

**MAHARASHTRA REAL ESTATE APPELLATE
TRIBUNAL, MUMBAI
APPEAL NO. U-15 IN SC10000593**

Mangal Murti Foundation

C/o. C-1/101, Green Square,
Opp. Sanghvi Hills, behind D Mart,
Ghodbunder Road, Kavesar,
Thane (W), 400 615

... Appellant

**Shree Mahavir Patwa Developers &
Construction Pvt. Ltd**

Bhaveswar Complex, G-15,
Near Vidyavihar Station,
Vidyavihar (W), Mumbai-400 086

... Respondent

Advocate Mr Manish Gala for Appellant.

None for Respondent

CORAM: SUMANT M. KOLHE, MEMBER (J)

S. S. SANDHU, MEMBER (A)

DATE: 13TH JULY, 2020

JUDGMENT



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

This appeal has been filed to challenge the order dated 14-05-2019 passed by learned Chairperson, MahaRERA (hereinafter referred to as 'the Authority') in Complaint No. SC100000593.

2. As per facts of this case, Appellant is an Association of flat purchasers who, based on an advertisement, purchased flats in the real estate project being developed by Respondent. It is revealed from the complaint filed by Appellant that a total of 246 flats were booked by the members of Appellant's Association by paying Rs. 10.58 cr. approximately. Respondent executed agreements for sale with a few of purchasers though such agreements were not executed with substantial number of flat purchasers despite receiving registration fees and stamp duty. Respondent commenced construction of some buildings out of the total 10 buildings around 2012-2013 but completed none. Thus, Respondent failed to complete the buildings along with various amenities as represented in the brochure/advertisement and did not hand over possession as promised. Alleging that Respondent has committed act of misrepresentation and failed to deliver possession, Appellant filed complaint with the Authority under Sections 12 and 18



of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as 'the Act').

3. The Authority heard the Appellant as Respondent did not appear in the matter being in jail. It appears that Appellant explained to the Authority that the project being developed by Respondent did not have necessary approvals and the project has been declared unauthorised by Collector, Thane. The Authority obtained the report dated 05-02-2019 about the project from Assistant Director Town Planning, Thane to ascertain the facts. Based on the said report, the Authority came to conclusion that subject project did not have requisite and valid approvals which are mandatorily required for the purpose of registration of the project under the Act. Accordingly, the Authority, vide the impugned order rejected the reliefs prayed for by Appellant by observing that directions cannot be issued for registration of an unauthorised project.

4. Learned Counsel for Appellant argued that the Authority has erroneously recorded in the impugned order that Appellant prayed for registration of the project though it was never sought by Appellant. He further submitted that Appellant's only demand was for withdrawal from the project and to get refund of amount paid by its members with



interest and compensation on account of misrepresentation and failure to handover the possession of the flats as promised. He therefore argued that conclusion recorded in para 5 of the impugned order is erroneous and contrary to the reliefs sought for by Appellant. It was further argued that Sections 12 and 18 of the Act are retrospectively applicable to the incomplete projects being executed prior to the Act came into force on 01-05-2017. It was also contended that irrespective of the fact as to whether the project was registered or not, Appellant is entitled to withdraw from the project to take refund of the amount paid with interest and compensation as the violations committed by Respondent fall under Sections 12 and 18 of the Act. It was further contended that considering the nature of reliefs prayed for in the complaint, the Authority had no jurisdiction to deal with the matter and under Section 71 of the Act, only the Adjudicating Officer (AO) was competent to decide the complaint.

With above submissions, Appellant pleaded for setting aside the impugned order and to grant reliefs as prayed for.

5. After hearing the learned Counsel for Appellant and considering documents including the impugned order on record, the only point that arises for our determination is whether the impugned order is sustainable. The answer to this point is in the positive as discussed in the account hereinafter.

