



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

SECOND APPEAL NO. 188 OF 2023

Dilip Kumar ...Appellant
Versus
Esque Finmark Pvt. Ltd. & ors. ...Respondents

**WITH
INTERIM APPLICATION NO. 2089 OF 2023**

**AND
SECOND APPEAL NO. 234 OF 2023**

Sangeeta Kothari ...Appellant
Versus
Esque Finmark Pvt. Ltd. & anr. ...Respondents

**WITH
INTERIM APPLICATION NO. 3143 OF 2023**

**AND
SECOND APPEAL NO. 475 OF 2023**

Surendra G. Shankar & anr. ...Appellants
Versus
Esque Finmark Pvt. Ltd. and ors. ...Respondents

**WITH
INTERIM APPLICATION (ST) NO. 5679 OF 2023**

**AND
SECOND APPEAL NO. 238 OF 2023**

Sharmila M. Jain ...Appellant
Versus
Esque Finmark Pvt. Ltd. & anr. ...Respondents

**WITH
INTERIM APPLICATION NO. 3180 OF 2023**

**AND
SECOND APPEAL NO. 239 OF 2023**

Rajesh B. Mehta ...Appellant
Versus
Esque Finmark Pvt. Ltd. & anr. ...Respondents

**WITH
INTERIM APPLICATION NO. 3181 OF 2023**

**AND
SECOND APPEAL NO. 241 OF 2023**

Kamlesh C. Dolani & anr. ...Appellants
Versus
Esque Finmark Pvt. Ltd. & anr. ...Respondents

**WITH
INTERIM APPLICATION NO. 3183 OF 2023**

**AND
SECOND APPEAL NO. 240 OF 2023**

Jayshree Jain ...Appellant
Versus
Esque Finmark Pvt. Ltd. & anr. ...Respondents

**WITH
INTERIM APPLICATION NO. 3182 OF 2023**

**AND
SECOND APPEAL NO. 237 OF 2023**

Kishore Kumar Umedmal Kothari ...Appellant
Versus
Esque Finmark Pvt. Ltd. & anr. ...Respondents

**WITH
INTERIM APPLICATION NO. 3179 OF 2023**

**AND
SECOND APPEAL NO. 242 OF 2023**

Rajesh F. Jain & anr.	...Appellants
Versus	
Esque Finmark Pvt. Ltd. & ors.	...Respondents

Mr. Saurabh Butala and Ms Padma Chinta i/b Mr. Anwar Landge for the Appellant in S.A. Nos.188 and 475 of 2023.

Ms Sunny Shah i/b Mr. Ashish T. Suryavanshi for the Appellant in S.A. Nos.234,238, 239, 241, 240, 237 & 242 of 2023.

Mr. Vikramjit Garewal a/w. Mr. Rashmin Jain, Mr. Rishabh Ranka, Mr. Prathamesh Jadhav i/b Kanga & Co. for the Respondent No.1.

Mr. Santosh Parad a/w. Mr. R.Y. Sirsikar for Respondent /MCGM.

CORAM: N. R. BORKAR, J.
DATE: 23 AUGUST 2023.

PC:-

1. The appellant(s) herein had filed the complaint(s) before the Maharashtra Real Estate Regulatory Authority, Mumbai (for short, 'Maha RERA') *inter alia* praying that the respondent No.1 herein be directed to hand over possession of their respective flats as per allotment letters issued to them by the respondent No.1 in the Maha RERA registered projects known as '*Lodha Venezia*' and '*Lodha Azzuro*' bearing registration Nos.P51900000828 & P51900005387 at Kalachowky, Mumbai.

2. Initially, respondent No.2 herein was not made party to the complaint(s). It however, appears that subsequently on the direction of MahaRERA the respondent No.2 was made party, as the projects in question were found to be registered in the name of respondent No.2.

3. The respondent No.2, thereafter appeared before the Maha RERA and sought its discharge. The Maha RERA had allowed the same by order dated 23 July 2019. The said order reads thus:-

*“Heard the Advocate for Complainant and Respondent.
The parties submitted that the allotment is done by Res. No.1 and therefore Respondent no.2 to be discharged since there is no privity of the contract b/n Complainant and Respondent no.2.
Respondent No.1 to be called for hearing by next date.
Respondent 2 is discharged from proceeding matter stands adj to 20/08/19.”*

4. The complaint(s) were thereafter heard on merit and by order dated 16 October 2019, the same were dismissed.

5. In appeal(s) filed by the appellant(s) before the Maharashtra Real Estate Appellate Tribunal, Mumbai, the appellant(s) in addition to the final order dated 16 October 2019, took exception to the order dated 23 July 2019 discharging respondent No.2. The respondent No.2 after appearing before the Appellate Tribunal objected to maintainability of the appeal(s) against the order dated 23 July 2019 *inter alia* on the ground of limitation. In view of the said objection, the appellant(s) filed the application(s) for condonation of delay. The said application (s) came to be rejected by the order(s) impugned.

6. The learned counsel for the appellant(s) submit that the application(s) for condonation of delay were filed by way of abundant caution though they were not required in view of Section 105 of the C.P.C. which permits challenge as raised by the appellant(s) against interlocutory orders. It is submitted that even otherwise considering the fact that the delay was of 77/102 days, the Appellate Tribunal ought to

have condoned it.

7. On the other hand, the learned counsel for the respondents supported the order(s) impugned.

8. In the normal circumstances, I would have condoned the delay. However, it appears that the order dated 23 July 2019 was passed with consent. According to the learned counsel for the appellant(s), the Advocate was not authorised to give such consent. However, admittedly, no application was thereafter made seeking recall of the said order. On the contrary, it appears from the final order dated 16 October 2019, that the same submissions were made at the time of final hearing of the complaint(s). The learned counsel for the appellant(s) submit that the merits of the order dated 23 July 2019 cannot be examined at this stage. However, considering the overall facts and circumstances of the case, I am not inclined to interfere with the impugned order(s). The Second Appeals are dismissed.

9. All the pending Interim Applications are disposed of.

(N. R. BORKAR,J.)