

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO.17401 OF 2023
IN
SECOND APPEAL NO.677 OF 2023

KRISHNA DEVELOPER PVT. LTD.
V/S
KUNAL KUMBHAT

....Appellant/Applicant
....Respondent

...

Mr. Surel Shah, Mr. Saakshat Relekar, Mr. Chirag Sarawagi, Ms. Smita Sawant i/b Mr. Tushar Goradia for the Appellant/Applicant.
Mr. Rohan Cama, Ms. Ayush Anandpara a/w Mr. Prakhar Parekh, Mr. Aman Sadiwala and Ms. Arya Gadgkar ib M/s. Rashmikant and Partners for the Respondent Nos.1 and 2.

...

CORAM: SANDEEP V. MARNE, J.
DATE : JANUARY 11, 2024.

P.C.:

1 The Interim Application is filed seeking stay of the order passed by MAHARERA Appellate Tribunal. It is seen that the Chairperson of MAHARERA Appellate Tribunal has passed following order:

“FINAL ORDER

a) The Respondent is directed to refund the entire consideration amount paid by the Complainant along with interest from the date of default i.e., 31/12/2017 at the rate as prescribed under Rule 18 of the Maharashtra Real Estate (Regulation and Development) (Registration of Real Estate Projects, Registration of Real Estate Agents, Rate of Interest and Disclosures on Website) Rules, 2017, till realisation of the amount.

- b) The complainant is directed to enter into a deed of cancellation of the flat upon refund of the amount.
- c) The Respondent promoter is also entitled to claim the benefit of "moratorium period" as mentioned in the Notification/Orders Nos. 13 and 14 dated 2nd April, 2020 and 18th May, 2020 issued by the MahaRERA.
- d) The claim of the Complainant for compensation stands rejected as no proof of the same has been submitted by the Complainant.
- e) No order as to the costs."

2 It is an admitted position that the Appellant did not challenge the order passed by the MAHARERA by filing an Appeal before the Appellate Tribunal. On the contrary it is the Respondent who filed Appeal before the Appellate Tribunal. In that view of the matter, the Appellant must pay to the Respondent all amounts arising out of the order passed by MAHARERA. Mr. Shah, the learned Counsel appearing for the Appellant, after taking instructions, makes a statement that entire amounts arising out of the order dated 29 December 2021 passed by the Chairperson, MAHARERA shall be paid to the Respondent within a period of two weeks from today. It is further seen that the order passed by the MAHARERA contemplates payment of interest on the amount of consideration to be paid from the date of default. As per the settled law, such interest will have to be paid from the date of payment and not from the date of default. Mr. Shah fairly submits that the Appellant shall pay to the Respondent interest on the entire amount of consideration paid by the Respondent from the date of respective payment. The statements

made on behalf of the Appellant recorded as undertakings given to this Court.

3 Immediately upon the payment of the amounts as directed above, the Respondent shall execute deed of cancellation with the Appellant.

4 Subject to the payments being made to the Respondent as directed above, there shall be stay to the order passed by the MAHARERA Appellate Tribunal during pendency of the present Appeal.

5 The Interim Application is accordingly disposed of.

(SANDEEP V. MARNE, J.)

Digitally
signed by
SUDARSHAN
RAJALINGAM
KATKAM
Date:
2024.01.15
15:02:15
+0530