

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 433 OF 2021
WITH
INTERIM APPLICATION NO. 18597 OF 2022

M/s. Rashmi Realty Builders Pvt.

Ltd. & Ors.

..Appellants

Versus

Rahul Rajendrakumar Pagariya & Ors.

..Respondents

Mr. J. A. Udaipuri a/w Ashok Upadhyay i/b for the Appellants.

Mr. Altaf Khan, for the Respondents.

CORAM : NITIN W. SAMBRE, J.

DATE : 18th November, 2022

PC.

1. The question of law in the present appeal which warrants consideration is, whether the **RERA Appellate Tribunal** was justified in passing the order impugned against the interest of appellants, particularly when the appellants' hard copy of reply was not on record.

2. It is the claim of the appellants that they have already tendered the copy of reply to the appeal before the **RERA Appellate Tribunal** through Email however, hard copy remained to be placed on record. As such, according to him, the impugned order was passed without considering the reply of the appellants. So as to substantiate his claim he submits that order with the copy of the reply which was affirmed on **9th December, 2020** was ready However, because of pandemic

same remained to be placed on record before the **RERA Appellate Tribunal**.

3. The counsel for the respondents would oppose the prayer as according to him, execution proceedings in the matter are at an advance stage and enough opportunity was granted to the appellants by the **RERA Appellate Tribunal**. Before passing the order impugned.

4. I have considered the aforesaid submissions.

5. It is not disputed on record that though the appellants has not sent copy of reply on online, hard copy of the same was not placed before the appellate tribunal. As such, said **Tribunal** was handicapped for want of hard copy of reply on record.

6. At this stage, counsel for the appellants undertakes to deposit an amount of Rs.12,50,000/-, in any case, by 25th November 2022 before the **RERA Appellate Tribunal** in the execution proceedings taken out by the respondents.

7. Said liberty to deposit the said amount within the time mentioned hereinabove.

8. In case if the appellants fail to deposit the amount of Rs.12,50,000/- as undertaken in the execution proceedings the respondents shall be at liberty to proceed with the execution.

9. Further statement in the form of undertaking is made by the counsel for the appellants that an amount of interest of Rs.9,00,000/- shall be deposited in the execution proceedings in any case by 31st December, 2022. Since the said statement is made on instructions same is accepted as an undertakings to this Court. As such, interest of respondents is secured.

10. If the aforesaid amount of interest as undertaken is not deposited in addition to the amount of Rs. 12,50,000/- as mentioned hereinabove, the respondents will be at liberty to execute the order as the protection order of this Court shall cease to operate without further reference to this Court.

11. If in case the amount is deposited, the execution proceedings are directed to be kept in abeyance and the order of the **RERA Appellate Tribunal** impugned in the present second appeal dated 20th August, 2021 is hereby quashed and set aside. It is directed that the appellants shall be at liberty to submit their reply in any case by 9th January, 2023. If the reply affidavit is tendered, the **RERA Appellate Tribunal** to make every endeavour to decide the appeal in any case by 28th February, 2023.

12. The Appeal stands partly allowed in above terms.

13. Interim Application stands disposed of.

[NITIN W. SAMBRE, J.]