

SLUM REHABILITATION AUTHORITY

BEFORE THE SECRETARY, SLUM REHABILITATION AUTHORITY,
BANDRA (EAST), MUMBAI.



Malad Shivaji Nagar Santaji Dhanaji)
Co-Operative Housing Society Ltd.)
CTS NO. 291 A (Pt.) Shivaji Nagar,)
Kurar Village, Malad (E), Mumbai-97)

...Applicant

V/s.

M/s. Rupam Pariket Developer)
B-27, Ashoka Apartment, Bachchani)
Nagar Road, Malad (E), Mumbai-97)

...Respondent

ORDER

(Passed on 12/10/ 2018)

The present proceeding is initiated with regard to the representation dated 28th March 2018 filed by Applicant Society Malad Shivaji Nagar Santaji Dhanaji Nagar CHS Ltd. requesting to terminate the appointment of the Respondent Developer Viz. M/s. Rupam Pariket Developer in respect of the plot of land bearing CTS No. 291(pt.) Village Kurar, Taluka Borivali for implementation of the S. R. Scheme of the Applicant Society.

FACTS IN BRIEF:

The S. R. Scheme proposal of Applicant Society Malad Shivaji Nagar Santaji Dhanaji Nagar CHS Ltd. was submitted by M/s. Rupam Pariket Developer and the same was accepted by SRA on 21.09.2010, on the plot of land bearing CTS No.291 (pt.) Village Kurar, Taluka Borivali, for implementation of the Scheme for Applicant Society. The said Plot of land is owned by the MHADA. The Ann-II was not issued by the Concerned Competent Authority. On 17.07.2018 Deputy Collector (E/R) and

Competent Authority issued Certified Ann-II for subject S. R. Scheme. After Ann-II is issued on 17.07.2018 no further approvals has been granted by SRA till date.

HEARING:

Notice dated 16.04.2018 was issued to the concerned Society & Developer thereby giving them opportunities to remain present at the office of SRA for the aforesaid hearing on date & time mentioned therein and to submit their say / written reply. In response to the said Notice dated 16.04.2018, hearings took place on 23.04.2018, 04.05.2018, 30.05.2018, 26.07.2018, 03.08.2018 and 07.08.2018. Advocate Shri. Kishor Hajare alongwith Advocate Shri R. P. Oza for Applicant and Shri Chandrakant Ajmera on behalf of Respondent Developer were present during the hearing. On the last date of hearing i.e. on 14.08.2018, after hearing the concerned parties matter was closed. Mr. Hamid Musa Shaikh and Mr. Anil Surendra Sharma Partner of Respondent Developer has submitted their Notarized Affidavits stating that they don't have any objection towards the development of the said society through newly appointed developer.

ARGUMENTS OF APPLICANT NO. 1 VIZ. MALAD SHIVAJI NAGAR SANTAJI DHANAJI CO-OPERATIVE HOUSING SOCIETY LTD.

It is the case of the Applicant Society that the Malad Shivaji Nagar Santaji Dhanaji Co-Operative Housing Society Ltd is registered under Maharashtra Co- Operative Society Act, bearing registration no. B.O.N. (W.P/N), H.S.G (T.O) 5387, 1990-91, situated at CTS No. 291, Shivaji Nagar, Kurar Village, Malad (East), Mumbai 400097.

It is the case of the Applicant Society that members of the said society wanted to redevelop their existing homes under Slum

Rehabilitation Scheme. Therefore on 25.07.2010 General Body Meeting was held and inter alia appointed M/s. Rupam Pariket Developers as developer of the society.

It is the case of the Applicant Society that the said Developer has shown dreams of better standard of living to the members of the society. In lieu of redevelopment purpose; the said developer has got executed the documents like Development Agreement, Individual Agreement, Power of Attorney etc.

It is the case of the Applicant Society that on 31.07.2010 Memorandum of Understanding (MOU) was executed between the said developer and the society. It is the case of the Developer Society that in para no. 6 of the said MOU it is clearly mentioned that Developer should provide occupation of flats within 36 months to the members of the said society and if Developer fails to provide accommodation then society reserves the right to change the developer.

