d) of RERA Act.

10. He has further taken this Court through the provisions of RERA Act dealing with the duties of promoter and would submit that under Section 31 of RERA Act, a complaint can be filed for

violation or contravention of the provisions of the Act or Rules or Regulations made thereunder against the promoter, allottee, or real estate agent, as the case may be. He submits that it is only the infraction of the statutory provisions which could be dealt with by the Authorities constituted under RERA Act and, in the present case, the relief which was sought was clearly outside the jurisdiction of the RERA Authority. He submits that considering the definition of allottee, there was no promoter-allottee relationship. He submits that the purport of Section 79 of RERA Act is not to curb the remedies available to the allottee. He submits that the Trial Court has rendered a finding of bar of jurisdiction under Section 79 of RERA Act and, despite the same, has returned the plaint under Order VII Rule 10 of CPC, whereas the consequence of bar of jurisdiction is rejection of the plaint under Order VII Rule 11(d). In support, he relies upon the following decisions:

- i. Sana Hospitality Services Pvt. Ltd. vs. Madan Kishan Gurow & Ors.*¹**
- ii. AshoPalav Coop. Housing Society Ltd. vs. Pankaj Bhagubhai Desai and Anr.*²**
- iii. Lt. Col. Anil Bhat and Ors. vs. CITI Bank, Mumbai*³**

1 CRA-606-2024 Dated 25/11/2025

2 2022 SCC OnLine Bom 10229

3 2009 SCC OnLine Bom 205 : (2009) 3 Mah LJ 111

11. *Per contra*, Mr. Sawant, learned counsel appearing for the Respondent No.1 would point out prayer clause (b) of the plaint to contend that the claim for additional area, subject to payment of moneys, falls within the jurisdiction of the authorities under RERA Act. He would submit that in respect of additional area, the Plaintiffs would fall within the definition of allottee and would bar the jurisdiction of the Civil Court. He would submit that the construction is completed and the Appellants have been allotted premises on the first floor and are now seeking to stall the redevelopment process by claiming that the allotment is fraudulent.

12. In rejoinder, Mr. Khandeparkar would submit that the Appellants were initially informed that there is no commercial premises being constructed on the ground floor and, though the Appellants had their initial commercial premises on the ground floor, as false and misleading information was given to the Appellants, the allotment on the first floor was accepted. He would further submit that there is no stay on construction and there is no violation of RERA Act to invest RERA Authority with jurisdiction.

13. Rival contentions now fall for determination:

14. It is undisputed that the Plaintiffs are members of the

Defendant No.2-Society and are the beneficiaries of the re-developed construction. The Trial Court has held that the jurisdiction of civil court is barred in view of Section 79 of RERA Act.

15. In ***Raizada Topandas v. Gorakhram Gokalchand***⁴ the Hon'ble Apex Court was considering the issue of jurisdiction of City Civil Court to entertain the suit seeking declaration of possession and injunction on the basis of an agreement dated 23rd June, 1955 appointing the Plaintiffs therein as commission agent. The defence raised was of sub-letting and the existence of landlord-tenant relationship. The preliminary issue of jurisdiction was decided against the Defendant by the High Court. The Hon'ble Apex Court noted the decision of Allahabad High Court in ***Ananti v. Channu***⁵ on the issue of jurisdiction at the inception of suit which had held as under:

“The plaintiff chooses his forum and files his suit. If he establishes the correctness of his facts he will get his relief from the forum chosen. If ... he frames his suit in a manner not warranted by the facts, and goes for his relief to a court which cannot grant him relief on the true facts, he will have his suit dismissed. Then there will be no question of returning the plaint for presentation to the proper court, for the plaint, as framed, would not justify the other kind of court to grant him the relief..... .. If it is found, on a trial on the merits so far as this issue of jurisdiction goes, that the facts alleged by the plaintiff are not true and the facts alleged by the defendants are true, and that the case is not cognizable by the court, there will be two kinds of orders to be passed. If the jurisdiction is only one relating to territorial limits or pecuniary limits, the plaint will be ordered to be

4 (1964) 3 SCR 214

5 (1929) ILR 52 Allahabad 501

returned for presentation to the proper court. If, on the other hand, it is found that, having regard to the *nature* of the suit, it not cognizable by the class of court to which the court belongs, the plaintiff's suit will have to be dismissed in its entirety."

16. The Hon'ble Apex Court held in paragraph 6 as under:

".....If, therefore, the plaintiff in his plaint does not admit a relation which would attract any of the provisions of the Act on which the exclusive jurisdiction given under Section 28 depends, we do not think that the defendant by his plea can force the plaintiff to go to a forum where on his averments he cannot go....."

17. The proposition of law approved by the Hon'ble Apex Court was that an objection on the ground of territorial or pecuniary jurisdiction would entail return of the plaint, and in case of subject-matter bar of jurisdiction, the suit will have to be dismissed in its entirety. The Trial Court, therefore, could not have directed the return of the plaint in exercise of powers under Order VII Rule 10 of CPC.

