

Nalawade

**BEFORE MAHARASHTRA REAL ESTATE APPELLATE TRIBUNAL
MUMBAI**

**MISC. APPLICATION NO. 762 OF 2022 (Stay)
WITH
MISC. APPLICATION NO. 603 OF 2023 (Waiver)
IN
APPEAL NO. U-7 OF 2022**

Abhijit Realtors & Infraventures Pvt. Ltd. ... Appellant

-VS-

The Jayanti Nagari III, Flats &
Row Houses Owners CHS Ltd. ... Respondent

APPEAL NO. U-19 OF 2022

The Jayanti Nagari III, Flats &
Row Houses Owners CHS Ltd. ... Appellant

-VS-

Abhijit Realtors & Infraventures Pvt. Ltd. ... Respondent

Mr. Tejal Thombre, Advocate for Promoter.
Mr. Ishwar S. Charlewar, Advocate for Allottees.

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

DR. K. SHIVAJI, MEMBER (A)

DATE : 21st FEBRUARY, 2024

(THROUGH VIDEO CONFERENCE)

Learned counsel for parties joined the conference.

MISC. APPLICATION NO. 603 OF 2023

Advocate Mr. Tejal Thombre appearing for Promoter submits
that completion certificate has been issued by the Gram Panchayat, Besa



(Beltarodi), Nagpur on 20.03.2013 and therefore Appellant promoter is seeking waiver of the pre-deposit towards the compliance of the Proviso to Section 43(5) of the Act of 2016.

2] Learned counsel for Respondent allottee vehemently opposed by submitting that the commencement certificate dated 24.05.2011 was issued by the Nagpur Improvement Trust and therefore the occupancy certificate issued by the Gram Panchayat is *prima facie* not valid and the gram panchayat is not competent according to ^{under the} law to issue completion certificate or the occupancy certificate. Therefore, the occupancy certificate issued by the Gram Panchayat on 20.03.2013 is not valid in law and in view of the provisions of the Act of 2016, Misc. Application No.603/2023 for waiver of pre-deposit towards the compliance of the Proviso needs to be rejected.

3] Heard learned counsel for parties.

4] Despite giving enough opportunity, Appellant has failed to produce and serve the copy of the relevant government order or notification according to which the Gram Panchayat is the competent authority after the receipt of the commencement certificate by the Nagpur Improvement Trust.

5] Advocate Mr. Tejal Thombre failed to produce any relevant documents in support of his contentions and merely submitted a bald

statement that as per the provisions of the Act of 2016, Gram Panchayat is the competent authority.

6] Perused.

7] Occupation certificate/completion certificate has to be issued by the competent authority more particularly, as per the provisions of the Maharashtra Regional and Town Planning Act, 1966.

8] Bare perusal of record reveals that gram panchayat is not competent authority for the project land to issue an occupation certificate.

9] By filing the captioned application, Appellant promoter is seeking waiver from the pre-deposit, which is statutorily mandatory requirement towards the compliance of the Proviso to Section 43(5) of the Act of 2016, to be fulfilled by Promoter Appellant before the Appeal is entertained.

10] In the impugned order dated 05th July 2022 in para 10, certain penalties have been imposed on the appellant for the violations of certain Sections under the Act. As per the provisions of Section 43(5) of the Act of 2016, compliance of the proviso is statutory and mandatory requirement before the appeal is entertained.

11] After hearing the parties, we are of the view that captioned Misc. Application No. 603/2023, seeking waiver cannot be granted *inter*



alia in view of the provisions under Section 43(5). Accordingly, we proceed to pass order as follows: -

ORDER

- a. Misc. Application No.603/2023 stands rejected.
- b. Appellant is directed once again to comply with the Proviso by depositing the entire amount as per impugned order dated 05th July 2022, failing which appropriate order will be passed.
- c. Misc. Application No.603/2023 is disposed of as above.
- d. No costs.

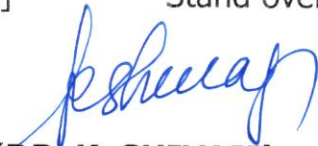
APPEAL NOS. U-7 OF 2022 AND U-19 OF 2022


Learned counsel for parties joined the conference.

2] Learned counsel for Appellant upon instructions seeks three weeks' time to pre-deposit the entire amount as per the impugned order dated 05th July 2022.

3] Appellant to file and serve the copy of the compliance report within 4 weeks from today, failing which appropriate order will be passed on the next date without any further reference.

4] Stand over to 01st April 2024 for compliance/ hearing.


(DR. K. SHIVAJI)


(SHRIRAM. R. JAGTAP, J.)