

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

Appeal No. AT006000000154559/2023

IN

Complaint No. CC006000000141019 of 2021

1. Bhupendra K Shah)

Nimit B. Shah

Jigar B. Shah

Adult, Indian Inhabitants

Flat No.702, New Sangeeta CHS Ltd.

Plot No.4709, 7th Road, Rajawadi,

Ghatkopar(E), Mumbai 400 077.

2. M/s. New Sangeeta CHS Ltd

Through Its Hon. Secretary

Having address

New Sangeeta CHS Ltd.

Plot No.4709, 7th Road, Rajawadi,

Ghatkopar(E), Mumbai 400 077

Appellants

V/s

Pinkesh Jain

Proprietor of M/s. Valdariya Constructions

Having address at

35, Ramwadi, Cavel Cross Lane,

1st Floor, Kalbadevi, Mumbai 400 002.

... Respondent

Adv. Dr. Pawan Kumar Pandey for Appellants

Adv. Aneesa Cheema for Respondent

**CORAM : SHRI SHRIRAM R. JAGTAP, MEMBER (J), &
DR RAJAGOPAL DEVARA, MEMBER (A)**

DATE : 5th May, 2026

(THROUGH VIDEO CONFERENCE)

1. The captioned appeal takes exception to the order dated 16.06.2023 passed in Complaint No.CC0060000000141019 whereby learned Member-I (for short "Authority") disposed of the

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complaint filed by allottees directing the complainants to approach to City Civil Court at Bombay, seeking compliance of consent terms dated 24.06.2021 filed in Suit No. 558/2021 and further granted liberty to complainants to approach MahaRERA after final disposal of Appeal No. AT006000000031756.

2. For the sake of convenience Bhupendra Shah, Nimit Shah and Jigar Shah will hereinafter be referred to as "complainants/allottees", M/s. New Sangeeta CHS Ltd will hereinafter be referred to as "the Society", Pinkesh P. Jain Proprietor of M/s. Valdariya Constructions will hereinafter be referred to as "erstwhile Promoter/Developer".
3. The factual matrix of the matter is that the property bearing Plot No. 48, CTS No. 4709, situated at village Kiral Ghatkopar, Mumbai belongs to the society. The society had decided to develop the said property. By virtue of development agreement dated 15.12.2011, the society had assigned rights to developer to develop the said property. Pursuant to the development agreement the developer had launched a project known as "Valdariya Residency" on the said property. Relying upon the assurances and documents produced by developer, the complainants/allottees agreed to purchase flat No. 701 on 7th Floor at the rate of Rs. 24, 353 per sq. ft. in the subject project. Pursuant thereto developer had executed MOU in favour of

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complainants/allottees with respect to the said flat. The allottees have paid Rs. 50,00,000/-, by cheques to developer out of consideration value of Rs. 1,03,50,000/-. Accordingly, the developer has issued allotment letter to allottees. Later on, Erstwhile developer had requested the allottees to change booking of flat No.701 to 703 on the same floor which has equal carpet area.

4. The promoter has also agreed to execute agreement for sale. The Erstwhile Developer informed the allottees that agreement value would be shown as per ready reckoner for Income Tax purpose i.e. at the rate of Rs.15294/- per sq.ft. and a supplementary agreement for amenities with respect to the subject flat would be executed at the rate of Rs.9000/- per sq.ft. The Erstwhile Developer had also asked allottees to pay balance amount as per terms of agreement as the work was in progress. Accordingly Erstwhile Developer had entered into agreement for sale on 17.01.2017 in respect of Flat No.703 for total consideration of Rs.65,00,000/- out of which he had received Rs.50,00,000/- by cheque. The Erstwhile Developer also entered into MOU with Bhupendra Shah and Jigar Shah (complainants) for flat No.702 situated on 7th Floor for total consideration of Rs.1,03,50,000/- out of which complainants have paid an amount of Rs.50,00,008/- by cheques dated 25.06.2015,

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28.07.2015 and 28.07.2015. Erstwhile Developer had communicated allottees that agreement value would be shown as per ready reckoner for Income Tax purpose i.e. at the rate of Rs.15294/- per sq. ft. and a supplementary agreement for amenities with respect to subject flat would be executed for the same at the rate of Rs.9000/- per sq. ft. The Erstwhile Developer had asked the allottees to pay balance amount as per terms of MOU in cash at the time of possession. Accordingly Erstwhile Developer entered into agreement for sale on 17.01.2017 in respect of flat No.702 for total consideration of Rs.65,00,000/-. The allottees have paid Rs.50,00,008/- to Erstwhile Developer towards part consideration for the subject flat.

