

**BEFORE MAHARASHTRA REAL ESTATE APPELLATE TRIBUNAL
MUMBAI**

**M.A. No. 669/23(Delay)
WITH
M.A. NO. 651/23 (To reject plaint)
WITH
M.A. No. 625/23 (Restoration)
WITH
M.A. No. 459/23 (Rectification of Order)
WITH
M.A. No. 227/23(Stay)
IN
Ex. No. 43/2021
IN**

APPEAL NO. AT006000000041914/19

Nehal N. Thakkar & Anr.

... Applicants

-VS-

Viva Winner Venture Realtors LLP

... Non-applicant

Mr. Nikhil Kumar Thakkar, Applicant-in-person.

Ms. Aruna Chourasia, Advocate for Non-applicant.

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

DATE : 2nd NOVEMBER, 2023

(THROUGH VIDEO CONFERENCE)

ORAL ORDER

IN Misc. APPLICATION NO. 459/23

By this application, Promoters/Applicants are seeking rectification of the order of this Tribunal dated 25th Feb. 2021 in para no. 11(ii).

- 2) Adv. Aruna Chourasia submits that the impugned order dated 25th Feb. 2021 of this Tribunal has been received in Feb. 2021. However,

this application has been filed only on 21st July 2023 with delay of around 2 years and 5 months.

- 3) Adv. Aruna Chourasia further submits that application has been filed only after the execution application came up for hearing regarding calculation of the refund amounts.
- 4) Perusal of record reveals that there is an unduly long unexplained and inordinate delay around 2 years and 5 months in filing of this application without any tangible, cogent and convincing reasons, much less the sufficient reasons required to be explained for condonation of such long time period. No other convincing ground for condonation of delay has been filed/submitted.
- 5) Moreover, it is pertinent to note that this application has been moved by the Promoter, which is not a person of ordinary prudence, and the Promoter is expected to be more vigilant, alert, and conversant with the facts of the project. Applicant remained sleeping over its rights. Therefore, delay in filing of this application being unduly long and has remained unexplained. Since, the application is filed without any supporting cogent and convincing ground, we are of the view that delay in filing of this application is deserves to be rejected.
- 6) Accordingly, in view of rejection of condonation of delay, the



captioned Misc. Application No. 459/23 stands dismissed.

7) No costs.

Misc. APPLICATION NO. 669/23 along with Misc. APPLICATION NO. 625/23

- 8) By these applications, Allottees are seeking to restore the Misc. Application No. 689/22 to rectify the order passed by this Tribunal on the ground that the Misc. Application No. 459/23 has already been accepted/allowed by this Tribunal on 11th Sept. 2023 and was uploaded on 12th Sept. 2023. Thereby, according to Allottees/Applicants, the cause of action occurred on 12th Sept. 2023.
- 9) Perusal of record reveals that Misc. Application No. 689/22 on 23rd Oct. 2023 filed by Allottees/Applicants for rectification of the order dated 25th Feb. 2023 passed by this Tribunal has already been rejected vide detailed order dated 1st Mar. 2023.
- 10) Therefore, Allottees/Applicants have filed captioned Misc. Application No. 669/23 for restoration of this Misc. Application No. 689/22 by seeking the condonation of delay in filing of this Misc. Application No. 669/23 by submitting that time period from 1st Mar. 2023 to 12th Sept. 2023 are exempted under the limitation Act for filing the restoration application. No other ground for condonation



of delay has been pleaded.

11) Perusal of record further reveals that the Misc. Application No. 689/22 has already been rejected with the detailed reasoning and the present Misc. Application No. 669/23 has been filed for condonation of delay in filing of the restoration application no. 689/22 by condoning the delay on the ground mentioned in the Misc. Application No. 669/23 after a long delay from 1st Mar. 2023 with a delay of more than 196 days for which no cogent, convincing ground has been submitted. Accordingly, captioned Misc. Application 669/23 for condonation of delay stands dismissed.

12) No costs.

13) In view of the dismissal of the Misc. Application No. 669/23 for condonation of delay in filing of the Restoration Application No. 625/23, the Misc. Application No. 625/23 also will not survive. Accordingly, this Misc. Application No. 625/23 stands dismissed and disposed of.

14) Additionally, the Rectification Application No. 689/23 has already been rejected/dismissed on 1st Mar. 2023 itself. Accordingly, Misc. Application No. 669/23 and 625/23 both will not survive. Hence, disposed of.

15) No costs.



Misc. APPLICATION NO. 651/23

- 16) By filing this Application on 21st Oct. 2023, Allottees/Applicants are seeking to rejection of Misc. Application No. 459/23.
- 17) Perusal of record reveals that Misc. Application No. 459/23 has already been rejected and stands disposed of as above. Accordingly, captioned Misc. Application No. 651/23 has become infructuous and will not survive. It is further to note that Allottees are in the habit of filing a number of Misc. Applications without any supporting rationale and substance grounds. These Misc. Applications are devoid of merit and substance. This is evident from the record that Allottees/Applicants are in the process of wasting time of Tribunal by these Applications without any substance. Accordingly, Misc. Application No. 651/23 also stands dismissed with cost of Rs. 10,000/- to be paid in the Tribunal within 30 days, failing which this amount will ^{be ~~the~~ ed} recover following the standard procedure as arrears of land revenue.
- 18) Misc. Application No. 651/23 stands disposed of on above terms.



IN EXECUTION NO. 43/2021

- 19) By this Application, Allottees/Applicants are seeking execution of the judgment decree passed by this Tribunal dated 25th Feb. 2021. Wherein, the Promoter/Non-applicant has been directed to pay Rs.24,36,239/- to the Complainants along with amounts of Rs. 1,72,500/- and Rs. 48,718/- paid towards stamp duty and owner's contribution respectively with interest at the rate of 10.40% p. a. from the date of payments till final realization.
- 20) Adv. Aruna Chourasia submits that post-dated cheques for Rs.8,64,781/- and another cheque for Rs. 2,74,884/- have been sent to Allottees but they have refused to accept these cheques.
- 21) At this stage, Allottees submit that they are ready and willing to accept these cheques. Accordingly, Applicants/Allottees to accept all these amounts and after acceptance, if there is still some grievance left, then to file appropriate submission clearly specifying with detailed calculation strictly according to the impugned order under Act of 2016 and Rule made thereunder and serve copy of the same to other side.
- 22) Adv. Aruna Chourasia submits that these amounts will be sent to Allottees within one week.
- 23) Allottees to file and serve calculation details after taking into



account of these post-dated cheques, if there is any further grievance, then file their say within two weeks.

24) Liberty to Non-applicant to file rejoinder, if any.

25) Stand over to 19th Feb. 2024 for further consideration.



(DR. K. SHIVAJI)



(SHRIRAM. R. JAGTAP)

MS/-