

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 3 OF 2024

Sanvo Resorts Private Ltd.

} ..Appellant
(Orig. Respondent)

V/S.

Mr. Samshet Shetye & Anr.

} ..Respondents
(Orig. Complainant)

Mr. Prasanna Tare, with Ms. Akshada Shetye, for the Appellant.

Mr. Vijayprakash Yadav, for the Respondent.

CORAM : SANDEEP V. MARNE, J.

Dated : 2 APRIL 2024.

P.C. :

1) By this appeal, the Appellant-Promoter challenges the Order dated 29 June 2022 passed by the Maharashtra Real Estate Appellate Tribunal (**Appellate Tribunal**), by which the Appeal preferred by the Appellant has been dismissed and the Order passed by the Regulatory Authority on 13 May 2019 is confirmed. By its Order dated 13 May 2019, the Regulatory Authority has directed payment of interest at Marginal Cost Lending Rate (MCLR) plus 2% on the amounts paid by the Respondent to the Appellant from 1 May 2017 till the date of actual possession.

2) It is not in dispute that the Appellant has taken over possession of the flat on 23 September 2023. However, it is the contention of the

Appellant-Promoter that the Occupancy Certificate in respect of the building was obtained on 2 May 2019 and possession of the flat was offered to the Respondent by letter dated 4 May 2019. It is therefore the contention of the Appellant that the liability to pay interest cannot exceed the date of 4 May 2019 on which the possession of the flat was offered to the Respondent. On the other hand, it is the contention of the Respondent that the flat was not ready to be occupied in May 2019. Reliance is placed on response given by the Respondent on 7 May 2019 to Promoter's Letter dated 4 May 2019. *Prima-facie*, the letter does not indicate that the flat was not ready. However, the Respondent apparently raised certain dispute about some of the heads under which payment of Rs.3,51,782/- was demanded by the Appellant. According to the Respondent, the Club House was yet to be constructed and therefore the payment in respect thereof could not have been sought. He has also disputed payments towards development/infrastructure/water/electricity/drainage charges. It is the contention of the Petitioner that the flat was not provided water or electricity connection as on 4 May 2019 which is evident from the fact that the Appellant was required to procure electricity connection in respect of the flat from MSEDCL after taking possession.

3) Mr. Tare, would counter the said submissions of the Respondent by contending that the electricity was actually provided to the flat and electric meter was also installed and that the Promoter paid electricity charges upto December 2022 whereafter MSEDCL disconnected

electricity supply on account of Respondent's failure to take possession of the flat.

4) In my view, there are serious disputes of fact amongst the parties about who is responsible for non-delivery of possession after issuance of letter dated 4 May 2019. Ideally, once the Occupancy Certificate is issued, Flat is deemed to be ready for possession and possession thereof ought to have been obtained by the Respondent. The Respondent has however attempted to contend that the Flat was not ready to be occupied in May 2019. These are factual disputes which are not considered by the Appellate Tribunal while upholding the Order of the Regulatory Authority. The Regulatory Authority's Order contemplates payment of interest right till the date of possession, which in the present case is 23 September 2023. It is Appellant's contention that it cannot be made liable to pay interest in respect of the period after 4 May 2019. In my view, this factual dispute is required to be adjudicated by the Appellate Tribunal rather than it being decided at the first instance by this Court in exercise of jurisdiction under Section 100 of the Code of Civil Procedure, 1908.

5) Accordingly, with the consent of the parties, the Order passed by the Appellate Tribunal is set aside and the Appeal filed by the Appellant-Promoter is restored on the file of the Appellate Tribunal, which shall proceed to decide the Appeal afresh. Parties shall be at liberty to file appropriate pleadings/affidavits as well as documents in support of rival contentions about the condition of the Flat as on issuance of letter dated 4

May 2019. The Appellate Tribunal shall proceed to decide the Appeal afresh without being influenced by any of the observations made in the its previous Order dated 20 June 2022, as well as in the present order.

6) Mr. Tare would submit that the Appellant-Promoter has already deposited Rs.2,55,590/- at the time of filing of the Appeal and it is willing to deposit the balance amount of interest of Rs.3,83,383/-. Let the said amount of Rs.3,83,383/- be deposited by the Appellant before the Appellate Tribunal within four weeks. With the above directions, the Appeal is **disposed of**.

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[SANDEEP V. MARNE, J.]