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**BEFORE MAHARASHTRA REAL ESTATE APPELLATE TRIBUNAL
MUMBAI****MISC. APPLICATION NO. 14 OF 2021 (Review)
IN
APPEAL NO.AT006000000052700**

Mr. Paresh Parihar & Another ...Applicants

-vs-

Kiyana Venturers LLP. ...Non-Applicants

Mr. Mayur Khandeparkar a/w Mr. Abir Patel, Advocates i/b M/s Wadia
Ghandy & Co., for Applicants.Mr. Vipul J. Shah, Advocate for Non-Applicant.
-----**CORAM : INDIRA JAIN J., CHAIRPERSON &
S.S. SANDHU, MEMBER (A)****DATE : 13th October, 2021**

(THROUGH VIDEO CONFERENCE)

ORDER [PER : INDIRA JAIN, J.]

Heard learned counsel for parties at length. Perused record.

2] Applicants are allottees and respondents whereas non-
applicant is developer and appellant in present appeal.**3]** By the instant application, allottees are seeking review of the
order dated 12th February 2021 passed by this Tribunal on the following
grounds:

- (i) The order is not in line with the proviso to Section 43(5) of the Act as the intention of legislature is clear from the proviso that appellant being promoter is required to deposit 100% interest and compensation for entertaining the appeal and Tribunal has no powers either to reduce the amount or waive the same as compliance to the proviso is mandatory.
- (ii) Directing the promoter to deposit 50% amount cannot be termed as legal, appropriate and correct and the same needs to be modified to bring in conformity with the settled position of law.
- (iii) In identical situation and facts Co-ordinate Bench of this Tribunal in **Parinee Realty Pvt. Ltd. Vs. Mr. Rajiv Govind Dharwadkar & Anr.** [Misc. Application No.490 of 2020 in Appeal No.AT006000000031724 vide order dated 22nd February 2021] reviewed its own order directing the promoter to deposit 40% of amount towards pre-deposit and rectified the same being an error apparent on record.
- (iv) The Co-ordinate Bench of this Tribunal in (i) **Avaresekar Realty Pvt. Ltd. Vs. Ashok Paranjpe & Anr.** [Misc. Application No.469120 in Appeal No.AT006000000052775 and (ii) **M/s Sankalp Siddhi Developers Pvt. Ltd. Vs. Prapti Malhotra & Ors** [Appeal No.AT006000000052963] also observed that proviso to Section 43(5) of

the Act requires the promoter to deposit entire amount and Tribunal has no powers to reduce or review the same so far as interest and compensation are concerned.

(v) The principle of estoppel does not apply against mandate of law. Proviso to Section 43(5) of the Act is mandatory and therefore order of pre-deposit passed to the extent of 50% needs to be corrected by exercising powers of review under Section 53(4)(e) of The Real Estate (Regulation and Development) Act, 2016.

(vi) The fundamental principles regarding review are well settled and it is the duty of Tribunal to set right any mistake, error or omission apparent on record. In support reliance is placed on decisions of the Hon'ble Supreme Court in **(a) Honda Siel Power Products Ltd. Vs. CIT [295 ITR 466]** and **(b) ACIT Vs. Saurashtra Kutch Stock Exchange Ltd [305 ITR 227]**.

4](i) Learned counsel for appellant seriously objects the Review Petition and submits that change in law will not affect the prior decisions and there is no reason to review or recall previous order. Learned counsel submits that in compliance to the directions issued by Tribunal, appellant has deposited Rs.52,10,000/- on 5th April 2021 and filed affidavit of compliance on 7th April 2021. Copy of affidavit of compliance was served

upon respondents on the same day and respondents did not raise any objection to the same till filing of Review Petition on 25th June 2021. It is contended that just to delay the application for stay preferred by appellant, present application (review petition) has been preferred despite compliance of the order of predeposit. According to learned counsel the scope of review is very limited to situations where there is an error apparent on the face of record or for production of important evidence which could not be produced despite diligence. Learned counsel submits that none of the criteria is met by respondents and as change in law can never be a ground for review, application deserves to be dismissed.

(ii) Learned counsel then submits that allowing such application would open the flood gate and would result into a dangerous situation.

(iii) On the law relating to power of review, learned counsel relies upon

(a) Beghar Foundation through its Secretary & Anr. Vs. Justice K.S. Puttaswamy (Retd.) & Ors. [Supreme Court Order dated 11.01.2021].

(b) Patel Narshi Thakershi & Ors Vs. Shri Pradyumansinghji Arjunsinghji [1971 (3) SCC 844)].

(c) Ram Sahu (Dead) through LRs and Ors. Vs. Vinod Kumar

Rawat & Ors [2020 SCC Online SC 896].

(d) Shanti Devi Vs. State of Haryana & Ors. [(1999) 5 SCC 703].

(iv) It is further submitted that Review Application runs contrary to the principles of stare decisis and therefore does not stand in law. In support thereof, learned counsel relies upon Judgments of the Hon'ble Supreme Court in (a) C. Golak Nath & Ors. Vs. State of Punjab & Ors. [AIR 1967 SC 1643], (b) Managing Director, ECIL, Hyderabad Vs. B. Karunakar & Ors. [(1993) 4 SCC 727] and (c) Shanker Raju Vs. Union of India [(2011) 2 SCC 132)].

(v) Next contention raised by learned counsel for appellant is that powers of review cannot be exercised under Section 53(4)(e) and Regulations 24 and 25 as orders passed by Co-ordinate Bench were later in point of time to order dated 12th February 2021. It is submitted that powers of review envisaged under Section 53(4)(e) and Regulations 24 and 25 enable the Tribunal to bring about a smooth transition by correcting its error without disturbing impact of these errors on the past orders. Learned counsel urged not to entertain Review Application considering the essential distinction between the principle of stare decisis and doctrine of prospective overruling.