

THE U.P. REAL ESTATE APPELLATE TRIBUNAL, LUCKNOW

Division Bench Court No. 1

APPEAL-803/2020

M/S OMAXE LTD.

.....Appellant

Versus

AMIT KATIYAR

.....Respondent

Counsel for Appellant

Counsel for Respondent

V.K.S. BISEN

Hon'ble Mr. Justice (Dr.) D. K. Arora, Chairman.

Hon'ble Mr. Rajiv Misra, Administrative Member.

List revised.

Sri V. K. Singh Bisen, learned counsel for the appellant, is present.

In the first round Sri Saghar Mehdi, learned counsel for the respondent, was present and raised issue regarding non settlement of his professional fee by the respondent and also submitted that the appellant be not permitted to withdraw this appeal.

The respondent is present in person.

As far as dispute regarding professional fee is concerned this Court restrains itself from making any observation on the same and the learned counsel for the respondent has to proceed against the respondent for settlement of dues in accordance with law, but his request for not permitting the appellant to withdraw this appeal is not acceptable.

Without making any observation on the issue raised by Sri Saghar Mehdi, we proceed to examine the application for withdrawal of the appeal filed by the appellant through Sri V. K. Singh Bisen, Advocate.

Submission of learned counsel for the appellant is that in pursuance to the application given by the respondent before the appellant on 23.09.2021 a joint meeting of both the parties was held on 12.10.2021 wherein the matter has been settled amicably. A settlement deed was executed on 12.10.2021 and as per settlement deed the appellant has agreed to refund the amount to the respondent in accordance with the common order passed by RERA on 08.07.2020 in Complaint Nos. 121201827333, 12201827345 and 12201827350.

Learned counsel for the appellant further submitted that in para 4 of the application the appellant has specifically mentioned that the appellant is ready and willing to refund the amount of Rs.22,95,000/- deposited by the appellant in the present

appeal i.e. Appeal No. 803/2020 towards statutory compliance of Section 43(5) of the Act 2016. The said amount has been deposited vide three Demand Draft Nos. 084312, 084313 and 084314 each dated 28.10.2020, for Rs. 7,65,000/- each drawn on Axis Bank, totaling Rs.22,95,000/-.

It is also submitted that the respondent has already submitted an application for withdrawal of Appeal No. 356 of 2020 filed by him and orally informed that the said appeal has been dismissed as withdrawn on 18.10.2021.

The respondent, present in person, submitted that he has already withdrawn Appeal No. 356/2020 filed by him and the issue has been amicably settled vide settlement deed dated 12.10.2021 and, therefore, he has no objection if this Tribunal permits the appellant to withdraw the appeal and release the amount in his (respondent's) favour.

Appreciating the submission of learned counsel for the appellant and the respondent, who is present in person, and after examining the issue and willingness of the appellant to withdraw the appeal on account of the issue having been amicably settled between the parties, the appeal is **dismissed as withdrawn**.

IA2574/2021

This is an application for release of the amount deposited under Section 43(5) of the Act in favour of the respondent.

Submission of learned counsel for the applicant is that three demand drafts nos. 084312, 084313 and 084314 each dated 28.10.2020, for Rs. 7,65,000/- each drawn on Axis Bank, totaling Rs.22,95,000/- have been deposited by the appellant towards compliance of the provisions of Section 43(5) of the Act and as the issue has been amicably settled, therefore, the said amount is to be refunded to the respondent as per the order of RERA dated 08.07.2020 and, therefore, the amount deposited by the appellant at the time of filing of the present appeal be released in favour of the respondent. A cancelled cheque of respondent's Account No. 18941930002158, HDFC Bank, IFSC:HDFC0001894 has also been annexed along with the application.

The respondent, who is present in person, submitted that the issue has been amicably settled with the appellant vide settlement deed dated 12.10.2021 and, therefore, the amount deposited by the appellant be released in his favour.

Appreciating the submission of Sri V. K. Singh Bisen, learned counsel for the appellant and the respondent, who appears in person, and after examining the contents of the application, we allow the application.

Registry is directed to release the amount deposited by the appellant vide three Demand Drafts Nos. 084312, 084313 and 084314 each dated 28.10.2020, for Rs. 7,65,000/- each drawn on Axis Bank, totaling Rs.22,95,000/- in favour of the respondent through RTGS in Bank Account No. 18941930002158, HDFC Bank, IFSC:HDFC0001894 forthwith.

(Rajiv Misra)

(D.K.Arora)

Dated: 22.10.2021
SHAKIR