

Arjun

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

**SECOND APPEAL NO.427 OF 2021
WITH
INTERIM APPLICATION NO.3747 OF 2021
IN
SECOND APPEAL NO.427 OF 2021**

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Kamran Livestock & Real Estate Pvt. Ltd. ...Appellant/
Applicant

V/s.

Santosh Sakharam Kale & Anr. ...Respondents

Mr. Sandesh D. Patil i/b P. S. Gole, for the
Appellant/Applicant.

Mr. Akshay Kapadia, for the Respondents.

**CORAM : MADHAV J. JAMDAR, J.
DATED : 30th MARCH, 2023**

P.C.:

1. Heard Mr. Patil, learned counsel appearing for the
Appellant and Mr. Kapadia, learned counsel appearing for
the Respondents.

2. By the present Second Appeal, the Appellant i.e.
Developer is challenging the legality and the validity of the
order dated 9th December, 2020 passed by the learned
Maharashtra Real Estate Appellate Tribunal, Mumbai

(hereinafter in short “**Appellate Tribunal**”) in Appeal No.AT006000000021473. By the said impugned order of the learned Appellate Tribunal, order dated 27th March, 2019 passed by the learned Adjudicating Officer MahaRERA in Complaint No.CC006000000023176 was set aside and the said Complaint was remanded back to the Maharashtra Real Estate Regulatory Authority, Mumbai (for short “**Authority**”) for deciding the same afresh. It has been clarified that all contentions of the parties are kept open.

3. The above Second Appeal was admitted by a learned Single Judge by order dated 18th January, 2021 on the following substantial questions of law :

“(i) Whether the Appellate Tribunal was justified in setting aside the order passed by the Adjudicating Officer, in the absence of there being any challenge to the order dated 13/6/2018 passed by the Authority?

(ii) Whether the impugned judgment and order passed by the Appellate Tribunal suffers from non application of mind?”

4. Mr. Patil, learned counsel submitted that by the impugned order the matter was remanded back to the Authority by the learned Appellate Tribunal when order dated 13th June, 2018 of the Authority was not challenged.

He submitted that, Adjudicating Officer has the jurisdiction to decide the dispute in the complaint.

5. On the other hand, it is the submission of Mr. Kapadia, learned counsel that, by order dated 13th June, 2018, chairperson of MahaRERA transferred the matter to the Adjudicating Officer for decision and, therefore, the said order is merely an administrative order and no rights are decided by the said order. He submitted that, in view of legal position as clarified by the Supreme Court in *Newtech Promoters and Developers Pvt. Ltd. (supra)*, the jurisdiction is with the Authority and, therefore, order is correctly passed by the learned Appellate Authority.

6. Before considering the rival submissions, it is necessary to set out the reliefs which have been sought by the complainants i.e. the Respondents in the complaint, which are as under :

“In view of the facts and grounds mentioned in paragraphs 4 and 5 above, the Complainants pray for the following reliefs:

(a) that **this Hon’ble Authority be pleased to direct Respondent to pay the Complainants interest on the amount paid by them, every month since the Respondent was liable to**

give possession i.e. December 2013 till the day of actual handing over of the possession of the allotted flat, for the delay in handing over the possession as per Section 18(1);

(b) that this Hon'ble Authority be pleased to direct Respondent to pay the Complainants additional interest on the amount paid by him, every month since the Respondent was liable to give possession i.e. December 2013 till the day of actual handing over of the possession of the allotted flat, for failure of discharging the obligation of ensuring that the Complainant was given a flat on the 15th floor in a 21 floor building, as per Section 18(3);

(c) that this Hon'ble Authority be pleased to direct Respondent to handover the possession of the flat within two weeks;

(d) that this Hon'ble Authority be pleased to direct the Respondent to reduce the total consideration of the said flat, as the Respondent has failed to comply with the condition of allotting a flat on the 15th floor in a 21 floor building;

(e) that this Hon'ble Authority be pleased to direct the Respondent in the alternate to prayer clause (d), to allot a flat with the exact description on the 15th floor of the other wing of the society which has the

permission of 21 floors or more;

(f) that this Hon'ble Authority be pleased to direct the Respondent to adjust the balance consideration payable by the Complainant accordingly, against the interest and reduction of such consideration, for breach of contractual obligations by the Respondent;

(g) that this Hon'ble Authority be pleased to direct Respondent No.1 to pay penalty to the Complainants for violating the representations made in the Agreement for Sale, as per Section 61 of RERA;"

(Emphasis added)

7. A bare perusal of the reliefs sought in the Complaint show that the possession is sought and till handing over possession interest is claimed.

8. The Hon'ble Supreme Court in the decision of *Newtech Promoters and Developers Pvt. Ltd. Vs. State of UP & Ors.*¹ in paragraph No.86 has held as follows :

"86. From the **scheme of the Act** of which a detailed reference has been made and taking note of **power of adjudication delineated with the regulatory authority and adjudicating officer**, what finally culls out is that although the Act indicates the distinct expressions like 'refund',

1 2021 SCC OnLine SC 1044

‘interest’, ‘penalty’ and ‘compensation’, a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory authority which has the power to examine and determine the outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act. If the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and functions of the adjudicating officer under Section 71 and that would be against the mandate of the Act 2016.”

(Emphasis added)

9. Thus, it is very clear that as far as refund of the amount and interest on the refund amount or directing payment of interest for delayed delivery of possession or penalty and interest thereon, it is the regulatory authority which has the

power to examine and determine the outcome of a complaint.

10. Therefore, Mr. Patil, learned counsel appearing for the Appellant is not right in contending that the Adjudicating Officer, MahaRERA has jurisdiction to decide the said complaint.

11. The contention that the learned Appellate Tribunal is not justified in setting aside order passed by the learned Adjudicating Officer in absence of challenge to order dated 13th June, 2018 passed by the learned Authority, Mr. Kapadia, learned counsel is right in contending that the said order is merely administrative order. The said order dated 13th June, 2018 is referred in para 3 of the order dated 27th March, 2019 passed by the learned Adjudicating Officer, MahaRERA in following manner.

“[3] Vide Roznama dated 13.06.2018. Hon’ble Chairperson transferred the matter to the Adjudicating Officer.”

Thus, it is clear that, said order is merely an administrative order and by that order rights of the parties are not determined after adjudication. Although, order of the learned Appellate Authority is dated 9.12.2020 the same is in consonance with the law laid down by the Hon’ble

Supreme Court in *Netwech Promoters and Developers Pvt. Ltd. (supra)*.

12. For the above reasons, the Second Appeal is dismissed however, with no order as to costs.

13. In view of dismissal of the Second Appeal, nothing survives in the Interim Application and the same is also dismissed.

14. Both the parties to appear before the Maharashtra Real Estate Regulatory Authority, Mumbai on 24th April, 2023 at 10:30 a.m. for fixing the date for proceeding further with said Complaint No.CC0060000000023176.

15. The Authority to decide the said Complaint in accordance with law. It is specifically clarified that, contentions of both the parties on merits are expressly kept open.

[MADHAV J. JAMDAR, J.]