

Ashwini

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 645 OF 2024

Hitesh Madhusudan Dave ...Petitioner
Versus
Shagun Realty & Ors ...Respondents

Mr Ketan Bawane, *for the Petitioner.*
Ms Payal Vardhan, *i/b Sharad Wakchoure, for Respondents Nos. 1 to 3.*
Mr Ashish Gaikwad, *with Anirudh Rote, for Respondents Nos. 4 to 6.*
Mrs SV Tondwalkar, *for the Respondent-BMC.*
Mr Atul Vanarse, AGP, *for the Respondent-State.*

CORAM M.S. Sonak &
Kamal Khata, JJ.
DATED: 11th June 2024

PC:-

1. Heard Mr Ketan Bawane, learned Counsel for the Petitioner. Ms Payal Vardhan, learned Counsel for Respondents Nos. 1 to 3. Mr Ashish Gaikwad, learned Counsel for Respondents Nos. 4 to 6. Mrs SV Tondwalkar, learned Counsel for the Respondent-BMC and Mr Atul Vanarse, AGP, for the Respondent-State.

2. In terms of our order dated 7th December 2022, we directed the Developer (Respondents Nos. 1, 2 and 3) to bring the Demand

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Draft of amount due and payable from January 2021 till date to be payable to the Petitioner on the next date. In the said order we had made it clear that the Petitioner may accept the amount without prejudice to his rights and contentions.

3. Accordingly, Ms Payal Vardhan now hands over the Demand Draft to Mr Ketan Bawane, learned Counsel for the Petitioner. This Demand Draft is in the amount of Rs. 5,33,000/-. This according to Ms Vardhan the amounts payable to the Petitioner from January 2021 till 31st May 2024.

4. Mr Bawane submits that this amount, which the Petitioner now accepts without prejudice is not in terms of Permanent Alternate Accommodation Agreement (“PAAA”). He submits that this amount is much lesser than what is due and payable to the Petitioner. Accordingly, we clarify that even though the Petitioner has now accepted this Demand Draft. The same is without prejudice and consequently, the Petitioner will be entitled to take such further steps as he may be advised in law for protecting his interest. The fact that a Petitioner has accepted, this will not construe any waiver.

5. The learned Counsel for the parties agree that since the main issue involved in the Petition was the payment of arrears and now that arrears have been paid (subject to the objections that the Petitioner may have to the quantum of other issues), this Petition can be disposed of by giving liberty to take out such proceedings as

he may be advised for recovery what the Petitioner considers the full and complete the arrears.

6. Accordingly, with the above liberty we dispose of this Petition.

7. Affidavit of Service is to be filed in the Registry.

(Kamal Khata, J)

(M.S. Sonak, J)