

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

Appeal No. AT006000000021295

In

Complaint No. CC006000000054749/18

Wadhwa Residency Private Limited

301, 3rd Floor, Platina, Plot No. C-59,
G Block, BKC, Bandra (East),
Mumbai- 400051

... **Appellant
(Promoter)**

Versus

1) Ketan Kataria

H-62, Mahindra Park, L.B.S. Marg,
Ghatkopar (West),
Mumbai- 400086

... **Respondent No.1
(Allottee)**

2) L & T Housing Finance Ltd.

L & T House,
Narottam Morarji Marg
Ballard Estate,
Mumbai – 400001

... **Respondent No.2
(Financial Institute)**

3) Executive Engineer, MCGM

(BC Building Proposal)
MCGM, L & N Ward
Mumbai

... **Respondent No.3
(Municipal Corporation)**

Counsel Mr. Chirag Kamdar a/w Mr. Abir Patel & Ms. Garima Agrawal i/b Wadia Ghandy & Co. for Appellant.

Adv. Anand Pai a/w Nilesh Gala i/b Law square for Respondent No. 1.

**CORAM : SUMANT KOLHE, MEMBER (J)
S. S. SANDHU, MEMBER (A)**

DATE : 1ST DECEMBER, 2020.

JUDGMENT

[PER: SUMANT KOLHE, MEMBER(J)]

Order dated 7th February, 2019 passed by Adjudicating Officer in Complaint No. CC006000000054749, awarding the refund with interest and compensation in favour of Allottee is challenged in this Appeal, by the Promoter.

2. In brief facts are as under:

Appellant is Promoter. Respondent No. 1 is Allottee. Respondent No. 2 is Financial Institution. Respondent No. 3 is the Municipal Corporation. Promoter and Allottee are contesting parties. Impugned order is directed only against Promoter. We will refer the parties as Promoter and Allottee in this Appeal.

Promoter launched the project at Vikroli, Mumbai. Allottee booked the flat in the said project. Promoter agreed to sell the flat for price of Rs. 1,90,00,000/- (One Crore Ninety Lakhas) excluding of Vat/GST, Stamp duty and registration charges and Allottee agreed to purchase the said flat accordingly on certain terms and conditions in the year 2015. Project was incomplete on 1st May 2017 i.e., the date of application of RERA. Promoter registered the project with MahaRERA. Allottee filed Complaint against Promoter before MahaRERA for refund and

interest as per Section 18 of RERA on the ground that Promoter failed to handover the possession of the flat as per due date.

3. MahaRERA transferred the Complaint to Adjudicating Officer for the decision according to law. Adjudicating Officer conducted enquiry. Promoter and Allottee were heard. Adjudicating Officer allowed the Complaint and permitted Allottee to withdraw from the project and directed Promoter to refund the amount with interest and compensation of Rs. 2,00,000/- (Two Lacs) to Allottee. Promoter was saddled with costs of Rs. 20,000/- (Twenty Thousand).

Being aggrieved by the order passed by learned Adjudicating Officer, Promoter has preferred this Appeal and challenged correctness, propriety and legality of the impugned order.

4. Heard learned counsel for Promoter and learned counsel for Allottee on various points involved in this Appeal. In the last leg of his submissions, learned counsel for Promoter argued on the point that Adjudicating Officer has no inherent jurisdiction to pass impugned order granting refund with interest. Learned counsel for Promoter relied on the decision in the case of ***Pankaj Agarwal V/s. Real Gem Buildtech, Appeal No. AT006000000052542 dated 31st August, 2020*** decided recently on 31st August, 2020 by this Appellate Tribunal on the point of scope and jurisdiction of the Authority vis-a-vis Adjudicating Officer under RERA. He referred to some

observations made and the conclusion arrived at by this Appellate Tribunal in that case. Counsel for Promoter submits that by applying ratio of the said order this Appeal should be allowed and matter be sent back for fresh hearing by such adjudicating mechanism which is having jurisdiction to decide the dispute.

5. On the other hand, learned counsel for Allottee argued that issue of jurisdiction was not raised before Adjudicating Officer and it cannot be raised for first the time at Appellate stage. He further submits that observations made and decisions given by this Appellate Tribunal in Pankaj Agarwal cannot be made applicable retrospectively. According to him this Appeal cannot be decided on the basis of decision of Pankaj Agarwal on the point of jurisdiction of Adjudicating Officer. He further argues that Complaint in which impugned order is passed was transferred to Adjudicating Officer by MahaRERA and not as per the request of Allottee. According to him, Promoter ought to have challenged the very order of transfer of the complaint to Adjudicating Officer. He also submits that only the issue relating to transfer of the Complaint to Adjudicating Officer was challenged in Pankaj Agarwal case and not the jurisdiction. Therefore, facts and circumstance of Pankaj Agarwal case are different. He also relied on **Lavasa** case and **Neelkamal Realtors** case, decided by the Hon'ble Bombay High Court and argued that Adjudicating Officer is having jurisdiction to decide the relief of refund with interest and

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compensation and therefore Adjudicating Officer does not lack inherent jurisdiction to decide such matter.

6. Both parties have filed written submissions along with case law to substantiate their respective case.

7. On this backdrop, following points arise for our determination.

POINTS

- i) Whether Adjudicating Officer lacks inherent jurisdiction to adjudicate dispute of refund with interest?
- ii) Whether impugned order is sustainable under law?
- iii) What order?

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8. Our findings on the above points for reasons stated below are as under.

FINDINGS

- i) Affirmative
- ii) Negative
- iii) Appeal is Allowed and complaint is remanded back to MahaRERA.

REASONS