

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

AT006000000011116

M/s Veena Realcon Pvt.Ltd. Appellant

Versus

Mr. Bias Taj Kumar & Anr. Respondents

(Mr. Omkar Kulkarni, Advocate for Appellant
Mr. Nilesh Gala, i/b Law Square, Advocate for Respondent)

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

DATE : 04TH OCTOBER, 2019

**ORDER BELOW APPLICATION CHALLENGING THE
MAINTAINABILITY OF THE APPEAL:**

w/s
The appellant is promoter. The respondents are the allottees.

2 The allottees had filed the complaint No. CC006000000023553 before MahaRERA. Allottees are Complainants and Promoter is the respondent. The learned Chairperson of MahaRERA passed the impugned order on 23.5.2018. The para 4 of the impugned order reads as under-

"In view of the above facts, the parties are directed to execute the apartment for sale as per the provisions of

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section 13 of the Real Estate (Regulation and Development) Act 2016 and the rules and regulations made thereunder within 30 days from the date of this Order. The respondent shall handover possession of the said apartment with Occupancy Certificate, to the Complainants before the period ending December, 31, 2018, failing which the Respondent shall be liable to pay interest to the Complainant from January 1, 2019 till the actual date of possession on the entire amount paid by the Complainant to the respondent. The said interest shall be at the rate as prescribed under Rule 18 of Maharashtra Real Estate (Regulation and Development) (Registration of Real Estate Projects, Registration of Real Estate Agents, Rate of Interest and Disclosures on Website) Rules, 2017. Further, the Respondent shall pass on the GST input tax credit to the Complainants as applicable. Complainants to make the balance payment, as agreed between the parties, at the time of executing and registering the agreement for sale".

The allottee preferred an application for non-compliance of impugned order dated 23.5.2018 passed in the complaint No.CC006000000023553 before MahaRERA Authority. The learned Chairperson of MahaRERA passed an order dated 15.1.2019 on the said application. Para 5 and para 6 of the order reads as under—

"5. It is observed that during the course of hearing of the said Complaint, the authorized representative of the Respondent had orally agreed that at the time of executing and registering the said agreement for sale, the Complainants will be required to pay only the principal amount due and interest, if any, shall be waived off by the Respondent. The Respondent has reneged on his commitment and has failed to comply with the directions passed by this Authority.

6. In view of the above facts, the Respondent is directed to handover possession of the apartment within 15 days from the date of this Order and adhere to all the other directions passed in the previous Order dated May 22, 2018. Further, the Complainants shall pay only the principal amount due at the time of receiving possession. The Respondent is directed to pay a cost of INR 50,000 to the Complainants for having reneged on his commitments".

3. The promoter has preferred this appeal No. AT006000000011116 against allottees by challenging the above mentioned impugned order dated 15.1.2019 which is passed below application for non-compliance of order dated 23.5.2018 passed in the complaint No. CC006000000023553,

4. Following reliefs are sought in this appeal.

"a. this Hon'ble Authority be pleased to quash and set aside the Order dated 15.01.2019 passed by the Hon'ble

Chairperson in the complaint bearing No. CC006000000023553 of 2018.

b. This Hon'ble Authority be pleased to direct the respondents to pay interest on delayed payment of balance consideration to Appellant from the date of intimation of fit-out amounting to Rs.9,42,411/- (Rupees Nine Lakhs Forty Two Thousand Four Hundred and Eleven only)

c. Pending the hearing and final disposal of the present Appeal, this Hon'ble authority be pleased to stay the effect, operation and implementation of the Order dated 15.01.2019 passed by the Hon'ble Chairperson in the complaint bearing no. CC006000000023553 of 2018".

