



Done

SLUM REHABILITATION AUTHORITY

BEFORE THE CHIEF EXECUTIVE OFFICER,
SLUM REHABILITATION AUTHORITY,
BANDRA (EAST), MUMBAI.



Andheri Savera CHS Ltd.
CTS No. 845 (Pt), Village Andheri,
Veera Desai Road,
Andheri (W),
Mumbai-400 053.

...Applicant

V/s.

1. M/s. Sweet Angel Home Builders.
104, Meridien Apartment,
1st Floor, Building No.1,
Veera Desai Road,
Andheri (W),
Mumbai-400 058.

2. M/s. Mayuree Consultants
Office No. 620, Swastik Disa Corporate
Park, L.B.S. Marg, Opp. Shreyas Cinema,
Ghatkopar (W)
Mumbai-400 086.

...Respondents

ORDER
(Passed on 10/7/19)

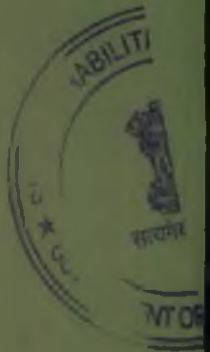
The present proceeding is initiated pursuant to the Application dated 28.06.2017 filed by Applicants viz. Andheri Savera CHS Ltd. under section 13(2) of Maharashtra Slum Areas (I. C. & R.) Act, 1971, for termination of appointment of Respondent No.1 Developer viz. M/s. Sweet Angel Home Builders for implementation of Subject S. R. Scheme submitted on plot of land bearing CTS No. 845 (Pt), Village Andheri, Veera Desai Road, Andheri (W), for Andheri Savera CHS Ltd.

7.7-418
12/7/19

FACTS IN BRIEF:

Occupants/slum dwellers residing on plot of land bearing CTS No. 845 (Pt), Village Andheri, Andheri (W) have formed Respondent No.3 society i.e. Andheri Savera CHS Ltd. and appointed M/s. Sweet Angel Home Builders i.e. Respondent No.1 as their Developer by passing a resolution. Pursuant to appointment, the Respondent No.1 submitted the proposal to Slum Rehabilitation Authority and the same was accepted on 18.05.2005. The land under subject S. R. Scheme is Government Land. Therefore the Additional Collector (Enr & Rem) W.S. issued Certified Annexure- II on 28.03 2006 for total 285 slum dwellers. Out of those 285 slum dwellers 243 slum dwellers are held eligible and 42 held are non-eligible. SRA issued LOI for implementation of the subject S. R. Scheme to the Respondent No.1 Developer on 24.11.2006. IOA for Rehab Wing A, B, C and D has been issued on 19.06.2007 and same has been amended on 20.10.2014. Plinth CC on 04.07.2007 and Further CC on 10.01.2008 have been issued by this Authority for Rehab Wing A, B, C and D. Thereafter Respondent No.1 Developer has failed to obtain the further approvals for subject S. R. Scheme till date. The Applicant Society filed Application dated 28.06.2017.

Therefore considering the inordinate delay in implementation of subject S. R. Scheme this Authority issued show cause notice to Respondent No. 1 Developer under section 13(2) of Maharashtra Slum Area (I. C. & R.) Act, 1971.



HEARING:

Accordingly hearing was fixed and notices were issued to the concerned parties. On 12.02.2019 during the hearing the society filed written submission, the Developer filed written submission on 20.02.2019 and the matter was closed for order.

ARGUMENTS OF APPLICANT SOCIETY VIZ. ANDHERI SAVERA CHS LTD:

It is the case of Applicant Society that, Applicant has filed present application to cancel appointment of Respondent No.1 as developer on the ground of inordinate delay in completing the slum rehabilitation scheme and act done by Respondent in complete violation of DCR 33(10), Government Resolution as well as The Maharashtra Slum Areas (I.C. & R.) Act 1971.

