

MAHARASHTRA REAL ESTATE APPELLATE TRIBUNAL**APPEAL NO. 0006000000031585**

M/s. Renaissance Infrastructure

... Appellants.

Vs.

Parth B. Suchak

... Respondent.

*(Shri Nikhil P. Mallelwar Advocate for Appellants
None for Respondent)***CORAM : INDIRA JAIN J. CHAIRPERSON
S.S. SANDHU, MEMBER (J)****ORDER BELOW MISC. APPLICATION (FOR EXEMPTION) :**

Heard Learned Counsel for parties. Perused record.

2. By this application appellants are seeking exemption from compliance to the Proviso to Section 43(5) of The Real Estate (Regulation and Development) Act, 2016 (for short 'the Act').

3. Appellants are the respondents in complaint filed before MahaRERA. Respondent in this appeal is the original complainant and duly authorized representative of his father Shri Bharat Ratilal Suchak. For the sake of convenience we would refer the parties in their original status as referred before the Authority in complaint.

4. It is the case of complainant that his father was one of the partners of respondent No.1 M/s. Renaissance Infrastructure Partnership



Firm. When he retired from the partnership firm, he was allotted 6 plinth lands (Warehousing Units) by the appellants as per the arrangements between them. Respondents agreed to handover possession of the Units up to 09.09.2010. As possession was not handed over within agreed timeline, complaint came to be filed before MahaRERA claiming compensation from 09.09.2010 onwards.

5. Respondents in the said complaint (Appellants herein) strongly resisted the complaint mainly on two grounds:

- (i) Claim in complaint is in the nature of performance of contract executed under the Transfer of Property Act and Indian Contract Act. It cannot be granted by Authority as the same will fall within the domain of Civil Court;
- (ii) Provisions of the Act are not applicable to the subject matter as they are not Promoters.

6. The Learned Member and Adjudicating Officer on examination of pleadings of parties and upon considering the various points for determination drawn, passed the order dated 20.03.2019 by coming to the conclusions that (i) MahaRERA has jurisdiction to entertain the complaint under the Act (ii) since respondents have failed to hand over possession of Warehousing Units as agreed they are liable to pay compensation @ Rs.6,30,000/- per month from 09.09.2010 till handing over possession (iii) Respondents to hand over possession of the Units to complainant and execute the deed of conveyance and (iv) pay costs of Rs.20,000/-.

7. It is this order which is the subject matter of challenge in present appeal. Learned Counsel for appellants contended that appellants

are not the promoters and provisions of the Act are not applicable. According to the learned counsel, Authority committed an error in holding that it has jurisdiction to entertain the complaint and further in granting exorbitant compensation. Leaned Counsel submits that unless the status of Appellants as promoters is determined question of compliance to the Proviso to Section 43(5) of the Act would not arise.

8. Per contra, Learned Counsel for Complainant/respondent submits that compliance of Proviso to Sec.43(5) of the Act is mandatory and appeal cannot be entertained without the promoters first having deposited the amount as prescribed under the Proviso. Learned Counsel strenuously submits that at this stage grounds raised cannot be gone into and in the absence of compliance appellants cannot be heard on merits. Learned Counsel prays to dismiss the application and to issue directions to appellants to deposit the amount as per Proviso to Section 43(5) of the Act.

9. As limited controversy revolves round proviso to Section 43(5) the same is reproduced here as under:

“43 (5)

Any person aggrieved by any direction or decision or order made by the Authority or by an adjudicating officer under this Act may prefer an appeal before the Appellate Tribunal having jurisdiction over the matter:

***Provided** that where a promoter files an appeal with the Appellate Tribunal, it shall not be entertained without the promoter first having deposited with the Appellate Tribunal at least thirty per cent of the penalty or such*

higher percentage as may be determined by the Appellate Tribunal, or the total amount to be paid to the allottee including interest and compensation imposed on him, if any, or with both, as the case may be, before the said appeal is heard."

10. It is a matter of record that complaint came to be decided on merits upon hearing the parties. The Learned Member and Adjudicating Officer on drawing points for determination and recording reasons held that respondents in complaint are liable to pay compensation. As it can be seen from Proviso (supra) compensation is inclusive in the proviso and there is no escape at this stage to appellants from depositing the amount as required prior to entertaining the appeal.

11. We, therefore, do not find merit in the contention of the appellants. Application deserves to be rejected. Hence. the following order.

ORDER

- i) Application stands rejected.
- ii) Liberty to the parties to make submissions on quantum of amount to be deposited in compliance to the Proviso of Section 43(5) of the Act of 2016.
- iii) Stand over to 24/01/2020 for submissions as per (ii) above.


(S.S.SANDHU)


(INDIRA JAIN J.)

09.01.2020.