

**BEFORE MAHARASHTRA REAL ESTATE
APPELLATE TRIBUNAL MUMBAI**

M.A. No. 167/23 (Strike Out Name of R-2)

In

11) Appeal No. AT006000000053300/21

Mehmood Alam Khan & 3 Ors.

... Appellants

V/s.

M/s Sapankumar Naskar & 3 Ors.

... Respondents

Adv. Ms. Vandana for Appellants

Adv. Mr. Jayprakash Tiwari for Respondent No. 2

None for Respondent Nos. 1, 3 and 4

**CORAM : SHRI S. S. SHINDE J., CHAIRPERSON &
DR. K. SHIVAJI, MEMBER (A)**

DATE : 8th April, 2024

(THROUGH VIDEO CONFERENCE)

None for Respondent Nos. 1, 3 and 4.

Misc. Application No. 167/23

In this captioned Misc. Application, Respondent No. 2 is praying to strike out the name Mr. Vijay Somdata Nagpal from the array of Respondents in the Appeal on the grounds mentioned in the Application. Advocate Mr. Tiwari learned Counsel for Respondent No. 2 further submits that Respondent No. 2 was not shown as the party Respondent in the array of the Respondents, in the impugned order dated 6th November, 2019, neither documents were served upon him before passing the said order passed by the MahaRERA dated 6th November, 2019. It is further submitted that, MahaRERA passed the



order dated 6th November, 2019 ex-parte against the Respondent No. 2. He further submits that the project registration does not contain the name of the Respondent No. 2 as a Promoter.

Advocate Ms. Vandana learned Counsel appearing for the Appellant vehemently opposed the Misc. Application by submitting that the complaint filed by the Appellants is against Respondent No. 2 and contains the name of the Respondent No. 2 which is evident from the complaint as on page No. 64. She further submits in her reply that Respondent No. 2 has given the power of attorney to Respondent No. 1 and the copy of the power of attorney has also been kept on record.

Perusal of record clearly shows that the complaint dated 16th November, 2019 is seen filed *inter alia* against the Respondent No. 2 and the Appeal is filed by challenging the orders dated 6th November, 2019 and 3rd June, 2021 both, though impugned order dated 6th November, 2019 does not show that the complaint proceedings has proceeded ex-parte. Whereas another impugned order dated 3rd June, 2021 passed by MahaRERA clearly shows that Respondent No. 2 was a party of the complaint proceeding and the impugned order has been passed ex-parte against the Respondent.

A perusal of the Application itself shows that the Respondent No. 2 and Respondent No. 1 have entered into tripartite agreement dated 23rd September, 2010 alongwith one Smt. Ashwini Mansukh Gindra. Para 9 also reveals *inter alia* that Respondent No. 2 and Respondent No. 1 mutually agreed to construct the residential-cum-Commercial building in question on the said plot and the perusal of the Misc. Application captioned clearly shows that Respondent No. 2 was very



much a part and parcel of the project construction.


In view of the above, we are of the considered view that Respondent No. 2 is a part and parcel and integral part as well as of the original complaint proceeding, is having inseparable activity of the Promoter/Co-Promoter. Moreover, the complaint is seen filed against Respondent No. 2 and is a necessary and essential party for effective adjudication of the controversy in question.

Accordingly, Respondent No. 2 is required to continue as a party in the array of Respondents in the Appeal proceeding and we proceed to pass the order as under:

ORDER

- (i) Misc. Application No. 167/2023 stands rejected.
- (ii) Respondent No. 2 will continue in the array of Respondent in the appeal ^{and if} will also pay cost of Rs.2,000/- in the Tribunal.
- (iii) Respondent No. 2 to deposit the cost of Rs.2,000/- in the Tribunal within 4 weeks.
- (iv) Compliance of costs of Rs.2,000/- is condition precedent for filing reply.


(DR. K. SHIVAJI)


(S. S. SHINDE, J.)