It is the case of Applicant Society that, Society has executed registered Development Agreement with Respondent on 11th May 2005. In the said Development Agreement Respondent has agreed in para No.12 to complete construction of rehab building within the period of 18 months from the date of Commencement Certificate. In case if Respondent will not complete the construction of rehab tenement within a period of 18 months in that case respondent has to pay damages at the rate of Rs.1,000/- per day from the date due till completion of construction.

It is the case of Applicant Society that, after Development Agreement Respondent has also executed individual agreement dated 11th April, 2006 with slum dwellers. In Para No.18 of said individual



agreement Respondent No.1 Developer has agreed to complete the work of construction within a period of 18 months from the date of first Commencement Certificate. The Commencement Certificate is granted on 4th July, 2007 in the favour of respondent. From the date of Commencement Certificate more than 11 years have passed. Thereafter also Respondent is not able to complete the work of construction of rehab tenements.

It is the case of Applicant Society that, Annexure-II of said plot of land is certified on 25th March, 2006. Thereafter on Application of Respondents, SRA has granted letter of intent i.e. LOI on 24th November, 2006 and thereafter granted IOA and CC on 19th June, 2007 in the favour of Applicant and Respondent.

It is the case of Applicant Society that, admittedly respondent has constructed rehab building A and B Wing in the year 2010. There were chances of breeding of mosquito, short circuit etc. therefore after receipt of complaint from slum dwellers Mr. Prakash (Anna Shendge), MLA made complaint dated 25th March 2014 to SRA with request to take necessary action against the Respondent and direct to clear the sewerage line and also complaint about PSC Block etc. After receipt of said complaint Asst. Engineer-I, SRA has issued notice dated 22nd August 2014 to Respondent and their Architect directing them to resolve the problem immediately otherwise no further approval to the scheme will be granted.

It is the case of Applicant Society that, after illegal construction of A and B Wing of rehab building the partners of Respondent



Developer have illegally handed over possession of rehab alternate accommodation to the slum dwellers without drawing lots.

It is the case of Applicant Society that, the partner of Respondent Developer has issued letters on 1st December, 2013. The Respondent Developer has submitted list of allotment of temporary transit accommodation to eligible slum dwellers which was submitted by Respondent Developer before Asst. Registrar, SRA. In the said list it can be seen that partners of above mentioned developer has taken possession of flats in rehab building under the guise of transit accommodation. Due to said illegal acts of developer the work of construction is not completed.

It is the case of Applicant Society that, one Mr. Babu Asappa Dhangar made complaint dated 25th February, 2015 to Executive Engineer, Western Suburb, SRA alleging therein that rehab tenement A and B Wing constructed by developer has been illegally handed over to Slum Dwellers without obtaining O.C. and carrying out lots. After receipt of said complaint Asst. Registrar, SRA has issued notice dated 10th April, 2015 to the developer with instructions to file reply to the said complaint. Thereafter twice Asst. Registrar Kept matter for hearing on 20th April, 2015 and 8th May 2015 for hearing however neither respondent nor his representative remained present. During the hearing Secretary of society has made statement that respondent herein has handed over possession of rehab tenement to slum dwellers as transit accommodation. Since Respondent neither filed reply nor appeared before SRA therefore Joint Registrar, SRA wrote letter dated 29th September 2015 and 13th January, 2016 to Executive Engineer,



Western Suburb, SRA to take necessary action against the Respondent herein for handing over possession without there being lots.

It is the case of Applicant Society that, after receipt of said letter from Joint Registrar, SRA, Asst. Engineer-1, SRA wrote letter dated 25th January, 2016 to the Respondent and their Architect, stating therein that C.C. to subject S. R. Scheme is issued on 18th January 2008, however Respondent herein has not submitted Application for O.C.C. and direction was given to Respondent to submit Application for O.C.C in S.O.P. format failing which further necessary action will be taken as per law. Thereafter again Asst. Engineer, K/West SRA has sent reminder for the same with the direction if Respondent failed to do so further approval for the scheme will not be granted.

