

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**SECOND APPEAL STAMP NO. 11801 OF 2019
WITH
CIVIL APPLICATION NO. 693 OF 2019**

Rohan Developers Pvt. Ltd.

... Appellants

Vs

Dr. Rajesh Sonebapu Mundhe & Ors.

... Respondents

Adv. Mayur Khandeparkar a/w. Harshal Dedhia i/b. Kanga &
Company for the Appellant.

Adv. Balasaheb Deshmukh for Respondent Nos. 2 & 4.

CORAM : SANDEEP K. SHINDE J.

DATE : APRIL 23rd, 2019

ORDER :

1. Heard learned counsel for the parties.
2. This appeal is preferred under Section 58 of the Real Estate (Regulation and Development) Act, 2016 against the order dated 11.03.2019 passed by the Judicial Member, Maharashtra Real Estate Appellate Tribunal (Maha RERA), Mumbai.
3. Aggrieved by the order dated 05.07.2018 passed by the Chairperson, MahaRERA, nine flat purchasers have preferred

appeals before the Maharashtra Real Estate Appellate Tribunal. In these appeals, an application was filed for appointment of expert for inspecting flats, being subject matter of said appeals. Learned member in purported exercise of powers under Section 53 (4)(g) of the Real Estate (Regulation and Development) Act, 2016 allowed the application and appointed Mr. Vasant Wani, Technical Officer as a Commissioner to inspect nine flats and submit the report. It is against this order, the present appeal is preferred.

4. Mr. Khandeparkar, learned counsel would submit that, the tribunal is not vested with the powers to appoint the Court Commissioner for inspecting the suit flats. He would thus rely on the provisions of Section 53(1) & (4) of the Real Estate (Regulation and Development) Act, 2016. Section 53 confers powers on tribunal. Sub-section (1) of Section 53 says that :

“The Appellate Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908 but shall be guided by the principles of natural justice”.

Sub-section (4) of Section 53 reads as under :

“53(4) The Appellate Tribunal shall have, for the purpose of discharging its functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 in respect of the following matters, namely :

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of documents;

(c) receiving evidence on affidavits;

(d) issuing commissions for the examinations of witnesses or documents;

(e) reviewing its decisions;

(f) dismissing an application for default or directing it ex parte; and

(g) any other matter which may be prescribed.”

5. Learned member of the tribunal has invoked the provisions of Sub-Section 4(g) of Section 53 which says that the tribunal, for the

purpose of discharging its functions under the said Act, shall have same powers as vested in a civil Court under the Code of Civil Procedure, 1908 in respect of the specified matters [under clause (a) to (e)], including any other matter which may be prescribed.

6. It is submitted by Mr. Khandeparkar that no matter is prescribed as envisaged under Section 53(4)(g) in the existing Rules of 2017 and therefore order impugned is non-est for want of jurisdiction. He would also submit that report submitted by the expert cannot be relied upon in the pending proceedings under the existing Rules.

7. Mr. Deshmukh, Learned counsel for the respondents would however submit that in view of the statement and objects of the Real Estate (Regulation and Development) Act, 2016, provisions of Section 53 of the Real Estate Act, 2016 cannot be narrowly construed which otherwise would not protect interest of consumer in the real estate sector.

8. I have perused the provisions of Section 53 of the Real Estate (Regulation and Development) Act, 2016. Sub-section (4) of Section

53 says that the tribunal shall have, for the purpose of discharging its functions, the same powers as are vested in a civil court in respect of specific matters in terms of Clauses 'a' to 'f'. Thus, prima facie Section 53 does not empower the tribunal to exercise all the powers, which are available to the Civil Court. Though clause 'g' of Section 53 says that tribunal may exercise such powers that may be prescribed, but it appears in view of Rule making powers, State has not framed rules in terms of Section 84(2)(z) read with Section 53(4)(g) of the said Act.

9. Mr. Khandeparkar further submits that the appellants were served with the copy of an application [for the appointment of the expert] by the respondents herein on Saturday 09.03.2019 at 8.00 p.m. by e-mail and the said application was heard by the tribunal on 11.03.2019 i.e. on Monday. Mr. Khandeparkar has pointed out the observations made by Judicial Member in para no. 3 of the impugned order. It is manifest from the order, opportunity was not afforded to the appellants before passing the order dated 11.03.2019. Though the appellant herein was present before the

tribunal, it cannot be said that principles of natural justice were followed (in spirit) while passing the order dated 11.03.2019.

10. Thus, taking into consideration the submissions made by the counsel for the parties and the provisions of the Real Estate (Regulation and Development) Act, 2016, in my view, in the interest of justice, impugned order is required to be set aside and the parties are to be relegated to the tribunal for hearing in application preferred by the respondents for the appointment of the expert. In view of this, following order :-

ORDER

- 1) The order dated 11th March, 2019 passed by the Maharashtra Real Estate Appellate Tribunal, Mumbai in Appeal Nos. 10600 and 10594 are hereby quashed and set aside.
- 2) Parties to the appeal are relegated to Maharashtra Real Estate Appellate Tribunal.
- 3) The learned members shall hear the parties afresh on an application for the appointment of expert, after affording sufficient opportunity to both and shall decide the application

on merits in accordance with law, preferably on or before 13.05.2019.

4) It is made clear that this Court has not expressed any opinion about the jurisdiction and powers of the tribunal for appointment of the Commissioner. It is further clarified that the reports, which are submitted by the Court Commissioner in pursuance to order dated 11.03.2019 shall not be looked into and relied upon by the authorities under the Act, unless the tribunal holds that it has powers to appoint the Commissioner (expert) under the provisions of Real Estate Act.

5) With aforesaid observations, appeal is allowed in aforesaid terms.

6) The parties shall appear before the tribunal on 25/04/2019 at 11.00 a.m.

7) The tribunal shall consider the request of the appellants herein for granting time to file their reply to the application for the appointment of expert.

(SANDEEP K. SHINDE, J.)

