

*Arun Mudaliyar*

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION  
INTERIM APPLICATION NO.1537 OF 2022  
IN  
SECOND APPEAL NO.206 OF 2022**

M/s. Laabh Buildwell ... Applicant/Appellant  
V/s.  
Sanket Prabhakar Yadav ... Respondent

**WITH  
INTERIM APPLICATION NO.1536 OF 2022  
IN  
SECOND APPEAL NO.206 OF 2022  
(NOT ON BOARD)**

Sanket Prabhakar Yadav ...Applicant  
V/s.  
M/s. Laabh Buildwell ...Respondent.

Adv. Pooja Gaikwad i/by Sanjay Chaturvedi Associates, for the  
Applicant /Appellant.

**CORAM : S. M. MODAK, J.**

**DATED : 05<sup>th</sup> SEPTEMBER 2022.**

**P.C:-**

**Interim Application No.1536 of 2022.**

1. Heard learned Advocate for the Applicant / Allottee / Respondent and learned Advocate for appellant / Developer.
2. The Authority as per RERA Act directed the Developer to pay the interest on account of delay in handing over possession. The period for which the Developer was directed to pay interest is as follows:-

From 1 October 2017 till the actual date of possession  
at the rate prescribed by MAHA RERA i.e.,  
MCLR + 2%.

As per the agreement, the possession was to be handed over on or before 30<sup>th</sup> September 2017. Admittedly, the possession is not handed over and the developer has got various reasons for not handing over possession.

3. The said order is challenged by the developer. As per the impugned judgment dated 20<sup>th</sup> October 2020 following modification is made so far as the period for paying interest is concerned. As per the said modification, the developer was directed to pay interest for following period:

From the date of 1<sup>st</sup> April 2018 till handing over actual possession.

4. The developer was granted six months exemption from paying the interest. It was for the reason that as per the order passed by this Court in Public Interest Litigation (PIL) No.36 of 2016, the Competent Authority was restrained from issuing commencement or occupancy certificate in respect of the projects falling within Ghodbunder area. It is referred in para no.29 of the impugned order. The restraint order was in force for a period of six months. It was considered by the First Appellate Court. There was another ground taken before the Appellate Tribunal and it was giving of consent for extension of time for handing over possession by the allottee. There was reliance on clause 'J' of the agreement. The developer was intending to load TDR as per the revised policy. It was not accepted by the Appellate

Tribunal. The relevant observations find place in para nos.27 and 28 of the impugned order.

5. There is an opposition for withdrawal on behalf of the developer for the reason that the second appeal is pending. There is also reference that similar request is rejected by the Appellate Tribunal and this fact is mentioned in para 11 of the affidavit of reply. It is not disputed on behalf of the allottee. There is consensus amongst both sides about the reason for rejection by the Appellate Tribunal. The copy of the said order is not placed on record. As per their contentions, the reason for rejection is pending of the present appeal. If such is the reason, that does not prevent this Court from dealing with the request for withdrawal.

6. The Appellant is asking for withdrawal of Rs.5,25,000/- deposited before the Tribunal. As per the contention of both sides, it is a mandatory deposit and it is 40% of the total amount calculated as per the order of authorities under the RERA Act.

7. There is no dispute that possession is not handed over. There is no dispute about the execution of agreement and handing over possession on or before 30<sup>th</sup> September 2017. The dispute only pertains to the reason for not handing over possession. According to Appellant the reasons were beyond their control.

8. For the above discussion, this Court finds that the Allottee can be permitted to withdraw that amount. Merely because the appeal is pending it does not mean that the Allottee cannot be permitted to

withdraw the amount. This Court has accepted the said request for the reasons that it is only 40% of the amount and withdrawal can be permitted by directing Allottee to furnish undertaking that he will return the amount if directed by this Court.

9. Considering prayer (b) both parties needs to be heard at great length because prayer (b) relates issuance of directions to Respondent to deposit the amount for the further period. Hence, following order is passed:-

a) The Interim Application No.1536 of application is allowed in terms of prayer clause (a).

b) The Respondent /Allottee is permitted to withdraw an amount of Rs.5,25,000/- by furnishing an undertaking within a period of three weeks that he will return the amount if directed by this Court. The undertaking to be furnished before the Appellate Tribunal and thereafter an affidavit of compliance be filed in this Court within two weeks.

10. The Applicant /Respondent is permitted to file the undertaking through Power of Attorney Holder / his father.

11. Matter be kept on 06<sup>th</sup> October 2022.

Second Appeal No.206 of 2022

12. The Appellant is permitted to file written submissions and supply copy to the other side.

**(S. M. MODAK, J.)**