It is the case of the Applicant Society that as mentioned above since 2010 from the date of appointment of the Respondent Developer, viz M/s. Rupam Pariket Developers till today; 8 years have been passed but not a single step has been taken towards the development. It is worthwhile to note that society was keeping regular follow up with the said developer but developer was delaying the work by giving unsatisfactory reasons.

It is the case of the Applicant Society that they have been deprived from their basic fundamental right i.e. Right to Life. The Respondent Developer has infringed their basic fundamental right and they are forced to live in the inhuman condition. It is the case of the Applicant Society that there is a big drainage which flows on site. In the rainy season, all water



including drainage water comes into the homes which causes sickness. Number of families in the said society are increasing and still they are living in such unacceptable conditions. The people are suffering from diseases since it has become very unhygienic area.

It is the case of the Applicant Society that since no progress has been made out by the developer and keeping in mind the safety of the persons, residing on the said plot, General Body Meeting was held on 14.01.2018 inter alia cancelled the appointment of the aforesaid developer by majority and appointed new developer named Royal Realtors.

It is the case of the Applicant Society that vide letter dated 31.03.2018 the Respondent Developer has been informed about the cancellation of his appointment as developer in respect of the redevelopment of the subject S. R. Scheme and same has been received by the M/s. Rupam Pariket Developers on 02.04.2018.

It is the case of the Applicant Society that SRA is also aware about Court order wherein Hon'ble Court have regularly observe that the SRA scheme is for the benefits of the slum dwellers and delay in implementation shall destroy the whole purpose of the S. R. Scheme.

It is the case of the Applicant Society that there are several judgments passed by Hon'ble High Court, Bombay including vide order dated 07.02.2013 passed in Appeal From Order No. 1019 of 2010, wherein Hon'ble High Court has specifically mentioned that developer must ensure timely completion of the projects by appropriate intervention and intermittently by competent authority. Further the Hon'ble Court has directed SRA, if the developer fails or there is no substantial progress in the redevelopment process under S.R. Scheme then SRA can take all



appropriate steps to remove the such developer and replace the such developer with another developer.

The Society stated that since the adjoining societies are developed by Royal Realtors, it has been noted by society that Royal Realtors are in better position to provide; basic amenities, good standard of living and also to access to the roads to the members of the society. They have completed the new buildings and accommodated tenants by obtaining O. C. in various projects.

It is the case of the Applicant Society that since 8 years Respondent did not commence or taken any steps towards the redevelopment of the said society. Being frustrated and affected by such attitude of the said Developer, society has filed the present application for cancellation of appointment of developer, viz M/s. Rupam Pariket Developers and architect i.e. M/s. Arch View Associates.

ARGUMENTS OF RESPONDENT VIZ.. M/S. RUPAM PARIKET DEVELOPERS

1) During hearing on 04.06.2018, M/s Rupam Pariket Developer have submitted written submission under signature of partner Shri Mahesh Boriya and stated as follows;

That as per the Agreement/MOU executed between the Society and Respondent, it is categorically mentioned that the period of 36 months will start from obtaining Commencement Certificate and not from the date of giving the consent to the present Respondent who is targeted with the ulterior motive.

It is the case of the Respondent Developer that the entire issue devolves upon contractual agreements which is even admitted by the Applicant. There is a policy decision of MHADA which was running for more than 5 years, and the NOC etc. were not issued during that period. It



is abadenently clear that there was no scope of development till 2016 and only after 2017 when they had being follow up with the Applicant Society. In meantime new so called Developer started coming in the year 2017 and the same is now attempting to ruin all the work done by the respondent Developer who has made so much of expenses.

It is the case of the Respondent Developer that they had put up the proposal on the plot of land bearing CTS No.291-A (pt) and got the Society registered under the provisions of MCS Act.

It is the case of the Respondent Developer that the Resolution passed in the year 2010 are not fully given and in the copy of the Agreement executed between the Society and present Respondent dated 31.07.2010. It is categorically mentioned that the Agreement cannot be cancelled under any circumstances and the Power of Attorney executed has been implemented in its true sense.

It is the case of the Respondent Developer that the subject S. R. Scheme is not delayed by them and it is the policy of the MHADA which was not allowing any Developer to put up any proposal on land belonging to MHADA.

It is the case of the Respondent Developer that they have fulfilled the dreams of more than 400 families by developing S. R. Schemes on plot of land bearing CTS No.386 of village Malad, Taluka Borivali, M.S.D. and also has constructed Royal Township which is also the dream fuifilled for more than 200 families.

