

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

**Misc. Application No. 476/20 (Exemption of pre-deposit)
In
Appeal No. AT00600000052651**

**M/s. Mateshwari Realtors
Through its Partner - Mr. Hiren Patel**

Mateshwari Altura,
Khidkali, Near Khidkaleshwar Temple,
Kalyan Shil Road,
Thane – 421 204.

... Appellant

Versus

1) Mr. Shailendra Dwiwedi

2) Mrs. Preeti S. Dwiwedi

401, 406, Shivneri CHS,
Deshmukh Homes,
Kalyan Shil Road,
Kalyan (E) - 421204

... Respondents

Mr. Ashwin Shah, C. A. for Appellant.

None for Respondents.

**CORAM : SHRIRAM R. JAGTAP, MEMBER (J)
S. S. SANDHU, MEMBER (A)**

**DATE : 14th OCTOBER, 2021.
(THROUGH VIDEO CONFERENCING)**

ORDER [PER: S. S. SANDHU, MEMBER (A)]


Heard learned counsel for Appellant. None for Respondents.

2. By this Application, Appellant seeks waiver to depositing the amount in compliance of proviso to Section 43(5) of RERA. Learned counsel for Appellant submitted that the impugned order sought to be challenged in this Appeal has been passed by the Adjudicating Officer (AO), who as held by the Tribunal in catena of cases, does not have the jurisdiction under Section 71 and 72 of RERA to decide the complaint seeking claim of refund. It is contended that in view thereof, the order is a nullity and for the said reason Appellant is not required to deposit the amount as per the above proviso. Appellant also contended that this Tribunal has waived the condition of pre-deposit in the case of **M/s. Renaissance Infrastructure & Ors. Vs. Shri. Parth Bharat Suchak** in Appeal No. AT006000000031585.

3. On considering the submissions put forth by Appellant, it is observed that on bare perusal of proviso to Section 43(5) of RERA, it is clear that where Promoter files an Appeal with Appellate Tribunal, it shall not be entertained without Promoter first having deposited the amount. Accordingly, Appeal cannot be entertained unless compliance is done by depositing amount as may be directed by the Tribunal. It is further observed that the issue of jurisdiction raised by Appellant is a matter of merit and can be gone into and considered only after Appeal is entertained on compliance of the requirement of pre-deposit envisaged under the Proviso to Section 43(5) of the Act and not prior to that. The said issue if adjudicated at the stage of

compliance of pre-deposit, it would amount to entertaining the Appeal contrary to the terms of aforesaid proviso. The order in the case of **Renaissance** (supra) cited by Appellant being distinguishable on facts, as it does not deal with jurisdiction of the deciding authority, has no relevance to support the plea of Appellant.

4. In above view of the matter, we do not find merit and substance in the submissions of Appellant and therefore the plea for granting waiver or exemption of pre-deposit is rejected with costs.
5. Promoter is accordingly directed to deposit the entire amount as per impugned order in compliance of proviso to Section 43(5) of RERA along with costs of Rs. 10,000/- to be deposited in the Tribunal before the next date.
6. Failure to comply with directions at 5 above shall invite dismissal of the Appeal.
7. Stand over to 17.11.2021 for compliance as above.


(S. S. SANDHU)

Bmb/- 4


(SHRIRAM R. JAGTAP)