

NALAWADE/

BEFORE MAHARASHTRA REAL ESTATE APPELLATE TRIBUNAL, MUMBAI

MISC. APPLICATION NO. 196 OF 2023 (Amendment in Calculation)
along with
Ex. NO. 32 OF 2022
IN
APPEAL NO. AT006000000021267

- 1. Mrs. Monali C. Sutrave**
2. Mr. Chandrakant Maruti Sutrave ... *Applicants*
Shree Datt CHS., Flat No. 102,
Wing 3-D, New MHADA Colony,
Near NNP, Malad (East), Mumbai – 400097.

-VS-

M/s. Man Global Ltd

Office address:

101, Man House, S.V. Road,

Vile Parle (West), Mumbai – 400056.

... *Non-applicant*

Mr. Chandrakant Sutrave, one of the Appellants present in person.
Adv. Mr. Vinod Talreja for Respondent No.1.

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

DR. K. SHIVAJI, MEMBER (A)

DATE : 21st AUGUST 2023

(THROUGH VIDEO CONFERENCE)

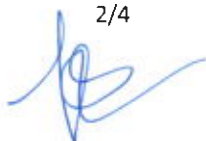
ORDER [PER: DR. K. SHIVAJI, MEMBER (A)]

MISC. APPLICATION NO. 196 OF 2023

By this Misc. Application No. 196 of 2023, applicants are seeking to amend the Execution Application No.32 of 2022, already filed for the Execution of order dated 10.06.2022 passed by this Tribunal in Appeal No. AT006000000021267 wherein, Applicants had challenged the order of MahaRERA passed in Complaint No. CC006000000012197.

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2. Heard learned counsel for parties in extenso.
3. Learned counsel for Applicants submits that captioned application is filed for amendment in para 10 of the original Execution Application No.32/2022 to correct certain inadvertent errors, which occurred due to oversight in calculating total amount due for the period from 01st January 2017 up till 28th February 2023 and after including the costs of Rs. 20,000/- as directed in the said Tribunal's order, which aggregates to Rs. 19,48,223/- and prayed for recovery of this amount by taking appropriate coercive steps. In addition, the interest per day of Rs.1,351/- is further accruing till the date of payment. Applicants have also attached detailed breakups of these calculations. Learned counsel for Applicants further submits that total amount calculated in the original Execution application was Rs.12,39,837/- after calculating the interest due from 01st January 2017 up to 22nd November 2019.
4. Learned counsel for Non-applicant vehemently opposed the said amendment application by filing its reply and further submits that calculation for amendment in the application is frivolous and deserves to be dismissed because, the impugned order was passed on 10.06.2022 by setting aside the impugned order passed by MahaRERA, whereas the execution application was filed for recovery of Rs.12,39,837/- for the dues calculated from 01st January, 2017 up to 12th November 2019 with costs of Rs.20,000/-, sought leave to file further detailed reply on Execution Application No.32/2022 and on the Misc. Application No.196/2023 filed by applicant herein. Further pleaded that Applicants are neither entitled for amount of Rs.12,39,837/- nor Rs.19,48,223 along with interest, which have been wrongly calculated by Applicants. Whereas Applicants are jointly entitled for only Rs.10,58,542/- and not for any other amount beyond this and the same is subject to Second Appeal No.123 of 2023. Since the order



of the Tribunal is under challenge, claim of Applicants is pending for decision in the Second Appeal before the Hon'ble Bombay High Court and sought leave to file further detailed calculations with accurate figures that is relevant to decide the execution application. Accordingly, according to Non-Applicant, said amendment deserve to be refused because this has been sought by Applicants are not just and are with an ulterior motive, but also to grab more money from Non-applicant without following the directions passed in the common judgment dated 10.06.2022 passed by the Tribunal. He further submits that in the event, such amendment is allowed and granted, Non-applicant will be put to heavy and irreparable losses, which cannot be compensated in terms of money and such amendment sought herein is abuse of the process of law.

- 5.** Perused.
- 6.** Appeal No. AT006000000021267 filed by applicants has been disposed of by this Tribunal on 10.06.2022, with direction to Promoter inter alia to pay Appellants Allottees/ Applicants herein, the interest @ 2% above the highest MCLR of the State Bank of India prevailing at the time of passing the impugned orders w.e.f. the next day of the date of possession as stipulated in the agreements for sale till the date of actual possession within a period of two months from the date of this order failing which, further interest at the aforesaid rate shall be payable by Respondent Promoter on the total amount payable on the date of actual possession till the payment of amount as directed and also directed to pay cost of Rs. 20,000/- to Appellants Allottees/ Applicants herein.
- 7.** Applicants have placed detailed calculation specifying the exact amount of dues to be recovered in terms of this Tribunal's order dated 10.06.2022, which is under execution.
- 8.** Date of agreement for sale executed between the parties is 18th July 2016



and the date of possession as per the agreement was 31st December 2016. In pursuant to the Tribunal's order dated 10.06.2022, Non-applicant has been directed to pay interest at prescribed rate from next day of the date of possession as per the agreement for sale. Accordingly, Applicants have correctly calculated details of interest from 01st January 2017.

9. Upon hearing learned counsel for parties and upon perusal of record, more particularly in the absence of any specific calculation of Non-applicant to controvert these claims made in the application, we are inclined to allow the Misc. Application No.196/ 2023 for amendment of original Execution Application No.32 of 2022 and we proceed to pass the order as follows;-

ORDER

- (a) Misc. Application No. 196 of 2023 is allowed.
- (b) Applicants to carry out amendment in the Execution No. 32/2022 within ten days from the date of uploading of this order and serve the amended copy to other side.
- (c) Liberty to Non-applicant to file additional reply, if any, within one week thereafter.
- (d) No costs.
- (e) Captioned Application No. 196 of 2023 stands disposed of on above terms.
- (f) In view of the Proviso of Section 44(4) of the Act of 2016, a copy of this order shall be sent to parties and MahaRERA.


(DR. K. SHIVAJI)


(SHRIRAM. R. JAGTAP, J.)