

**BEFORE MAHARASHTRA REAL ESTATE APPELLATE TRIBUNAL
MUMBAI**

**(1) M.A. No. 919/22 (Directions)
IN**

APPEAL NO. AT006000000010978/19

Navin Kumar

... Appellant

-VS-

Lucina Land Dev. Ltd. & Ors.

... Respondents

**(2) M.A. No. 721/22 (Prod. of Docs.)
WITH
M.A. No. 920/22 (Directions)
IN**

APPEAL NO. AT006000000041907/19

Mr. Nitin P. Parab & Anr.

... Appellants

-VS-

Lucina Land Developers Ltd

... Respondent

Mr. Satish Dedhia, Advocate for Appellants.

Mr. Abir Patel a/w Adv. Protyusha, Advocate for Respondent.

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

DR. K. SHIVAJI, MEMBER (A)

DATE : 7th DECEMBER, 2023

(THROUGH VIDEO CONFERENCE)

IN Misc. APPLICATION NO. 920/22

By this application, Respondent/Promoter is opposing the prayers made by the Appellants/Allottees regarding the said documents and is seeking to strike off these documents on the ground that these documents were never produced in the complaint proceedings. However, Non-applicants/Allottees vehemently opposed by submitting that these

documents were very much part and parcel of the complaint and have been referred as well in the complaint proceedings by submitting the list of documents which is the part of the appeal sets and the same is starting from page 40 onwards as attachments to this captioned complaint.

2. By this application, Applicant/Promoter is seeking not only to strike off each of these documents as referred in this captioned application but also sought to restrain Appellants/Allottees from pressing any of these in relation to the disputes. Learned counsel for Respondent/Applicant further submits that if the Tribunal feels that these documents are to be allowed then in that event, the appeal be remanded back for the adjudication afresh to the Authority below.


3. Applicant/Promoter submits that these documents were never placed and produced before the MahaRERA in the complaint proceedings and these documents cannot be allowed based on mere reference made in the relevant part of the complaint and in the appeal proceeding.

4. Learned counsel for Non-applicant/Allottee vehemently opposed the contentions raised by the Applicant by demonstrating various page numbers and the documents already placed in the appeal and are attachments of the captioned complaint, which are placed on page 40 onwards, ^{and} were filed along with complaint itself as well as these are the part of the complaint proceedings before MahaRERA itself.

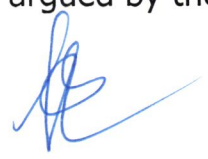
5. Learned counsel for Non-applicant/Allottee particularly referred the



para no. 1 of the impugned order dated 17th Oct. 2019, wherein, it is specifically referred as the said register agreement for sale dated 13th Jan. 2012 which is referred as Exhibit (J) and this is also a part of the appeal set as on page no. 131.

6. Perusal of these documents more particularly the list of the documents as on page no. 1107 clearly reveals that these documents are very much relevant and are required for effective adjudication of the disputes and controversies in the captioned appeal. Accordingly, in view of the peculiar facts and circumstances of the case and as per the provisions of the Order 41 Rule 27 (b), we are of the view that these documents are imperative to be referred to for effective adjudication by keeping the point of admissibility open to the other side to rebut  on the same on merits by the other side and without prejudice to the rights and contentions of the parties.

7. By this application, learned counsel for Applicant further contended that these grounds were not argued nor contested in the complaint proceedings by the Non-applicants/Allottees and therefore, these documents cannot be allowed to be produced in view of the judgment of the Hon'ble Supreme Court in the case of State of Maharashtra vs. Ramdas Shrinivas Nayak, (1982) 2 SCC 463 in the judgment dated 28th July 1982. Learned counsel for Applicant further contended that it is settled position of law that what were not argued by the Appellant, cannot be raised now

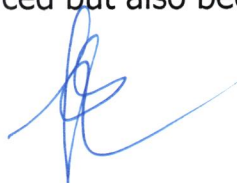


in the captioned appeal. Learned counsel further submits that these contentions have been raised for the very first time. Hence, these documents cannot be permitted to be referred to in the appeal and therefore, prayed to strike off these documents.

8. Learned counsel for Non-applicants/Allottees vehemently opposed the contentions of the Applicant by submitting that these documents and these grounds were part and parcel of the complaint and were part of the complaint proceeding and the points/grounds were raised, which are evident from the observations of MahaRERA as reflected in the para no. 1 of the impugned order itself, which are being reproduced therein. *"Therefore, they prayed inter-alia that the Respondent be directed to hand over possession of the apartments at the earliest, pay them interest for the delay."*

9. We have considered all the points raised by the Applicants and the submissions made by the learned counsel for parties and upon consideration, we are of the view that all these points raised are directly related and are relevant in the context of controversies in the complaint/appeal. Accordingly, Misc. Application No. 920/22 deserves to be dismissed.

10. Accordingly, we are of the view that these documents are prima-facie part and parcel of the complaint filed before MahRERA by Allottees and have not only been produced but also been referred in the impugned



order itself. Therefore, we do not find merits and substance in the contentions raised by Applicant/Promoter in the captioned Misc. Application No. 920/22. Accordingly, we proceed to pass the order as hereunder:

ORDER

a) Misc. Application No. 920/22 stands dismissed.

b) No costs.

11. Learned counsel for parties jointly submit that Misc. Application No.919/22 also contains similar points/grounds and submitted that the appropriate order be passed for disposal of the Misc. Application No. 919/22 as well.

12. Perused.

13. In view of the submissions made by the learned counsel for parties, more particularly having similar grounds and interconnected issues, the Misc. Application No. 919/22 will not survive. Accordingly stands rejected.

14. Upon consideration of the points raised hereinabove and in view of the peculiar facts and circumstances of the case, Misc. Application No. 919/22 also contains exactly the similar grounds and contentions, which are been raised by Applicant/Promoter. Accordingly, this Misc. Application No. 919/22 will also not survive and stands dismissed.

15. Both Misc. Application Nos. 919/22 and 920/22 are accordingly stand disposed of as dismissed.



16. No costs.

17. Liberty to parties to file additional affidavits/additional written submissions, if any.

18. Stand over to 5th Feb. 2024 for reply and hearing on remaining Misc. Application.


(DR. K. SHIVAJI)


(SHRIRAM. R. JAGTAP)

MS/-