

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

SECOND APPEAL NO.93 OF 2021

Mangal Murti Foundation

....Appellant

V/S

Shree Mahavir Patwa Developers &
Constructions Pvt. Ltd. & Ors.

....Respondents

Mr. Manish Gala with Mr. Nilesh Gala, Mr. Minil Shah i/b M/s. Law Square
for the Appellant.

CORAM: SANDEEP V. MARNE, J.

DATE : 29 APRIL 2024.

P.C.:

1 By this Appeal, Appellant challenges the judgment and order dated 13 July 2020 passed by the Maharashtra Real Estate Appellate Tribunal, Mumbai, (**Appellate Tribunal**) dismissing the Appeal and confirming the order passed by Maharashtra Real Estate Regulatory Authority, Mumbai, (**MahaRERA**) on 14 May 2019.

2 It appears that the Regulatory Authority has proceeded to dismiss the Source Complaint only on the ground that no development permission is issued in respect of the project in question.

3 The Appeal has been admitted by this Court by order dated 5 January 2021 by framing following substantial questions of law:

- (i) Whether under Section 31 of Real Estate (Regulation and Development) Act, 2016, a complaint can be filed by an aggrieved person against a promoter in respect of a real estate project without such project having been registered under that Act?
- (ii) Whether a complaint under Section 31 can be adjudicated by the authority, particularly having regard to Section 71 of Real Estate (Regulation and Development) Act, 2016, or the authority has to appoint an Adjudicating Officer or refer the case to him for holding an inquiry in the prescribed manner?
- (iii) Whether the Chairman of Maharashtra Real Estate Authority alone constitutes competent coram for adjudicating a complaint made under Section 31 of that Act within the meaning of Section 21 of that Act?

4 I have heard Mr. Gala, the learned counsel appearing for the Appellant. It appears that the notice of admission of the Appeal was attempted to be served on Respondent No.1 whose premises were found locked since four years. However considering the nature of order that has been passed in the present Appeal, it is not necessary to await appearance on behalf of first Respondent.

5 This Court has taken a view in *Mohammed Zain Khan vs. Emnroy Properties India & Ors.* in Second Appeal No.209 of 2022 decided on 23 April 2024 that Complaints under section 31 of the Real Estate Regulatory Authority Act (**RERA Act**) would be maintainable in respect of projects

which are capable of being registered and which are liable to be registered under provisions of sections 3, 4 and 5 of the RERA Act. In my view considering the law expounded by this Court in *Mohammed Zain Khan* (supra), it would be necessary for the Regulatory Authority to consider whether the project in question is capable of being registered or is liable to be registered under RERA Act. If the Regulatory Authority comes to the conclusion that the project is capable of being registered or is liable to be registered, the Complaint under section 31 of the RERA Act would obviously be maintainable. In order to enable the Regulatory Authority to undertake that exercise, the orders passed by the Regulatory Authority and the Appellate Tribunal are required to be set aside and the Source Complaint is liable to be restored on file of Regulatory Authority for being decided afresh.

6 Accordingly I proceed to pass the following order:

- i) Order dated 14 May 2019 passed by the Regulatory Authority and judgment and order dated 13 July 2020 passed by the Appellate Tribunal are set aside;
- ii) The Source Complaint No.SC10000593 shall stand restored on the file of the MahaRERA which shall proceed to decide the same afresh in the light of law declared by this Court in **Mohammed Zain Khan** (supra);
- iii) Considering the fact that the Source Complaint was filed in the year 2019, the MahaRERA shall proceed to decide the same as expeditiously as possible, preferably within a period of six months from today.

iv) The MahaRERA shall issue notice to the Promoter and after service thereof shall proceed to decide the Complaint.

v) All questions on merits are left open.

7 With the above observations, the Second Appeal is disposed of.

(SANDEEP V. MARNE, J.)

Digitally signed
by
SUDARSHAN
RAJALINGAM
KATKAM
Date:
2024.05.02
10:46:37 +0530