

**MAHARASHTRA REAL ESTATE APPELLATE TRIBUNAL****Application for Execution No. 27****In****AT006000000000120**

Mr.Ashutosh Suresh Bag .... Applicant

Versus

Mr. Darode Jog Kulkarni & Ors. .... Respondents

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Applicant in person.

Mr. Vikrant Salunke, representative of respondents

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**Coram : S.S. Sandhu, Member (A)**

**Date : 16<sup>th</sup> May, 2019**

**JUDGMENT (Per S. S. Sandhu, Member(A))**

Heard the parties.

2. The applicant/allottee filed an application with MahaRERA in December 2018 for execution of order dated 18.1.2018 of MahaRERA and order dated 2.5.2018 of this Tribunal.

3. After conducting the case for some time, Learned Member has observed as under:



*“ The complainant has filed this complaint but in fact it is the application for execution of the order passed by this Authority in his complaint No. CC005/313 dated 18<sup>th</sup> January 2018. It has been confirmed by the Appellate Tribunal in Appeal No.AT006/120.*

*2. Since the appeal is dismissed, the order of the Authority has merged into the order of the Tribunal. Section 57 empowers the Tribunal to execute its own order. Hence, this complaint/application is being forwarded to the Hon'ble Appellate Tribunal for execution”.*

Consequently, the proceedings<sup>1</sup> forwarded/sent by learned Member & Adjudicating Officer, MahaRERA as received by this Tribunal was taken up for hearing.

3. Upon hearing the parties and on perusal of papers on record, it is observed that applicant as well as respondent had filed appeals challenging the order dated 18.1.2018 passed by the Authority. The appeal of applicant was dismissed with directions that the promoter shall make the payment to applicant within 60 days as directed by the Authority in the order dated 18.1.2018. In Appeal No. AT006000000000184 filed by respondent/developer, the Tribunal as per provisions of Section 43(5) of the RERA, directed the promoter on 11.4.2018 to deposit 50% of the amount as directed in the order dated 18.1.2018 of Adjudicating Officer. It was also informed that if



the amounts are not deposited, without further reference the appeal shall dismiss. As the promoter failed to comply with the said directions of depositing the amount mandated in terms of Sec.43(5) of RERA, the Appeal was dismissed on 2.5.2018.


4. It is noted that this case has similar facts and circumstances and identical question of law as involved in the case of Mr.Rustam Phiroze Mehta Vs. Marvel Dwellings Private Limited in Appeal No.0006000000000271. The said case was also forwarded/sent to learned Member to Tribunal for execution. This Tribunal after detailed reasoning therein has held that in such case, as the one under consideration, the forum of the first instance is the proper authority to deal with the issues of non-compliance of Authority's order. Therefore, in view of above, without further discussion it is suffice to observe that the instant application for execution can be disposed off as per the view already taken by this Tribunal in aforementioned case. Accordingly, following order is passed.

#### Order

- i) Execution proceeding in application No. 27 in AT0060000000000120 containing page No.1 to 76 is returned to the applicant for presenting the same before MahaRERA on or before 27.05.2019 for disposal as per law.



- ii) The learned Registrar of this Tribunal shall send a copy of this order to MahaRERA Authority for information and necessary action.
- iii) The learned Registrar of this Tribunal shall follow the provisions laid down under Order 7 Rule 10 of the Civil Procedure Code for returning the Petition/Appeal for presentation to the proper forum.
- iv) The applicant may request the concerned Authority for expeditious disposal of proceeding if he so desire.

  
(S.S. Sandhu)