

Nalawade

**BEFORE MAHARASHTRA REAL ESTATE APPELLATE TRIBUNAL
MUMBAI**

**EX. NO. 25 OF 2023
IN
APPEAL NO. AT0060000000052964 OF 2022**

Mr. Arjun M. Gawade

... Applicant

-VS-

Kamal J. Joshi

... Non-applicant

*Mr. Nitin Kaskar, Advocate for Applicant a/w. Mr. Arjun M. Gawade,
Applicant-in-person.*

Mr. Deepan Dixit, Advocate for Non-applicant.

CORAM : SHRI SHRIRAM R. JAGTAP, MEMBER (J) &

DR. K. SHIVAJI, MEMBER (A)

DATE : 20th MARCH, 2024

(THROUGH VIDEO CONFERENCE)

Applicant in-person a/w. learned counsels for the parties
joined the conference.

2] Heard learned counsel for the parties *in extenso*.

3] By this Execution Application, Applicant is seeking for
enforcement of the judgment decree of this Tribunal dated 03rd August
2022.

4] Advocate Mr. Deepan Dixit appearing for Non-applicant
confirms that the Second Appeal before the Hon'ble Bombay High Court

has already been dismissed as withdrawn vide order dated 20.03.2023.

5] Learned counsel for Non-applicant further submits that the correct amount as per the judgment decree as given on page no.38 is ₹ 24,04,626/-. Whereas, on page no.39, learned counsel for Non-applicant himself has given calculation for the correct amount as "due and payable ₹ 30,04,614/-. Admittedly, ₹ 24,04,626/- has already been paid.

6] Perusal of order dated 25.08.2023 of this Tribunal has explicitly clarified that the interest payment will be as per Section 2(z)(a) of the Act of 2016, interest payable in case of the refund by Non-applicant Promoter will be from the date of payment made by the Applicant/ allottee to the Promoter.

7] It is disappointing to note that despite the explicit clarification sought by the Non-applicant/ Promoter itself on 25.08.2023 and even after submitting the correct calculations as per the judgment decree on page no.39 for ₹ 30,04,614/-, learned counsel for Non-applicant/ Promoter is *prima facie* erroneously making the submission that the amount payable is only ₹ 24,04,626/-.

8] In view of the submissions made by the parties, we are of the considered view that the judgment decree needs to be implemented. Accordingly, amount of ₹ 30,04,614/- as per the calculations submitted by



none other than Non-applicant/ Promoter itself as on page no.39 need to be paid immediately without any further delay along with the accrued interest at prescribed rate.

9] At this stage, learned counsel for Non-applicant/ Promoter submits that the remaining amount of ₹ 05,99,988/- has also been deposited in the Tribunal on 01/09/2023.

10] In view of the submissions made and the deposits already made by the Non-applicant promoter, there is no impediment if this amount of ₹ 05,99,988/- deposited in the Tribunal along with accrued interest, if any is allowed to be withdrawn by the Applicant/ Allottees.

11] Mr. Arjun M. Gawade, Applicant-in-person who is present today confirms that in view of above, captioned Execution Application be disposed of and he has no further grievance left based on the judgment decree if ₹ 05,99,988/- plus accrued interest is allowed to be withdrawn by him.

12] Registry is accordingly, directed to allow to withdraw this amount of ₹ 05,99,988/- along with accrued interest, if any, as and when the formal request is made by Applicant following the standard procedure.

13] Accordingly, Execution Application No.25/2023 stands disposed of on above terms.



14] No costs.

15] At this stage, learned counsel for Non-applicant seeks to stay this order for two-weeks.

16] Perused.

17] Judgment decree is dated 03/08/2022, which is more than 1 and half years and even then, despite being the promoter, Non-applicant has not complied with the judgment decree fully. Accordingly, the written submissions of the calculations filed by Non-applicant itself, after serving it to the other side, and in view of the fact that this amount has already been deposited in the Tribunal towards the satisfaction of the judgment decree, prayer of the Non-applicant/Promoter lacks substance and prayer of Non-applicant for stay is devoid of merit. Accordingly, the prayer for stay by Non-applicant/ Promoter stands rejected.



(DR. K. SHIVAJI)



(SHRIRAM R. JAGTAP, J.)