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**BEFORE MAHARASHTRA REAL ESTATE APPELLATE TRIBUNAL
MUMBAI**

**EXECUTION APPLICATION NO. 84 OF 2019
IN
APPEAL NO.AT006000000010645 of 2018**

(1) Mr. Husain K. Zaveri]
 (2) Mr. Khozaima E. Zaveri,]
 Both residing at Flat No.20, 5th floor]
 65/67, Maskati Building, Nagdevi]
 Street, Mumbai-400 003.]

.. Applicants.

-VS-

Nirmal Lifestyle (Kalyan) Pvt.Ltd.]
 A Private Limited Company having]
 Its Corporate Office at 3rd floor,]
 Multiplex Building, L.B.S. Marg.,]
 Mulund (West), Mumbai-400 080.]

..Non-Applicant

Mr. Anosh Sequeira, Advocate for Applicants.
 Mr. Dharam Jumani, Advocate for Non-Applicant.

**CORAM : INDIRA JAIN J., CHAIRPERSON &
DR. K. SHIVAJI, MEMBER (A)**

DATE : 14th January, 2022.

(THROUGH VIDEO CONFERENCE)

ORDER [PER : INDIRA JAIN, J.]

By this application, complainants claiming themselves to be allottees seek execution of an order dated 28th March 2019 passed by Single Member Bench of this Tribunal in Appeal No.AT006000000010645

thereby allowing appeal and directing promoter to return Rs.12,84,189 along with interest as per Rule 18 of The Maharashtra Real Estate (Regulation and Development) (Registration of Real Estate Projects, Registration of Real Estate Agents, Rates of interest and Disclosure on Website) Rule 2017 (for short "Rules of 2017") to allottees from the date of payment till realization.

2] The facts giving rise to present Execution Application may be narrated in brief as follows –

(i) Complainants booked flat No.1604 in Non-Applicant's project "Thames", Wing-A on 19th October 2013 for total consideration of Rs.25,55,280/-. Applicants paid part consideration of Rs.12,84,189/-. At the time of booking it was agreed between the parties that possession of the flat would be handed over with occupation certification within three years from the date of booking.

(ii) As promoter failed to deliver possession on time allottees filed complaint before MahaRERA seeking directions to refund booking amount with interest thereon.

(iii) Upon hearing parties, learned Member, MahaRERA came to the conclusion that Section 18 of The Real Estate (Regulation and Development) Act, 2016 (for short "the Act") is not applicable and complainants are not entitled to seek any relief under Section 18(1) of the Act. Against the said order appeal was filed and above said order was passed by Single Member Bench of this Tribunal.

3] Non-Applicant/Promoter appeared in pursuance to the notice and raised preliminary objection to executability of the order dated 28th March 2019. It is contended that order dated 28th March 2019 passed by

Single Member Bench cannot be put to execution as Bench of Appellate Tribunal shall consists of at least one judicial member and one administrative or technical member as per Section 43(3) of the Act. It is submitted that Appellate Tribunal being creature of statute derives powers conferred under the statute and even composition of the Tribunal is required to be strictly in terms and mandates of Section 43(3) of the Act. It is contended that considering the mandatory requirements regarding constitution of Bench of Appellate Tribunal, order passed by Single Member Bench being nullity and void ab initio cannot be executed in law. In support thereof non-applicant placed strong reliance on **(i) Man Global Limited Vs. Bharat Prakash Joukani [(2019) SCC Online Bom 2466]** and **(ii) Order of the Hon'ble Bombay High Court dated 17th October 2019 in Larsen and Toubro Limited Vs. Ms. Rekha Sinha.**

4] Non-Applicant also relied upon judgment of the Hon'ble Supreme Court in **Sushil Kumar Mehta Vs. Gobind Ram Bohra (through LRS) [(1990) 1 SCC 193]** to submit that objection to inherent lack of jurisdiction can be raised at any time including in execution proceedings and therefore judgment delivered by Single Member Bench being nullity cannot be put to execution.

5] As non-applicant raised preliminary objection to maintainability of execution, the said preliminary objection is taken up for determination at the threshold as it goes to the root of execution application.

6] Heard learned counsel for parties.

7] Learned counsel for non-applicant reiterated the objections to



maintainability of execution application as raised in written submissions and case law referred in support thereof.

8] Learned counsel for applicant fairly conceded that issue regarding jurisdiction of Single Member Bench has been considered by this Tribunal vide order dated 6th January 2022 in Ex.Application No.70 of 2019 and appropriate order be passed in present case.

Perused order dated 6th January 2022 in Ex. Application No.70 of 2019. Upon considering comprehensive submissions of learned counsel for parties on preliminary objection regarding improperly constituted Bench, this Tribunal observed in paragraphs 9 to 15 as follows -

"9] The principal controversy regarding jurisdiction of Single Member Bench to entertain, hear and decide the appeal revolves round Section 43(3) and Section 45 of the Act of 2016. For ready reference these provisions are reproduced as follows-

Section 43(3)- Every bench of the Appellate Tribunal shall consist of at least one judicial Member and one Administrative or Technical Member.

Section (45) – Composition of Appellate Tribunal

The Appellate Tribunal shall consist of a Chairperson and not less than two whole time Members of which one shall be a judicial member and other shall be a Technical or Administrative Member, to be appointed by the appropriate Government.

Explanation – For the purposes of this Chapter-

(i) "Judicial Member" means a Member of the Appellate

Tribunal appointed as such under clause (b) of sub-section (1) of section 46;

- (ii) "Technical or Administrative Member" means a Member of the Appellate Tribunal appointed as such under clause (c) of sub-section (1) of section 46.

10] Further objection to constitution of Single Member Bench of Tribunal was raised before the Hon'ble Bombay High Court in **Man Global Limited Vs. Bharat Prakash Joukani and Larsen and Toubro Limited Vs. Ms. Rekha Sinha (supra)**. It has also been held by the Hon'ble Bombay High Court that an order passed by a Member of the Appellate Tribunal sitting singly is without jurisdiction and order passed by an improperly constituted Bench is void ab initio.

11] Learned counsel for non-applicant Nos.1 and 2 pressed into service the above mentioned authorities and contended that an order passed by improperly constituted Bench is not only without jurisdiction but also a nullity. Learned counsel submitted that such an order being nullity cannot be enforced even at the stage of execution. Placing strong reliance on the authorities referred in paragraph 3 above, learned counsel urged to dismiss the execution application on preliminary ground as order passed by Single Member Bench of the Tribunal is without jurisdiction and being nullity cannot be enforced.

12] In reply to preliminary objection learned counsel for applicant relied upon the judgment of the Hon'ble Supreme