

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

**Appeal No.AT006000000010462**

M/s. Siddhitech Homes Pvt.Ltd.

104/105, Apple Plaza,

Behind Kohinoor Technical,

S.B.Marg,

Dadar(W), Mumbai-400 028 ... Appellant

Versus

Mr. Sujay S. Parkar

15/275, 1<sup>st</sup> Floor, ESIC Nagar,

Andheri (W)Mumbai 400 053. ... Respondent

(Mr. Subit Chakrabarti i/b Vidhi Partners,Advocate for  
Appellant

Respondent in person )

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

**DATE : 4<sup>th</sup> OCTOBER,2019**

**JUDGMENT : (PER SUMANT M. KOLHE, MEMBER (J))**

The legality, propriety and correctness of order dated  
7.5.2018 is challenged in this appeal.

2. The appellant is promoter. Respondent is allottee. I will refer parties as "promoter" and "allottee".

3. The allottee had filed the complaint No.CC0050000000001697 against the promoter for recovery of interest on delayed period of possession.

4. After hearing both sides and considering the evidence on record, the learned Member and Adjudicating Officer of MahaRERA passed impugned order dated 7.5.2018 in the complaint No. CC0050000000001697 and directed the promoter to pay simple interest on the amount of consideration paid by the allottee to the promoter as per the payment sheet marked as Exhibit A and also for cost of the complaint to the extent of Rs.10,000/- to the allottee.

5. Feeling aggrieved by impugned order, the promoter has preferred this appeal.

6. Heard learned Advocate for the promoter. Heard the allottee in person. Perused impugned order and papers on record.

The following points arise for my determination.

**POINTS**

- 1 Whether impugned order is sustainable in law ?
- 2 Is it necessary to modify impugned order ?
- 3 What order ?

My findings to above points for the reasons as stated below are as under :-

**FINDINGS**

1. Negative.
2. Affirmative.
3. Complaint remanded back to MahaRERA.

**POINTS NO.1,2 AND 3**

7 In para 2 of impugned order, learned Member and Adjudicating Officer of MahaRERA has mentioned that the promoter have failed to appear for recording a plea despite notice and therefore the complaint proceeds exparte against them. In para 4 of impugned order, it has further mentioned that the promoter have not appeared to contest the claim of allottee.

The impugned order is passed on 7.5.2018. Now, let us see the roznama of the complaint No. CC0050000000001697. It is revealed from the

roznama at Exhibit D that the complaint was fixed on 29.1.2018. The roznama is written as under –

"Both the parties present. The parties seek time to settle the matter amicably. Adjourned for settlement. The next date is 20.2.2018" .

Copy of roznama of 27.2.2018 is at Exhibit E. It reads as under –

"Complainant absent. Respondent present/ ready to give possession. Complainant has seen the site and satisfied. Adjourned for ascertaining whether matter is settled/dismissal. The next date was 12.4.2019" .

The roznama dated 12.4.2018 as per Exhibit F reads as under –

"Complainant present. He visited the site and informed that flat is not ready in all respects. He wants to continue in the project and proceed with the case. None present for respondent. Adjourned for plea/exparte order. The next date is 4.5.2018" .

On 4.5.2018 allottee was heard in absence of the promoter. Thereafter, impugned order was passed on 7.5.2018.

8. I would like to refer Sec.53 of RERA,2016. It is in respect of powers of the Tribunal. Sec.53 clause 1 reads as under –

" The appellate tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908, but shall be guided by the principle of natural justice ".

Similarly, Sec. 38 Sub sec. 2 of RERA, 2016 is in respect of powers of the Authority. It reads as under –

"The Authority shall be guided by the principles of natural justice and, subject to other provisions of this Act and the rules made thereunder, the Authority shall have powers to regulate its own procedure" .