It is the case of the Respondent Developer that the new Developer who has instigated the Applicant has no personal experience and he tries to sell the projects in the market by complying all the procedural aspects



or alternatively the said Developer enters into Joint Venture with third person.

It is the case of the Respondent Developer that it is absolutely false to the knowledge of the Applicant that the Memorandum of Understanding mentions 36 months of the MOU dated 31.07.2010. The misinterpretation of the Clause of MOU and suppression of Development Agreement showing that the Agreement cannot be terminated itself goes to show that they have attempted to be targeted by using political force of the new Developer.

It is the case of the Respondent Developer that MHADA has not the proposal for construction to be made, because of which the proposal was not entertained by the authorities of MHADA in spite of complying the conditions of MHADA and the requisitions called upon by MHADA authorities vide their letter dated 11.06.2014.

It is the case of the Respondent Developer that the Society had also issued letter to the Ex. Engineer III of SRA for the purposes to make the proposal and delete the portion of the land which are over lapping to another Scheme.

It is the case of the Respondent Developer that the occupants on the land have produced false photographs with a view to prejudice the mind of the authorities so that they should be flown away with the point of mercy and sympathy.

It is the case of the Respondent Developer that It is absolutely false that the Society had passed Resolution, dated 14.01.2018 in any manner and the said document is fabricated document and it is prepared anti dated.



It is the case of the Respondent Developer that the so called Resolution is passed on 14.01.2018 and letter is issued at a later stage that is on 31.03.2018. This shows that anti dated documents are prepared for the purposes to forge the consent and with the view to take away the rights of the present Respondent.

It is the case of the Respondent Developer that they denies delay of 7 years and put the Applicant to the strict proof thereof. Yet the CC is required to be obtained and till such time CC is granted the so called termination cannot take place at all. The new Developer is pressuring the present Respondent to give the NOC.

It is the case of the Respondent Developer that there are no records to support the contention that Royal Realtors have given any such amenities which are more than what is given by the Respondent Developer hence it is prayed that the Application be dismissed with cost.

2) During hearing on 14.08.2018, Shri Hamed Musakh Khaikh and Anil Surendra Sharma Partners of Rupam Pariket have submitted notarized affidavit on behalf of M/s. Rupam Pariket Developer and same is taken on record. It is stated in the said affidavit that due to their financial in capability, they are not in a position to implement the subject S. R. Scheme and neither have they submitted financial status in SRA nor having pan card of their firm. It is further stated that they do not have any objection towards the development of the subject S. R. Scheme through newly appointed developer, appointed by Applicant Society in General Body Meeting dated 14.01.2014.

3) On 14.08.2018 Shri Mahesh Kumar Boriya one of the partner of M/s Rupam Pariket has filed written submission before this Authority and stated at follows:



a) That the resignation is tendered by two partners 1) Mr. Anil Sharma and 2) Mr. Hamid Moosa Shaikh of M/s. Rupam Pariket Developers and now after the retirement of two partners of the respondent M/s. Rupam Pariket the present developers is taking M/s. Jalian Developers, Malad to admit as partner.

b) That the entire issue is, relegating factor of the developer who is instigating the members of the society to anyhow take back the development right from the present developer which is totally unethical on the part of the said developer i.e. Royal Realtors.

c) That the termination/withdrawal of Agreement cannot be done so until and unless there is an appropriate courts order and the competent civil court is the only authority who can pass an order for withdrawal and / or termination of the agreement. The quasi-judicial Authority is not empowered to terminate and/or cancel the agreement between the parties.

d) That the entire contentions which are raised in the affidavit cum rejoinder, the entire issues is attempted to be diverted from the main issue. The provisions of section 13 (1) & 13 (2) cannot apply in the present circumstances as the delay was with an appropriate concrete and a proper reason. The delay cannot be said to be delay caused intentionally. It was beyond the control of the present developer because, the MHADA Authorities did not grant the permission for the purpose of grant of LOI by the competent authority.

That the entire contentions raised in the Affidavit in Reply is contrary to the original application itself. The drainage line according to the very applicant society is abutting a "Nala" and the said "Nala" was not filled up there is no news cutting or papers at any point of time and in fact

developer is spending various amounts for the purposes to upkeep the passages of the society premises.S

ISSUES:

Whether the appointment by developer can be terminated?