18. The core issue which is required to be addressed is whether the Trial Court was right in holding that the provisions of Section 79 constitute an explicit bar on the jurisdiction of the Civil Court. For that purpose the averments in the plaint will have to be perused to ascertain whether the grievance is such which can be redressed by RERA authorities.

19. It would be apposite to first refer to the provisions of Section

79 of RERA Act, which read as under:

“79. 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. Section 79 indicate an explicit bar to the jurisdiction of the Civil Court only when the subject matter is capable of being adjudicated/determined by the authorities constituted under the RERA Act. Admittedly, the Appellants are original members of Defendant No. 2 Society which is taken up for redevelopment.

Section 2(d) defines "allottee" to mean as under:

“2(d) “allottee” in relation to a real estate project, means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent.”

21. For establishing a promoter-allottee relationship, the plot, apartment or building has to be allotted, sold or otherwise transferred by the promoter. A redevelopment project would involve a transaction wherein, in lieu of surrender of the old premises, the redeveloped premises are handed over to the original

members.

22. Being conscious of the fact that no promoter-allottee relationship exists between the original members and the promoter, Mr. Sawant would seek to emphasize on prayer clause (b) of the plaint in order to contend that, as an additional area is now being sought by payment of monies, an allottee-promoter relationship is now established. Prayer clause (b) reads as under:

“(b) that this Hon'ble Court be pleased to declare that the Plaintiff No. 1 and the Plaintiff No.2 are jointly entitled to one Shop or a business office, admeasuring 307 sq ft and that the Plaintiff No. 3 is entitled to one Shop or a business office, admeasuring 375 sq ft **OR** all the three Plaintiffs are jointly entitled to **one** combined business **office with loft therein**, subject to payment of monies, by the Plaintiffs, to the Defendant No. 1, for the additional area i.e., being in excess of the entitlement on the ground floor of the (proposed) new building. to be constructed on all that piece and parcel of the land bearing Survey No. 97 **CTS No. 297** of Revenue Village Pahadi, Goregaon (East) in P/S Ward, lying and situate at Aarey Road, Goregaon (East), Mumbai 400 063, within the Registration District and Sub District of Mumbai City and Mumbai Suburban, **free of cost**, in lieu of their old shop Nos.1 and 2 respectively and Consequently, pass appropriate directions and orders in the said regard, accordingly.”

23. Though arguments were canvassed by Mr. Khandeparkar on the applicability of RERA Act to the re-development project, the moot question is about the nature of grievance raised by the Plaintiffs. The substantial relief that the Plaintiffs seek is that the

allotment is fraudulent and that the Plaintiffs are entitled to premises on the ground floor. In view of the plans having been sanctioned and the construction having been completed of the areas on the ground floor, an offer is being made by the Plaintiffs for payment of additional monies in respect of the additional area of the proposed building. There is no sale of free sale component of shop premises by the Defendant No. 2 in order to establish a promoter-allottee relationship. It is also difficult to accept that only in respect of the excess area, the Plaintiffs can be construed as allottees within the meaning of Section 2(d) of RERA Act. It is common knowledge that in respect of redevelopment projects, in lieu of the surrender of the old premises, as an incentive, the original members are given additional area over and above the existing area. If the contention of Mr. Sawant is accepted, then in respect of the additional area which is given in consideration of surrender of the original area, the original members would be construed as allottees within the meaning of Section 2(d), which would run contrary to Section 3(2)(c) of RERA Act, which does not mandate registration of redevelopment project.

24. For the purpose of application of Section 79 of RERA Act, the authorities should be vested with jurisdiction to grant the reliefs

sought in the plaint. The grievance is as regards *inter se* entitlement of specific allotment falling within the realm of contractual dispute. The Plaintiff is not asserting RERA governed grievances. Section 31 of RERA Act governs the filing of complaints with the Authority or Adjudicating Authority and reads as under:

“31. Filing of complaints with the Authority or the adjudicating officer-

(1) Any aggrieved person may file a complaint with the Authority or the adjudicating officer, as the case may be, for any violation or contravention of the provisions of this Act or the rules and regulations made thereunder against any promoter., allottee or real estate agent, as the case may be. Explanation.-- For the purpose of this sub-section "person" shall include the association of allottees or any voluntary consumer association registered under any law for the time being in force.

(2) The form, manner and fees for filing complaint under sub-section (1) shall be such as may be specified by regulations.”

25. Section 31 provides for filing of complaint for any violation or contravention of the statutory provisions either by the promoter or by the allottee or by the real estate agent. The first requirement is, therefore, relationship of a promoter and allottee between the parties, which is absent in the present case, as discussed above. The provisions provide for filing of a complaint by an aggrieved person, i.e., a person who has an interest in the subject matter, which would be a person as per Section 12 of RERA Act, i.e., a person

making any advance or deposit in a real estate project. In the present case, the Plaintiffs are clearly out of the ambit of Section 12 of RERA Act.

