IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.172/2019

AVD Developers ..... Petitioner

Vs.

State of Maharashtra & Ors. ..... Respondents

Mr. Akshay Patil i/b. Mr. Satendra Kumar for the Petitioner
Mr. Kedar Dighe, AGP for Respondent Nos.1 to 3.

CORAM : K.K.TATED, J.
DATED : JUNE 10, 2019

P.C.

1 Heard. By this petition under Article 226 of the Constitution of India the Petitioner challenges the order dated 03.07.2018 passed by Respondent No.2 being the Additional Controller of Stamps, Mumbai in respect of GSO/32-B/12/2018.

2 The learned counsel for the Petitioner submits that as per the agreement for development dated 20.06.2013 they agreed to provide six flats to the owner for providing to the confirming party No.2 i.e. Veer Vikas Estate Pvt. Ltd. and Smt. Shweta Naresh Shah. He submits that as per the said agreement, in clause 3, it is specifically stated that the Builder will provide six flats to the owner for transfer in the name of second party. Clause 3 of the agreement reads thus:

> *"3. In consideration of the Owners having agreed to grant development rights to the Developers in respect of the said property the Developers shall provide to the*

owners self contained flats in the building proposed to be constructed on the said property by utilizing the FSI arising out of the said property as also by utilizing the outside TDR/FSI thereon and the fungible FSI in accordance with the D.C. Regulations. The Developers shall amend the sanctioned building plans and utilize the outside TDR/FSI and the fungible FSI at their costs, charges and expenses. The Developers shall be entitled to 5 flats of 97 sq.mtr. built up area per flat coming to their share on ownership basis. The sadi flats shall be located between 9th to 13th floors of the proposed building or as per the plan approved by B.M.C. The Developers shall also provide four flats of 97 sq.mtr. on two flats of 97 sq.mtr. having total area of 582 sq.mtr. built up area directly to the Second Confirming Party from 3rd to 8th floor as per the details set out in Annexure B hereto for and on behalf of the owners. The Developers shall construct the said flats as mentioned hereinabove thereafter enter into sale deed with second confirming party. The second confirming party agreed to register the sale deed in respect of above four plus two flat total admeasuring 582 sq.mtr. The stamp duty & Registration should be borne by second confirming party save and except the said five flats and the said flats to be provided to the Second Confirming Party, the Developers shall provide the remaining flats to the Owner. The Developers shall be entitled to consume the FSI available at present in respect of the said property and also to consume the TDR FSI available by treating the said Property as a residential Property and the Fungible FSI or other area available by payment of the premium or otherwise in accordance with the present Development and Control Regulations and the Developers shall have the plans sanctioned and construct the building accordingly."

3 The learned counsel for the Petitioner submits that it is agreed between the owner and the second party that all stamp duty charges shall be paid by the second confirming party. He submits that instead of that by order dated 03.07.2018 the Petitioner is called upon to pay stamp duty on those six flats.

4 After arguing for some time, the learned counsel for the Petitioner submits that they are ready and willing to pay the stamp duty on those flats but the confirming party No.2 must get benefit of the stamp duty.

5 At this stage, the learned AGP for Respondent No.2 submits that as per section 4 of the Maharashtra Stamp Act, the Petitioners are entitled to the benefit of payment of stamp duty at the time of transferring those six flats in favour of the owner for the benefit of confirming party No.2.

Section 4 of the said Act reads thus:

> ***"4. Several Instruments used in single transaction of [development agreement] sale, mortgage or settlement.*** -
>
> *(1) Where, in the case of any [development agreement] sale, mortgage or settlement, several instruments are employed for completing the transaction, the principal instrument only shall be chargeable with the duty prescribed in Schedule-I for the conveyance, [development agreement] mortgage or settlement, and each of the other instruments shall be chargeable with a duty of [one hundred rupees] instead of the duty (if any) prescribed for it in that Schedule.*
>
> *(2) The parties may determine for themselves which of the instruments so employed shall, for the purposes of sub-section (1), be deemed to be the principal instrument.*
>
> *[(3) If the parties fail to determine the principal instrument between themselves, then the officer before whom the instrument is produced may, for the purposes of this section, determine the principal instrument:]*

Provided that the duty chargeable on the instrument so determined shall be the highest duty which would be chargeable in respect of any of the said instruments employed.

6 The learned counsel for the Petitioner submits that in view of the statement made by the learned AGP for the Respondent, he received instructions from his client to withdraw the present Writ Petition, in view of section 4 of the said Act. To that effect, he has given in writing. Same is taken on record and marked "X" for identification.

7 The Writ Petition stands disposed of as withdrawn in view of the statement made by the learned AGP for the State. No order as to costs.

(K.K.TATED, J.)