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**CAN TENANTS/SOCIETY MEMBERS ADJUDICATE
THEIR CLAIMS BEFORE RERA**

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A. BACKGROUND

Mumbai has been on steady urban redevelopment and has several old buildings and structures which either needs maintenance or if their life is exhausted needs redevelopment and upon redevelopment the Society Members/Tenants get new premises as and by way of Permanent Alternate Accommodation ("**PAA**") in lieu of their existing Premises occupied by them.

Such PAA consists of (i) Existing Area + Free Entitlement as per scheme of DCPR 2034 or (ii) Existing Area + Free Entitlement + Additional Area purchased by the Society Members/Tenants by choice or by force.

B. SEVERAL QUESTIONS ARISE AS REGARDS RIGHTS OF SOCIETY MEMBERS/TENANTS WITH RESPECT TO ADJUDICATION OF THEIR CLAIM BEFORE RERA AS UNDER

- i. Whether RERA is applicable to tenants/members of society under redevelopment?
- ii. Whether free area entitlement to the Tenants/Members of Society in lieu of their existing premises comes under the framework of RERA?
- iii. Whether additional area purchased by the Tenants/Members of Society under PAAA comes under the framework of RERA?

C. ANALYSIS

1. Hon'ble Maharashtra Real Estate Regulatory Authority ("**MahaRERA**") in its judgment dated 10th April, 2018 in matter of **Vimla Kapoor vs. Ekta Supreme Corporation and Anr.** has held that;

- (i) Redevelopment project is not required to be registered as per Section-3(2)C, of RERA Act, 2016 which states that

“Notwithstanding anything contained in sub-section (1), no registration of the real estate project shall be required for the purpose of renovation or repair or redevelopment which does not involve marketing, advertising selling or new allotment of any apartment, plot or building, as the case may be, under the real estate project.”, and further the court held that as per Sec 2(d) of RERA Act, 2016 the definition of Allottee does not include a person to whom such plot, apartment or building, as the case may be, is given on rent and therefore any claim/dispute pertaining to the redevelopment component does not fall within the purview of RERA, Hence, Maha RERA concluded that it has no jurisdiction to adjudicate grievances and claims with respect to the complaint filed by the Tenants/Society Members with respect to Rehab Component.

However, the existing member/tenants can approach the **appropriate authority** agitating their grievances.

2. Maharashtra Real Estate Appellate Tribunal in its judgment dated 1st February, 2022 in the matter of **Kishor Shamji Thakkar and Ors. v M/s. Sumer Builders Pvt. Ltd. & Ors.** has held that:

- PAAA, is executed primarily to provide alternate accommodation free of cost in lieu of tenants vacating their tenanted premises. Such agreements are governed by the mutual obligations of the parties and lack the essential characteristics of a sale transaction, such as the transfer of ownership through monetary consideration therefore, a contractual instrument such as PAAA creating obligations other than those under an agreement for sale does not fall within the ambit of RERA.

- Purchase of “Additional Area” by Tenant, doesn’t constitute a sale component under RERA as the Additional Area was inseparably tied to the broader agreement to provide permanent alternate accommodation in the redevelopment project that did not transform the PAAA into an Agreement for Sale even if the Additional Area

was purchased for consideration, therefore excluded from the purview of RERA.

- Permanent Alternate Accommodation located in Free Sale building does not necessarily mean that the characteristics of PAAA changed to Agreement for Sale, and PAAA cannot be termed as an Agreement for Sale.

- The rights and obligations related to the Additional Area are stemmed directly from the PAAA and are not independent transaction and therefore the transaction cannot be classified as sale, therefore the claims made by such Tenants were rejected under RERA.

D. SUMMARY/CONCLUSION

In view of the aforesaid it can be stated that as per Sec 3(2)(c) and 2(d) of RERA Act, 2016 RERA is not applicable to Tenants/Members of Society in respect of Free Area Entitlement as well as Additional Area purchased by Tenants/Society Members under PAAA.

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