IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 17195 OF 2025

Trimurti & K Mukesh Builders & Developers Through Its Partners Dharamraj Mahale and Rajendra Mahale ..Petitioner

Versus

Asha V Tuteja & Anr …Respondents

Mr. Mohit Bhansali, with Vanita Jain and Girdhar Bhansali, for the Petitioner.

CORAM: N. J. JAMADAR, J.

DATE : 22nd DECEMBER 2025

ORDER:

1. The Petitioner -Judgment Debtor/Original Opposite Party has preferred this Petition assailing the orders dated 28th April 2025 and 16th September 2025 passed in Execution Application No. 615 of 2022 and connected matters.

2. The Respondents had booked the flats in Balaji Empire, Chembur, then being developed by the Petitioner. The later had agreed to deliver possession of the respective flats by the end of May 2009. In the wake of default, the Respondents had filed complaints before the State Consumer Disputes Redressal Commission ("the State Commission"); which came to be partly allowed by the judgment and order dated 23rd

February 2015, thereby directing the Petitioner to deliver the possession of the respective flats to the complainants.

3. The complainants as well as the Petitioner-Opposite Party assailed the aforesaid order before the National Commission.

4. On 27th June 2017, the National Commission disposed of the Appeals in view of the settlement arrived at between the parties. The order dated 27th June 2017 passed by the National Commission, with the consent of the parties, reads as under:

> "Dated : 27th June, 2017
>
> **ORDER**
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> Having regard to the peculiar facts and circumstances of the case, wherein the Opposite Party submitted that on account of dispute between the partners, construction of 'C' and 'D' wings is not yet complete and also that there is no sight of completing them in the near future, despite the fact that the amounts have been taken way back in the year 2006, I am happy to note that a consensus has been achieved by both the parties in all the above-mentioned Appeals. It has been agreed that the Opposite Party/Partnership firm represented by Mr. Dharam Raj K. Mahale would pay to the Complainants in each of the cases the principal amount within eight weeks from today. To prove their bonafides, as an interim measure, this principal amount is directed to be remitted directly to each of the Complainants by 30.08.2017 and the interest amount @ 15% p.a. from the respective dates of deposit till the date of realisation will be paid to each of the Complainants within eight weeks from 30.08.2017, i.e., on or before 01.11.2017.

> The amount of Rs. 35,000/- deposited as statutory deposit in the Appeals preferred by the Opposite Party will be transferred to each of the Complainants with interest, if any, accrued thereon. The adjustment of the statutory amount can be made by the Partnership firm in the interest amount which is to be payable on or before November, 2017.
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> Learned Counsel representing the Complainants submitted that in First Appeals No. 293 to 299 and 322 of 2015, preferred by the Complainants, statutory amount of Rs. 35,000/- has been deposited before this Commission. The Registry is directed to release these amounts forthwith on an Application filed by the Counsel for the Complainants.
>
> All the Appeals are disposed of by way of this consent order with the afore-mentioned terms of settlement.
>
> Needless to add, it is open to the Complainants to move an appropriate application, if any, of the terms is not complied with."

5. As a controversy arose over the true import of the aforesaid order, the State Commission in Execution Application No. EA/18/48 to EA/18/51, directed the parties to seek clarification from the National Commission.

6. By an order dated 8th May 2019, the National Commission disposed of Misc Application No. 24 of 2019 opining that the aforesaid order passed by the National Commission dated 27th June 2017, with the consent of the parties, was clear and explicit and there was no need for any clarification of the said order. The National Commission, *inter* *alia,* noted that the aforeextracted order of 27th June 2017, was challenged before the Supreme Court and the said Appeal was dismissed by the Supreme Court.

7. Thereafter, in EA No. 615 of 2022 and connected Applications, the National Commission, examined the issue of the principal amount, which the Petitioner-Judgment Debtor was liable to refund to the complainants. By an order dated 28th April 2025, the National Commission ruled that the Judgment Debtor/Opposite Party was liable to refund the sum of Rs.1,55,30,770/- only, along with interest @15% per annum from the date of deposit of the respective amounts, till the realisation. The parties were directed to file their respective calculations in that regard, within a period of two weeks.

8. By a further order dated 16th September 2025, the National Commission repelled the objections of the Petitioner/Judgment Debtor that the Interim Applications filed by the Judgment Debtor raising objections to the execution of the decree, and for dismissal of the execution applications, were yet not disposed of. By providing further opportunity to the parties to file calculations with regard to the due amount and objections, if any, thereto, the matter was stood over to 14th October 2025.

9. The aforesaid order dated 16th September 2025, and the order dated 28th April 2025, are sought to be assailed in this Petition.

10. Mr. Mohit Bhansali, the learned Counsel for the Petitioner, made an endeavour to urge that the National Commission should not have entertained the execution applications, when the State Commission was seized with the execution applications. It was necessary for the Respondents-complainants to file the execution applications before the State Commission as different consequences ensue the determination of the execution applications by the State Commission and the National Commission. It was further urged that the Petitioner/Judgment Debtor had already offered to make the payment and the said fact was not taken into account by the National Commission.

11. Having regard to the nature of the impugned orders, I am afraid, any of the aforesaid submissions merits countenance. First and foremost, the Court cannot loose sight of the fact that the Appeals were disposed of by the National Commission, in view of the settlement arrived at between the parties. The order dated 27th June 2017 having been passed by the consent of the parties, especially, in view of the peculiar circumstances, wherein the Opposite Party (JD) had submitted before the National Commission that on account of dispute between the partners, construction of "C" and "D" wings was not yet completed, and there was no possibility of completing the said construction, though the Petitioner/JD had received the amounts from the complainants-flat purchasers in the year 2006, it is not open for the Petitioner to raise all sorts of objections to obviate the liability to pay the decretal debt.

12. The Petitioner/JD seems to have resorted to litigative stratagem to defeat the rights of consumers. Under no circumstances, the Petitioners could have complied with the order passed by the State Commission to deliver the possession of the respective flats and, thus, by giving an undertaking, in the form of the consent terms, to refund the principal amount alongwith the interest @ 15% per annum, the Petitioner/JD made the National Commission to dispose of the Appeals and relive the Petitioner of the obligation to put the consumer in possession of the flats. Thus, the fact that for over 20 years the consumers have been deprived of the amount paid to the Petitioner, on the faith of the representation made by the Petitioner, exacerbates the situation.

13. Secondly, by the impugned order dated 28th April 2025, the National Commission determined the quantum of the principal amount paid by the complainant to the Petitioner. Evidently, the said order was not challenged till the order dated 16th September 2025 came to be passed. In fact, on that day also, the JD had undertaken to file the calculations before the National Commission, during the course of the day.

14. In these circumstances, when the National Commission cannot be said to have still passed a final order determining the exact liability of the Petitioner to pay interest @ 15% per annum on the principal amount of Rs.1,55,30,770/-, in accordance with the consent order dated 27th June 2017 and the order dated 28th April 2025, there is no propriety in entertaining the Petition which has been filed with a design to defeat and further delay the execution of the consent decree.

15. The Petition thus stands dismissed with costs of Rs.25,000/-, to be deposited with Maharashtra State Legal Services Authority, Mumbai, within two weeks of uploading of this order.

[N. J. JAMADAR, J.]