It is the case of Applicant Society that, even after receipt of third notice from Asst. Engineer Respondent has not filed any reply or Application as directed. Therefore Executive Engineer-IV, SRA has fixed the hearing before CEO, SRA on 29th November, 2016 at 11.00 a.m. to discuss about nonperformance in respect of scheme. After hearing the parties this Authority has directed to carry out inspection of A and B rehab building constructed by Respondent and to file report before him. As per direction of this Authority a group of officers has inspected the A and B Wing of rehab building on 5th January, 2017 and they have filed their report of inspection on 18th April, 2017 stating therein that most of the rehab tenement is illegally occupied by slum dwellers without there being lots through the office of Asst. Registrar, SRA.

It is the case of Applicant Society that, after receipt of said inspection report from Joint Registrar, Eastern and Western Suburb, SRA



and Letter from Asst. Registrar, Dy. Collector (Enc. & Rem.) Andheri-1 has initiated proceeding by notice dated 11.05.2018 under Sec. 33, 3 (e) of Slum Act against 97 slum dwellers for evicting them from unauthorized occupation.

It is the case of Applicant Society that, meanwhile without knowledge and consent of Applicant as well as its members, Respondent has taken finance from M/s. Rajeshree Realtors. After taking finance there were disputes between both the parties, in result of that M/s. Rajeshree Realtors has filed Arbitration Petition (lodging) No. 558 of 2016 before Hon'ble High Court. In the said Arbitration Petition Hon'ble Bombay High Court has appointed Mr. Chetan Kapadia, Advocate as sole arbitrator to decide the dispute between the parties. By said order dated 29th April, 2016 Hon'ble High Court has directed to maintain status quo in respect of property.

It is the case of Applicant Society that, admittedly status quo which was granted on 29th April, 2016 is extended up to 31st January, 2018. After hearing the parties at length the Arbitrator has passed Award on 31st January, 2018 and directed respondent herein to pay 26, 36, 54,218/- to applicant together with interest at the rate of 6% per annum from the date of Application till the date of award and thereafter 12% per annum from 1st February, 2018 till payment realized.

It is the case of Applicant Society that, being aggrieved due to inaction on the part of Respondent, Applicant has filed Application on 11th July, 2017 with prayer to cancel the appointment of Respondent as Developer. After receipt of complaint from Applicant this Authority directed Asst. Registrar, SRA to call GBR of Applicant on 24th August.



2018. The said representative has filed his report dated 29th August, 2018 stating that out of 146 individual slum dwellers 98 have given their consent for cancelling the appointment as the Developer, 46 slum dwellers have given their consent in the favour of Respondent Developer.

It is the case of Applicant Society that, Slum Rehabilitation Authority has issued number of letters since March, 2014 up till now to not to issue further approval till resolving the problem.

It is the case of Applicant Society that, in the light of above mentioned discussion it can be seen that due to illegal acts the Respondent Developer could not construct rehab tenement within a period of more than 11 years though they have agreed to complete the same within a period of 18 months from the date of Commencement Certificate. Therefore it's a fit case to cancel appointment of Respondent as Developer immediately as soon as possible in the interest and welfare of member of Applicant Society.

ARGUMENTS OF RESPONDENT NO.1 DEVELOPER Viz. M/s. SWEET ANGEL HOME BUILDERS.

It is the case of Respondent No.1 Developer that as per Special General Body Meeting dated 08.08.2004 Respondent No.1 was appointed as Developer by the Society for Development of the S. R. Scheme.

It is the case of Respondent No.1 Developer that there are total 301 tenements however upon certification and issuance of Annexure-II it appears that there are total 285 tenements out of which 243 were eligible and 42 were non- eligible.



It is the case of Respondent Developer that on 11.05.2005, a Development Agreement was executed between the Andheri Savera CHS Ltd. and Sweet Angel Home Builder granting development rights in favour Sweet Angel Home Builders.

