

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****SECOND APPEAL NO. 392 OF 2021
WITH
INTERIM APPLICATION NO. 3434 OF 2021**

Omega Premises Pvt. Ltd.

... Appellant

V/s.

Rachana Govekar & Anr.

... Respondents

Mr.Vivek V. Salunke for Appellant.

Mr.Sandesh Deshpande for Respondents.

CORAM : A.S. GADKARI, J.**DATE : 23rd November 2021.****PC. :**

1. By the impugned Order dated 15th June 2021 passed by the Maharashtra Real Estate Appellate Tribunal, Mumbai (for short, 'The Tribunal'), Appellant was directed to deposit entire amount as per the Order dated 14th June 2019 passed in Complaint No. CC005000000022056 preferred by the Respondents. By the Order dated 14th June 2019, the Real Estate Regulatory Authority, Mumbai had directed Appellant/builder to pay interest to the Respondents as contemplated under Section 18 of the Real Estate (Regulation and Development) Act, 2016 from 1st May 2017 till the date of Occupancy Certificate at the rate prescribed by RERA i.e. Marginal Cost Lending Rate (MCLR) plus 2% on the money paid by the Complainants.

It is the case of the Appellant that, the Occupancy Certificate and possession of the suit property was handed over to the Respondent on 30th October 2018. By the impugned Order, the Appellate Tribunal has simply directed the Appellant to deposit entire amount as per the Order dated 14th June 2019 passed by the RERA Authority.

2. Proviso to Sub-Section 5 of Section 43 prescribes that, where a promoter files an appeal with the Appellate Tribunal, it shall not be entertained without the promoter first having deposited with the Appellate Tribunal atleast 30% of the penalty or such higher percentage as may be determined by the Appellate Tribunal. It is thus clear that, what is prescribed by the said proviso is the minimum percentage of deposit. However, higher percentage of deposit can be ascertained from the facts and circumstances involved in each case. In the present case, it is an admitted fact on record that, the Appellant herein is the promoter/builder. Though he had agreed to deliver possession of the suit property, i.e. the apartment in-question, to the Respondents on or before 2nd December 2014, after accepting total consideration towards the same, he failed to perform his part of obligation and after receipt of Occupancy Certificate on 30th October 2018 gave possession to the Respondents. The Appellant is thus liable to pay interest on delayed possession as contemplated under Section 18 of the RERA Act from 1st May 2017 till 30th October 2018, as has been held by the RERA Authority.

3. After taking into consideration the aforestated facts, this Court finds that, there is no substantial question of law involved in the present Appeal.

4. Appeal is accordingly dismissed.

5. In view of disposal of Appeal, Interim Application No.3434 of 2021 does not survive and is accordingly disposed off.

[A.S. GADKARI, J.]

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