

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 12408 OF 2022**

M/s Gupta Builders and Developers ... Petitioner
Versus
The State of Maharashtra and Ors. ... Respondents

Mr. Mahesh Vishwakarma a/w Ms. Madhvi Mathur, Sayali Gite
i/b Mr. Ranjeet Chouhan for the Petitioner.
Mr. S.B. Kalel and Mrs. S.S. Bhende AGP for the State.
Mr. Bishwajeet Mukherjee a/w Humera Syed, Meet Gandhi for
Respondent Nos. 2 to 6.

**CORAM : S.V. GANGAPURWALA &
R.N. LADDHA, J.J.**

DATED : 14th OCTOBER, 2022

P.C. :-

1. At the request of learned Counsel for the Petitioner, leave to amend prayer clause. Re-verification is dispensed with.
2. Heard learned Counsel for the Petitioner and Respondents. The Petitioner seeks directions to stay the proceedings before the Appellate Authority of RERA till the State Government decides representation of the Petitioner and/or grant Occupancy Certificate.
3. On 12/08/2022, order is passed by the Appellate Tribunal of pre-deposit under Proviso to Section 43(5) of the

Real Estate (Regulation and Development) Act, 2016 and compliance was directed to to be made by 02/09/2022.

4. The Petitioner had approached this Court by Filing Writ Petition No. 10633 of 2022. We exercised our discretionary powers and extended the time for deposit of the amount by four week under Order dated 13/09/2022.

5. The Petitioner has failed to deposit the amount even within the extended period as directed under order dated 13/09/2022 in Writ Petition No. 10633 of 2022 filed by the Petitioner.

6. Learned Counsel for the Petitioner submits the Petitioner had filed Writ Petition No. 1444 of 2022 for getting occupancy certificate. This Court under order dated 15/09/2022, directed Municipal Corporation to follow the procedure as prescribed in law. The procedure shall be completed within 3 months and the State Government was directed to take decision within 6 months thereafter.

7. In absence of occupancy certificate, the Petitioner is not in a position to deal with the property and realise the amount

so as to the deposit in the Court. Learned Counsel submits that the Petitioner, today, is financially exhausted and is not in a position to deposit the amount.

8. Learned Counsel submits that proceedings before the Appellate Authority and RERA authorities be stayed for 9 months.

9. Learned Counsel for Respondents opposes said request.

10. We had exercising our discretionary powers, passed an order on 13/09/2022 in Writ Petition No. 10633 of 2022, filed by the present Petitioner extending the time to deposit the amount by 4 weeks.

11. In the present matter, we asked learned Counsel for the Petitioner to deposit some part of the amount immediately and we would further grant 4 weeks time to deposit remaining amount. Learned Counsel, on instructions, submits that it will not be possible for the Petitioner to comply with the same.

12. The Proviso to Section 43(5) of the Act is mandatory as has been held by the Apex Court. We have already exercised our discretion once. Today also we had apprised the learned

Counsel for the Petitioner, we would exercise discretion and grant extension of a reasonable time. However, Petitioner is not in a position to comply, even if 4 to 6 weeks extension is granted.

13. In light of above, it will not be possible to entertain the Writ Petition.

14. The Writ Petition is disposed of.

(R.N.LADDHA, J.)

(S.V. GANGAPURWALA, J.)

YUGANDHARA
SHARAD
PATIL

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by YUGANDHARA
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Date: 2022.10.19
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