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

**SECOND APPEAL NO. 353 OF 2023
WITH
INTERIM APPLICATION NO. 13076 OF 2023
WITH
INTERIM APPLICATION NO.13093 OF 2023**

Mount Marry Builders
sole proprietorship concern of
Sushila Suresh Malge
through its Power of Attorney Holder
Suresh Babu Malge ...Appellant
Versus
Tajbar Aslam Saudagar ...Respondent

Mr. A. S. Sayyed, i/b. S. S. & Associates, for the Appellant.

Ms. Nidhi Singh, i/b. India Law LLP, for the Respondent.

**CORAM : MADHAV J. JAMDAR, J.
DATED : 28th JULY 2023**

P.C. :

1. Heard Mr. Sayyed, learned counsel appearing for the Appellant and Ms. Nidhi Singh, learned counsel appearing for the Respondent.
2. In the present Second Appeal, the challenge is to the legality and validity of the impugned order dated 22nd February 2022 passed by the

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learned Maharashtra Real Estate Regulatory Authority, Mumbai. By the said order, the present Appellant was directed to refund the entire amount paid by the Respondent i.e. Complainant along with interest at the rate of SBI's Highest Marginal Cost Lending Rate (MCLR) plus 2% as prescribed under the provisions of Section-18 of the Real Estate (Regulation and Development) Act, 2016 and the Rules made thereunder from the date of payment till the actual realization of the said amount.

3. The present Appellant filed Miscellaneous Application No.222 of 2023 seeking condonation of delay in filing the Appeal challenging said order dated 22nd February 2022. The said Miscellaneous Application was dismissed by the learned Appellate Tribunal by order dated 26th April 2023.

4. During the pendency of this Second Appeal, the parties have arrived at a settlement and the Respondent has agreed to accept Rs.1,30,00,000/- as full and final settlement amount in terms of order passed by the MAHARERA.

5. Today, Mr. A. A. Sayyed, learned counsel appearing for the Appellant has handed over to Ms. Nidhi Singh, learned counsel

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appearing for the Respondent two Banker's Cheque dated 28th June 2023 and 26th July 2023 each issued by the Bank of Baroda for an amount of Rs.34,18,840/- and Rs.90,00,000/- respectively.

6. Mr. Sayyed, learned counsel appearing for the Appellant has also handed over a cheque dated 4th August 2023 towards the balance amount of Rs.5,81,160/- and issued in favour of Respondent. Mr. Sayyed on the instructions of the Appellant states that the said cheque will be honoured on presentation. The said statement is accepted as undertaking given to this Court.

7. The order dated 22nd February 2022 passed by the learned Authority in Complaint No.CC006000000196821 and as confirmed by the Appellate Tribunal in view of consequence of rejection of delay condonation application is set aside by consent.

8. By consent, the said complaint is disposed of by passing the order that Appellant will pay above referred amount of Rs.1,30,00,000/- as full and final settlement to the Respondent and the said complaint is disposed of in terms of this order.

9. Accordingly, the Second Appeal is disposed of in above terms with no order as to costs.

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10. In view of the disposal of the Second Appeal, nothing survives in the Interim Applications and the same are also disposed of.

11. Accordingly, it is clarified that obligations under order passed in complaint are satisfied by above payments. Consequently the actions taken for execution of order dated 22nd February 2022 passed by learned Authority in Complaint No.CC006000000196821 are also quashed and set aside.

12. The learned Maharashtra Real Estate Regulatory Authority, Mumbai is directed to take further steps in accordance with this order.

13. Stand over to **10th August 2023** to ensure the compliance of this order.

[MADHAV J. JAMDAR, J.]