IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8454 OF 2024

Marvel Realtors and Developer Ltd. … Petitioner

versus

Seema Sureshchandra Mehata (since deceased through Lhr.) and anr. …. Respondents

Mr. Amit A. Gharte, Advocate for the Petitioner.
Mr. Kaustubh Patil along with Mr.Roshan Sawant, Advocate for Respondent Nos.1 and 2.

CORAM : R. M. JOSHI, J.

DATE : 6th SEPTEMBER, 2024.

P.C. :

1. Learned counsel for the petitioner seeks leave to amend the cause-title. It is his submission that inadvertently respondent No.1 is referred as deceased. He seeks correction of the same. Leave granted. Amendment be carried out forthwith.

2. This petition takes exception to order dated 10th May 2024 passed by Execution Court in Special Darkhast No.116 of 2022.

3. Undisputedly, the proceedings were filed under Real Estate (Regulation and Development) Act, 2016 (for short "RERA Act"). The adjudicating member and adjudicating officer of MAhaRERA passed order dated 16th August 2019. The operative part of the order reads thus :

> *a. The respondents shall pay simple interest on the complainants' amount from 1-1-2015 till 4-12-2018 @ 10.4% per annum.*

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b. The complainants shall pay the infra charges agreed by them with the same rate of interest from the dates agreed for their payments till they are paid.

c. The parties are at liberty to adjust their respective claims and any balance, if any.

d. On receiving the full agreed amount from the complainants, the respondents shall handover the possession of the offices with the copy of OC to the complainants.

e. Payment detail shall form part of the order.

3. There is no dispute about the fact that none of the parties have challenged this order and this has attained finality. Further there is no denial that both sides preferred execution proceedings. However, it is necessary to note that the execution proceedings were filed by the contesting respondent before RERA Authority and the petitioner filed it before the Civil Court.

4. Learned counsel for the petitioner submits that in view of the operative part of the order and more particularly clauses (b) and (d) thereof, there cannot be handing over of possession of the offices unless the full agreed amount from the complainant is received. It is his submission that clause (b) contemplates a payment of infra charges agreed by them with the same interest rate i.e. 10.4% per annum. He drew attention of the Court to certain calculations, which according to him is more than the amount offered by respondent due and payable to the petitioner. In the light of these facts, it is sought to be canvassed that the Execution Authority has failed to take into consideration the contention of the petitioner and passed order dated 10th May 2024. He also drew

attention of the Court to the provisions of Order XXI Rule 19 of Code of Civil Procedure 1908 with regard to the execution of decrees.

5. On the other hand, learned counsel for the contesting respondent has opposed the petition on the ground that the Execution Authority under the RERA Act has already issued a recovery warrant and the same has been issued after due consideration of the amounts payable by both sides. He submits these aspects are duly considered by the Execution Court and, hence, there is no reason or justification to cause any interference therein.

6. There cannot be any dispute made with regard to the fact that in view of the order passed by the RERA Authority, more particularly, clause (d) of the operative part, the possession of the offices was to be handed over to the complainant i.e. respondent herein on receiving full agreed amount by the petitioner from the complainant. In such circumstances, if there are rival contentions of the parties with regard to correct amount due and payable and received by them, it was incumbent on the part of the Execution Court to record finding to that effect.

7. Perusal of the impugned order passed below Exhibit-16 reads thus :

> *"2. Record shows that, The Maharashtra Real Estate Regulatory Authority has directed to the judgment debtor to handover possession of property to the decree holders by order dated 16.08.2019. There does not appear any stay to the proceeding. In Writ Petition No.5453 of 2021 Hon'ble High Court has*

> *directed to decide the matter expeditiously. It appears that, judgment debtor has failed to deliver possession of property to the decree holders. Decree holders have filed an affidavit at Exh.18 stating that, they paid agreed amount to the judgment debtor as directed by order dated 16.08.2019. In such situation, it will be just and proper to issue possession warrant. There is nothing on record to show that, warrant cannot be executed without Police protection. So, at this stage, it will not be proper to give any direction in that regard..."*

8. It is clear from the above quoted portion of the order that arguments now sought to be canvassed before this Court were not considered by the Execution Court. The Execution Court cannot pass order in the nature of the impugned order unless a satisfaction is recorded by the Execution Court about a due payment being made to the parties.

9. In the facts and circumstances of the case and more particularly in view of clause (d) of the order passed by RERA Authority, it was not be open for learned Execution Court to pass the impugned order without recording such satisfaction. As a result of this, order cannot be sustained. Hence, the order is set-aside. The proceeding is relegated back to the Execution Court for decision in accordance with law.

10. Considering the time lapsed in between, the Execution Court is directed to decide the execution proceeding within a period of three months from today.

11. The petition stands disposed of in above terms.

(R. M. JOSHI, J.)