26. Even accepting the promoter-allottee relationship between the parties, the provisions of RERA Act can be invoked only where there is an infraction of the statutory provisions. The Trial Court has placed reliance on Section 14 of RERA Act, which imposes an obligation on the promoter to adhere to the sanctioned plans and project specifications as approved by the Competent Authority. It is necessary for the plaint to be read in a holistic manner in order to ascertain the real nature of the relief which the Plaintiffs seek. The plaint pleads about the execution of the development agreement, the non furnishing of the final plans by the Developer and the fraudulent representation as regards the proposed construction. The plaint essentially seeks a declaration of their entitlement to commercial premises on the ground floor and their present allotment being fraudulent by reason of misrepresentation by the Developer that no commercial premises are proposed on the ground floor, which grievances are relatable to the development agreement.

27. The Plaintiffs therefore came with the case of fraudulent

representation by the developer, contrary to what is now sought to be constructed by the developer. It is not the case of the Plaintiffs that there is no adherence by the developer to the sanctioned plans, but a case that tentative plans were shown and thereafter the sanctioned plans present a completely different picture. The provisions of Section 14 read with Section 31 of RERA Act would permit the aggrieved person to approach the Authority only where, after the sanctioned plans are disclosed to the person, the promoter makes any additions/alterations. This is not the case put up by the Plaintiffs, who seek a declaration that the allotment itself is fraudulent and has been done surreptitiously by the Defendant Nos. 1 and 2. The allegation is of suppression of sanctioned plans and misrepresentation, which will not fall under Section 14 of RERA Act. The stated object of RERA Act is to provide for a special machinery for enforcement of the rights and obligations of the allottees and promoter and to provide remedies for enforcement of those rights and obligations. The relief which has been sought, of the allotments being fraudulent and illegal, and entitlement to specific allotment is not a dispute which the authorities under RERA Act are empowered to adjudicate. The remedies sought by the Plaintiffs, are essentially civil remedies arising out of the

development agreement executed between the parties, which would vest the jurisdiction solely with the Civil Court.

28. The provisions of Section 79 do not place an embargo on the jurisdiction of the Civil Court in respect of matters which fall outside the purview of the Regulatory Authority and Adjudicating Authority constituted under RERA Act. The provisions of Section 88 of RERA Act provide that the RERA shall be in addition to, and not in derogation of, any other law for the time being in force. The nature of the dispute in the present case is not such that it can be characterised as an infraction of the statutory provisions, rules and regulations of RERA, and the allegations in the plaint are premised on misrepresentation, fraud in the process of allotment by reason of suppression of the sanctioned plans.

29. The discussion in the impugned order does not address the issue of bar of jurisdiction under Section 79 by addressing the aspect as to whether the authorities under RERA Act are competent to decide the *lis* brought before the Civil Court. The Trial Court has taken into consideration the provisions of Section 79 and has held that the same bars the jurisdiction of the Trial Court. There is no discussion as to whether the relationship between the Plaintiffs and Defendants constitute a promoter-allottee

relationship, whether the provisions of RERA Act provide a remedy for the grievances raised by the Plaintiffs, and whether there is an absolute bar to the jurisdiction of the Civil Court *qua* the subject matter of the dispute.

30. As the grievances raised by the Plaintiffs fall outside the purview of RERA Act, the Civil Court will have the jurisdiction to entertain the suit. The plaint as framed does not disclose promoter-allottee relationship and is framed in a manner so as to seek civil remedies which the authorities under RERA Act cannot grant.

31. In light of the above discussion, the impugned order returning the plaint under Order VII Rule 10 of CPC is clearly unsustainable and is hereby quashed and set aside. Resultantly, the following order is passed:

ORDER

- (i) The Appeal from Order is allowed.
- (ii) The impugned order dated 23rd July 2025 passed in Notice of Motion No.929 of 2025 in S.C Suit No.433 of 2025 is hereby quashed and set aside.
- (iii) S.C. Suit No. 433 of 2025 is restored to the file of the City Civil Court, with the finding that the Civil Court will have the jurisdiction to entertain and try the suit.
- (iv) The ad-interim order restraining the Defendant No 1

from creating third party rights or interest in the commercial shop on the ground floor is continued for a period of four weeks from today.

- (v) The parties are at liberty to seek extension of the ad-interim relief from the Trial Court, which the Trial Court will decide on its own merits and in accordance with law.
- (vi) The parties to appear before the Trial Court on 8th July, 2026 at 10:45 a.m.

32. Interim Application does not survive for consideration and stands disposed of accordingly.

[SHARMILA U. DESHMUKH, J.]