

**BEFORE MAHARASHTRA REAL ESTATE APPELLATE TRIBUNAL,
MUMBAI**

**REVIEW APPLICATION NO. 10 of 2023
Along With
MISC. APPLICATION NO. 438 OF 2023 (Stay)
IN
APPEAL NO. AT006000000041843**

| | | |
|--------------------------------------------------|---|-------------------|
| Wadhwa Realty Pvt. Ltd. | } | ... Applicant |
| 301, Platina, G – Block, C-59, | } | |
| Bandra Kurla Complex, | } | |
| Bandra (East), Mumbai – 400 098. | } | |
| | } | |
| <i>versus</i> | } | |
| | } | |
| Mr. Atul C. Waichal | } | |
| A-7/1, Indrayudh CHSL, | } | |
| M.G. Road, Goregaon (West), | } | |
| Mumbai – 400 104. | } | ... Non-applicant |
| <hr/> | | |
| <i>Mr. Mayur Borkar, Advocate for Applicant.</i> | | |
| <i>None for Non-applicant.</i> | | |

**CORAM : SHRI SHRIRAM R. JAGTAP, MEMBER (J)
& DR. K. SHIVAJI, MEMBER (A)**

DATE : 15th SEPTEMBER 2022

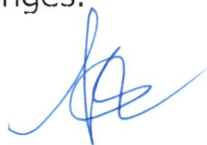
(THROUGH VIDEO CONFERENCE)

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

By this application, applicant is seeking review of the order dated 15th March 2023 passed by this Tribunal in the captioned appeal under Section 53 (4) (e) of The Maharashtra Real Estate (Regulation and Development) Act, 2016 (in short, the Act).



2. Heard learned counsel for Applicant on 06th September 2023. None appeared on behalf of non-applicant.
3. Perused record.
4. Applicant is promoter and non-applicant is an allottee, homebuyer and complainant before the Maharashtra Real Estate Regulatory Authority (in short "MahaRERA").
5. Applicant had preferred the captioned appeal challenging the order dated 3rd August 2019 passed by learned Member, MahaRERA, wherein Applicant was directed *inter alia* to pay interest at prescribed rate to non-applicant with effect from 01st July 2018 till the date of obtaining the occupation certificate. After hearing the parties, this Tribunal dismissed the captioned appeal vide order dated 15th March 2023. Applicant has sought review of this very order dated 15th March 2023 citing following grounds: -
 - a. The impugned order has been passed on the ground that promoter being expert in the market, ought to have known that the project would require environmental clearance along with time required for this and accordingly, ought to have given the accurate date for possession. Tribunal ought to have considered that applicant made application around 14 months prior to the promised date of the possession to state level environment appraisal committee on 20th October 2016 itself. Thereafter Government of Maharashtra issued a notification in April 2017, for creation of environmental cell at the planning authority level.
 - b. Tribunal ought to have considered that SEIAA Committee meeting was held after a long gap of about nine months. Accordingly, applicant, in spite of being an expert in the real estate market, is not contemplated to estimate the time requires for Environmental Clearances due to such policy changes.



- c. Tribunal ought to have taken into consideration that even after creation of the environmental cell at the planning authority level, the first committee meeting was held only in October 2017, wherein the promoter was asked to resubmit an application in a new format.
- d. Tribunal ought to have considered that National Green Tribunal (NGT), vide its order dated 08th December 2017 calling upon MOEF to re-examine its notification with respect to the provisions governing the real estate project for certain built-up area on the ground that the said notification suffers from legal infirmity. Applicant was not in a position to decide the MOEF policy decision, which was stated to have suffered from legal infirmity.
- e. Tribunal ought to have considered that the change in Planning Authority could not have been contemplated by applicant and is not a situation, which arises in regular course of construction business.
- f. Tribunal ought to have considered that application for occupation certificate was made on 16th May 2018 itself. Whereas, by notification dated 23rd May 2018, Government of Maharashtra, MHADA has empowered as Planning Authority under its jurisdiction in Greater Mumbai area.
- g. Applicant has diligently complied with all the obligations in timely manner. Even though the tribunal cited the judgment of the Hon'ble Supreme Court in the case of M/s. Newtech Promoters and Developers Pvt, Ltd. Vs. State of U.P and Ors, [2021 SCC Online 1044] to consider the case of non-applicant relating to the factors beyond the control of applicant, Tribunal ought to have considered its inherent discretion with respect to the occurrence of force majeure events to extend the registration in the interest of justice.
- h. Applicant has *prima facie* strong case on merit and balance of convenience is in favour of applicant and if the relief prayed for in