It is the case of Respondent Developer that pursuant to the said Development Agreement in the year 2007, LOI, IOA and subsequently CC, were issued for the purpose of constructing rehabilitation building A and B wings.

It is the case of Respondent Developer that building A and B wings was completed somewhere in or around March 2010, and the Society Management Committee without following the process of allotment, rehabilitated total 104 tenants which include 96 residential and 8 commercial tenements.

It is the case of Respondent Developer that from the year 2007 till date, they have given rent on a monthly and yearly basis to eligible slum dwellers of Andheri Savera CHS Ltd. and paid the electricity bill and maintenance of A and B wings.

It is the case of Respondent Developer that they continued to follow up for the sanction of further plans for IOA and CC for the construction of further Rehab Building C and D as well as the sale building E. Finally in the year 2014 this Authority further sanctioned IOA for building C, D and E vide letter dated 20.10.2014.

It is the case of Respondent Developer that they approached the remaining slum dwellers and requested them to vacate the premise by offering the rent. But the said slum dwellers refused to vacate the structures stating that they wish to be rehabilitate in the same area, and they insisted Respondent No.1 to obtain permission to



construct a transit camp in the same area. Accordingly, Respondent No.1 Developer applied for permission to construct a transit camp and finally on 12.08.2015 the said permission was granted.

It is the case of Respondent Developer that they approached the slum dwellers once again. However, the slum dwellers who were not eligible, refused to cooperate and hence construction of transit camp could not take place.

It is the case of Respondent Developer that they wrote a letter dated 29.04.2017 to the Dy. collector, MHADA to issue notices under sections 33 & 38, against occupiers who were not co-operating, as well as to evict unauthorized slum dwellers who are not eligible for rehabilitation.

It is the case of Respondent Developer that notices under sections 33 & 38 under the Maharashtra Slum Areas (I. C. & R.) Act, 1971 were issued by the Dy. Collector (Encroachment/Eviction) on 19.06.2017.

It is the case of Respondent Developer that various hearings were held at which time the unauthorized occupants objected on the ground that the Hon'ble High Court had directed to Respondent No.1 Developer to maintain status quo with respect to the said scheme.

It is the case of Respondent Developer that this Authority issued a notice to Respondent No.1 Developer dated 17.01.2018 requesting them to take necessary steps, and complete the construction work of transit camp.

It is the case of Respondent Developer that on 02.02.2018 the Respondent No.1 Developer replied to the said letter of the Executive Engineers and informed the Authority that they had taken necessary



steps and that the said status quo has been removed. Respondent No.1 Developer on the very same day i.e. 02.02.2018 called upon the Dy. Collector MHADA to issue notices and take steps and to evict unauthorized encroachments as the status quo was vacated.

It is the case of Respondent Developer that till date the said encroachments have not been removed and therefore the construction of transit camp could not take place. Respondent No.1 Developer has neither received any notice nor reply from the Dy. Collector, MHADA or from this Authority. However, on 12.07.2018 the learned Dy. Collector has passed an order, directing 21 slum dwellers to vacate and hand over peaceful possession, failing which the Authority shall take over possession.

It is the case of Respondent Developer that another notice in respect of 25 non-cooperative occupants/slum dwellers (eligible and ineligible) has been sent to them on 20.04.2018 and 17.07.2018. They say until these 46 occupants /slum dwellers are removed, they will not be able to commence and complete the construction of the rehab C and D wings or construct the transit camp, for which permission has already been granted. It is the case of Respondent No.1 that, the complainants are either residents;

1. Who are occupying the rehab wing A and wings B for the last 9 years or;
2. The slum dwellers who are either eligible to whom Respondent No.1 Developer is ready and willing to pay rent for alternative accommodation but are not co-operating or;



3. Eligible and ineligible slum dwellers against whom 33 & 38 proceedings are pending and who are not vacating the premises,
4. Needless to mention we have only received a Notice under Section 13(2) but they have not received a copy of the complaint.

