

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION (L) NO.3714 OF 2017

Sharan Bihari Lund
and another

...Petitioners.

Versus

Union of India
and others

...Respondents.

....

Mr. Milind Sathe, Senior Counsel a/w Dr. Abhinav Chandrachud,
Rakesh V. Misar, Mr. Mustafa Kachwala i/b. M/s. Kachwala Misar
& Co. for the Petitioners.

Ms. Purnima Awasthi for Respondent No.1-UOI.

Mr. Vaibhav Krishna a/w Mr. Tahir Prande, Mr. Devang Lakhotia,
Ahtesham Khatri i/b. M/s. Juris Consillis for Respondent No.2.

Mr. Shardul Singh i/b. Ms. Sushma Singh for Respondent No.3.

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***CORAM : R.M.BORDE &
R.G. KETKAR, JJ.***

DATE : 16th JANUARY, 2018

ORDER:

1. Heard.
2. Rule. With the consent of the parties, the petition is taken up for final disposal at admission stage.
3. Our attention is invited to the order impugned in this petition passed by the Maharashtra Real Estate Regulatory Authority, Mumbai on 28.11.2017. On perusal of the said order, it is noticed that the learned Presiding Officer has merely recorded

submissions of the parties and without elaborating reasons proceed to dispose of the complaint. Section 38(2) of the Real Estate (Regulation and Development) Act, 2016 (for short, “the Act of 2016”) provides that the authority shall be guided by the principles of natural justice and subject to the other provisions of the said Act and Rules made thereunder, the authority shall have power to regulate its own procedure while exercising the powers of disposing of the complaints. Since the deciding authority failed to record the reasons, according to us, the order impugned in this petition is not in conformity with the principles of natural justice. Recording of reasons discloses the mind of the deciding authority and the insight in respect of the circumstances or the other aspects which led the authority to arrive at a particular decision. The recording of reasons is obviously an aspect of the principles of natural justice and need to be adhered to. The order that ought to be passed by the authority shall be in compliance with the statutory requirements of Section 38(2) of the Act of 2016.

4. In view of reasons recorded above, we direct the deciding authority to reconsider the complaint and after extending an opportunity of being heard to both the parties, proceed to pass an order in conformity with the statutory provisions i.e. Section 38(2) of the Act of 2016.

5. The order impugned in this petition is quashed and set aside and the matter stands remitted back to the deciding authority for recording a fresh decision in accordance with law and particularly keeping in mind the provisions of Section 38(2) of the Act of 2016,

as expeditiously as possible, preferably within three months from today. The parties before us undertake to cooperate the presiding officer in disposing of the complaint within the time stipulated as above.

6. Rule is made absolute accordingly. There shall be no order as to costs.

7. It is clarified that all the contentions raised in this petition shall be specifically kept open and it would be open for both the parties to raise all the contentions before the deciding authority. Both the parties agree that the deciding authority shall decide the matter / complaint before it on the basis of material placed on record before the said authority as well as the material already which has been placed before this Court in the instant petition.

(R.G. KETKAR)
JUDGE

(R.M. BORDE)
JUDGE