

Nalawade

**BEFORE MAHARASHTRA REAL ESTATE APPELLATE TRIBUNAL
MUMBAI**

MISC. APPLICATION NO. 1092 OF 2022 (Delay)

ALONG WITH

MISC. APPLICATION NO. 1093 OF 2022 (Stay)

ALONG WITH

REVIEW NO. 71 OF 2022

IN

APPEAL NO. AT005000000010772 OF 2019 (D.)

M/s. Creative Royal Associates & Ors.

... Applicant

-VS-

Mr. Virendra M. Deshpande

... Non-applicant

C.A. Mr. R. S. Prabhu for Applicant/ Promoter.

Mr. Virendra M. Deshpande, Non-applicants in-person.

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

DR. K. SHIVAJI, MEMBER (A)

DATE : 05th APRIL, 2024

(THROUGH VIDEO CONFERENCE)

Learned C. A. Mr. R. S. Prabhu appearing for Applicant submits that Review Application No.71/2022 has been filed primarily for seeking clarification with respect to the actual date of possession mentioned in the operative part in para 13 (1(a) of the order dated 24.12.2019 passed by this Tribunal.

2] He further submits that the project has already received occupation certificate from Pimpri-Chinchwad Municipal Corporation and is placed on record as on page no.76 on 15.04.2019, and this has been duly communicated vide email dated 04.06.2019 sent to the



Non-applicant /allottee and this email clarification was given in pursuant to the request made by the Non-applicant allottee seeking the copy of occupation certificate and the Non-applicant allottee has already occupied the subject flat even before that when the fit-out possession was given to him.

3] Non-applicant allottee confirms that completion certificate has already been received along with email dated 04.04.2019 from Applicant promoter. However, he submits that occupation certificate has not been received.

4] Perusal of occupation certificate dated 15.04.2019 issued by the Pimpri-Chinchwad Municipal Corporation, shows its title as completion certificate but it further certifies that the building is fit for occupation as is evident from its first paragraph as follows,

"..... महाराष्ट्र महानगरपालिका अधिनियम २०१२ (जुना मुंबई प्रांतिक महानगरपालिका अधिनियम १९४९)..... वरील परवानगी प्रमाणे अर्जदारानी यांनी काही इमारतीचे बांधकाम पूर्ण केले मुळे M/s. क्रीएटिव्ह असोसिएट तर्फे श्री महेंद्र ठाकूर यांना दि ०८/०३/२०१९ पासून खालील नमूद केलेल्या इमारतीचा भाग भोगवटा करणेस महाराष्ट्र महानगरपालिका अधिनियम २०१२ (जुना मुंबई प्रांतिक महानगरपालिका अधिनियम १९४९) कलाम २६३(१) अन्वये खालील आटीस अधिनराहून परवानगी देण्यात येत आहे. हा दाखला आज दिनांक १५/०४/२०१९ रोजी माझे सहीने व कार्यालयीन शिक्क्यानिशी दिला आहे."..

5] This certificate clearly contains the subject flat situated in 402 on the 4th floor is fit for occupation.



- 6] Accordingly, it is more than clear that the local authority who is the Competent Authority under the Act of 2016 has already issued Occupation Certificate for occupation of the subject flat on 15.04.2019.
- 7] Learned C. A. Mr. R. S. Prabhu appearing for Applicant promoter further submits that the building was already having all the basic amenities including for water supply, electricity connection and sanitation etc. As such, the Non-applicant allottee was already occupying another flat in the same building even at the time of fit-out possession and has actually occupied the subject flat after the receipt of the occupation certificate only after the direction of this Tribunal on 28.09.2022. Accordingly, Applicant promoter is liable to pay the delay interest as per the judgment dated 24.12.2019 only till the date of intimation of the occupation certificate up to 04.06.2019.
- 8] Non-applicant allottee vehemently contested this point and seeks one month time to file appropriate response on the above contentions raised by Applicant promoter.
- 9] Non-applicant allottee is directed to file its say on this point of taking the possession after the receipt of O.C on 04.06.2019 within one month and serve the copy of the same to the other side.
- 10] Stand over to 18th July 2024 for further consideration.


(DR. K. SHIVAJI)


(SHRIRAM. R. JAGTAP, J.)