

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL (ST.) NO. 27241 OF 2023

WITH

INTERIM APPLICATION NO. 16652 OF 2023 (for stay)

WITH

INTERIM APPLICATION NO. 16649 OF 2023 (for condonation of delay)

Era Realtors Private Ltd.

....Appellant

V/s.

Prakash Shah and anr.

....Respondents

Mr. Shakeeb Shaikh a/w. Mr. Noorani Patel i/by. Diamondwala & Co.,
for the Appellant.

Mr. Aseem Naphade a/w. Ms. Vaishali Sanghavi, Ms. Milli Murkudkar i/by.
Ameet Mehta i/by. M/s. Solicis Lex, for the Respondents.

CORAM : SANDEEP V. MARNE, J.

Dated : 10 January 2024.

P.C. :

1. Heard Mr. Shaikh, learned counsel appearing for the Appellant and Mr. Naphade for the Respondents.

2. After considering the submissions canvassed by the learned counsel for the parties, the Appeal is **admitted** on following substantial questions of law :

(i) Whether a litigant who obtains orders by making concession before the RERA Authority is permitted to seek relief over and above the concession so made in appeal filed before the RERA Appellate Authority ?

(ii) In absence of a specific ground being raised in the Appeal Memo about not having made a concession before the RERA Appellate Authority, whether the RERA Appellate Tribunal is justified in holding that the Respondents did not make such concession ?

3. Considering the limited controversy involved in the present Appeal, endeavour shall be made to decide the Appeal finally on the next date of hearing. Stand over to **1 March 2024**.

Interim Application No. 16652 of 2023 :

4. Mentioned. Not on board.

5. The Appeal is admitted by formulating substantial question of law. *Prima-facie*, it appears that the order of RERA Appellate Authority dated 25 November 2020 is passed on account of concession made by the Respondent that interest be directed to be paid only on amounts paid after implementation of the Real Estate (Regulation and Development) Act, 2016.

In absence of any application for review being filed before the RERA Authority and in absence of a specific ground being raised in Appeal before the Appellate Tribunal, it appears that the RERA Appellate Tribunal has proceeded on an erroneous presumption that there is denial on the part of the Respondents about making of such concession. The order passed by the RERA Appellate Tribunal, *prima-facie* appears to be erroneous. Therefore, during the pendency of the Appeal, there shall be stay to the Order passed by the RERA Appellate Tribunal. Interim Application stands disposed of.

Interim Application No. 16649 of 2023 :

6. The Interim Application is filed seeking condonation of delay of 107 days in filing the Appeal. The application is fairly not opposed by Mr. Napahde, the learned counsel for the Respondent.

7. For the reasons stated in the application, the same is allowed. The delay in filing the Second Appeal is condoned. Interim Application is disposed of.

SANDEEP V. MARNE, J.

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