5. Both agreements for sale stipulate that Erstwhile Developer was appointed as developer by the society vide Development Agreement dated 15.12.2011 and Erstwhile Developer was allowed to develop the property of the society. The Erstwhile Developer had committed to hand over the possession of subject flats with Occupation Certificate on or before 17.01.2018. The complainants/allottees have paid Rs.65000/- towards TDS, Rs.2,47,500/- towards service taxes and Rs.3,55,000/- towards stamp duty and registration charges.

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6. The Erstwhile Developer has informed the allottees that he exited from the project. He has terminated the Development Agreement with the society but he undertook to refund part consideration received from the complainants along with interest. The Erstwhile Developer has refunded an amount of Rs.25,00,000/- which was agreed to be adjusted against accumulated interest on the principal amount paid for flat No.703 till date but Erstwhile Developer failed to refund the principal amount and balance interest. The complainants have issued notices on 30.04.2019 and 06.05.2019 asking the Erstwhile Developer to refund the entire amount. However due to error in computing the interest, complainants have issued fresh notices on 14.05.2019 to erstwhile developer. Before Conciliation Forum, Erstwhile developer misguided the allottees by representing them to seek their flats relying upon order dated 14.08.2018 passed by MahaRERA in the matter of other flat purchasers (Mr. Kaushal Haria). The said order has been challenged by the society as it was passed on presumption that society is a promoter. Complainants have requested the society for accommodating them on fresh terms and consideration. The complainants have relied on the judgment of the Hon'ble High Court passed in Goregaon Pearl CHS Limited wherein it has been held that

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society has no privity of contract with flat purchasers of defaulting developer and society is not liable to give flats to such flat purchasers. As Erstwhile Developer has already terminated development agreement and is not in position to provide subject flats to complainants, the complainants sought refund of amount along with interest and compensation from the Erstwhile Developer.

7. The respondent No.1 (Erstwhile Developer) has remonstrated the claim of allottees by filing affidavit in reply dated 31.08.2021 contending therein that society had executed development agreement on 15.12.2011 and power of attorney on 14.02.2012 in favour of M/s. Valdariya Constructions for re-development of the property of the society. The Erstwhile Developer through the society had appointed Architect Mr.R.J.Ashar. He had applied to the BMC for various NOCs and relevant permissions for re-development of the subject property. Pursuant to the said applications BMC has accorded approvals and sanctions to the layout plans as per norms of BMC. R.J. Ashar the Architect procured various requisite permissions from the concerned Authority. The application for further approvals and permission of plans and unconsumed FSI in the project have been made to the BMC but applications are still pending due to varied complaints and obstructions by the members

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of the society to BMC. The erstwhile developer had completed work upto 7th floors. As per Development Agreement dated 15.12.2011 and power of attorney dated 14.02.2012, the erstwhile developer had entered into agreement for sale with flat purchasers.

8. The Erstwhile Developer had further contended that on 07.02.2018 erstwhile developer terminated the development agreement due to circumstances created by the society which resulted in incompleteness of construction and stoppage of development activities. The termination letter dated 7.2.2018 was accepted vide letter dated 9.2.2018 by the society. The society took over the possession of the subject property and revoked license granted to the Erstwhile Developer. Thereafter society initiated arbitration proceeding against Erstwhile Developer and sought relief of further construction of the project and to appoint new developer or self re-development. The society was allowed to re-development of the property. The society entered into agreement with new developer for completion of construction of project in the year 2020. The Erstwhile Developer had further contended that society through Suresh Kumar the Architect had applied for further approvals vide letter dated 28.12.2020.

