

**BEFORE MAHARASHTRA REAL ESTATE APPELLATE TRIBUNAL
MUMBAI**

**M.A. No. 158/23 (Int. Relief)
WITH
M.A. No. 521/23 (Amendment)
WITH
Ex. No. 16/2022
IN
APPEAL NO. AT006000000052139/20**

Sana Hospitality Services Pvt. Ltd.

... Applicant

-VS-

Mrs. Sushila S. Malge

Propt. Of Mount Mary Builders. & 3 Ors

... Non-applicants

Mr. Jairam Chandani, Advocate for Applicant.

Mr. Vishal Phal, Advocate for Non-applicant nos. 3 and 4.

None for Non-applicant nos. 1 and 2.

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

DR. K. SHIVAJI, MEMBER (A)

DATE : 13th OCTOBER, 2023

(THROUGH VIDEO CONFERENCE)

M.A. No. 521/23

2) By this application, Applicant/executing applicant is seeking to amend the execution application no. 16/2022 on the grounds mentioned in the application in furtherance to the judgment decree dated 10th Dec. 2021 passed by this Tribunal *inter-alia* in para 14 (ii) directing Promoter to hand over the possession of subject flat within a period of 60 days from the date of order, failing which the Developer to pay interest at prescribed rate....

- 3) Adv. Jairam Chandani further submits that the subject flat under dispute has been alienated by the Non-applicant nos. 1 and 2 to third party, who are Non-applicant nos. 3 and 4 in this matter.
- 4) By this application, Applicant is seeking to amend the execution application for the possession of the said flat.
- 5) Adv. Vishal Phal vehemently opposed this application by submitting that Non-applicant nos. 3 and 4 were never the parties impleaded so far, neither in the complaint proceeding before MahaRERA nor in the appeal proceeding held in the Tribunal. Non-applicant nos. 3 and 4 are in possession of the flat based after formal receipt of possession by the Non-applicant nos. 1 and 2/promoters after the receipt of occupation certificate from 2019 onwards based on the registered documents.
- 6) In view of above, Non-applicant nos. 3 and 4 have also filed a civil suit and are pursuing it.
- 7) Adv. Vishal Phal further submits that an FIR against the Developer has already been filed and subject flat has been purchased after taking loan from HDFC bank.
- 8) Adv. Jairam Chandani in his rejoinder, further submits that he came to know about the alienation of the subject flat to the third parties/non-applicant nos. 3 and 4 *inter-alia* only after passing of the impugned order dated 10th Dec. 2021 by this Tribunal and the amendment sought in the captioned application is absolutely essential in regard for



execution of the order issued in the judgment decree by the Tribunal.

9) Perused.

10) Perusal of the impugned order more particularly para no. 14 (ii) clearly reveals that "the Promoter has been specifically directed to hand over the possession of the flat within a period of 60 days from the date of the order..." Accordingly, we are of the view that there is no impediment for allowing Misc. Application for to carry out the amendment sought herein and accordingly, we proceed to pass the order as follows.

11) Misc. Application no. 521/23 is allowed.

12) Applicant to carry out the amendment in the execution application within one week and serve and file the amended copy within one week thereafter.

13) Liberty to Non-applicants to file additional reply, if any on the execution amended application within three weeks thereafter.

14) Adv. Jairam Chandani further submits that Non-applicant nos. 1 and 2, despite the order of this Tribunal dated 21st Aug. 2023 and despite the undertakings given by the learned counsel for Non-applicant nos. 1 and 2 have not complied with the order for Rs. 10,000/- to be paid to Applicant as yet. At this stage, suddenly, Adv. A. S. Sayyed on behalf of Non-applicant nos. 1 and 2 appeared and submits that the amount of Rs. 10,000/- will be paid within two weeks



from today.

15) No costs.

16) Stand over to 19th Dec. 2023 for compliance and further consideration.


(DR. K. SHIVAJI)


(SHRIRAM. R. JAGTAP)

MS/-