MAHARASHTRA REAL ESTATE APPELLATE TRIBUNAL

APPEAL NO. 0006000000010370

M/s. Akshar Space Pvt. Ltd. & Ors.)
)... Appellant/s.
Vs.
Somaji Kubal & Ors.)... Respondent/s.

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

DATE : JANUARY 25, 2019.

ORAL ORDER

Complaint No.CC006000000000987.

1. Heard Ld. Advocate for the Appellant.

Heard the Ld. Advocate for the Respondent.

2. The matter is called out at 3.00 pm. as agreed in the first session. Heard Ld. Advocate for the Appellant. She submitted that she could not deposit the amount as per order. She submitted that both the Directors are out of Mumbai and their presence is required for making transaction of depositing the amount through Bank since it is huge amount. She fairly admitted that office has given her the user ID. There is no any technical problem on the part of office to make the deposit online for compliance of the order. It appears that on the part of the office the necessary assistance and help is rendered to Appellant for making online deposit.

3. The Ld. Advocate for the Respondent submitted to dismiss the matter for non- compliance of mandatory proviso of Section 43(5) of RERA Act 2016.

4. RERA Act 2016 is a special statute. The most important object of enacting RERA Act 2016 is to complete the incomplete projects and at the same time to protect the interest of the customers. It is true that the matter before me is at Appellate stage. Authority has already given the decision in this matter on merit. Promoter has preferred the Appeal by challenging the decision of the Authority. Section 43(5) proviso is mandatory in the sense that that whenever an Appeal is preferred by Promoter, he is required to make deposit of some amount as per order passed by the Tribunal. It is always desirable to give opportunity to both the sides to make submissions and to put up their respective cases on merit. In

this matter the order regarding deposit of the amount is appears to be passed on 07.08.2018 by this Tribunal. Thereafter, there is no compliance of the said order till today. In fact the very order speaks about the dismissal of the Appeal on failure to make the deposit without further reference. Principle of natural justice is to be followed while dealing with any matter under the RERA Act 2016. In this matter the principle of natural justice is followed by giving more than sufficient time to the Appellant to comply the order. In fact office was also directed to give necessary help or assistance to the Appellant in getting deposited the amount on the basis of online payment. Moreover, from 07.08.2018 till today the matter was on board from time to time and was dealt with by this Tribunal. 17.01.2019 was last date of this matter. On that day the grievance of some technical problem in depositing online payment was again put up before me and so the matter was adjourned till today in the interest of justice and in order to give sufficient opportunity to the Appellant, to comply the order so that Appeal can be heard on merit. It was specifically mentioned in the said order that failure to comply this order will result in dismissal of the Appeal and there will be no further extension of time for making compliance.

5. Ld. Advocate for the Appellant present before this Tribunal. Today also matter was called in the morning session and in view of the non-compliance of the order again the Ld. Advocate for the Appellant was given some opportunity to make attempt to comply the order and the necessary assistance of the office is also given for making the online payment. Today there is no difficulty on the side of the office as far as making of online payment with MahaRERA is concerned. Special adjudication machinery and decision of the matter within the stipulated time are also the objects of enactment of RERA Act 2016. This Tribunal is bound to decide the Appeal within 60 days, from the date of filing of the Appeal and parties are expected to co-operate for deciding the matter within stipulated time by making compliance of necessary formalities as prescribed under RERA Act 2016.

6. Unless compliance of Section 43(5) proviso is made, this Tribunal is not empowered to hear the Appeal. So inspite of considering the principle of deciding the matters on merit and not dismissing the matters on technical ground, the order passed by this Tribunal on 07.08.2018 is not complied by Appellant by this or that reason. The Allottees are the Respondents. They are home buyers. They are attending the Tribunal for this matter on the date fixed.

They have already fight out the matter before the Authority. We have to strike the balance between Promoter and Allottees while adjudicating the dispute between them. It would have been always preferable to decide the matter on merit. But to decide the matter on merit is having a condition precedent of making compliance of depositing the amount with MahaRERA by the Promoter and for that Appellant is given sufficient time till today to comply the order dated 07.08.2018 for making deposit with MahaRERA. At this juncture, there is no just, proper and acceptable reason for extending the time for making compliance since order itself speaks about dismissal of the matter without any reference on failure to comply it. I just endorse the said order and pass the following order.

ORDER

I) The Appeal No.AT006000000010370 stands disposed of for non-compliance of mandatory proviso of Section 43(5) of RERA Act 2016 on the part of Appellant inspite of giving sufficient time and opportunity.

II) No order as to costs.

25.01.2019.

25-01-19

(SUMANT M. KOLHE)
JUDICAIL MEMBER,

Maharashtra Real Estate
Appellate Tribunal (MahaRERA)
Mumbai