



Refresher Course on MAHARERA
Practice & Professional Opportunities

FILING OF APPEALS
UNDER THE REAL ESTATE
REGULATORY ACT

- AMAR KHANNA

ADVOCATE & SOLICITOR

RIGHT TO APPEAL

- An appeal is a process by which a judgment/order of a subordinate Court is challenged before its superior court. A party does not have an inherent right to challenge the judgment/order of a Court before its Superior Court. No party can file an appeal against any judgment, decree or order as a matter of course in the absence of a suitable provision of some law conferring on the party concerned the right to file an Appeal.

APPEALS UNDER RERA

- One of the main objects of the RERA Act, as stated in the Preamble is to establish an adjudicating mechanism for speedy dispute redressal and also to establish the Appellate Tribunal to hear appeals from the decisions, directions or orders of the Real Estate Regulatory Authority and the adjudicating officer and for matters connected therewith or incidental thereto. Accordingly, Part VII of the Act consisting of Sections 43 to 58 deals with matters relating to such tribunal.

COMPOSITION OF THE APPELLATE TRIBUNAL

- Section 43(1) of the Act provides for the establishment of an Appellate Tribunal, within a period of one year from the date of coming into force of the Act.
- The Appellate Tribunal shall consist of a Chairperson and not less than two whole time Members of which one shall be a Judicial member and other shall be a Technical or Administrative Member, to be appointed by the appropriate Government.

COMPOSITION OF THE APPELLATE TRIBUNAL

- Every bench of the Appellate Tribunal shall consist of at least one Judicial Member and one Administrative to Technical Member.
- In **Man Global Limited V/S Bharat Prakash Joukani & Anr.**, the Bombay High Court that on a plain reading of section 43(3) of the Act, it is clear that the sole member of the said Tribunal does not have jurisdiction to dispose of appeal or any application including even an application for condonation of delay in filing appeal.

COMPOSITION OF THE APPELLATE TRIBUNAL

- In the matter of **Larsen and Toubro Limited vs. Rekha Sinha**, it has been observed by the Hon'ble Bombay High Court that in view of the language used in sub-section 3 of section 43 of the said Act, for the composition of the Bench of the Appellate Tribunal the requirement of law is that it shall consist of at least one Judicial Member and one Administrative or Technical Member.

PERSONS WHO CAN FILE AN APPEAL

- Any person aggrieved by any direction or decision or order made by the Authority or by an Adjudicating Officer under this Act may prefer an appeal before the Appellate Tribunal having jurisdiction over the matter. The expression “person” shall include the association of allottees or any voluntary consumer association registered under any law for the time being in force.

PERSONS WHO CAN FILE AN APPEAL

- In **Udayachal Goregaon Cooperative Housing Society Ltd. v/s. Shyam Sunder Kedia & Anr.**, the Appellant Cooperative Housing Society questioned the legality and correctness of the order passed by the Ld. Chairperson, although it was not party before MahaRERA. It was observed by the MahaREAT that the Appellant's rights are involved in the complaint property and consequently it was a necessary and proper party to the complaint proceedings before the RERA.

PRE DEPOSIT

- Where a Promoter files an appeal with the Appellate Tribunal, it shall not be entertained, without the promoter first having deposited with the Appellate Tribunal atleast thirty per cent of the penalty, or such higher percentage as may be determined by the Appellate Tribunal, or the total amount to be paid to the allottee including interest and compensation imposed on him, if any, or with both, as the case may be, before the said appeal is hear.

CONSTITUTIONAL VALIDITY OF THE PROVISION OF PRE DEPOSIT

- In **M/s. Lotus Realtech Pvt. Ltd. v. State of Haryana**, the Punjab & Haryana High Court has observed that the promoters form a distinct and separate class and as the prescription of the condition of pre-deposit upon the promoters is in furtherance of the object of the legislation, therefore, the imposition of the condition of pre-deposit upon the promoters satisfies the test of Article 14 of the Constitution of India.

PRE DEPOSIT

- In the case of **M/s Mahanagar Reality & Ors. v/s. Dinesh Ramlal Oswal & Anr.**, the Hon'ble MahaREAT has observed that it is mandate of statute that when the Promoter prefers an Appeal it is mandatory to deposit the amount and comply the proviso of Section 43 sub-Section 5 of RERA for entertaining and hearing the Appeal. Deposit is pre-requisite. No litigant possesses any natural or inherent right to Appeal unless statute confers it. Right of Appeal can be conditional and quantified

PRE DEPOSIT

In **Nagpur Integrated Township Pvt Ltd V/S Maharashtra Real Estate Regulatory Authority, Mumbai And Ors.**, it has been observed by the Hon'ble Bombay High Court that for the purpose of acting under the proviso to Section 43(5) of the Act, whether or not the Appellant is a promoter within the meaning of that expression used in the proviso, is a jurisdictional question to be decided by the Appellate Tribunal before any order of pre-deposit could be passed.

