Pallavi

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.912 OF 2022
WITH
INTERIM APPLICATION NO.30731 OF 2022
IN
SECOND APPEAL NO.912 OF 2022

M/s. Ronak Builders and Developers Mumbai ...Appellant
Versus
Prashant Sakharam More ...Respondent

- Mr. Nikhil Wadikar i/b. Nandu V. Pawar, for the Appellant.
- Mr. G.H. Keluskar, for the Respondent.

CORAM : MADHAV J. JAMDAR, J.
DATE : 19th AUGUST 2023

P.C:

1. The Appellant is challenging the legality and validity of the order dated 29th October 2020 passed by learned Chairperson, MahaRERA in Complaint No.CC006000000078951 as well as the order dated 16th December 2021 passed in Appeal No.AT006000000052810.

2. It is the contention of Mr. Wadikar, learned counsel appearing for the Appellant that by order dated 29th October 2020 no executable order is passed by the learned Competent Authority and the Appellate Court without considering the said aspect has dismissed the Appeal.

3. The factual position on record shows that the Respondent booked a flat on 8th March 2010 for a total consideration of Rs.46,46,400/- and he was orally promised possession of flat by 2013.

4. In May 2011, the erstwhile developer i.e. Scarlett Builders and Developers assigned the project to the Appellant i.e. M/s. Ronak Builders and Developers.

5. On 3rd May 2011, the present Appellant issued allotment letter to the Respondent with respect to Flat No.902, admeasuring about 1210 sq. ft. (Saleable Built Up area) in the proposed residential building to be constructed on Plot No.37, Sector 42, Nerul (W), Navi Mumbai for an aggregate price of Rs.46,46,400/- which shall be exclusive of all other charges, stamp duty, registration charges, Service tax, legal charges, maintenance charges, etc.

6. It is the contention of the Respondent that they have paid total amount of Rs.28,25,000/- to the earlier builder whereas, it is the contention of the Appellant that erstwhile builder has confirmed receipt of only Rs.15,25,000/-.

7. It is further contention of the Appellant that the father of the

Respondent has issued cancellation letter and therefore, the Respondent is not entitled to any refund. However, it is admitted position that at least Rs.15,25,000/- was paid to the erstwhile builder and the present Appellant has confirmed the receipt of the same. It is also admitted position that when the father of the Respondent has allegedly executed the cancellation deed, the said amount of Rs.15,25,000/- has not been refunded to the father.

8. The learned Appellate Tribunal has found that as per the Maharashtra Ownership Flats (Regulation of the promotion of construction, sale, management and transfer) Act, 1963 ("**MOFA Act**"), an agreement was to be executed after receipt of 20% of the amount and as per Real Estate (Regulation and Development) Act, 2016 (**RERA Act**), it is to be executed before accepting 10% of the amount. Aggregate consideration of the said flat was Rs.46,46,400/- and the agreed payment received was Rs.15,25,000/-. Thus, almost 30% payment is received by the developer and yet the developer has not executed the agreement of sale in favour of the allottee i.e. the Respondent.

9. It is the contention of Mr. Wadikar, learned counsel appearing for the Appellant that the Chairperson, RERA has advised the parties to reconcile the amount of balance consideration and therefore, the said order is not executable and the learned Appellate Tribunal has not taken into consideration this point. To appreciate this contention of Mr. Wadikar, learned counsel appearing for the Appellant, the relevant observations in the order of the Chairperson, RERA are set out hereinbelow:-

> "… The parties are advised to reconcile the amount of balance consideration amount and execute the agreement for sale within 30 days of the balance consideration amount being paid by the Complainant. The Complainant will also be required to pay the requisite CIDCO transfer fees, parking charges, club house charges, security deposit, society formation and maintenance charges and Government taxes and duties."

It is admitted position that the total consideration is Rs.46,46,400/- and the only dispute was whether the Respondent has paid an amount of Rs.15,25,000/- or Rs.28,25,000/-. In that context, the Chairperson has directed that the parties to reconcile the amount of balance consideration. The other directions issued by the learned Chairperson, RERA are very clear.

10. As far as said aspect of reconciliation of the amount of balance consideration is concerned, Mr. Keluskar, learned counsel appearing for the Respondent after taking instructions from the Respondent states that the Respondent is ready to proceed on the assumption that he has paid only Rs.15,25,000/- to the developer although actual payment is Rs.28,25,000/-. Therefore, now there is no question of reconciliation of the amount of balance consideration. It is admitted position that the Respondent has made payment of Rs.15,25,000/- and the aggregate total consideration was Rs.46,46,400/-. Therefore, the balance consideration will be Rs.31,21,400/-. The learned Chairperson has already issued clear directions regarding other charges. The order of the learned Chairperson is confirmed by the learned Appellate Tribunal by giving cogent reasons. Therefore, subject to said clarification regarding amount of balance consideration, the order of the Competent Authority as confirmed by the learned Appellate Tribunal is confirmed. As there is no substantial question of law involved in the Second Appeal, the Second Appeal is dismissed, however, with no order as to costs.

11. In view of dismissal of the Second Appeal, nothing survives in the Interim Application and the same is also dismissed.

[MADHAV J. JAMDAR, J.]

Note : The title of this order is corrected vide speaking to the minutes of order dated 5th September 2023.