

Sharayu Khot.

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

COMMERCIAL APPEAL NO. 312 OF 2018

IN

SUMMONSES FOR JUDGEMENT NO. 31 OF 2018

IN

COMMERCIAL SUMMARY SUITS NO. 889 OF 2017

Amrik Singh Bhui & Anr.

...Appellants

Versus

M/s. K.T. Group & Ors.

...Respondents

Mr. Tejas Kishor Sanghrajka, a/w Mr. Kayval P. Shah, for the Appellants.

Ms. Sunita Poddar, a/w Ms. Farhana Khan, for the Respondent.

**CORAM : B.R. GAVAI &
RIYAZ I. CHAGLA, JJ.**

DATE : 27 November 2018

ORDER :

1. Rule. Rule made returnable forthwith. Heard by consent of parties. The Appeal is taken up for final hearing.

2. The Appeal challenges the order dated 11th June 2018 vide which the learned Single Judge has granted unconditional leave to the Respondents-Defendants to defend.

3. The learned Counsel appearing for the Appellants submitted that the Appellants have no grievance with regard to the unconditional leave granted by the learned Single Judge to the Defendants. He is mainly aggrieved with certain findings in the order impugned. There are the certain observations which are made by the learned Single Judge, which causes difficulty in the way of the Appellants at the stage of trial. The Appellants are basically aggrieved with the following observations :-

“Admittedly, there is no provision for refund of this money on demand by the purchaser/plaintiff although it is contended that the defendants have failed to complete construction and failed to handover possession. The plaintiffs are claiming refund with 24% interest p.a.. Admittedly, there is

no provision to refund the money nor there is any specific clause shown to the Court under which the plaintiffs can claim refund.”

4. We have perused the Agreement of Sale dated 25th May 2016. The perusal of clause 10 of the Agreement would reveal that it provides that if the developer does not give possession of the flat to the purchaser save and except for the reasons beyond their or their agents/representative's control and as per the provisions of Section 8 of the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963, by the prescribed date, the developer shall be liable for the repayment of the amounts received in respect of the subject flat with simple interest at the rate of nine percent per annum. There is thus, a specific provision for refund provided in the Agreement for Sale.

5. In that view of the matter, we find that the aforesaid observations made in the order of the learned Single Judge

which are reproduced herein above are not based on the correct factual aspect. No doubt that though the Plaintiffs-Appellants have claimed interest at the rate of 24%, the Agreement provides the rate of interest only at 9%. However, by that it cannot be said that there is no provision for refund of money by the developer to the purchaser.

6. In that view of the matter, we find that the Appeal needs to be partly allowed.

7. Appeal is therefore, partly allowed.

8. The portion from the order of the learned Single Judge which has been reproduced herein above is directed to expunged from the order. In the facts and circumstances of the case, no order as to costs.

[RIYAZ I. CHAGLA J.]

[B.R. GAVAI, J.]