

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 636 OF 2022
WITH
INTERIM APPLICATION NO. 18328 OF 2022

Matrix Constructions	}	..Appellant
V/S.		
Manisha Hitendra Varale	}	..Respondent

Mr. Dharan Sharma *i/by. Mr. Jayesh Jain, for the Appellant.*

Mr. Mishra Rajendra Prasad, *for the Respondent.*

CORAM : SANDEEP V. MARNE, J.

Dated : 3 APRIL 2024.

P.C. :

1) By this Appeal, the Appellant challenges the Order dated 31 January 2022 passed by the Maharashtra Real Estate Appellate Tribunal (**Appellate Tribunal**) allowing the Appeal filed by the Respondent-allottee and setting aside the Order dated 19 August 2020 passed by the Regulatory Authority. The Appellate Tribunal has directed Petitioner to pay to the Respondent interest at SBI MCLR plus 2% on the amount of Rs.44,95,000/- from 1 July 2019 till the date of possession. The Petitioner is also directed to pay costs of Rs.20,000/- to the Respondent-allottee.

2) I have heard Mr. Sharma, the learned counsel appearing for the Appellant and Mr. Mishra, the learned counsel appearing for the Respondent.

3) It is the contention of the Appellant that though liability to pay interest to the Respondent-allottee as directed by the Appellate Tribunal is not seriously disputed, there has been delay on the part of the Respondent-allottee in making various payments to the Petitioner-Promoter as per the terms and conditions of the flat purchase agreement. Inviting my attention to Clause-2 of the agreement, it is contended that the allottee had agreed to make slabwise payment to the Developer and under Clause-4(vii), the Promoter was entitled to claim reasonable interest in respect of the delay caused in making payments by the allottee. My attention is invited to a table incorporated in the Memo of Second Appeal to demonstrate as to how there was delay in making each payment on the part of the Respondent-allottee to the appellant. Reliance is placed on allottee's letter dated 4 August 2015 under which she had agreed to pay interest to the Promoter in respect of the delayed payments made from time to time. Reliance is also placed on letter dated 14 January 2019 under which demand was raised for interest on delayed payment. It is sought to be contended on behalf of the Appellant that when there is a admitted liability on the part of the Respondent-allottee to pay interest to the Appellant, the Appellate Tribunal ought to have issued a direction for making necessary adjustments by adjusting the interest payable by the Respondent-allottee from the amount of interest that the Appellant is required to pay her.

4) I have heard the submissions canvassed on behalf of the Appellant. It appears that the Appellant did not participate in proceedings either before the Regulatory Authority or before the Appellate Tribunal. Though a feeble attempt is sought to be made to raise a grievance in respect of the non-receipt of notices in respect of the proceedings filed before the Regulatory Authority and the Appellate Tribunal, the said contention deserves outright rejection in view of specific findings recorded by the Appellate Tribunal about the manner in which the Appellant was sought to be served. Furthermore, the learned counsel appearing for the Appellant does not dispute the position that details of filing of complaint, as well as, appeal are reflected on the website of MahaRERA from which it was easily possible for the Appellant to notice filing of complaint as well as appeal by the Respondent-allottee. On account of non-participation of the Appellant in Appeal filed before the Appellate Tribunal, the issue of liability of Respondent-allottee to pay interest to the Appellant was never canvassed before the Appellate Authority. In ordinary course, it is not permissible for the Appellant to raise the issue directly before this Court in a Second Appeal, which it never raised before the Appellate Tribunal. However, considering the fact that the Appellant was not present before the Appellate Tribunal, I proceed to examine whether there is any merit in the claim that is sought to be raised on behalf of the Appellant.

5) Perusal of the statement incorporated in the Appeal Memo would indicate that there is minor and insignificant delay which is alleged to have taken place in making various payments by the Respondent-allottee to

the Appellant on completion of the various slabs of the building. The period of delay is not significantly higher. What is important is the fact that there is no communication on record by the Appellant to the Respondent-allottee demanding interest contemporaneously when the alleged delay had taken place. Again the chart incorporated in the Appeal Memo is vague and does not contain any details of date of completion of particular slab and the date of issuance of intimation to the Respondent-allottee for particular payment. It cannot be inferred on the basis of stray letter obtained from the Respondent-allottee on 4 August 2015 that there is any admission on her part about the delay, details of which are incorporated in the Appeal Memo. It therefore cannot be contended that there is any admitted liability on the part of the Respondent-allottee in respect of delay in making payments to the Appellant. So far as Appellants letter dated 14 January 2019 is concerned, the same appears to have been issued seven months after the Respondent-allottee made full payment of consideration in respect of the Flat in July, 2018. Admittedly, till July 2018, not even a single correspondence was made by the Appellant with the Respondent-allottee alleging any delay in making slabwise payments. Perusal of the letter dated 14 January 2019 shows that the same was issued essentially demanding payment of service tax and GST. In that letter, an absolutely vague demand of Rs.17,23,840/- was made under the heading "Interest on late payment calculated upto 17 July 2018". No details of such amount were given in the letter dated 14 January 2019. It appears that the total consideration for purchase of flat is Rs.44,95,000/-. If the period of delay in the chart incorporated in the Memo of Appeal is taken into consideration, it is impossible to believe that the claim for interest of those

amounts can escalate to Rs.17,23,840/- as sought to be demanded in the letter dated 14 January 2019. In short, there are neither any contemporaneous demand for interest nor particulars were supplied even in the letter dated 14 January 2019. In my view, therefore the claim for interest on account of alleged delay in making slabwise payments by Respondent-allottee which is now sought to be raised is far from genuine.

6) In my view, therefore no interference is warranted in the order passed by the Appellate Tribunal. Infact it is shocking that despite making full payment of consideration as early as in July 2018, the Appellant has failed to deliver possession of the flat to the Respondent-allottee during last six long years. I am informed that the Occupancy Certificate in respect of the building has still not been procured by the Appellant. Infact, the Appellate Tribunal could have granted interest to the Respondent-allottee from completion of period of three years from the date of execution of the agreement as per the Judgment of the Apex Court in **Fortune Infrastructure and anr. V/s. Trevor D'lima and Ors.** 2018 (5) SCC 442. However, the Appellate Tribunal has granted interest only from July 2019 instead of awarding the same from 15 March 2017. The conduct of the Appellant has been such that exemplary costs are required to be imposed while dismissing the Second Appeal. However, since liability to pay interest as per the Order of the Appellate Tribunal is recurring in nature, I am not imposing additional costs over and above the one imposed by the Appellate Tribunal.

7) No substantial question of law is involved in the Appeal. The Second Appeal is accordingly **rejected**. Interim Application also stands disposed of.

NEETA
SHAILESH
SAWANT

[SANDEEP V. MARNE, J.]

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