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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
INTERIM APPLICATION NO. 1692 OF 2021
IN
FIRST APPEAL NO. 281 OF 2021

Clover Developers Private Limited & Ors ...Petitioners
Versus
Rakhee Sachdev & Ors ...Respondents

WITH
INTERIM APPLICATION NO. 1696 OF 2021
IN
FIRST APPEAL NO. 282 OF 2021

Shabbir Mikhdad Thingana & Ors ...Applicants
Versus
Rakhee Sachdev & Ors ...Respondents

**SONALI
MILIND
PATIL**

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Mr Prasad Dhakephalkar, Senior Counsel, with Dinyar Madon, Senior Counsel, Chetan Kapadia, Mayur Khandeparkar, Kausar Banatwala, Ziyad Madon, Sharad Wakchoure, i/b Tushar Goradia, for the Applicants/Appellants in IA-1692/2021 in FA-281/2021 and for Respondents Nos. 10, 10A, 10B and 11 in IA-1696/2021 in FA-282/2021.

Mr Prasad Dani, Senior Advocate, with Drupad Patil, i/b Pavan S Patil, for Respondents Nos. 1 to 9.

Dr Abhinav Chandrachud, i/b Sitesh Sharma, for Respondent No.25.

**CORAM G.S. Patel &
 Madhav J. Jamdar, JJ.**

DATED: 10th February 2022

PC:-

1. The two First Appeals have been admitted. In each of the First Appeals there is an Interim Application for stay of the impugned order and judgment. This has been stayed already on 3rd August 2021. On 14th January 2022, we continued that stay with the following additional directions, viz., that we put the Appellants to notice that any further sales of flats would be subject to the outcome of the Interim Application and that the Appellants would not be entitled to claim any equities if they entered into sale agreements.

2. Today, having heard both the sides, we confirm the previous order of stay but with additional conditions. The Appellant, developer is permitted to proceed with obtaining an Occupancy Certificate, entering into further Sale Agreements and even giving possession of flats but subject strictly to the following:-

- (a) All further steps irrespective of their nature will be subject to final orders in the First Appeals.
- (b) The Appellants shall not, under any circumstances, be entitled to claim any equities of whatsoever nature because they have undertaken further steps.
- (c) While entering into any Sale Agreements, the Appellants must include a reference in those Sale Agreements or any document annexed to Sale Agreements and to which the attention of the flat purchaser is drawn regarding the pendency of these

First Appeals, the nature of the trial Court order and the existence of this order.

- (d) Similarly, while giving possession and obtaining a document confirming the receipt of possession, the Appellants must bring to the notice of the persons taking possession that their continue to be pending these First Appeals and that this order is still operating. Those possession documents must make it abundantly clear that possession, if taken, is at the risk of the third party flat purchasers. The 3rd party flat purchasers will also not be entitled to raise any independent claim whether in equity or otherwise since they will be taking possession with specific notice of pendency of these First Appeals and the existence of this order.

3. Mr Patil for the original Plaintiffs seeks what is effectively a stay on further construction. We find it difficult to accede to this request for two reasons. First, the original plaintiffs are not the appellants before us and we do not see how they can obtain a substantive injunction against the Appellants in the Appellants' Appeals and stay applications. Second, we see no way to balance equities by ensuring that the Plaintiffs bear liability for any consequential loss caused to the Appellants should these Appellants succeed. Mr Patil's request is thus rejected.

4. We are told that the Occupation Certificates have been received up to the 16th floor. Subject to these terms set out above,

the builders may proceed with their applications for further Occupation Certificate.

5. Both IAs are disposed of accordingly.

6. All concerned will act on production of a digitally signed copy of this order.

(Madhav J. Jamdar, J)

(G. S. Patel, J)