

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

APPEAL NO. 08 OF 2018

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

----- Chairman

Hon'ble Mr. D.K.Kotia

-----Member

M/S Assotech Supertech(JV).

..... (Appellant)

vs.

Metropolis Resident Welfare Association(MRWA)

.....(Respondent)(s)

Present: Ms. Priya Anand, holding brief of Sri Rohit Dhyani, Counsel for the appellant.

Sri Shashi Kumar, Counsel, for the respondent(s)

JUDGMENT

Dated: OCTOBER 31, 2018

Per: Justice U.C.Dhyani

Present appeal has been preferred by the promoter-appellant (Respondent No.1), being aggrieved against an interim order (dated 18.09.2018) passed by Real Estate Regulatory Authority (for short, RERA), whereby Ld. Authority below has stayed effect and operation of the circular issued by the promoter to the members of the Resident Welfare Association. The promoter, by way of such circular, unilaterally enhanced common area maintenance charges from Re.1/- per sq.ft. to Rs.1.50/- per sq.ft.

2. Controversy, in the instant appeal, lies in a narrow compass. The complainant (respondent herein) filed a complaint before RERA against appellant-respondent no.1, in relation to certain irregularities committed by the builder-promoter. The said complaint is pending

adjudication before RERA. During the pendency of such complaint, promoter enhanced common area maintenance charges from Re.1/- per sq.ft. to Rs.1.50/- per sq.ft., which is resisted by complainant, Metropolis Resident Welfare Association (for short, MRWA). After hearing the parties, Ld. Authority below stayed the effect and operation of the circular issued by the promoter and also mentioned in the impugned order that such interim order shall be subject to final adjudication of complaint before it. On 18.09.2018, 05.10.2018 was fixed for final arguments, which, according to Ld. Counsel for the parties, is now adjourned to 20.11.2018.

3. When the order impugned was passed, the appellant-promoter filed an appeal, in which, on 04.10.2018, this Tribunal passed the following order:

“Present appeal has been filed by the appellant being aggrieved against the interim order dated 18.09.2018, passed by Uttarakhand Real Estate Regulatory Authority (for short, RERA) in case No. 01/2017, Metropolis Resident Welfare Association vs. M/S Assotech Supertech(JV) and others, whereby RERA has stayed increase of common area maintenance charges from Re.1.00/- per Sq. Ft. to Rs. 1.50/- per Sq. Ft. RRERA has also clarified that this interim order shall be subject to final decision to be taken in the case which has been captioned above.

After hearing Ld. Counsel for the appellant, we direct issuance of notices to the respondent(s).

Issue notices to the respondent(s) for 25.10.2018 on admission. Steps be taken today itself by DASTI.

It is clarified that we have neither stayed the effect and operation of order dated 18.09.2018 nor we have stayed the ongoing proceedings before RERA.”

4. On 25.10.2018, an adjournment was sought on behalf of appellant. Since none was present for respondent, therefore, the appellant was directed to take fresh steps for service of notice upon the respondent, failing which it would be presumed that the appellant is not interested in pursuing its appeal.

5. Today, Sri Shashi Kumar, Advocate has appeared for the complainant-respondent (MRWA).
6. A Perusal of the order impugned would indicate that one of the parties (which party? It is not clear) insisted upon RERA to decide the interim relief application. Such an interim relief application relates to common area maintenance charges (CAMC). Ld. Authority below, it appears was of the view that the issue involved in interim relief application does not entail irreparable loss to the promoter. Ld. Authority below, was, therefore, of the opinion that such relief sought for in the interim relief application can be decided finally at the time of final adjudication of the complaint. Looking at the concept of balance of convenience, RERA found it proper to restrain the builder/promoter from realizing enhanced CAMC, which question shall be decided at the time of final adjudication of the matter before it. RERA also found that there appears to be no justification for enhancement of CAMC, at this stage.
7. After hearing Ld. Counsel for the parties and having carefully considered the submission made before this Tribunal, as also before RERA, a mention of which has been made by Ld. Authority below in the order impugned, we think that no irreparable loss would be caused to the promoter, if the Ld. Authority below has directed maintenance of *status quo*, in so far as realization of enhanced common area maintenance charges are concerned. Whether the promoter is entitled to enhance such charges from Re.1/- per sq.ft. to Rs.1.50/- per sq.ft., can very conveniently be decided by RERA at the time of final adjudication of complaint, which, according to Real Estate (Regulation And Development) Act, 2016 (for short, 'Act of 2016') should be decided, as far as practicable, within 60 days, as per the scheme of the Act.
8. In the grounds of appeal, the appellant has nowhere mentioned that MRWA was heard before enhancement of common area maintenance charges from Re.1/- per sq.ft. to Rs.1.50/- per sq.ft. Other points have although been taken in the grounds of appeal, but they are

general in nature and have no relevance to the decision of present appeal on merits.

9. If Ld. Authority below comes to the conclusion that the common area maintenance charges should be enhanced from Re.1/- per sq.ft. to Rs.1.50/- per sq.ft, the same may be realized from the allottees, from the date of issuance of circular. There is no legal impediment in it. It does not lie in appellant's mouth to say that the charges so enhanced, cannot, conveniently, be realized from the back date(when circular was issued). It appears that such maintenance charges have been increased *ex-parte*, without affording an opportunity to MRWA, in order to exert pressure on the residents to withdraw their complaint. *Prima facie*, it appears that the same was done in violation of the principles of natural justice. Moreover, loss, if any, caused to the promoter/ builder is measurable in terms of money, which can always be recovered from MRWA. It is quantifiable. Normally, the Appellate Tribunal would have granted stay on the order of Ld. Authority below, had the same not measurable in terms of money, provided there was a *prima facie* case.
10. The appellant has come before this Tribunal against an interim order. There is no dispute that the appellant cannot approach against any interim order, for, the Act of 2016 provides that any person, who is aggrieved with a decision, direction, order, can approach the Tribunal. Ld. Authority below admitted that when the complaint was filed, common area maintenance charges were Re.1/- per sq.ft and the allottees were paying the same to the promoter. When MRWA filed the complaint, then only common area maintenance charges were enhanced from Re.1/- per sq.ft. to Rs.1.50/- per sq.ft. In other words, common area maintenance charges were enhanced only when the complaint was filed by MRWA against the promoter. Whereas it is the submission of Ld. Counsel for the respondent that it was a pressure tactics of the promoter against the allottees, Ld. Advocate appearing for the appellant denied the same. Be that as it may, the fact remains that the charges were enhanced without affording any opportunity of hearing to the Residents' body. This Tribunal also finds a *prima facie* case in favour of respondent, in the given set of facts. We have already

observed above that no irreparable loss will be caused to the appellant, if the issue is decided, at the time of final adjudication of the complaint, in their favour. Lastly, balance of convenience is also in favour of respondent (MRWA)/

11. We are unable to take a view contrary to what was taken by RERA. The appeal, therefore, fails and is dismissed.
12. RERA is requested to decide the complaint of MRWA as expeditiously as possible, in accordance with the scheme of the Act, untrammelled by any of the observations, made by us, in the foregoing paragraphs of this judgment.

(D.K.KOTIA)
MEMBER

(JUSTICE U.C.DHYANI)
CHAIRPERSON

DATED: OCTOBER 31, 2018
DEHRADUN

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