

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMMERCIAL APPEAL (L) No.13 of 2019
IN
NOTICE OF MOTION (L) NO.15 OF 2019
IN
NOTICE OF MOTION (L) NO.2318 of 2018
IN
COMMERCIAL SUIT NO.433 OF 2018
WITH
NOTICE OF MOTION IN COMMERCIAL DIVISION MATTERS
(L) NO.17 OF 2019
WITH
NOTICE OF MOTION IN COMMERCIAL DIVISION MATTERS
(L) NO.18 OF 2019**

RNA Corp Pvt. Ltd. : Appellant/Applicant
versus
RNA Viva Residents Association : Respondent

**ALONG WITH
COMMERCIAL APPEAL (L) No.44 of 2019
IN
NOTICE OF MOTION IN COMMERCIAL DIVISION MATTERS
NO.2558 OF 2018
WITH
NOTICE OF MOTION IN COMMERCIAL APPELLATE
DIVISION MATTERS LODGING NO.76 OF 2019**

RNA Corp Pvt. Ltd. : Appellant/Applicant
versus
RNA Viva Residents Association : Respondent

Cherag Balsara a/w Mr.Vishesh Kalra and Ms. Neha Joshi I/by vidhi Partners for the Appellant.
Mr. Tushar Gujar a/w Mr. Pramod Pandey I/by Solicis Lex for the Respondent.
Mr. D R Shetty Court Receiver present.

**CORAM : NARESH H. PATIL, C.J. &
N. M. JAMDAR, J.**
DATE : 06th FEBRUARY 2019

P.C.

The Appellant is the Defendant in the suit filed by the Respondent-Plaintiff. The Appellant had undertaken a project for construction and development of certain residential buildings. The project had to be developed in two Phases i.e. Phase I and Phase II. The original Plaintiff is the association of residents who made to receive flats from the said project. A dispute arose between the parties which led to the Respondent-Plaintiff filing a suit in this Court. Notice of Motion (L) No.2318 of 2018 was taken out by the Respondent-Plaintiff.

2 The learned Single Judge by an order dated 17/10/2018 opined that in view of the delay in completion of the project by the Appellant, a Court Receiver needs to be appointed. The learned Single Judge noted that however since the Appellant had made a request to give one more opportunity to complete the project, an indulgence can be granted. The Appellant had tendered certain Bar Charts before the learned Single Judge giving schedule of completion. The learned Single Judge accepted the undertakings of the Appellant and took the Bar Charts on record. An architect was appointed to visit the suit premises periodically and submit a report.

3 This order has been challenged by the Appellant by filing the Appeal before us. Thereafter the Appellant had also sought for and

extension. The grievance of the Appellant is that when a praecipe was moved for circulation of Notice of Motion for extension of time, the circulation was refused effectively nullifying the request for extension. This endorsement on the praecipe of not granting circulation is the subject matter of the second Appeal, that is placed before us.

4 Both the Appeals were extensively heard on 4 February 2019 both in the morning session and in the afternoon session, when the learned counsel for the Appellant had submitted that if one more opportunity is given to the Appellant, the Appellant will not raise various questions of law including that of jurisdiction in this Appeal. The Respondent was not averse to the grant of extension, however, the matter was heard in respect of the modality to be worked out. Again on 5 February 2019 the modalities were debated in the Court. The learned counsel jointly submitted that they will prepare a draft of their understanding and present the same before the Court.

5 The learned counsel for the parties today tendered before us the understanding between them as regards the modalities and the time schedule. The learned counsel for the parties requested us that the Appeals can be disposed of in terms of the understanding and no reasons in support of thereof be given.

6 We have perused the record, the order passed by the learned Single Judge and have also perused the undertakings given by the Appellant today. We are of the opinion that the course of action suggested by the

learned counsel is fair and can effectively resolve the dispute.

7 Accordingly we take the undertaking/affidavit given by the Appellant dated 4 January 2019 on record and it is marked as “X” for identification. We accept the undertakings given by the Appellant.