Thus, to follow the principles of natural justice while adjudicating dispute between parties is the backbone of RERA,2016. It is evident from impugned order challenged in this appeal that it was passed in absence of plea of promoter and thereafter without oral argument for and on behalf of promoter. Impugned order was passed ex parte against promoter. It is pertinent to note that both parties were present in the matter on 29.1.2018. Thereafter, on 27.2.2018, allottee was absent and promoter was present and matter was adjourned to ascertain whether it is settled

amicably between parties and alternatively for dismissal in view of absence of allottee on that day. On the next date i.e. 12.4.2018, allottee was present, promoter was absent and matter was adjourned for recording plea/ ex parte order. On the next date i.e. 4.5.2018, again promoter was absent and allottee was heard who submitted payment details. Matter adjourned for ex parte order. I would like to point out that in order to observe the principles of natural justice, opportunity of hearing must be given to both parties. Moreover, to give opportunity of hearing to both parties, it is necessary on the part of the Authority to take efforts for adjudicating dispute on merits and for securing the presence of both parties. In the present matter, it appears that there was no such attempt made by the Authority in securing the presence of allottee and promoter. Once, allottee remained absent on 27.2.2018 and matter was adjourned for dismissal on the next date. Again on the next date promoter remained absent on 12.4.2018. So, a plea of promoter was not recorded. Thereafter, opportunity of giving an explanation on the part of promoter was not offered to them by taking genuine efforts to secure the presence of promoter by issuing fresh notice. In the ordinary course of nature, if a party remained absent and matter is likely to proceed ex parte against such party then

initially it is adjourned for passing exparte order against such absent party. In order to follow the principles of natural justice by giving opportunity of hearing to both sides and by taking efforts to secure the presence of absent party, it is reasonably expected that fresh notice ought to have been given to such absent party informing that order of proceeding the matter exparte is already passed and absent party should be informed by issuing notice to appear in the matter on the next date without fail otherwise, matter will be heard exparte against such absent party. Thus, in the present matter, neither allottee has taken any efforts to inform the promoter to remain present for hearing of the matter nor the authority had taken any efforts for securing the presence of absent party by issuing fresh email. Moreover, absent party could not avail opportunity of denying the case made out by allottee in the complaint by way of submitting plea and also by availing opportunity of submitting an explanation on the part of promoter to allegations made in the complaint by allottee. Moreover, promoter could not get opportunity of oral argument before the authority and impugned order came to be passed in absence of argument of promoter.

9 Thus, in order to observe the principles of natural justice for adjudicating dispute and to give full opportunity to both sides to submit their pleadings, evidence and arguments, I am of the opinion that such exparte order does not sustain in law and as such, it is necessary to set aside impugned order and remand matter to MahaRERA Authority for fresh hearing after giving full opportunity to both sides to submit their pleadings, evidence and to make oral argument for adjudicating dispute before MahaRERA Authority.

10. For the reasons stated above, I record my findings to points No.1 to 3 accordingly.

11. In the result, I pass following order.

### ORDER

- 1) Appeal No.AT006000000010462 is allowed.
- 2) Impugned order dated 7.5.2018 passed in the complaint No.CC0050000000001697 is set aside.
- 3) The complaint No.CC0050000000001697 is remanded back to learned Member & Adjudicating Officer of MahaRERA for fresh hearing after giving

sufficient opportunity to both sides to submit their respective pleadings and evidence and also to make oral argument in support of their respective case before MahaRERA.

- 4) Both parties shall appear before learned Member & Adjudicating Officer of MahaRERA on 22.10.2019.
- 5) Fresh notices for appearance of parties before MahaRERA authority are dispensed with.
- 6) Learned Member & Adjudicating Officer of MahaRERA shall expedite matter as early as possible and shall decide the same within three months from the date of this order in accordance with law.
- 7) Parties to bear their respective costs of the appeal and complaint.
- 8) Copy of order be sent to both parties and MahaRERA authority as per Sec.44 Sub sec.4 of RERA,2016.

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04-10-2019

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*Upeelle* 04-10-19.  
(SUMANT M. KOLHE)  
MEMBER (J)