

**BEFORE THE UTTARAKHAND REAL ESTATE APPELLATE TRIBUNAL
AT DEHRADUN**

Present: Hon'ble Mr. Justice U.C.Dhyani

----- Chairperson

Hon'ble Mr. Rajeev Gupta

-----Member(A)

Miscellaneous Application No.09 of 2021

Sri Harish Kumar Rai and others.

..... Applicants/appellants

vs.

Uttarakhand Real Estate Regulatory Authority and others.

.....Respondents.

Present: Sri Shivam Nagalia, Advocate for the appellants.
Sri Ajar Rab, Advocate for Omaxe Ltd., caveators.

JUDGMENT

DATED: MARCH 24, 2021

Justice U.C.Dhyani (Oral)

Mr. Harish Kumar Rai, Mr. Ajay Goyal and Mr. Rajeev Kumar Setiya , appellants have filed present appeal, arraying Real Estate Regulatory Authority and M/S Omaxe Ltd. as respondents. In present appeal, direction has been sought to Respondent No.1 to transfer Complaint No. 10 of 2019, Mr. Harish Kumar Rai vs. M/S Omaxe Ltd. and others, Complaint No. 243/2019 Mr. Ajay Goyal vs. M/S Omaxe Ltd. and others

and Complaint No. 242/2019, Mr. Rajeev Kumar Setiya vs. M/S Omaxe Ltd. and others to some other Bench of RERA.

2. Transfer application was heard by Chairman, RERA on 09.03.2021. (Copy of order dated 09.03.2021 has been given to the appellants on 18.03.2021). Complainants Mr. Harish Kumar Rai, Mr. Ajay Goyal and Mr. Rajeev Kumar Setiya prayed for transfer of their complaints to any other Bench of RERA, on the ground that they have no faith in the Chairman. We understand from a reading of order dated 09.03.2021 that the complaints were fixed for arguments; the applicants, namely, Mr. Harish Kumar Rai, Mr. Ajay Goyal and Mr. Rajeev Kumar Setiya, instead of arguing the complaints, insisted that their transfer petition be decided first and then only the matters be heard on merits. It may be noted here that two other Benches, namely of , Sri M.C.Joshi and Sri Manoj Kaushik are functional in RERA, Dehradun, as of now. The Chairman, RERA dismissed the transfer applications on the ground that the applicants want to delay the pending proceedings before RERA.
3. Short question, which arises for consideration of this Tribunal, is- whether an appeal against rejection of a transfer application by Chairman, RERA, is maintainable before this Appellate Tribunal?
4. Ld. Counsel for the appellants relied upon Section 43(5) of the Real Estate (Regulation and Development) Act, 2016 (Act No. 16 of 2016)(hereinafter referred to the Act), which runs as below:

“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.”

[Emphasis supplied]

Here, no direction or decision or order has been passed by Ld. Authority below under this Act.
5. Ld. Counsel for the appellants would argue that the appellants are aggrieved by order dated 09.03.2021 of Chairman, RERA, whereby their transfer application for transferring the complaints to some other Bench, was rejected. We are unable to subscribe to such view of the appellants that

this appeal is maintainable before this Appellate Tribunal, for the simple reason that refusal to transfer the complaints to any other Bench, is not a direction or decision or order made by the Authority, under the Act. The argument of Ld. Counsel for the appellants that Chairman, RERA ought to have transferred the transfer application itself before some other Member of RERA, is not tenable because any Member or two Members Bench of RERA is not vested with such administrative powers, which the Chairman is vested with.

6. Administrative powers of Chairperson have been provided in Section 25 of the Act, as below:

“25. The Chairperson shall have powers of general superintendence and directions in the conduct of the affairs of Authority and he shall, in addition to presiding over the meetings of the Authority, exercise and discharge such administrative powers and functions of the Authority as may be prescribed.”

7. Chairman, RERA sets the roster of cases. Constitution of Benches is his prerogative. In the given facts and circumstances, he could have recused himself and transferred the complaints to some other Bench, but since the Chairman did not do so and his action is being assailed by the appellants in present appeal, we are of the view that present appeal is not maintainable before this Tribunal. This order falls under the administrative arrangements of RERA and not under the definition of any direction or decision or order, made by the Authority, appealable under Section 43(5) of the Act.

