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MAHARASHTRA REAL ESTATE APPELLATE TRIBUNAL

APPEAL NO. AT006000000010331

M/s. Skyline Construction Co. ... Appellant/s.
Vs.
Mr. Mayank Chemiplast Pvt. Ltd. ... Respondents.

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

DATE : FEBRUARY 22, 2019.

Appeal Under Section 44 of RERA ACT 2016.

ORDER

1. Advocate for the Appellant is present. Representative on behalf of Respondent Mr. S. Bhimani is present.
2. Heard Advocate for the appellant. Heard representative of the Respondent, S. Bhimani. Perused the previous orders passed by the Tribunal in this appeal. This appeal is filed by the promoter.

Impugned order pertains to section 18 of RERA Act and it is in respect of refund of the amount with the interest. So as per proviso of sec 43 of RERA Act, it is obligatory and mandatory for the appellant who is promoter to deposit some amount with MahaRERA and then only appeal can be entertained and heard. Appeal is Judicial examination of the order under challenge. The meaning of word "entertain" is to consider the appeal.

3. It is mandate of statute to make compliance of proviso of sec 43(5) RERA Act. Whenever, appellant promoter has filed an appeal and unless statutory compliance is made by the promoter, appeal can not be considered unless it is entertained. Now in the present matter filed by promoter this Appellate Tribunal passed order on 24/1/2019 and directed appellant to deposit 40% amount as per impugned order on or before 1/2/2019. On that day recovery warrant issued by MahaRERA Authority on 17/12/2018 in respect of impugned order was stayed till further order by the this Tribunal as per the request of appellant subject to compliance of making deposit of 40% amount with MahaRERA.

4. On 1/2/2019 appellant sought extension of the time to deposit 40% amount with MahaRERA.

In the interest of justice and with the observation that it is just and proper to heard the matter on merit, instead of dismissing the matter for non-compliance or for some technical ground, this Tribunal extended the time up to 11/2/2019 as a last chance and matter was kept for final hearing on 13/2/2019 subject to above mention compliance of depositing the amount. On 12/2/2019, again appellant requested to extend the time by ten days for depositing the amount and making the compliance of proviso of sec 43(5) of RERA Act. Again in the interest of justice and to make matter ready for the final hearing one more opportunity was given to appellant to deposit 40% amount as last chance up to 22/2/2019. Now on 22/2/2019, that is today, also appellant is further seeking one week time to make compliance of proviso of sec 43 (5) of RERA Act.

5. He mainly submitted that promoter is in financial crises as some home buyers have failed to pay their installment of price as per the time schedule.

Considering the object of RERA Act to safeguard the interest of customers and to strike the balance between right of Allottee, against the obligation of promoter while implementing RERA Act. I am of the opinion that this Tribunal and parties are bound by mandate of the statute. Considering spirit behind compliance of proviso of sec 43(5) of RERA Act as well as to follow the principle of natural justice this Tribunal has already given more than sufficient time to appellant to comply the order by making deposit of the amount of 40% with MahaRERA.

It can not be ignored that recovery warrant is to be issued by the authority for execution of impugned order and this Tribunal has stayed the order of issuance of recover warrant.

6. So appellant was given best possible relief by staying the recovery warrant and by extending the time at least for Three times to deposit the amount and to make the compliance. After all delay incompling the statutory formalities in respect of appeal on the part of both parties, may result in not desposing appeal as early as possible and preferably with in Two months which is also one of the object of RERA Act for which this forum of adjudication such as authority and Tribunal is provided under Section -20 and Section 43 of RERA Act respectively for speedy adjudication.

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7. I think in this matter the principle of natural justice is fully followed to maximum limit by extending the time for making compliance of the order three times and accordingly stayed the order of recovery during the extended time. Today there is no just and proper reason to extend the time any more for making the compliance, This Tribunal is left with no option but to pass the order of Dismissal of the appeal for non-compliance of proviso of Section 43 (5) of RERA Act. Consequently, order of stay of recovery warrant stands vacated. so I pass following order

ORDER

- W/S
1. **Appeal no. AT006000000010331** Stands dismissed for non-compliance of proviso of Section 43(5) of RERA Act.
 2. Order of stay of recovery warrant is vacated.
 3. No order as to cost

22-2-2019

W. Kolhe
22/02/19.
(SUMANT M. KOLHE)
JUDICIAL MEMBER,
Maharashtra Real Estate
Appellate Tribunal, (MahaRERA)
Mumbai.