



WEB COPY



CMP. No28973 of 2023
in CMSA No. 44 of 2023

C.M.P. No. 28973 of 2023
in
C.M.S.A. No. 44 of 2023

R. MAHADEVAN, J.
AND
MOHAMMED SHAFFIQ, J.

(Order of the court was made by R.Mahadevan, J)

This civil miscellaneous petition is filed by the petitioner / appellant to modify the judgment dated 13.09.2023 passed in CMSA No.44 of 2023

2.According to the petitioner / appellant, the respondent preferred a complaint against the appellant alleging delay in completion and handing over the flat bearing No.J108, Casagrand Asta, Pattaravakkam Village, Ambattur Taluk, and claiming compensation for the same. After due contest, the Adjudicating Officer, TNRERA, Chennai, has passed an order dated 27.05.2022 in CCP No.10 of 2021 *inter alia* directing the appellant to pay compensation by way of interest at 9.30% from the respective dates of payments till the handing over the possession of the flat. Challenging the same, the appellant preferred an appeal in SR. No.189 of 2023, along with an application in MA No.58 of 2023 seeking to condone the delay of 210 days



CMP. No28973 of 2023
in CMSA No. 44 of 2023

in preferring the same. While so, the appellant has also made pre-deposit of Rs.37,42,279/- before the Tamil Nadu Real Estate Appellate Tribunal. However, the said condone delay application was dismissed, against which, the present appeal came to be filed by the appellant.

3.It is further submitted by the petitioner / appellant that during the pendency of the appeal, the possession of the flat was handed over to the respondent and a memo dated 13.09.2023 was also filed to that effect. On 13.09.2023, this court has recorded the said memo and disposed of the appeal in terms of the settlement arrived at between the parties. Now, the appellant / petitioner is before this court with the present petition to modify the said judgment passed in the appeal.

4.The learned counsel for the petitioner / appellant submitted that the petitioner / appellant has completed the construction in accordance with the timeline and was able to give possession and that, there was no delay attributable on their part in handing over the possession to the respondent. Hence, the appeal for delay compensation will have to be necessarily



CMP. No28973 of 2023
in CMSA No. 44 of 2023

contested on merits. Accordingly, in paragraph 6 of the memo dated 13.09.2023 filed in the appeal, it was specifically stated by the petitioner / appellant that the issue raised in the appeal preferred by them against the order passed in CCP No.10 of 2021 relating to the delay compensation and connected relief, shall be contested before the Tamil Nadu Real Estate Appellate Tribunal, on merits. Furthermore, in paragraph 5 of the said memo, it was categorically averred by the petitioner / appellant that the compromise recorded pertains only relating to the handing over of the possession of the subject unit and the same does not cover the issue relating to the payment of delay compensation. With these submissions, the learned counsel prayed to suitably modify the judgment dated 13.09.2023 passed in CMSA No.44 of 2023.

5.Heard the learned counsel for the respondent, who submitted that the complaint was disposed of by the TNRERA in favour of the respondent; and that, the appeal preferred by the appellant with the condone delay petition, was also dismissed at SR stage. In such circumstances, the respondent is entitled to receive the compensation deposited by the appellant before the



CMP. No28973 of 2023
in CMSA No. 44 of 2023

Appellate Authority. Therefore, the learned counsel sought permission of this court to withdraw the compensation amount deposited by the appellant.

6. Upon considering the facts and circumstances of the case and having regard to the submissions made by the learned counsel on either side, this court, in order to meet the ends of justice, is inclined to pass the following order:

(i) The application in MA No. 58 of 2023 in Appeal SR. No. 189 of 2023 is condoned and the Appellate Tribunal is directed to take up the appeal on file and dispose of the same, on merits and in accordance with law, after affording reasonable opportunity to both the parties.

(ii) The respondent is permitted to withdraw 50% of the compensation amount deposited by the appellant before the Appellate Tribunal, on filing appropriate petition. However, the same shall be subject to the outcome of the appeal filed by the appellant relating to delay compensation.



CMP. No28973 of 2023
in CMSA No. 44 of 2023

WEB COPY

7.This miscellaneous petition is disposed of, on the above terms.

(R.M.D., J.)

(M.S.Q., J.)

14.03.2024

rk



WEB COPY



CMP. No28973 of 2023
in CMSA No. 44 of 2023

R. MAHADEVAN, J.
AND
MOHAMMED SHAFFIQ, J.

rk

C.M.P.No.28973 of 2023
in
C.M.S.A. No. 44 of 2023

14.03.2024