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9. On termination of Development Agreement, Erstwhile Developer and society had amended their claims in the Arbitration proceeding. The complainants were put in possession of the subject flats in April 2019 under the pretext of Leave and License Agreement. The complainants are now in possession of the subject flats therefore complaint is not maintainable. The Leave and License Agreement is a fake agreement as disputed flats were proposed for sale purpose and accordingly sold to complainants by registered agreement dated 17.1.2017. The society has falsely allotted flats in dispute to Mr. Kirit Gaglani, despite the fact that said member is not eligible for the said flats. The complainants were put in possession of the subject flats in the year 2019 and therefore question of delay in handing over the possession of subject flats to complainants does not arise.
10. Erstwhile Developer has further contended that in 2019 the complainants had filed Complaint No.CC006000000022942 before the Conciliation Authority, in which consent terms were filed on 21.9.2019 in accordance with the order dated 6.8.2019 passed by MahaRERA in complaint filed by three other purchasers in the same project. The record shows that registration of the project still stands in the name of Erstwhile Developer and on account of failure of complainants to approach society for incorporating their names in the

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record of the society pursuant to the consent terms executed by the parties complainants are held liable for such delay. The complainants have misguided the Authority by mentioning incorrect addresses. The complainants have sold subject flat for consideration of Rs.90 lakh in 2016. The complainants on the basis of MOU and allotment letter have made false allegations and claim against Erstwhile Developer that Erstwhile Developer had agreed to sell flats having similar carpet area in same vicinity for consideration of Rs.2 crore. Whereas agreement for sale dated 17.1.2017 executed between the complainants and Erstwhile Developer shows that subject flats are sold for consideration of Rs.65 lakh (for one flat) which shows that complainants have not come with clean hands.

11. The Erstwhile Developer has further contended that society denied before MahaRERA that society is a promoter of the project. However on the other hand society has made application to Municipal Corporation for further approvals of plans. The society has registered project with MahaRERA in its name and has opened separate bank account wherein amount received from the complainants would be kept till possession is handed over. The complainants have extorted Rs.25,00,000/- from Erstwhile Developer under the garb of interest. The Erstwhile Developer has denied the allegations made against

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him. Thus, complainants have filed the captioned complaint only to harass Erstwhile Developer and therefore complaint is liable to be dismissed.

12. The society has filed reply to complaint contending therein that the consent terms filed by the society and complainants in Suit No. 558/2021 are independent contracts. The rest of the contentions raised by the complainants in the complaint which are beyond the consent terms have nothing to do with the society. The society is willing to comply with part obligations mentioned in the consent terms.
13. The society has further contended that the erstwhile developer has never developed the project. The erstwhile developer had undertaken the project of the society and another project known as "Jai Kadambari CHS" at Mulund. The erstwhile developer could not complete both the project and instead created encumbrances and unwanted litigations for both the societies. The funds received were also not put into the project because at the time of terminating the agreement, the erstwhile developer did not make payments to contractors, labour contractors, material suppliers, taxes to the MCGM and rent to the society members etc. On the contrary, the erstwhile developer diverted the funds of the society from bank for

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paying his liabilities. The society initiated arbitration proceedings against the erstwhile developer due to breach of terms of the development agreement and non-payment of monthly compensation. Thereafter, the arbitral Tribunal directed the erstwhile developer to pay the rent to the members of the society. The erstwhile developer terminated the development agreement. Therefore, the society took over the project and completed the same up to 7th Floor. The plans for remaining construction from 8th to 11th Floor were put up, but it was delayed as the dummy flat purchasers of the erstwhile developer made complaint to MCGM and other Authorities which resulted in litigations. At the time of termination of the development agreement in February, 2018, only 7 slabs RCC structures without brick work was done. The society allotted units to its members and completed the building up to 7th floor and also paid pending taxes/development charges and other dues while renewing the CC which had lapsed.

