

**BEFORE MAHARASHTRA REAL ESTATE APPELLATE TRIBUNAL
MUMBAI**

M.A. No. 61/23(Delay)

WITH

M.A. No. 62/23(Stay)

IN

APPEAL NO. AT005000000134140/23

M/s Shree Sai Associates

... Applicant

-VS-

Mr. Dnyaneshwar Popat Chaudhari & Anr.

... Non-applicants

Mr. Parth Chande, Applicant.

Mr. Dominic Braganza, Advocate for Non-applicants.

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

DR. K. SHIVAJI, MEMBER (A)

DATE : 13th OCTOBER, 2023

(THROUGH VIDEO CONFERENCE)

M. A. NO. 61/23

Adv. Dominic Braganza has no objection to condone the delay and therefore, Misc. Application no. 61/23 is allowed.

2) Being not objected, captioned Misc. Application no. 61/23 is allowed. Delay is condoned.

3) No costs.



IN APPEAL NO. AT005000000134140/23

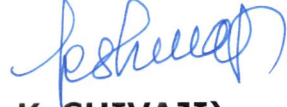
- 4) Adv. Dominic Braganza submits that he has already filed reply, which is at page no. 416 whereby has conveyed to allow the present appeal to be remanded to MahaRERA for fresh disposal.
- 5) Adv. Parth Chande also has no objection to remand the matter.
- 6) Perused.
- 7) Captioned appeal has been filed by challenging the order dated 12th Oct. 2020 passed by Ld. Adjudicating Officer, MahaREARA allowing to withdraw from the subject flat and declaring that the complainants are entitled for refund of all the paid amount together with the interest including stamp duty and costs of Rs. 20,000/-.
- 8) Ld. Adjudicating Officer in para 4 of the impugned order dated 12th Oct. 2020 has further formulated the points of determination the following points:
 - i) Whether the Complaints are entitled to withdraw from the project and for refund of amounts paid together with interest? **Findings-Yes**
 - ii) Whether Complaints are further entitled to recover compensation of Rs.2,00,000/- and equitable relief as sought in the complaint? **Findings- Yes Rs. 20,000/- cost of the proceedings.**
 - iii) What order? **Findings- As per final order.**



- 9) In view of settled position of law and more particularly in view of the judgment of the Supreme Court in the case of M/s. Newtech Promoters and Developers Pvt. Ltd. vs. State of Uttar Pradesh and others, Civil Appeal no. 6745-6749 of 2021, 2021 (11) ADJ 280, Ld. Adjudicating Officer is not having jurisdiction to consider the said relief sought in this captioned complaint.
- 10) In view of above, more particularly in view of judicial pronouncements and settled position of law, the matter is restored to file of the Authority to consider the matter afresh as expeditiously as possible.
- 11) Captioned appeal is partly allowed and impugned order dated 12th Oct. 2023 is set aside.
- 12) The complaint in respect of relief other than compensation is restored to file of the Authority and to be decided afresh as expeditiously as possible in accordance with law.
- 13) Liberty to Complainants to take appropriate recourse to get their grievance regarding compensation, if any ~~restress~~ ^{redressed} as per law.
- 14) All contentions of the parties are kept open.
- 15) No costs.
- 16) In view of above dismissal of appeal, above captioned pending miscellaneous applications will not survive. Hence, disposed of.



- 17) In view of the provision of section 44(4) of the Act, copy of the order be sent to parties, MahaRERA and Ld. Adjudicating Officer.



(DR. K. SHIVAJI)



(SHRIRAM. R. JAGTAP)

MS/-