

**MAHARASHTRA REAL ESTATE APPELLATE
TRIBUNAL, MUMBAI**

**Appeal No. 31581
In
Complaint No. SC005000000022416**

M/s. Yemul & Sancheti Associates

580, A-3, Sai Ishwar Apartments,
Narayan Peth, Pune-411030. ...

**Appellant
(Promoter)**

Vs.

Mrs. Manjusha Bhusari,

Flat No. 305, Building No. J-5,
Gangadham, Phase-2, Market Yard,
Pune-411037. ...

**Respondent
(Allottee)**

Advocate Mr. Amit Patil for Appellant

Advocate Ms. Surabhi Mehta for Respondent

CORAM:

SUMANT M. KOLHE, MEMBER (J)

S. S. SANDHU, MEMBER (A)

DATE:

13TH JULY, 2020

J U D G M E N T

[PER: SUMANT M. KOLHE, MEMBER (J)]

Appellant/Promoter has challenged legality, correctness and priority of the impugned order dated 31/05/2019 passed by the learned Adjudicating officer in complaint No.SC005000000022416, whereby the Respondent/Allottee is allowed to withdraw from the project and Appellant/Promoter is directed to refund the amount with interest and cost within 30 days from the date of impugned order.

2. Heard learned Counsels of both the sides. Perused impugned order. Read the papers including roznamas of 30/05/2019 and 31/05/2019 of complaint proceedings.

3. Brief facts of the case are that Respondent allottee and her deceased husband jointly booked the flat in the project of Appellant. Appellant failed to give possession by the date committed in the agreement between the parties following which Respondent filed complaint with MahaRERA seeking directions for handing over possession. As per submissions of Appellant Parties initially appeared before MahaRERA at Mumbai office on 22.4.2019. Again, after hearing initial submissions of parties at Mumbai on 8.5.2019 by Presiding

Officer via video conference from Pune, parties were told to make further submissions at Pune. Date of next hearing was to be informed by e-mail which according to Appellant was never informed before 31.5.2019 on which date impugned order was passed ex-parte in the absence of Appellant granting refund with interest and compensation of Rs. 20000 towards cost of complaint. Hence this appeal is filed against the said order.

4. Parties were heard in detail during which Learned Counsel for Appellant *inter alia* argued as follows:

(i) Appellant had no opportunity to appear before the AO as no notices were received for hearing On 29.5.2019, 30.5.2019 and 31.5.3019. Only the email for hearing was received on 1.6.2019. Ex-parte order is passed in denial of natural justice without giving opportunity to file written explanation nor final arguments on behalf of Appellant/Promoter before Adjudicating Officer.

(ii) Project housing the flat booked by Respondent was already complete as part Occupation Certificate (OC) for the project was already obtained on 16.7.2016 and the same did not require registration under the Real Estate (Regulation and Development) Act, 2016 (the RERA). Registration of the project under RERA was only with the purpose of completion

of shops in the project which had nothing to do with Appellant's flat.

(iii) Respondent had already filed RCS No. 987 of 2016 in the Civil Court at Pune for possession of flat and therefore she cannot seek same remedy under Section 18 of RERA.

With broad submissions as above, learned Counsel for Appellant urged the Tribunal to either allow the Appeal or remand the matter for affording full and fair opportunity to parties to plead their case.

5. On the other hand, learned Counsel for Respondent denied any denial of opportunity of being heard to Appellant and opposed the plea of Appellant for remand by contending that Appellant failed to appear despite due notices sent to appear on the dates fixed for hearing. As the Appellant failed to appear despite notices, learned AO had the authority to proceed *ex-parte* as per Rules 7(2)(h) under the RERA Rules 2017. It was also argued that Respondent being an old lady and a widow was not in a position to move to another place and therefore she wants refund of her amount with interest and compensation as Appellant has failed to handover possession by 2015 i.e. within 18 months from execution of agreement in 2013. It was further argued that pending civil suit by Respondent poses no hurdle in granting the refund as