14. The society has further contended that during the mediation process the complainants agreed to file consent terms with society but the erstwhile developer never appeared for mediation. As per the consent terms filed in Suit No. 558/2021 the complainants have agreed to purchase the flats at market value and it is further agreed

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that the amount paid to the erstwhile developer, if acknowledged by the MahaRERA or the erstwhile developer, would be proportionately set off against total consideration amount. The erstwhile developer sold flats in which free fungible FSI of the rehab component was used. Under DCR the erstwhile developer was not permitted to sell flats in which free fungible component was used. The Developer submitted incorrect CA reports before the Authority and the cost in the project is shown as Rs. 15,44,56,792/- and on the contrary he sold the entire inventory available for sale and even more for Rs. 6.23 Cr. The erstwhile developer breached consent terms and agreement entered into between the society and its members that the erstwhile developer shall not sell flats until the provision of rehab flats has been made. As the society never signed any agreement with flat purchasers nor it accepted any amount from the flat purchasers of erstwhile developer, the society has no privity of contract with the flat purchasers. The Hon'ble High Court in the case of Vaidehi Akash CHS and Goregaon Pearl CHS has held that the society cannot be treated and held responsible as promoter in respect of flat purchasers of the defaulted developer.

15. After hearing the parties impugned order came to be passed by the learned Authority. Being aggrieved by the impugned order the

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captioned appeal came to be filed by the complainants/ allottees and the society.

16. We have heard learned advocate Dr. Pawankumar Pandey for appellants and advocate Aneesa Cheema for respondent/ Erstwhile Developer. The submissions advanced by the learned counsel appearing for respective parties are nothing but reiteration of contents of complaints, Appeal Memo, affidavit in reply and written submissions.

17. Learned Advocate Dr. Pawankumar Pandey for appellants has placed his reliance on the following citations.

1. *Kakad Housing Corporation Vs. Rajkumari Singh & Anr. Appeal No. AT006000000089924 Before the Maharashtra Real State Appellate Tribunal, Mumbai.*
2. *Tuvin Constructions LLP Vs. State of Maharashtra Through Urban Development and Another Bombay High Court WP No. 1673 dated 09.09.2025.*
3. *Kapilkunj CHS Ltd Vs. State of Maharashtra WP No. 2157 of 2021 Bombay High Court order dated 13.12.2023.*
4. *D N Nagar Shivneri CHS LTD Vs. Kamila Parasmal Jain And Anr. Coram: Shri S. S. Shinde, Chairperson, & Shri. S. M. Deshpande, Member(A) Order Dated 10.10.2025 Before the Maharashtra Real State Appellate Tribunal, Mumbai. M.A. No. 377/2025(Stay) In Appeal No. AT06/00376/2025.*
5. *Samaj Kalyan CHS LTD Vs. Santosh Sable and Others Maharashtra Real State Appellate Tribunal, Mumbai M.A. No. 383 of 2024 (Stay)*

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In Appeal No. AT006/000000275245 of 2024 Order dated 17.10.2025.

6. *New Sangeeta CHSL. Vs. Kaushal M. Haria Bombay High Court Second Appeal No. 148 of 2025 With Interim Application No. 1853 of 2025.*

7. *Arbitral Award dated 27.01.2025.*

8. *Ranjana Tiwari & Anr. Vs. Adinath CHS Ltd. & 4 Ors., Manju Chawala & Ors Vs. Adinath CHS Ltd. & 4 Ors., Bimal Burman & Anr. Vs. Adinath CHS Ltd. & 4 Ors. and Manju Chawla & Ors. Vs. Adinath CHS Ltd. & 4 Ors. Before the Maharashtra Real State Appellate Tribunal, Mumbai.*

18. After considering the submissions advanced by the learned counsel appearing for respective parties, pleadings of the parties and material on record following points arise for consideration and we have recorded our findings thereupon for the reasons to follow.

Sr.Nos.	Points	Findings
1.	Whether the learned Authority (MahaRERA) has jurisdiction to entertain and try the complaint?	In the negative.
2.	What order?	As per final order.