It is the case of Respondent Developer that the complainants had earlier tried, by dishonest means, to remove them as Developers and accordingly a notice dated 20.03.2018 was issued to them. The Respondent Developer further stated that the said notice was bad in law for the reasons mentioned here under;

- a. Most parties who have filed the complaint have already been rehabilitated and accommodated in rehabilitation building A and B and therefore have absolutely no reason to have the said developer removed or changed.
- b. The remaining parties who have not been rehabilitated are the same one who have refused to move inspite of being offered rent in lieu of alternative accommodation.
- c. As a Developers as mentioned above, they have taken all steps to proceed with the construction. However, on account of action to be taken by the Dy. Collector, MHADA, to remove the unauthorized encroachments, Respondent No.1 Developer is unable to construct the transit camp inspite of having not only the permission but also the necessary resources to do.



d. Co-operative Officer Mr. R. N. Halde has called an illegal meeting of Andheri Savera CHS Ltd. with a sole agenda to cancel the appointment of Developer for the redevelopment of the Andheri Savera CHS Ltd. by conducting secret ballot voting. There is no such provision to remove the Developer by conducting secret ballot voting.

It is the case of Respondent No.1 Developer that, by letter dated 21.08.2018 they have objected to the said illegal meeting which was to be conducted on 24.08.2018. Still instead of cancelling such illegal meeting Co-operative office proceeded and conducted the said meeting.

It is the case of Respondent No.1 Developer that being aggrieved by the said meeting dated 24.08.2018 they approached Hon'ble High Court for the reliefs specifically mentioned therein against the SRA being the Writ Petition (L) No. 3020 of 2018.

DISCUSSIONS AND CONCLUSION:

The Applicant Society has been formed by Slum Dwellers occupying the CTS No. 845 (pt.) village Andheri as described above. The Respondent No.1 Developer signed Registered Development Agreement and the Individual Agreement on 11.04.2006. The Developer had promised to complete the Rehab Component in 18 months. The scheme was accepted on 18.05.2005 and the Annexure II was certified by the competent Authority on 28.03.2006 wherein out of total 285 slum dwellers 243 were declared eligible. LOI was issued on 24.11.2006 and IOA in respect of A, B, C and D wings of rehab building was issued on 19.06.2007. The plinth CC as well as the full CC were



issued in respect of the said A, B, C and D rehab wings on 04.07.2007 and 10.01.2008 respectively.

Admittedly construction for A & B wings was done in the year 2010. The said wings have not yet being completed. OC has not been obtained by the Developer. Admittedly the tenements are occupied by the Slum Dwellers in the year 2010. The occupation is illegal. The Applicant Society claims that the slum dwellers have been placed in possession of the said tenements by the Developer. The Developer blames the Society for illegal occupation by its members. In the light of above facts the explanation of the developer in his pleading will have to be taken in to consideration. The developer claims that he had written letter dated 29.04.2007 to the Dy. Collector/ MHADA for action under section 33 and 38 of Slum Act against the occupiers. He has also requested to evict the unauthorized ineligible slum dwellers. The notices under section 33 and 38 of the Act were issued by Dy. Collector (E & R.) on 19.06.2017. He has also replied to the MHADA authorities on 02.02.2018. The Deputy Collector issued notices for eviction of the encroachers on 02.02.2018. Even on his own showing the encroachment were done in the month of March 2010 and till 29.04.2017 he had not taken any action. As such, till date Wing A and B of Rehab building are without OC. There is inaction on the part of Developer for long period of 7 years. The explanation given by him inaction leading to delay shows that the delay was without any reasonable cause.