PRE DEPOSIT

- In the case of **Radicon Infrastructure And Housing Private Limited V/S Karan Dhyani**, it has been observed that as per the said proviso the appellate tribunal can require either the penalty or portion thereof or the total amount to be paid to the allottee including interest and compensation imposed on him to be deposited before the appeal is heard for being entertained. The word "as the case may be" following the words "or with both" are a reference to the deposit either of penalty or the total amount or both as the facts of the case may require.

APPELLABLE ORDERS

The Act does not list the Orders against which the Appeals can be filed.

Some examples wherein Allottees can file an Appeal are :

- An order refusing to register an unregistered Project [Sec. 3];
- Any directions issued by the Authority to the Allottees for the purpose of discharging its functions [Sec. 37];
- An order for Imposition of penalty or interest, in regard to any contravention of obligations cast upon the Allottees [Sec. 38(1)];
- An Order refusing to grant compensation to the Allottee [Sec. 71];

APPELLABLE ORDERS

- Some examples wherein Promoters can file an Appeal are :
- A direction by the Authority for registration of a Project [Sec. 3(2)];
- An Order denying registration of the project [Sec. 5(1)(b)];
- An order denying extension of registration [Sec. 6];
- An Order Revoking registration of the project and debarring the promoter from accessing to website [Sec. 7];
- An Order directing completion of the construction of remaining uncompleted work where the registration is revoked [Sec. 8];

APPELLABLE ORDERS

- Any directions issued by the Authority for the purpose of discharging its functions under the provisions of this Act [Sec. 37];
- An order for Imposition of penalty or interest, in regard to any contravention of obligations cast upon the Promoters [Sec. 38(1)];
- An Order imposing penalty on the Promoters for contravention of Section 3 [Sec. 59];
- An Order imposing penalty for failure to make application for registration or providing information [Sec. 60];

APPELLABLE ORDERS

- Order imposing penalty for non-compliance of orders [Sec. 63]
- Any Order by the Adjudicating Authority u/s 12, 14, 18 and 19 [Sec. 71].
- Some examples wherein Agent can file an Appeal are :
- An Order Imposing penalty on real estate agent for failure to comply with the provisions of the Act [Sec. 62];
- An Order imposing penalty on real estate agent for contravening the orders or direction of RERA [Sec. 65];

PRESENTATION OF APPEAL

- All appeals to be instituted with the Tribunal shall be presented online in 'Form C' of the Maharashtra Real Estate (Regulation and Development) (Recovery of Interest, Penalty, Compensation, Fine payable, Forms of Complaints and Appeal, etc.) Rules, 2017.
- Every appeal shall be accompanied by an appeal fee of Rs. 5000/-
- The hard copy of such appeals along with attachments shall be presented within seven (7) days from the date of online filing.
- On failure to submit hard copies within time, such appeals shall be notified by the Registry for dismissal for want of hard copies.

PRESENTATION OF APPEAL

- All other proceedings with attachments, if any, shall be instituted in the Office of the Registrar till the online system is in place.
- All proceedings to be presented to the Tribunal shall be in English and in case it is in some other language, it shall be accompanied by a true translation of the same in English and shall be legible, type-written or printed in double spacing with proper margin, duly paginated, indexed and stitched together in paper book form and shall be presented in triplicate.

PRESENTATION OF APPEAL

- Court fee stamps affixed on Vakalatnama, Letter of Authorisation and the documents shall be checked and entered after due cancellation in the Court Fee Register to be maintained as per the procedure
- On examination of appeals, if the Registrar finds the same in order he shall seek appropriate orders for allotment of appeal

PRESENTATION OF APPEAL

- No new documents which have not been produced or relied upon before the Authority shall be produced at the time of filing appeal. However, if any application is filed for production of additional documents or evidence, the same shall be considered by the Appellate Tribunal after giving opportunity to the other side.
- The hearing of appeal shall be concluded within sixty days from the date of its filing.

Powers of Appellate Tribunal

- 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. The Appellate Tribunal shall also not be bound by the rules of evidence contained in the Indian Evidence Act, 1872.
- The Appellate Tribunal shall have power to regulate its own procedure.

Powers of Appellate Tribunal

- The Appellate Tribunal shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 in respect of the following matters :
 - (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;

Powers of Appellate Tribunal

- (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.

