

STRATAGE UPDATES

Real Estate Update

Nature of Directives issued under Section 79A of the Maharashtra Co-operative Societies Act, 1960

Case: In this update, we have examined the ruling of the High Court of Bombay (“**Court**”) pronounced on May 7, 2021, in *Abhanga Samata Co-op. Housing Society v. Parag Binani and Arkade Developers Private Limited*.

Background: Abhanga Samata Co-op Housing Society (“**Society**”) was a co-operative housing society, formed and registered under the Maharashtra Co-operative Societies Act, 1960 (“**MCS ACT**”). Parag Binani (“**Respondent**”) was a member of the Society since 2020. Arkade Developers Private Limited (“**Developer**”) was the developer appointed by the Society for the re-development of its property. The Respondent had initiated a suit against the Society and the Developer, on the ground that the re-development process was violative of the directives under Government Resolution No. Sa. Gru. Yo-2018/ Pra.Kra.85/14-Sa, dated July 4, 2019, issued by the Government under Section 79A of the MCS Act (“**Directives**”). The Respondent further alleged that the re-development process was sanctioned by fraud. The City Civil Court, Dindoshi (“**Trial Court**”) had issued an injunction restraining the Society from proceeding with the re-development, against which said appeal was filed.

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Brief Facts (1 of 2):

1. In 2015, upon examining the cost of substantial repair and renovation of the Society, a decision for re-development of the property was taken in a Special General Body Meeting of the Society (“**SGBM**”). At that time, the Respondent was not a member of the Society. A project management consultant was appointed by the Society. The consultant had submitted a feasibility report in 2018, after which tenders were invited from developers.
2. In 2019, in a subsequent SGBM, the three tenders that were submitted were discussed and the proposal of the Developer was unanimously accepted by the existing members who had attended the meeting.
3. In the next SGBM, a resolution was passed to appoint the Developer for the re-development. A letter was issued by the Society to the Deputy Registrar of the Co-operative Societies requesting him to attend a meeting to approve the appointment of the Developer and to verify and ensure compliance of the Directives.

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Brief Facts (2 of 2):

1. In the succeeding SGBM, appointment of the Developer as was duly approved by the office of the Deputy Registrar. Accordingly, the draft development agreement and plans of the proposed buildings were approved on the basis of consent letters given by a majority of the members of the Society.
2. In 2020, the development agreement was registered with the Sub-Registrar after being executed by the Society and the Developer, along with 39 existing members (out of 51 existing members) as confirming parties.

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Decision of the High Court: The Court quashed the injunction order passed by the Trial Court and cited previous judgements to conclude that the position of law with respect to the Directives was well established, as follows:

1. The Directives are not mandatory in nature and substantial compliance with the same is sufficient. Certain non-compliances of the Directives were noted by the Court, such as the society not creating a website as required under the Directives. However, the Court held that such non-compliances could not stall the re-development process.
2. General body of a society is the supreme authority to take decisions for the society;
3. The decision taken by the majority of society members will bind the minority members;
4. The Directives do not bind third parties; and
5. Decisions taken by a co-operative society in accordance with the principles of democracy cannot be interfered with or displaced, unless it is shown, that same were sanctioned by fraud or misrepresentation.

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Comments and Analysis:

From the judgment, one may form a view that certain irregularities or deviations in compliance with the Directives issued under Section 79A of the MCS Act may not have the effect of vitiating the entire process of re-development being undertaken by a society. This would, however, depend on the nature of the non-compliance.

It should be noted that the non-compliances with the Directives in the present case did not appear to be significant. In the event of substantial non-compliance with the Directives, the judiciary may take a different view about the effect of such non-compliance on the re-development.

Further, it is important that societies ensure transparency in the process of redevelopment and procure the consent of the majority of members for the re-development.