

**BEFORE THE MAHARASHTRA REAL ESTATE  
APPELLATE TRIBUNAL, MUMBAI**

**Appeal No. AT006000000031785**

**Anil Gulabdas Shah  
Having address at 1601, B Wing,  
Jay View Co-operative Housing  
Society, Sahakar Nagar, J.P.Road,  
Andheri (West), Mumbai-400 053.**

**..Appellant**

**V/s**

**1-M/s Solaris Developers Private Limited  
A company registered under the provisions of  
Companies act 1956, having head office at  
401, Peninsula Plaza, A/16, Veera Industrial  
Estate, Off New Link Road, Andheri (West),  
Mumbai-400 053.**

**2-Jay View Co-operative Housing Society Ltd,  
A society registered under the provisions of  
Maharashtra Co-operative Societies Act, 1956  
having address at Titanium Towers, Sahkar Nagar,  
J.P.Road, Andheri (West), Mumbai-400 053**      **...Respondents**

**Appellant in person present.  
Advocate Abir Patel i/b Wadia Gandhi & Co. for Respondents.**

**CORAM : SUMANT M. KOLHE, MEMBER(J)  
S. S. SANDHU, MEMBER (A)**

**DATE : 20<sup>th</sup> December, 2019.**

**JUDGMENT (PER SUMANT KOLHE, MEMBER(J))**

The impugned order dated 22<sup>nd</sup> July 2019 passed by the Learned Member of MahaRERA in complaint no. 57281 is challenged in this appeal.

2. The appellant is an allottee. Respondent No. 1 is the promotor and Respondent No.2 is a Co-operative Housing Society. Complaint no.57281 was filed by allottee against the promotor and the society. Learned Member No.1 of MahaRERA disposed of the complaint by passing order on 22<sup>nd</sup> July 2019.

3- Being dissatisfied with the order, appellant has preferred this appeal. On the date of appearance of the parties in the appeal, appellant in person submits that the matter be remitted back to MahaRERA for fresh hearing in his presence. Appellant submits that he is a heart patient and a senior citizen. He further submits that he was not present before MahaRERA at the time of hearing of the complaint and the advocate present on behalf of the appellant was a junior advocate authorized only to take further date. According him, complaint was heard in absence of Appellant as well as his Senior Advocate by declining request for the next date made by junior advocate and therefore principle of natural justice was not followed.

4- On the other hand, the Learned Counsel for the promotor submits that there is no need to remand the matter as impugned order was passed on merits after hearing both the sides. According to him, advocate of appellant was present before MahaRERA and he argued for appellant before MahaRERA and therefore principle of natural justice was duly followed.

5- Considering the heart ailment of the appellant, who is also a senior citizen and the nature of his prayer for remanding the matter, we proceed to consider the request of remand on the basis of submissions made by both the sides.


On perusing impugned order, it is revealed that the appellant was not present at the time of hearing of the complaint. According to the appellant, he was suffering from heart ailment and therefore could not remain present for hearing. As his senior advocate was also not present, the junior advocate was deputed to seek next date. As the request of next date was not granted, the complaint came to be heard in absence of appellant and his senior advocate. It is further revealed from the impugned order that both the sides were heard and thereafter the order was passed. In fact, Appellant being an allottee i.e. flat purchaser suffering from heart ailment and unable to attend the hearing of the matter before MahaRERA to put up his case properly through his senior advocate deserved compassionate consideration.

6- In such circumstances, in view of the impugned order having been passed by denying the next date as sufficient opportunity without considering the ill health of the appellant, we feel there is some substance in the submissions of the appellant claiming denial of natural justice. It is well recognised that justice should not only be done but it also must be seen to have been done. Therefore, in the interest of natural justice, we feel that matter deserves to be remanded to MahaRERA for fresh hearing and decision by giving sufficient opportunity to appellant and his advocate to remain present to argue his case with similar opportunity to the Respondent as well. There will be no injustice to other side if matter is remitted for a fresh decision.

7- In view of above, we pass the following Order: -

**ORDER**

- a) Appeal No. **AT006000000031785** stands disposed of.
- b) Impugned order dated 22/7/2019 passed in complaint No. 57281 by Learned Member- 1 of MahaRERA is set aside.
- c) Complaint no. 57281 is remitted to Learned Member-1 of MahaRERA for fresh hearing in the presence of appellant (Original Complainant) and his Senior Advocate.
- d) Learned Member-1 of MahaRERA shall give sufficient opportunity to both the sides to file evidence if any and to argue the matter to their satisfaction.
- e) Learned Member-1 of MahaRERA shall expedite the hearing of the complaint.
- f) Inform Learned Member-1 of MahaRERA accordingly.

  
(S. S. SANDHU)

 20/12/19.  
(SUMANT KOLHE)

SDR/-