LIMITATION

- Every appeal shall be preferred within a period of sixty days from the date on which a copy of the direction or order or decision made by the Authority or the adjudicating officer is received by the aggrieved person. In case of delay, if the last day of filing appeal falls on a holiday, that day and succeeding holidays shall be excluded for the purpose of reckoning the period of limitation. Appeal should be presented on the next working day succeeding the holidays from the last date of limitation.

SUFFICIENT CAUSE

- However, the Appellate Tribunal may entertain any appeal after the expiry of sixty days if it is satisfied that there was sufficient cause for not filling it within that period. The Hon'ble Supreme Court, in **Collector, Land Acquisition, Anantnag & Anr. vs. Mst. Katiji and Ors.**, observed that the power to condone the delay is conferred in order to enable the courts to do substantial justice to the parties by disposing of the matters on merits and further that the expression "sufficient cause" is elastic enough to enable the courts to apply the law in a meaningful manner to subserve the ends of justice.

EXECUTION OF ORDERS

- Every order made by the Appellate Tribunal shall be executable by the Appellate Tribunal as a decree of civil court, and for this purpose, the Appellate Tribunal shall have all the powers of a civil court.
- However, the Appellate Tribunal may transmit any order made by it to a Civil Court having local jurisdiction and such civil court shall execute the order as if it were a decree made by the Court.

EXECUTION OF ORDERS

- In **Rustam Phiroze Mehta v/s. Marvel Dwellings Private Limited**, MahaREAT observed that when Appellate Court makes a decree then decree of original court is merged into that of superior court and it is the later decree alone that can be executed. If the Appellate Court or Tribunal rejects the Appeal for non-compliance of order or for want of prosecution or if the Appeal abates or if the appeal is withdrawn, there is no decree of Appellate Court and decree to be executed is of original Court

EXECUTION OF ORDERS

- In **Manoj Votavat V/S. Sea Princess Realty & Ors.**, MahaREAT has observed that the Order of the Appellate Tribunal can be executed by sending copy of such order to Principal Civil Court to execute such order either within the local limits of whose jurisdiction the project is located or within the local limits of whose jurisdiction the person against whom order is issued resides or carries on business or personally works for gain.

APPEALS TO THE HIGH COURT

- Any person aggrieved by any decision or order of the Appellate Tribunal, may, file an appeal to the High Court, within a period of sixty days from the date of communication of the decision or order of the Appellate Tribunal, to him, on any one or more of the grounds specified in section 100 of the Code of Civil Procedure, 1908.

APPEALS TO THE HIGH COURT

- However, the High Court may entertain the appeal after the expiry of the said period of sixty days, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal in time.
- No appeal shall lie against any decision or order made by the Appellate Tribunal with the consent of the parties.

APPEALS TO THE HIGH COURT

- In **Supertech Ltd v/s. Subrat Sen**, the Allahabad High Court has observed that A reading of the aforesaid provision itself makes it clear that by creating a legal fiction, the order of the Appellate Tribunal has been recognised to be a decree only for limited purpose of execution but not for the purposes of filing an appeal against it. The High Court has further observed that such appeals are not to be categorised as Second Appeal even if they are arising out of an appellate order but under a distinct category as R.E.R.A. appeal.

APPEALS TO THE HIGH COURT

- In **Sea Princess Realty V/S Rajesh Mehta**, it has been observed by the Bombay Hon'ble High Court that the ratio that can be called out from these judgments of the Hon'ble Supreme Court is that the High Court must "satisfy" itself that the case involves substantial question of law, then only it can entertain the Second Appeal.

APPEALS TO THE HIGH COURT

- It has been further observed that for that it is obligatory on the part of appellant to precisely state in the Memo of Appeal the "substantial question of law" involved in the appeal and thereafter, it is for the High Court to formulate such substantial question of law. If no such substantial question of law is precisely stated in appeal memo and the High Court also is not satisfied about it, then the Second Appeal has to be dismissed in limine at the threshold itself.

JURISDICTION OF CIVIL COURTS

- Under Sec. 79, no Civil Court shall have jurisdiction to entertain any Suit or proceeding in respect of any matter which the Adjudicating Officer, the Real Estate Regulatory Authority or the Real Estate Appellate Tribunal is empowered by or under the Act to determine.

JURISDICTION OF CONSUMER FORUM

- The Consumer Forum (National, State or District) have not been barred from the ambit of the Act. However, it has been clarified that an aggrieved person can only approach one of the two for disputes over the same matter.
- It also needs to be borne in mind here that an Appeal from an order of RERA can only lie before the Maharashtra Real Estate Appellate Tribunal and not before the Consumer Forum.



WIRC Conference on
Appeals under MahaRERA
AMAR KHANNA
ADVOCATE & SOLICITOR
Email : khannaamar@rediffmail.com
THANK YOU