

ISM

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 284 OF 2020

Avarsekar Realty Private Ltd.Appellant

V/s.

L and T Financial Consultants LTD.Respondent

Mr. Rohit Gupta a/w Mr. Vijay Purohit and Ms. Nikita Bagera for the appellant

Mr. H. N. thakore and Ms. N. Shah i/b Dua Associates for respondent

CORAM : NITIN W. SAMBRE, J.

DATE : FEBRUARY 5, 2020.

P.C.

Agreement dated 29/07/2013 between appellant-promoter and the respondent-buyer was formed to be a basis for initiating complaint before the Maharashtra Real Estate Regulatory Authority.

2] The said authority after adjudicating rival claims, allowed said complaint vide order dated 22/05/2018 thereby directing present

appellant-promoter to return amount of Rs. 5 Crores and 28 Lakhs with 10.05 interest per annum and compensation of Rs. 1 Lakh. Said order was subject matter of challenge in 4 appeals at the behest of present appellant pursuant to provisions of Section 43(5) of the Real Estate Regulatory Authority Act ('RERA' for short). Present Second Appeal is restricted to the extent of Appeal No. 0006000000010492. Appeal preferred by the present appellant came to be dismissed vide impugned Judgment dated 01/02/2019. As such, this Second Appeal under Section 58 of the RERA Act.

3] The question of law which is sought to be agitated is;

"In view of provisions of Section 43 of the RERA Act, whether Member Judicial alone will be competent in law to decide the appeals?"

4] Learned counsel for the appellant would draw support from the Judgment of this Court in the matter of **Larsen and Toubro Limited Vs. Ms. Rekha Sinha** delivered on 17/10/2019 delivered in Second Appeal Stamp No. 14061 of 2019 so as to urge that minimum coram required for deciding the appeal by RERA Appellate Authority is two,

whereas the impugned judgment is delivered by Member Judicial.

5] While countering aforesaid submissions, learned counsel for respondent-original complainant would urge that even if the said Judgment covers the issue, however, this Court need to take note of the fact that the directions given to the present appellant-promoter to refund the amount has not been honoured. According to him, since the order of RERA Authority which is confirmed by the first Appellate Authority amounts to a money decree, appellant needs to be put to stringent conditions. According to him, as earlier interim order/direction passed by the RERA Appellate Authority was not honoured, the Appellate Authority was right in dismissing the First Appeal of the appellant.

6] Considered submissions.

7] The question of law which needs to be answered by this Court is;

“Whether Judgment of the Appellate court which is impugned herein is in tune with the provisions of Section 43 of the RERA Act?”

8] The fact remains that Judgment impugned is delivered by a Member Judicial of the Maha RERA Authority. This Court in the matter of **Larsen and Toubro Limited [cited supra]** had an occasion to consider the required configuration of the Appellate Tribunal. This Court has held that minimum coram required is two Members. Whether a Member Judicial while exercising powers of the Appellate Authority can be competent enough to decide the appeal is an issue also answered in the said Judgment. As such, issue raised is squarely covered by the Judgment of this Court in the matter of **Larsen and Toubro Limited [cited supra]**.

9] That being so, Judgment impugned dated 01/02/2019 passed in Appeal No. 0006000000010492 is hereby quashed and set aside. Parties herein agree that they shall appear before Appellate Authority on 24/02/2020 and shall complete their pleadings within period of one week i.e. on 02/03/2020.

10] Appellate Authority shall dispense with issuance of fresh notice to the parties in view of their agreement as recorded herein above.

11] Let the appeal and pending application of the appellant be decided afresh within period of 8 weeks from today i.e. by 30/04/2020.

[NITIN W. SAMBRE, J.]