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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**SECOND APPEAL NO.267 OF 2023
WITH
INTERIM APPLICATION NO.4003 OF 2023
IN
SECOND APPEAL NO.267 OF 2023**

Fiona Realty Private Limited
(Formerly known as Ms. Vision Developers)

A Pvt. Ltd. Company

...Appellant

Versus

Fahim Kazi & Anr.

...Respondents

- Mr. Girish Godbole, Senior Counsel a/w Mr. Vikramjeet Garewal, Mangesh R. Kokare i/b. Zaid S. Ansari & Associates for the Appellant.
- Mr. Devendrakumar R. Tripathi for the Respondents.
- Mrs. Shabnam Mohd. Ali Panwalkar as Authorised representative of Respondents present in person.
- Mr. Ashfaq Malkani, Director of Appellant present in person.

CORAM : MADHAV J. JAMDAR, J.

DATE : 26th APRIL 2023

P.C. :

1. Heard Mr. Girish Godbole, learned Senior Counsel appearing for the Appellant and Mr. Devendrakumar R. Tripathi, learned counsel appearing for the Respondents.

2. Both Mr. Godbole, learned Senior Counsel and Mr. Tripathi, learned counsel state that the parties have settled the dispute and accordingly, Minutes of Order are arrived at in accordance with the

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terms of settlement. The said Minutes of Order are signed by the respective Advocates for identification.

3. Mr. Ashfaq Malkani, Director of the Appellant who is personally present in Court confirms the terms of settlement as set out in the Minutes of Order.

4. Mr. Tripathi states that the Respondents i.e. Fahim Kazi and Meenaz Fahim Kazi are presently at Dubai and therefore, are not in a position to remain present before this Court. However, he states that by email dated 25th April 2023 which has been received by learned Advocate Mr. Tripathi, the Respondents have consented for disposal of the Second Appeal in terms of Minutes of Order. They have authorised Mrs. Shabnam Mohd. Ali Panwalkar i.e. sister of the Respondent No.1 and sister-in-law of Respondent No.2 to appear before this Court and give consent for passing order in terms of the Minutes of Order. Said Mrs. Shabnam Mohd. Ali Panwalkar is present in the Court and she filed affidavit dated 26th April 2023 on behalf of the Respondents. The above-referred e-mail is annexed to the said Affidavit. In the said affidavit filed on behalf of the Respondents, it is *inter-alia* stated that Second Appeal be disposed of in terms of Minutes of Order. Said Minutes of Order are taken on record and

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marked 'X' for identification. The said affidavit of Mrs. Shabnam Mohd. Ali Panwalkar is taken on record and marked 'X1' for identification.

5. Said Minutes of Order read as under :-

"MINUTES OF ORDER DATED 26th APRIL, 2023

1. By consent of the parties, the following Order is passed.
2. The Appellant has handed over to the Respondents demand draft, bearing No.034953 (and Reference No. 045512034562), dated 20/04/2023 for a sum of Rs. 27,33,018/- (Rupees Twenty-Seven Lacs Thirty-Three Thousand Eighteen Only) drawn on HDFC Bank in favour of 'Fahim Abubakar Kazi', Respondent No. 1 and husband of Respondent No. 2, towards amount due and payable by the Appellant to the Respondents up to 31/03/2023 pursuant to Order dated 15/10/2020 passed by the Maharashtra Real Estate Regulatory Authority in the above Complaint No. CC006000000110834 of 2019. The Respondents confirm receipt of the above Demand Draft dated 20/04/2023 and the amount of Rs. 27,33,018/- (Rupees Twenty-Seven Lacs Thirty-Three Thousand Eighteen Only) and discharge the Appellant in respect thereof now and forever.
3. The Appellant undertakes to pay monthly interest at prevailing MCLR of SBI + 2% above the same, on the sale consideration of Rs. 67,52,000/- (Rupees Seventy-Seven Lacs Fifty-Two Thousand Only) on or before the 10th day of every successive month to be calculated on monthly rest from 01/04/2023 till the Appellant hands over the quiet, vacant and peaceful possession of the said Flat to the

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Respondents. At present, the prevailing MCLR of SBI is 8.5%. Therefore, as on date, the monthly interest would be calculated @ 10.50% and amounts to a sum of Rs. 59,080/- (Rupees Fifty-Nine Thousand and Eighty Only) per month. The amount of monthly interest payable by the Appellant to the Respondents may increase or decrease as and when the MCLR rate is changed in future by the appropriate authority.

