

**BEFORE THE MAHARASHTRA REAL ESTATE
APPELLATE TRIBUNAL, MUMBAI
Appeal No. AT00600000010936
With Delay Condonation**

PIL Developers Private Limited

304/305, Shubham Centre,

B-2 Cardinal Gracious Road, Chakala,

Andheri (East), Mumbai 400 099

..Appellant

Versus

S. R. & Shah Realtors

Raj Deep Building, Station Road,

Vasai (W), District Palghar

.. Respondent

Shri S.P. Singh, Advocate for Appellant.

Shri Sanjay Chaturvedi, Advocate for Respondent.

CORAM : INDIRA JAIN J.,CHAIRPERSON &

S.S. SANDHU, MEMBER(A)

DATE : 25TH MARCH, 2019.

JUDGMENT (PER : INDIRA JAIN, J.)

Heard the Ld. Counsel for the parties.

2. The Ld. Counsel for appellant submits that appeal could not be filed in time as Counsel for appellant was unwell. In view of the cause assigned for delay, delay condoned.

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3. So far as merits of the case are concerned it is a matter of record that a complaint seeking reliefs. i] Execution of Agreement for Sale or ii] Refund of money was filed before MahaRERA. The said complaint was disposed of vide order dated 17th April 2018 by the Ld. Chairperson, MahaRERA whereby parties were directed to execute and register the Agreement as per the provisions of Section 13 of the The Real Estate (Regulation and Development) Act, 2016 (for short "the Act") and rules and regulations made thereunder within 30 days from the date of the order. The said order was challenged in first appeal No. AT00500000010411 before this Tribunal. Vide Oral Judgment dated 31st August, 2018, appeal came to be dismissed with no costs.

4. After dismissal of appeal, on 5th September, 2018 complainant applied to MahaRERA under Section 39 of the Act for rectification of order dated 17th April 2018. The submission was that three flat nos. 205 206 and 207 mentioned in the order dated 17th April, 2018 need to be corrected as flat nos. 301, 302 and 303 of the same project. The said application was allowed by the Ld. Chairperson on 25th Sept. 2018 and error was accordingly rectified.

6. The Ld. Counsel for appellant submits that order dated 25th Sept. 2018 clearly shows that opportunity of hearing was denied to appellant and so matter needs to be remanded as principles of natural justice have been violated. Another submission is that fresh order has been passed on 25th Sept. 2018 giving a fresh cause of action to the appellant to prefer an appeal.

7. Per contra, Ld. Counsel for respondent submitted that there is no change in the rectification order except an error regarding Number of three flat nos. which came to be pointed out to the Authority by an application for



rectification under Section 39 of the Act. Ld. Counsel submits that all the grounds raised in the present appeal were raised by the appellant in first appeal and on identical grounds, this appeal would not be maintainable. Respondent prays to dismiss the appeal with costs.

8. On perusal of impugned order dated 25th September, 2018 and order dated 17th April, 2018, it can be seen that typographical error regarding Flat nos. 205, 206 and 207 mentioned in the original order was rectified as Flat nos. 301, 302 and 303 by the later order. No other change was allowed to be made. The first order was admittedly a subject matter of controversy in first appeal no. AT005000000010411 which came to be dismissed on 30th August, 2018. Paragraphs 3 and 4 of this order reads thus –

"3. The grievance before Adjudicating Officer, was either to direct to refund the money or direct to execute the Agreement for Sale. The Promoter's grievance is that the original Complainants are not bonafide purchasers of the flat, rather the Investors and consequently provisions of RERA will not be applicable. His submission would be against the spirit of the statute as there is no distinction carved out between the Allottee / Flat Purchaser and the Investor. No perversity is surfacing in the order. No interference.

4. In the situation since the project was already registered, it was imperative for the Promoter to enter into Agreement for Sale or refund the amount received from the Respondent as allottee."

10. With these observations, first appeal was found having no merits and came to be dismissed by our Ld. Predecessor. In this premise, we find substance in the submission of Ld. Counsel for respondent that on identical grounds, present appeal would not be maintainable. Moreover, there is no

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substantial change in the rectified order and on this count too instant appeal being meritless, deserves to be dismissed.

Appeal dismissed with costs.


(S.S. SANDHU)


(INDIRA JAIN J)

ed.