DISCUSSION:

In the present matter, the Applicant Society is occupying the land belonging to MHADA. Admittedly, the Society and the Respondent Developer had entered into Agreement (MOU) dated 31.07.2010. The scheme was submitted by the Respondent Developer and the same was accepted on 21.09.2010. The Scheme has not been anyway progressed further. The Applicant Society resolved to remove the Respondent Developer by resolution dated 14.01.2018 and proposed to appoint Royal Realtors as new Developer. The Society made representation dated 28.03.2018 for removal of the Respondent Developer. Pursuant to the said representation, show cause notice u/s 13(2) of the Slum Act dated 16.04.2018 was issued and both the parties were called upon for hearing.

The respective pleadings of Applicant Society and the Respondent Developer have already been summarized above. The Applicant has pointed out that there is delay of more than 8 years since the acceptance of Scheme on 21.09.2010. The Respondent Developer has pleaded that, because of policy of MHADA, the requisite permissions have not been issued for development of scheme on the MHADA land for about 5 years and the constructions were permitted thereafter in the year 2017. Apparently Annexure - II has also been issued on 17.07.2018. As such it will have to be said that for the delay of about 8 years, the Developer cannot be blamed.



The another contention of the Applicant society is breach of the promise to complete the scheme within 36 months of the MOU dated 31.07.2010. Both the parties have relied on para 6 of the MOU. It is clear from the said clause that the possession of the tenements was required to be given to slum dwellers within 36 months from the date of Commencement Certificate and after the plot is vacated. Both this conditions are not fulfilled therefore there is no breach of said condition. The Respondent Developer has taken plea that the termination of the Agreement of Development is the issue to be decided by the Civil Court and therefore the SRA cannot decide the same. The issue before the SRA is limited to the scope of section 13 (2) of the Slum Act and not as to the substances or cancellation of Agreement.

The Respondent Developer is the partnership firm, one of his partner Shri. Mahesh Boriya filed written submission and contested the Application. During the hearing the other two partners Shri. Hamed Masaq Khaikh & Shri. Anil Surendra Sharma filed their submission on 14.08.2018 stating that they do not have the financial capacity to fulfil implementation of the scheme and they have no objections for appointment of any other Developer. One of the partner Shri. Mahesh Boriya filed his rejoinder stating that, those 2 partners have resigned from partnership firm and the said firm is taking M/s. Jalin Developers as a partner. As such the business of partnership firm is continuing, though the composition as to partners is going to be changed. It is likely that the shareholding pattern may be change. This contingency can be taken care of as per the circular dated 23.03.2015.

In the circumstances, considering the total facts, this is the case where the Developer should be allowed to continue with the development of the Scheme, since the Annexure II is received recently on

17.07.2018. The Developer will have to be directed to take steps for obtaining LOI within period of 1 month from the date of order and also take further steps for implementation of the scheme within reasonable time by complying all the requirements in that respect.

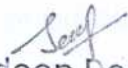
In the light of this facts in order to give one more opportunity to developer the Application of the Applicant society needs to be rejected.

ORDER

1. The Application of the Applicant society is rejected.
2. The Respondent Developer shall take steps within 1 month to obtain LOI and thereafter diligent steps for completion of the scheme within reasonable time.

Place: - Mumbai




(Sandeep Deshmukh)
Secretary
Slum Rehabilitation Authority

NO.SRA/Secretary/ Malad Shivaji Nagar Santaji Dhanaji CHS Ltd/ /2018
Date: 12 OCT 2018

Copy to :

- 1) Malad Shivaji Nagar Santaji Dhanaji Co-Operative Housing Society Ltd.
CTS NO. 291 A (Pt.) Shivaji Nagar, Kurar Village, Malad (E), Mumbai-97.
- 2) M/s. Rupam Pariket Developer, B-27, Ashoka Apartment, Bachchani
Nagar Road, Malad (E), Mumbai-97.
- 3) P.A. to Secretary/SRA
- 4) Deputy Chief Engineer (I)/SRA
- 5) Deputy Collector (WS)/SRA
- 6) Finance Controller/SRA
- 7) Chief Legal Consultant/SRA
- 8) IT Officer to update the Factsheet.