As regard the C and D wings of Rehab Component full CC was issued on 10.01.2008 till this date the construction has not been



commenced. In response to said, the explanation given by Respondent No.1 Developer that till the removal of 46 unauthorized/non-cooperative occupants it was not possible for developer to commence and complete the construction of rehab wing C and D for which full CC has already given on 10.01.2008. The Developer claims that 46 slum dwellers have not co-operated in eviction and demolition of structures therefore rehabs C & D wings as well as the transit camp could not be constructed. It is apparent from his own pleading that the IOA issued on 19.06.2007 was amended at his instance on 20.10.2014. He has not shown as to what action he has taken to comply with full CC which was issued on 10.01.2008. No action for removal of their structures was taken till 2018. As such the pendency of the action under section 33 & 38 is not the explanation for not taking action at earliest after the full CC.

The Developer has submitted that he is willing to pay rent for alternate accommodation still the slum dwellers are not ready to cooperate. The Developer has not taken any step for removal of such slum dwellers. Therefore mere showing willingness to pay the rent is not a proper compliance to LOI and for permission.

After the notice under section 13(2) the parties were heard at length. The Developer filed reply and given explanation for the delay and inaction. Hence his contention that the copy of complaint not received alongwith copy of notice under section 13(2) is of no help to him.

The Developer has pleaded that the meeting for removal was taken on 24.08.2018 by the co-operative officer Mr. R. N. Halde. He



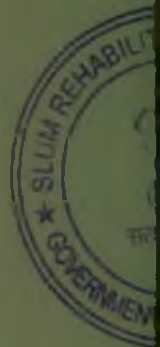
claims that the removal by voting through secret ballot is not provided under the law. The voting by secret ballot is a well-recognized mode of getting independent view of each of the members. It is a fair way of finding a majority in support of or against the Agenda.

The Developer challenging validity of meeting dated 24.08.2018. He has not challenge validity of the meeting nor made any grievance to any Authority having jurisdiction. He had also not approach to the AGRC. He has directly approach to Hon'ble High Court by filling Writ Petition No.3020 of 2018 in which no order has been passed and as such considering the facts and circumstance this matter can be decided at this stage.

In view of the aforesaid facts and circumstances following order is passed;

ORDER

1. The appointment of Respondent Developer i.e. M/s. Sweet Angel Home Builders in respect of the S.R. Scheme on plot of land bearing CTS No. 845(Pf), Village Andheri, Veera Desai Road, Andheri (W) for Andheri Savera CHS Ltd. is hereby stands terminated.
2. The Applicant society is at liberty to appoint new Developer of their own choice within 90 days of this order through GBR to be conducted by Assistant Registrar, Co-operative Department/ SRA as per law, rules, regulations and prevailing norms and policy of SRA, to complete the further implementation of subject S.R. Scheme.



3. The Engineering Department of SRA to ascertain expenses legally incurred for the said Scheme by Respondent No.1 Developer & direct the newly appointed Developer to deposit the said assessed amount of compensation within 45 days of the date of final assessment of compensation by the CEO/SRA.

Place: - Mumbai

Date: **10 JUL 2019**



Chief Executive Officer
Slum Rehabilitation Authority

ow/2019/31438

NO.SRA/CEO/ Andheri Saver CHS Ltd. /

/2019

Date: **10 JUL 2019**

Copy to:

1. Andheri Saver CHS Ltd. CTS No. 845 (Pt), Village Andheri, Veera Desai Road, Andheri (W), Mumbai-400 053.
2. M/s. Sweet Angel Home Builders. 104, Meridien Apartment, 1st Floor, Building No.1, Veera Desai Road, Andheri (W), Mumbai-400 058.
3. M/s. Mayuree Consultants, Office No. 620, Swastik Disa Corporate Park, L.B.S. Marg, Opp. Shreyas Cinema, Ghatkopar (W), Mumbai-400 086.
4. Deputy Chief Engineer /SRA
5. Deputy Collector/ SRA
6. Joint Registrar/SRA
7. Finance Controller/SRA
8. Chief Legal Consultant/SRA
9. Astt. Town Planner /SRA
10. Administrative Officer/SRA
11. IT Officer - To update the fact sheet and computer record.