

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

902 CIVIL APPLICATION NO. 14947 OF 2019
IN SECOND APPEAL NO. 513 OF 2019

WITH

CIVIL APPLICATION NO. 14948 OF 2019
IN SECOND APPEAL NO. 516 OF 2019

WITH

CIVIL APPLICATION NO. 14949 OF 2019
IN SECOND APPEAL NO. 515 OF 2019

WITH

CIVIL APPLICATION NO. 14950 OF 2019
IN SECOND APPEAL NO. 514 OF 2019

DIPAK VISHWANATH JADHAV

VERSUS

M/S SHREE NARHARI BUILDERS AND DEVELOPERS THRO. PARTNERS
ANIL AND ANOTHER

Mr. B. R. Kedar, Advocate for the applicants

Mr. N. S. Choudhary, Advocate for the respondents

CORAM : S. M. GAVHANE, J.

DATED : 17.01.2020

PER COURT :-

. By these applications the applicants who are different claimants have made following prayers (B) and (C) in their respective applications:

In Civil Application No. 14947 of 2019-

“(B) The amount of Rs. 6,19,969/- out of the amount of Rs. 21,51,061/- deposited by the respondents may kindly be allowed to be withdrawn to the applicant.

(C) The respondents may kindly be directed to deposit the remaining total amount of award alongwith accrued interest thereon, till the date of actual deposit of the same.

In Civil Application No. 14948 of 2019-

(B) The amount of Rs. 4,85,000/- out of the amount of Rs. 21,51,061/- deposited by the respondents may kindly be allowed to be withdrawn to the applicant.

(C) The respondents may kindly be directed to deposit the remaining total amount of award alongwith accrued interest thereon, till the date of actual deposit of the same.

In Civil Application No. 14949 of 2019-

(B) The amount of Rs. 4,66,092/- out of the amount of Rs. 21,51,061/- deposited by the respondents may kindly be allowed to be withdrawn to the applicant.

(C) The respondents may kindly be directed to deposit the remaining total amount of award alongwith accrued interest thereon, till the date of actual deposit of the same.

In Civil Application No. 14950 of 2019-

(B) The amount of Rs. 5,80,000/- out of the amount of Rs. 21,51,061/- deposited by the respondents may kindly be allowed to be withdrawn to the applicant.

(C) The respondents may kindly be directed to deposit the remaining total amount of award alongwith accrued interest thereon, till the date of actual deposit of the same."

2. The applicants who are respondent in the respective second appeals have filed the respective applications contending that the respondents in the applications have filed respective appeals challenging the judgment and award passed by the Ld. Adjudicating Officer, Maharashtra Real Estate Regulatory Authority, Pune on 18/09/2018 confirmed by the Ld. Maharashtra Real Estate Appellate Tribunal, Mumbai on 12/06/2019, wherein the award of Rs.12,34,938/- plus 2,60,000/- alongwith

interest and Rs.85,000/- compensation + Rs. 20,000/- cost excluding stamp duty has been passed in favour of the applicant in Civil Application No. 14947 of 2019, award of Rs.11,51,500/- alongwith interest and 1,00,000/- compensation + Rs.20,000/- cost excluding stamp duty has been passed in favour of the applicant in Civil Application No. 14948 of 2019, award of Rs. 9,42,184/- plus Rs. 50,000/- alongwith interest and Rs.70,000/- compensation + Rs. 20,000/- cost excluding stamp duty has been passed in favour of the applicant in Civil Application No. 14949 of 2019 and award of Rs.11,50,000/- alongwith interest and Rs.90,000/- compensation + Rs. 20,000/- cost excluding stamp duty has been passed in favour of the applicant in Civil Application No. 14950 of 2019. It is contended that the execution of above awards has been filed by the applicants. Only after direction by this Court the respondents have deposited an amount of Rs. 21,51,061/- in four second appeals collectively and paid an amount of Rs. 50,000/- each to the four respondents i.e. present applicants. Total amount of recovery in four second appeals is approximately Rupees one crore, out of which approximate amount of all the respective

applicants is Rs.27,50,000/-, Rs.22,90,700, Rs.21,058,70/-, Rs.21,50,000/- respectively.

3. Learned counsel appearing for the applicants in all the applications submitted that there is no dispute that the applicants have deposited amount with the respondents and therefore, the applicants be permitted to withdraw amount mentioned in prayer clause (B) of the respective applications out of the amount of Rs. 21,51,060/- deposited in this Court.

4. Learned counsel appearing for the respondents in all the applications referring to reply filed in respective applications submitted that there is no dispute that the applicants had deposited amount with the respondents. Therefore, the applicants may be allowed to withdraw the amount on their giving undertaking that they would deposit the said amount in case the decision in the appeals went against them.

5. It appears that as noted in the order dated 18/10/2019 the learned counsel appearing for the appellants in all the four appeals submitted that the

appellants shall deposit Rs. 23,51,061/- to show the bona-fides to resolve the dispute and that the deposit of amount shall be without prejudice to rights and contentions raised in the appeals. As per said order appellants were granted time till 18/11/2019 to deposit amount of Rs. 23,51,061/- in terms of statement made through Advocate on condition to file undertaking on or before 22/10/2019. As per said order directions were issued that till 22/10/2019 no coercive steps be taken against the appellants.

6. In view of the above as the amount of Rs. 21,51,061/- deposited by the appellants in all the four appeals is appeared to the extent of 50% of undisputed amount in terms of order passed by the Adjudicating Member in all the four matters, it is just to allow the applicants to withdraw amount as prayed in their respective applications out of above said deposited amount in the light of prayer clause (B) of their respective applications.

7. Therefore, all the four applications are allowed in terms of prayer clause (B) of the respective

applications. The applicants are allowed to withdraw amount on their giving undertaking that they would deposit the said amount in case the decision in the appeals went against them.

8. Interim relief granted earlier to continue till next date and place all the appeals for admission and further consideration on 18/02/2020.

9. Learned counsel appearing for the applicants states that he will take necessary instructions from the applicants till next date regarding possibility to allow the appellants to sell out the disputed flats.

[S. M. GAVHANE, J.]