the review application is not granted then, it will cause a grave and irreparable loss, severe prejudice, hardship, damage and injury to applicant. Accordingly, applicant prays for review of the order dated 15th March 2023.

6. After considering the aforesaid contentions of the applicant, solitary point that arises for our consideration is whether, the review application is maintainable as per law, for which, our finding is in the negative for the reasons as here under.
7. Tribunal has the power to review its order/ judgment, under Section 53 (4) (e) of the Act. Section 53 specifies that Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure but shall be guided by the principles of natural justice, subject to the provisions of the Act and shall have the power to regulate its own procedure. Further, Section 88 of the Act specifically provides that provisions of the Act shall be in addition to, and not in derogation of the provisions of any other law for the time being in force. In view of the section 88 of the Act, Order XLVII of the code of Civil Procedure relating to review may be relevant.
8. Even as per Order XLVII, an error, which is not self-evident and has to be detected by the process of reasoning, cannot be said to be an error apparent on the face of record and the same cannot justify in the exercise of power of review. Erroneous decision and error apparent on the face of record are distinctly different. Erroneous decision can be corrected only by the higher judicial forum and the error apparent on the face of record can be considered in exercise of the review jurisdiction. It is a settled position of law that review application has very limited purpose/scope and cannot be allowed to be in an appeal in disguise.



9. Applicant is seeking review of the order dated 15th March 2023, primarily on the ground that the delay in project completion happened on account of factors beyond the control of the applicant and has sought for consideration with respect to purported *force majeure* conditions/events beyond its control. However, perusal of the impugned order clearly reveals that this order has been passed after considering all the grounds, which have been raised in the captioned review application and after providing ample opportunities for hearing of the parties. In fact, perusal of para 20 of the impugned order further shows that all the grounds mentioned in the review application including the issue of stated delay on account of factors beyond the control of the promoter *inter alia* environmental clearances etc. have been particularly dealt with at length and the finding derived therein and are based on the ratio and dictum laid down by The Hon'ble Apex Court in the case of *M/s. Newtech Promoters and Developers Pvt. Ltd. Vs. State of U.P (supra)*.
10. As per Order XLVII, Rule 1 of the Code of Civil Procedure CPC, review of an order or judgement could be sought only on the grounds of (a) discovery of new and important matter or evidence, which even after exercise of due diligence, was not within the knowledge of the review applicant (b) Such important matters or evidences could not be produced by him at the time, when the decree was passed or order was made or (c) on account of some mistake/s or error/s apparent on the face of the record or any other sufficient reason.
11. Upon perusal of records and upon consideration of submissions made by applicant, we find that none of the grounds, which have been raised in the instant review application, are permissible within the law, Moreover, all the grounds mentioned in review application, have



already been considered at length and have been elaborately dealt with in the order dated 15th March 2023.

- 12.** In view of foregoing, we find that applicant has failed to point out any error apparent on the face of record in the order sought for review. Captioned application lacks substance, all the grounds mentioned in the review application have already been dealt with extensively in the impugned order with clear conclusions and considering the limited scope in exercising the power of review, we do not find force in the grievance of the applicants. Therefore, the review application being devoid of merits, deserves to be dismissed. Accordingly, we answer the point in the negative and proceed to pass order as under; -

O R D E R

- (a) Captioned review application stands dismissed.
- (b) No order as to costs.
- (c) In view of the provisions of Section 44(4) of the Act of 2016, copies of the order shall be sent to the parties and to MahaRERA.


(Dr. K. SHIVAJI)


(SHRIRAM R. JAGTAP J.)