REASONS

19. On examination of pleadings of the parties, material on record and submissions advanced by learned counsel appearing for respective parties revealed that the complainants have purchased flats from erstwhile developer and agreement for sale came to be executed by complainants and erstwhile developer on 17.01.2017 whereby the

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erstwhile developer had agreed to handover the possession of the subject flats within 12 months from the date of execution of the agreement for sale i.e. 16.01.2018. It is not in dispute that the erstwhile developer did not adhere to his commitment and failed to handover possession of the subject flats to complainants on the agreed date. It is also not in dispute that on 07.02.2018 the erstwhile developer had terminated the development agreement. The society took over the subject project and decided to carry on further construction of the subject project by itself. At the same time the society has also initiated arbitration proceedings against the erstwhile developer. It means the society has accepted the termination of development agreement. It is also not in dispute that the society had filed SC Suit No. 558/2021 in the City Civil Court at Bombay against the erstwhile developer and the complainants. The society and the complainants have amicably settled their disputes and they have filed consent terms in the said suit. Accordingly, SC Suit No. 558/2021 came to be disposed of in terms of consent terms. It is not in dispute that the erstwhile developer is not party to the consent terms. By virtue of consent terms the society has agreed to allot the subject flat to the complainants, further agreed to adjust the amount of Rs. 1,05,50,008/- paid by the complainants to the erstwhile



developer as part consideration under the agreement for sale dated 17.01.2017. The consent terms further discloses that the complainants undertook to file application before MahaRERA or any other forum/Court to recover their amount as mentioned in the consent terms against the erstwhile developer and the entire amount which would be recovered from the erstwhile developer would go to the society or at the instance of society would go to the contractor appointed by the society. It is also not in dispute that while terminating development agreement the erstwhile developer undertook liability to settle the claim of flat purchasers. Pursuant thereto the erstwhile developer has paid Rs. 25,00,000/- to the complainants.

20. It is significant to note that pursuant to the consent terms the complainants have filed the captioned complaint against the erstwhile developer and sought relief of refund of amount with interest. The complainants have filed the captioned complaint on 23.06.2021. Therefore, considering peculiar circumstances of the case a pivotal question falls for our consideration whether on the date of filing of the complaint the erstwhile developer was promoter/developer of the subject project? if no, then whether the

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complaint is maintainable against the erstwhile developer or the learned Authority has jurisdiction to entertain and try the complaint.

21. We would like to reiterate that the erstwhile developer has terminated the development agreement on 07.02.2018. The society has accepted the termination and decided to re-develop its property. The society has communicated its decision to the developer vide letter dated 09.02.2018. This signifies that soon after termination of development agreement the erstwhile developer is no longer promoter/developer of the subject project.

22. Section 31 of Real Estate (Regulation and Development) Act, 2016 speaks about filing of complaint with the Authority or the Adjudicating Officer. Section 31 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 1[prescribed].

Section 31 stipulates that any aggrieved person may file a complaint with the Authority or the Adjudicating Officer for any violation or contravention of the provisions of Act or the rules and regulations made thereunder, against any promoter, allottee or real estate agent,

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as the case may be. It means the complaint is maintainable only against promoter, allottee or real estate agent. Section 31 does not stipulate that the complaint can be filed against the erstwhile developer for violation or contravention of the provisions of RERA Act, 2016. It is not in dispute that the complainants have filed the captioned complaint against the erstwhile developer on 23.06.2021. It means when the complaint was filed, the erstwhile developer was not the developer or promoter of the subject project. In other words, the respondent/erstwhile developer was no longer promoter or developer of the subject project. It means the relationship between the complainants and erstwhile developer that of allottee and promoter were not in existence on the date of filing of the complaint. Under such circumstances we are of the view that the learned Authority has no jurisdiction to entertain and try the complaint. By the impugned order the learned Authority has directed parties to the complaint to approach to the City Civil Court for execution of the consent terms or to redress their grievances. Under such circumstances we found that the impugned order does not warrant interference in the captioned appeal. We, therefore, answer point nos. 1 and 2 accordingly. Consequently, we proceed to pass following order.

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ORDER

1. Appeal No. AT006000000154559/2023 stands dismissed.
2. Parties shall bear their own costs.
3. Copy of this judgment be communicated to learned Authority and respective parties as per Section 44(4) of RERA Act.


(DR RAJAGOPAL DEVARA)
VS_


(SHRIRAM. R. JAGTAP)