WS 5 The hard copies of this appeal were received by office on 22.2.2019 whereas notice of the appeal was sent to both parties on 22.3.2019. On 22.3.2019 learned counsel for appellant appeared on second call and respondents sought adjournment by sending an email application to office of the Tribunal and accordingly the appeal was adjourned to 8.4.2019. On that date, learned Counsel for both sides were heard by Administrative Member of this Tribunal who was presiding over Bench. Both parties were given opportunity to produce copy of roznama and matter was adjourned to 23.4.2019. Both parties were heard at length on 23.4.2019 by Administrative Member and appellant was directed to

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deposit some amount on or before the next date and matter was adjourned to 6.5.2019. On 30.4.2019, matter was not on board when clarification was given by Administrative Member regarding the amount to be deposited by appellant in this appeal as per Sec. 43 Sub sec. 5 of RERA, 2016. Thereafter, on 6.5.2019 modification of order regarding the deposit of the amount under Sec. 43 Sub sec. 5 of RERA, 2016 was made by Administrative Member. On that day, learned Counsel for allottees read this application and challenged the maintainability of the appeal on grounds mentioned in the application and time was granted to learned Counsel for appellant to file reply to this application and the appeal was adjourned to 28.5.2019 for further hearing. On 14.6.2019, matter was called and it was adjourned to 5.7.2019 by Bench comprised of three members of this Tribunal with the directions to parties to comply the formalities of submitting three sets of their pleadings in view of reconstitution of Bench. Similarly, direction was given to appellant to submit the statement of recovery of GST amount, society maintenance charges and other ancillary charges except interest. On 5.7.2019 matter was again called and as per the request of appellant, it was stand over to 15.7.2019. Thereafter, on 15.7.2019 learned Counsel for both sides were heard for some time. Learned

Counsel for appellant undertakes to give possession on or before 20.7.2019 subject to payment of Rs.25,39,308/- to be made by allottee on or before the next date and appellant undertakes to pass necessary benefits of GSI to allottee as and when received from the Government. The contentions of both parties on all other issues involved in this appeal were kept open and matter was adjourned to 1.8.2019 for compliance of above mentioned undertakings. On 1.8.2019, matter was called for second time and learned Counsel for allottees was heard for some time and it was adjourned to 17.9.2019 for hearing on application challenging the maintainability of the appeal. On 17.9.2019, learned Counsel for both sides were heard.

6. I would like to point out that impugned order challenging in this appeal is passed by learned Chairperson of MahaRERA who dealt with an application for non-compliance of impugned order and some directions were given by disposing of said application on 15.1.2019. So, order dated 15.1.2019 passed below the application for non-compliance of order dated 23.5.2018 passed in the complaint No.CC006000000023553 is challenged by promoter in this appeal. The allottees intend to raise a point

of maintainability of the appeal by filing a separate application.

7 The non-compliance of depositing the amount by promoter as per proviso to Sec.43(5) of RERA,2016 is one of the ground raised by allottees in this application. Whenever promoter files an appeal, it cannot be entertained and heard unless promoter complies an order regarding the deposit of some amount as per impugned order. Admittedly, some amount is already deposited by promoter under the said provisions of RERA,2016. Moreover, learned Counsel for both sides dealt with this appeal by making submissions on their parts from time to time on different dates on which the appeal was listed before different benches. Considering the fact that impugned order pertains to order below the application for non-compliance of previous order and scope of deciding the legality, propriety and correctness of said impugned order in this appeal and the fact that both parties have already dealt with this appeal by making out submissions before a single bench of Administrative Member and thereafter before Bench comprising three members of this Tribunal from time to time, I think it just and proper to decide the maintainability of the appeal by framing the issue to that extent while finally deciding this appeal on

merits on the basis of arguments of both sides and documents placed on record by both sides. The principle of natural justice will be properly observed after both parties are given full opportunity to complete their pleadings and to file documents and then to argue the appeal finally on merits as early as possible. I reiterate that the objections raised regarding the maintainability of the appeal will be decided on merits at the time of final hearing and as such the hearing of this appeal can be expedited in the interest of justice. So, I pass following order.


: ORDER :

- 1) Application for deciding the maintainability of the appeal shall be heard along with the appeal by framing issue about the maintainability of the appeal along with other issues involved in this appeal and to be decided on merits at the time of final hearing of the appeal after giving full opportunity to both sides to complete the formalities of submitting their pleadings and filing the documents and making final arguments in this appeal as early as possible.
- 2) Appeal shall be expedited as early as possible.

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- 3) Both parties shall cooperate to decide this appeal as early as possible preferably within three months from the date of this order.
- 4) Copy of order be sent to both parties and Authority as per Sec.44 Sub sec. 4 of RERA,2016.

Date: 4.10.2010


(SUMANT KOLHE)
MEMBER(J)