

BASAVRAJ
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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 2626 OF 2021

Pankaj Chawla

..... Petitioner

Vs.

Vijay Jain & Ors.

..... Respondents

Mr. Rajesh H. Mirchandani for the Petitioner

Mr. K. S. Thorat, AGP for the State

Ms. Pooja Gaikwad I/b. Mr. Sanjay Chaturvedi for Respondent No.1

**CORAM: S.V.GANGAPURWALA &
MADHAV J. JAMDAR, JJ.**

DATED : AUGUST 22, 2022

P.C.

1 The Petitioner is challenging the order dated 18th June 2021 passed by the MahaRERA, Mumbai.

2 We have heard the learned Counsel for the Petitioner and the learned Counsel for the Respondents.

3 Respondent No.1 had approached the MahaRERA. In the order, the MahaRERA directed the present Petitioner to register an agreement for sale in favour of Respondent No.1 or to refund the money given by Respondent No.1.

4 The learned Counsel for the Petitioner submits that the

MahaRERA has not quantified any amount. It could not come to the conclusion as to what was the amount paid by the complainant to the Developer nor it could conclude that if any amount was paid and same was for purchase of a flat. The RERA could not have exercised the jurisdiction, according to the learned Counsel for the Petitioner.

5 The learned Counsel for the Petitioner also submits that for compliance of Section 42(5) of the Act, amount ought to have been quantified by the RERA. The appellate Tribunal ought not to have left it to the parties to determine the amount.

6 The learned Counsel for the Respondent submits that the Petitioner is required to make 100% pre deposit before the appellate tribunal while challenging the order of the RERA. As the amount is not quantified, the Tribunal has directed the parties to submit the details. The Respondent No.1 has submitted the details of amount. In view of proviso to Section 43(5) of the Real Estate (Regulation and Development) Act, 2016 (RERA Act) the Petitioner be directed to deposit the amount as submitted by the Respondent.

7 Upon perusal of the order of the RERA, it appears that RERA has not quantified the amount allegedly paid by the Respondent to the present Writ Petitioner. Paragraphs 3 and 4 of the order suggest that the RERA Authority could not conclude about the alleged

transaction or the amount paid.

8 In such a scenario, the Petitioner filed an appeal and in the appeal, the order is passed granting opportunity to the parties to submit the details to substantiate the amount payable as per the impugned order for the limited purpose of compliance of proviso to Section 43(5) of the RERA Act. For compliance of the proviso to Section 43(5) of the RERA Act, the amount quantified by the RERA has to be pre-deposited. The RERA has not quantified any amount. In view of that it would be improper for the appellate tribunal to direct the parties to quantify the amount.

9 Be that as it may, this Court, under order dated 28th July 2021 had directed the Petitioner to deposit 50% of the sum of Rs.1,97,50,000/- (Rupees One Crore Ninety Seven Lacs Fifty Thousand Only).

10 The learned Counsel for the Petitioner submits that said amount has been deposited by the Petitioner before this Court.

11 In light of the above, and in the peculiar facts and circumstances existing herein, we pass the following order:

- a. The amount deposited by the Petitioner shall be transmitted to the RERA Appellate Tribunal, Mumbai. Same

shall be kept in the deposit of the Appellate Tribunal Mumbai. The said amount paid shall be considered as compliance of Section 43(5) of the RERA Act.

b It is made clear that the said deposit made by the Petitioner is without prejudice to the rights and contentions of either parties.

c. The Appellate Tribunal shall hear the appeal filed by the Petitioner and / or cross appeal filed by the Respondents, on its own merits. In that case, all contentions of the parties are kept open.

d. With these aforesaid, the Writ Petition is disposed of. No costs.

(MADHAV J. JAMDAR,J.)

(S.V. GANGAPURWALA, J.)