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RELEVANCE OF SECTION 15 OF RERA FOR A NEW PROMOTER IN A REGISTERED PROJECT

In Writ Petition No. 1673 of 2025 *[Tuvin Constructions LLP v. State of Maharashtra & Maharashtra Real Estate Regulatory Authority ("**MahaRERA**")]*, the Bombay High Court ("**HC**") clarified the circumstances that give rise to the mandate under Section 15 of the Maharashtra Real Estate (Regulation and Development) Act, 2016 ("**RERA**").

A. Factual Background

i. Vilas Vaibhav Co-operative Housing Society Limited ("**Society**") had executed a Development Agreement and Power of Attorney in favour of M/s. Aditya Developer ("**Erstwhile Developer**").
ii. By an Arbitral Award the rights of the Erstwhile Developer were terminated.
iii. Subsequently, by court orders, the Erstwhile Developer was directed to handover the subject property to the Society and the Society was allowed to continue and complete the redevelopment.
iv. Society then executed a Development Agreement and Power of Attorney with the Petitioner i.e. Tuvin Constructions LLP.
v. The Petitioner applied to MahaRERA for registration of its project, however, by an impugned email, MahaRERA directed it to obtain consent from two-third allottees of the Erstwhile Developer.

B. Issue

Whether the Petitioner was required to obtain the consent of allottees under Section 15 of RERA?

C. Relevant Sections of RERA

i. Section 2(zk) which defines a 'Promoter'.
ii. Section 15(1) which obligates a promoter to obtain written consents from two-thirds of its allottees and from MahaRERA before transferring / assigning majority of its rights and liabilities in a project to a third party, subject to the proviso and the explanation therein.

D. Parties' Contentions

i. Contentions of the Petitioner
- Counsel for the Petitioner submitted that, being a new developer / promoter, the Petitioner could not be compelled to secure consent from two-thirds of the Erstwhile Developer's allottees for project registration.
- It was further argued that the claims of the allottees / purchasers against the Erstwhile Developer could not be enforced against the Petitioner in the absence of privity between the Petitioner and allottees / purchasers of the Erstwhile Developer.

ii. Contentions of MahaRERA
- Counsel for MahaRERA argued that the Society, being the landowner, qualified as a co-promoter under Section 2(zk) of RERA.
- It was submitted that since the Society had transferred its development rights in favour of the Petitioner, compliance with the mandate of Section 15 was required.
- It was also highlighted that MahaRERA was considering the issue of privity of contract in another pending matter akin to the present one.

E. HC's Conclusion

i. Relying on the precedents cited by the Petitioner, the HC reiterated its settled position that no privity of contract exists between the Society or the Petitioner with third party purchasers claiming through the Erstwhile Developer.
ii. The HC reaffirmed that when a Development Agreement is terminated by a society and the erstwhile developer is unable to secure specific performance against the society, no third party purchaser may claim specific performance against the society or the new developer, as in the present matter.
iii. The HC held MahaRERA's aforesaid contentions to be misconceived emphasizing that (1) the Erstwhile Developer alone was the promoter; and (2) upon termination of the Erstwhile Developer under the Arbitral Award, no allottee of the Erstwhile Developer could pursue a claim against the Petitioner.
iv. Accordingly, the Petition was allowed with the following directions:
- Writ of Mandamus (or such other appropriate writ, order or direction under Article 226 of the Constitution of India), directing MahaRERA to process the Petitioner's application to either change the promoter's name to the Petitioner, or to register the project afresh in the Petitioner's name, without transferring the liabilities of the previous developer, and by cancelling the previous developer's registration; and
- Exemption of the Petitioner from the requirement of obtaining consents from two-thirds of the Erstwhile Developer's allottees for effecting the name change from the Erstwhile Developer to the Petitioner.

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