

Dusane

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

SECOND APPEAL NO.336 OF 2023

Noble Infra Projects ...Appellant

V/s.

Shakir Shafiuddin Shaikh ...Respondent

Mr. R.A. Thorat, Senior Counsel a/w Mr. Ashish M. Varute i/by S.P. Chavan for Appellant.

Mr. Aseem Naphade a/w Ms. Sharon Fernandez and Mr. Sulaiman Bhimani i/by The Law Suits for Respondents.

CORAM: MADHAV J. JAMDAR, J.
DATE: 26th June 2023

P.C.:

1. By the present Second Appeal, the challenge is to the legality and validity of the impugned order dated 27th March 2023 passed by learned Maharashtra Real Estate Appellate Tribunal, Mumbai in Miscellaneous Application No.73 of 2023 (for delay) alongwith Miscellaneous Application No. 66 of 2023 (for restoration) in Appeal No. AT005000000053321.

2. By order dated 9th October 2019 passed by the learned Adjudicating Officer, Maharashtra Real Estate Regulatory

Authority, Mumbai in Complaint No. CC006000000078246, the present Appellant *inter alia* was directed to pay interest @10.35% per annum on Rs.55.00 Lakhs from 1st January 2018 till possession of flat is delivered. The said order was challenged before the learned Maharashtra Real Estate Appellate Tribunal (hereinafter referred to as "The Appellate Tribunal").

3. Admittedly, by order dated 22nd August 2022 passed in Miscellaneous Application No.811 of 2021 (for delay) in the Appeal, the delay in filing the Appeal was condoned. On the same day, by separate order the Appellant was directed to deposit entire amount as per the impugned order in compliance of proviso to Section 43(5) of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as "RERA" for short). The said order was not complied with and resultantly the said Appeal was dismissed for non-compliance. Therefore the above referred Miscellaneous Application No. 73 of 2023 (for delay) alongwith Miscellaneous Application No. 66 of 2023 (for restoration) has been filed.

4. It is an admitted position that during the pendency of this Second Appeal, pursuant to the order passed by a learned Single Judge (Vacation Court) on 12th May 2023, the Appellants have deposited a sum of Rs.55.00 Lakhs in this Court. It is also admitted position that the said amount of Rs.55.00 Lakhs is

more than the amount as directed by the order dated 22nd August 2022 passed by the learned Appellate Tribunal, Mumbai. Therefore, by consent of the parties, the following order is passed.

ORDER

- (i) As the Appellant has complied with the requirement of Proviso to Section 43(5) of the RERA Act, by consent of the parties, Miscellaneous Application No. 73 of 2023 (for delay) alongwith Miscellaneous Application No. 66 of 2023 (for restoration) of Appeal bearing Appeal No. AT005000000053321 is allowed.
- (ii) The said Appeal No. AT005000000053321 along-with all pending Applications, if any, are restored to the file of Maharashtra Real Estate Appellate Tribunal, Mumbai.
- (iii) The Maharashtra Real Estate Appellate Tribunal, Mumbai is requested to dispose of the said Appeal expeditiously.
- (iv) The amount which has been deposited by the Appellant in this Court, pursuant to the order dated 12th May 2023 passed by a learned Single Judge (Vacation Court) be remitted to the learned

Maharashtra Real Estate Appellate Tribunal,
Mumbai within four weeks from today.

- (v) The Second Appeal is disposed of in above terms
with no order as to costs.

(MADHAV J. JAMDAR, J.)