

SECOND APPEAL NO.738 OF 2022

Vs.

Shri Vijay Solanki ...Respondent

Mr. Aditya Deolekar, Shivalee Satam, Jheel
Sanghavi i/by TRSNA Legal for Respondent.

CORAM: MADHAV J. JAMDAR, J.

DATE: 4th JANUARY, 2023

P.C.:

- 1.** Heard Mr. Damle, learned Senior Counsel appearing for the Appellant and Mr. Aditya Deolekar, learned Counsel appearing for the Respondent.
- 2.** Mr. Damle submitted that the following substantial question of law is involved in this Second Appeal:

"Whether the authorities namely MahaRERA and Maharashtra Real Estate Appellate Tribunal, Mumbai have passed the impugned orders, which are in violation of Section 18 of the Real Estate (Regulation and Development) Act, 2016 ?

3. The factual position on record shows that the agreement was executed between the Appellant and the Respondent on 10th January 2014, by which the Appellant agreed to deliver the possession of apartment in question to the Respondent by 31st December 2014.

4. It is the contention of Mr. Damle, learned Senior Counsel that the Occupation Certificate has been received on 11th July 2019 and the Respondent has accepted the rent for delay from September 2016 to March 2017. He therefore submitted that the complaint filed by the Respondent is not maintainable and Section 18 of the RERA will have no application to the facts of this case.

5. Section 18 of the RERA Act, which is relevant for deciding the present Second Appeal, reads as under:

"18. (1) If the promoter fails to complete or is unable to give possession of an apartment, plot or building,—

(a) **in accordance with the terms of the agreement for sale** or, as the case may be, **duly completed by the date specified therein**; or

(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason, **he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed** in this behalf **including compensation** in the manner as provided under this Act:

Provided that **where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed.**

(2) The promoter shall compensate the allottees in case of any loss caused to him due to defective title of the land, on which the project is being developed or has been developed, in the manner as provided under this Act, and the claim for compensation under this subsection shall not be barred by limitation provided under any law for the time being in force.

(3) If the promoter fails to discharge any other obligations imposed on him under this Act or the rules or regulations made thereunder or in accordance with the terms and conditions of the agreement for sale, he shall be liable to pay such compensation to the allottees, in the manner as provided under this Act."

(Emphasis added)

6. It is admitted position that the agreement between the Appellant and Respondent was executed on 10th January 2014, by which the Appellant agreed to give possession to the Respondent on or before 31st December, 2014. Although the

Respondent has accepted the rent (i.e. interest for every month of delay) for delayed possession from September 2016 to March 2017, it is important to note that the complaint was lodged on 27th October 2018 i.e. almost after 1½ years later. It is also admitted position that the Occupation Certificate was received on 11th July 2019 i.e. after complaint was decided by MahaRERA. The contention of Mr. Damle, learned Senior Counsel that as the Respondent has accepted interest per month for delay for few months, the apartment purchaser can not avail right to withdraw from the project has no legal basis. The Respondent accepted the said interest from September 2016 to March 2017 and thereafter filed complaint before MahaRERA on 27th October 2018. Thus, it is clear that the Respondent waited for considerable period with a hope that he receives possession. This is a case where the Respondent is not given the possession for considerable period nor the rent/interest is paid. Thus, there is no substance in the said contention.

7. Section 18 of the said Act provides that if the promoter fails to complete or is unable to give possession of an apartment, in accordance with the terms of the agreement for sale, or as the case may be, duly completed by the date

specified therein, he shall be liable on demand to the allottees in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by the promoter in respect of that apartment, with interest at such rate as may be prescribed in this behalf. In fact Section 18 of the Act clarifies that this remedy is in addition to any other remedy available and also this is apart from the compensation. It is admitted position that no compensation has been awarded. Therefore, the contention of Mr. Damle, learned Senior Counsel that the complaint is not in accordance with Section 18 of the Act is without any basis.

8. It is significant to note that the MahaRERA, Mumbai has only directed that the amount which the Respondent has paid to the Appellant shall be returned back with simple interest at the rate of 10.55% per annum from the date of their payment till the refund and further directed that the Appellants are entitled to get set off of the amount of rent amount of Rs.31,500/- and the EMI of loan paid by them. It has further been directed that the charge of the said amount shall be on the flat booked by the Respondent till his claim is satisfied. Thus, it is significant to note that even the said amount of

rent is accounted for by MahaRERA. Therefore there is no substance in the Second Appeal.

9. The Second Appeal is dismissed with costs of Rs.25,000/-

BHALCHANDRA
GOPAL
DUSANE

(MADHAV J. JAMDAR, J.)

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