

**BEFORE THE
MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY
MUMBAI**

COMPLAINT NO. CC006000000078646

Shailendra Dwiwedi & anr

..Complainant/s

Versus

Mateshwari Reltors

..Respondent/s

MahaRERA Regn. No. P51700010188

Coram:

Hon'ble Shri Madhav Kulkarni.
Adjudicating Officer, MahaRERA.

Appearance:

Complainant: Adv. Avinash Pawar

Respondents : CA Ashwin Shah

**ORDER BELOW APPLICATION
OF THE RESPONDENT CHALLENGING JURISDICTION OF THE AO
TO DEAL WITH NON-COMPLIANCE APPLICATION.
(Dated 12.10.2021)**

1 .Final order in this matter was passed on 4.12.2019 and respondent/ promoter was directed to refund the amount received with interest, within 30 days. Since the respondent did not comply with the order, complainants filed application about non-compliance.

2 .The respondent in present application alleged that the execution proceeding jurisdiction lies with the authority as per Section 34(f) and 34(g) of the Act and not with the AO. The Authority has delegated powers recently to the Secretary u/s 81 of the Act ,for execution of the orders. Even Hon'ble High Court in the matters of Arunesh Prasad Vs. Tata Housing and Lavasa Corporation Vs. Jitendra Tulsiyani has held that administrative powers lie with the authority and recovery proceedings u/s 40 of the Act falls in the basket of administrative function. Hence, this non-compliance application needs to be transferred to the Authority. The prayer has been opposed by the complainant.

3 .Heard CA Mr. Ashwin Shah for Respondent and Adv. Avinash Pawar for complainant. Both made submissions on expected lines. Shri Shah cited Judgement of Hon'ble Kerala High Court in CRP no. 253 of 2013 in the matter of S. K. Pandit Vs Shri Krishna Swami Devaswam. There dispute was in respect of assets of temple. According to Shri Shah powers are conferred on AO u/s 71 of the RERA for adjudging compensation u/s 12, 14, 18 and 19 of the Act. Section 40 provides for execution of orders passed by AO or the Authority or the Appellate Authority but does not provide that powers are conferred on AO in that respect. Shri Avinash Pawar pointed to Rule 3 and 4 of Maharashtra Rules

2017. Shri Shah pointed out that only orders of the AO contemplated under Section 40 sub-section 2 can be enforced by AO which means, orders except those about interest, penalty and compensation. Section 40 sub-section (1) only speaks that the above stated sums shall be recoverable as arrears of land revenue. According to Shri Shah powers directing recovery as arrears of land revenue are not conferred on AO.

4 . Division Bench of Hon'ble Bombay High Court in WP NO. 3221 of 2020 in the matter of Marval Sigma Homes Vs. Rustom Mehta alongwith the WP no. 2627 of 2020, framed issue no. 2 as to whether order directing return of consideration amount with interest is required to be executed or enforced under sec.40 r/w Rule 3 or Rule 4 of Maharashtra Rules. There the AO had directed issuance of recovery warrant u/s 40 sub-section (1). Para 12 enumerates relevant provisions in the Act and Rules. In para 13 sub-para v- it is observed that in view of the above, we are of the clear view that expression compensation as used in Section 40(1) must be understood in the sense of Section 71 of the Act viz. to include all amount that the promoter is liable to pay to an allottee inter alia u/s 18 of the Act or for that matter u/s 12, 14, and 19 of the Act. Under sub-para (vi)- It is also clear from reading Section 40(1) of the Act when contrasted with 40(2) of the Act that clear intention of the Legislature was to group all directions to pay or monetary relief granted against the promoter in one category that is section 40(1) of the Act and to treat them differently from all other orders for the purpose of means of enforcement or recovery. There is no valid explanation or justification for treating some monetary reliefs granted to allottees differently from others as has been suggested by Respondent no. 4. The intention of legislature as is apparent from preamble of the Act was to provide for speedy and efficacious remedy to allottees against the breaches of promoters and developers.....

Para 13.1 - for the above reasons we are of the view that recovery certificate resulting order from AO has rightly been issued u/s 40(1) of the Act read with Rule 3 of RERA Rules.

In view of the observation of the Hon'ble Bombay High court submission of the respondent cannot be accepted that AO has power to enforce orders u/s 40 sub-section (2) but no power to execute orders referred in Section 40 sub-section (1) I therefore, pass following order :

ORDER

Application of respondent challenging jurisdiction stands rejected.

Mumbai
Date : 12.10.2021

(Madhav Kulkarni)
Adjudicating Officer
MahaRERA