4. In the event of default on part of the Appellant in terms of making payment to the Respondents of the above monthly interest for the relevant month by the aforementioned due date, the Appellant undertakes to pay to the Respondents over and above the said monthly interest, further interest @ 10% on such monthly interest for the relevant month of default only.
5. In the event of three consecutive defaults on part of the Appellant in terms of making payment to the Respondents of monthly interest for the relevant months by their respective due dates as aforementioned, the Appellant undertakes to pay to the Respondents over and above the monthly interest for the respective months of default as set out in Clause 3 hereof, penalty @ Rs. 1,000/- per day from the date of first default till full payment of all dues concerning the three months is made by the Appellant to the Respondents. In such an eventuality and considering the consequential levy of penalty in the sum of Rs. 1,000/- per day upon the Appellant, no amount towards further interest @ 10% shall be payable by the Appellant to the Respondents as per preceding Clause 4 hereof. By consent, parties agree that the levy of penalty in the sum of Rs. 1,000/- per day upon the Appellant in the eventuality mentioned above is fair, reasonable and correct.

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6. The Appellant undertakes to hand over the quiet, vacant and peaceful possession, after obtaining Occupation Certificate, of Flat No. 604 situated at 6th Floor of A Wing, Vision Heights, Bandivali Hill Road, Jogeshwari (W), Mumbai- 400 102 (**“the said Flat”**), being the residential premises constituting the subject matter of the present proceedings, to the Respondents **latest by 30/12/2025**, being the date by which the real estate project wherein the said Flat is situated is to be duly completed as per the information published on portal of Maharashtra Real Estate Regulatory Authority by the Appellant.
7. By consent of the parties, the original Order dated 15/10/2020 passed by the Maharashtra Real Estate Regulatory Authority in the above Complaint No. CC006000000110834 of 2019 stands modified and substituted in the above terms.
8. In light of the above, all consequential orders and measures and/or acts towards, in furtherance of and/or pursuant to execution of the said Judgment and Order dated 15/10/2020 passed by the Hon’ble Maharashtra Real Estate Regulatory Authority, Mumbai in Complaint No. CC006000000110834 of 2019 are hereby set aside, including:
 - (i) The Order dated 22/06/2022 passed by the Hon’ble Maharashtra Real Estate Regulatory Authority, Mumbai in the Non-Execution Application taken out by the Respondents in the said Complaint No. CC006000000110834 of 2019 against the Appellant, at Exhibit “G” to the Additional Affidavit in Support of Interim Application No. 4003 of 2023 taken out by the Appellant in the above Second Appeal;

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- (ii) Recovery Warrant bearing No. MahaRERA/ VH/ WARRANT/ 09/11/2022, dated 16/11/2022 issued by the Hon'ble Maharashtra Real Estate Regulatory Authority;
- (iii) Order dated 07/02/2023 passed by Ld. Collector in furtherance of the said Recovery Warrant dated 16/11/2022; and
- (iv) Recovery Certificate/notice, bearing No. Tah/Andheri/RRC/Maharera/Pra. Number 82/2022-2023, dated 09/03/2023 served by the Office of Tahsildar, Andheri upon the Appellant, at Exhibit "A" to the Additional Affidavit in Support of Interim Application No. 4003 of 2023 taken out by the Appellant in the above Second Appeal;
- (v) Notice of Demand to Defaulter under Form I also dated 09/03/2023 issued under Section 178 of the Maharashtra Land Revenue Code, 1966 by the Office of Tahsildar, Andheri to the Appellant, also at Exhibit "A" to the Additional Affidavit in Support of Interim Application No. 4003 of 2023 taken out by the Appellant in the above Second Appeal;

9. All concerned to act on authenticated copy of this Order."

6. It is also recorded that in the Court Mr. Girish Godbole, learned Senior Counsel has handed over to Mr. Tripathi, learned counsel appearing for the Respondents, a Demand Draft of Rs.27,33,018/- (Rupees Twenty-Seven Lacs Thirty-Three Thousand Eighteen Only) which is mentioned in Clause No.2 of the Minutes of Order.

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7. Mr. Ashfaq Malkani, Director of the Appellant who is personally present in the Court gives undertaking to comply with various terms and conditions of the Minutes of Order. The undertakings as contained in Minutes of Order in paragraph Nos.3 to 6 are accepted as undertaking given to the Court personally by Mr. Ashfaq Malkani.

8. Second Appeal is disposed of in terms of Minutes of Order.

9. In view of the disposal of the Second Appeal in terms of Minutes of Order, the judgment and order dated 15th October 2020 passed by the Maharashtra Real Estate Regulatory Authority, Mumbai in Complaint No.CC006000000110834 of 2019 including all consequential orders stand modified and the said complaint is disposed of in terms of Minutes of Order.

10. In view of aforesaid, order dated 22nd June 2022 passed by the Maharashtra Real Estate Regulatory Authority in Non-execution Application in Complaint No.CC006000000110834 is set aside.

11. In view of disposal of the Second Appeal, nothing survives in the Interim Application and the same is also disposed of.

[MADHAV J. JAMDAR, J.]