8. This Tribunal is only an Appellate Tribunal. It does not have power of superintendence over RERA. At least, Rules made under the Act do not suggest the same. The Appellate Tribunal cannot usurp the administrative powers of the Chairman, RERA. The Chairman, RERA has the authority to allocate the cases to different Benches. Adherence to this principle is essential to maintain discipline and decorum. Powers, however, should be exercised in a manner that is fair, just and transparent. At the same time, justice must not only be done but must also appear to have been done, which is essential trait of principles of natural justice. If certain allegations were levelled against Chairman, RERA, he had the option of transferring the case to some other Bench, but if he has not done so, the same cannot be looked into by this Tribunal in appellate jurisdiction. As per Article 227 of

the Constitution of India, every High Court has superintendence over all Courts and Tribunals throughout the territory in relation to which it exercises jurisdiction. Power of superintendence, conferred upon Hon'ble High Courts by Article 227, is not confined to administrative superintendence only, but includes the power of judicial revision (judicial superintendence) also, even where no appeal or revision lies to the High Court under the ordinary law. This power enjoins a duty on the High Courts to keep their subordinate Courts and Tribunals 'within bounds of their authority and to see that they do what their duty requires and that they do it in a legal manner'. Whereas the appeal is creation of statute, power of judicial superintendence is inherent in Hon'ble High Courts, by virtue of Article 227 of the Constitution of India. Such power of superintendence over RERA is not inherent in this Tribunal.

9. Ld. Counsel for the appellants relied upon a decision of Hon'ble High Court of judicature at Allahabad in *Hakeemuddin and others vs. In-Charge District Judge, Azamgarh and others, 1993(2), Allahabad Rent Cases 297*, wherein a transfer application under Section 38 of Bengal, Agra and Assam Civil Courts Act, 1887 was filed before District Judge, containing allegations against Court presided over by an Addl. District Judge. Such transfer application came for hearing before that Addl. District Judge himself, as he was In-Charge District Judge on that date. Hon'ble High Court ruled that judicial norms and practice required that the Addl. District Judge should have refrained from deciding that transfer application, because no one is qualified to try a cause to which he himself is a party. Hon'ble Court remarked that the order passed by the Addl. District Judge smacks fowl and has a tinge of judicial anarchy. Hon'ble Court found it to be a case of interference in exercise of its powers under Section 24 of Code of Civil Procedure, 1908, which provides for general power of transfer and withdrawal to High Court or the District Judge. This Tribunal has no such power
10. Hon'ble High Court did it under Section 24 CPC, considering that it was a case of transfer under Section 38, Bengal, Agra and Assam Civil Courts Act, 1887, which reads as below:

“38. Judges not to try suits in which they are interested.—(1) The presiding officer of a Civil Court shall not try any suit or other proceeding to which he is a party or in which he is personally interested. (2) The presiding officer of an appellate Civil Court under this Act shall not try an appeal against a decree or order passed by himself in another capacity. (3) When any such suit, proceeding or appeal as is referred to in sub-section (1) or subsection (2) comes before any such officer, the officer shall forthwith transmit the record of the case to the Court to which he is immediately subordinate, with a report of the circumstances attending the reference. (4) The superior Court shall thereupon dispose of the case under section 25 of the Code of Civil Procedure (14 of 1882). (5) Nothing in this section shall be deemed to affect the extraordinary original civil jurisdiction of the High Court.”

11. We have no power to direct transfer of cases to some other Bench of RERA in exercise of appellate jurisdiction.
12. Since the appeal is against refusal of transfer of complaints to some other Bench, it is not maintainable before this Tribunal. In other words, impugned order is not amenable to appellate jurisdiction of this Tribunal. Therefore, the appeal is dismissed at the admission stage.
13. Let a copy of this order be sent to RERA for information and necessary action, in terms of Sub Section (4) of Section 44 of the Act.

(RAJEEV GUPTA)
MEMBER (A)

(JUSTICE U.C.DHYANI)
CHAIRPERSON

DATE: MARCH 24, 2021

DEHRADUN

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