8 We accordingly direct and record as under :-

a. Time to complete construction of the buildings in Phase I - Wings A to D with all amenities is extended from 31st December 2018 to 15th March 2019. This indulgence is shown on an unconditional undertaking given by the Appellant to complete the project and on an express undertaking that the Appellant shall not claim any extension of time on any ground whatsoever.

b. If for any reason whatsoever, the Appellant does not and/or is unable to complete the project i.e. the construction of the building in Phase I - Wings A to D by the stipulated time i.e. 15th March 2019, then in that event, the Court Receiver, High Court Bombay who was appointed by the impugned order dated 17th October 2018 shall forthwith without any reference to this court take possession of the project with police assistance (if required) and shall forthwith take steps to appoint an independent contractor who will complete the project and handover possession of flats to the respective flat purchasers at the cost and expense of the Appellant. The indulgence of extension of time as set out herein above and consent of the Respondent is granted in view of the undertaking given by the Appellant. It is made clear that no further extension of time shall be granted to the Appellant.

c. As far as Phase II is concerned it is agreed between the parties that the time for completion of the building shall stand extended from 31st July 2019 to 31st October 2019.

d. If for any reasons whatsoever, the Appellant does not and/or is unable to complete the project i.e. construction of the buildings in Phase II - Wings E to I by the stipulated time i.e. 31st October 2019 then in that event the Court Receiver, High Court Bombay who was appointed by the impugned order dated 17th October 2018 shall forthwith without any reference to this court take possession of the project with police assistance (if required) and shall forthwith take steps to appoint an independent contractor who will complete the project and handover possession of flats to the respective flat purchasers at the cost and expense of the Appellant. The indulgence of extension of time as set out herein above and consent of the Respondent is granted in view of the undertaking given by the Appellant. It is made clear that no further extension of time shall be granted to the Appellant.

e. The Appellant agrees and undertakes not to raise any issues pertaining to jurisdiction or bar under RERA. It is expressly undertaken by the Appellant not to seek any further extension of time in respect of Phase I beyond 15th March 2019 and Phase II beyond 31st October 2019.

f. The Appellant shall submit a revised bar chart within two weeks from the date hereof showing the completion of work with amenities in respect of construction of buildings in Phase I - Wings A to D which is 15th March 2019 and construction of buildings in Phase II - Wings E to I which is 31st October 2019. The bar charts are taken as an

undertaking to this Court. This Order is in terms of the undertakings given by the Appellant and its Director.

g. The Appellant agrees and undertakes that immediately within a period of 2 weeks from 15th March 2019, shall apply for Occupation Certificate for Phase I - Wings A to D and within a period of 4 weeks from 31st October 2019 shall apply for OC for Phase II - Wings E to I.

h. The Appellant also categorically states that they have carried out construction in accordance with sanctioned plan and that there is no violation of any kind whatsoever. Appellant agrees and undertakes to procure all approvals and sanctions so as to enable them to complete the project as per the timeline stipulated above. The Appellant shall endeavour to procure the occupation certificate within 3 months from the date of the filing of respective applications for OC of buildings in Phase I and II.

i. M/s. Shetgiri & Associates are appointed to take inspection and submit a report every two weeks to the Learned Single Judge of this Court to see whether the work is being carried out in accordance with the bar chart. If the work is not carried out as per the time lines stipulated in the bar chart and in case of breach of the Bar Chart at any stage, the Court Receiver High Court Bombay shall forthwith take possession of both phases and appoint an independent contractor to complete the project at the cost and expenses of the Appellant.

9 Considering the aforesaid undertakings as well as the written undertaking of Mr. Anubhav Agarwal, Director of the Appellant Company

as well as his personal undertaking to complete the project within the stipulated timelines as mentioned above, this Court has granted extensions as and by way of final indulgence. The undertakings are accepted and written undertaking is taken on record and marked "X" for identification.

10 Appeals are disposed off as above.

11 In view of the disposal of the Appeals, the Notice of Motion Lodging Nos. 17 of 2019, 18 of 2019 and 76 of 2019 do not survive and the same are accordingly disposed of.

N. M. JAMDAR, J.

CHIEF JUSTICE