

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.271 OF 2024

Manoj Rane and Ors. ...Appellants

Versus

M/s. Fortune Infra Creators Pvt. Ltd. ...Respondent

...

Mr. Kunal Bhanage *Ms Priyanka Acharya i/b. Mr. Akshay Pawar for the Appellants.*

Ms Padmashri K. for Respondent Nos.2 & 3.

CORAM : SANDEEP V. MARNE, J.

DATED : 9 MAY 2024.

PC:

1. The Second Appeal is filed challenging order dated 26 October 2023 passed by the Maharashtra Real Estate Appellate Tribunal rejecting the Appellant's application for condonation of 231 days delay in filing the appeal.

2. I have heard the Mr. Bhanage, the learned counsel appearing for the Appellants and Ms Padmashri, the learned counsel appearing for Respondent Nos.2 and 3.

3. After having considered the submissions canvassed by the learned counsel appearing for the parties, in my view instead of considering only the aspect of condonation of delay in filing of appeal

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before the Appellate Tribunal, what needs to be done in the present case is to grant leave to the Appellants to file individual complaints before the Regulatory Authority. In paragraph 15 of its order, the Regulatory Authority essentially held that a joint complaint is not maintainable and desired that the Appellants ought to have filed individual complaints. While the Appellants were apparently ready to do so, they felt that the observations made by the Regulatory Authority in paragraph 16 of its order may come in their way.

4. In paragraph 16 of its order, the Regulatory Authority recorded “*prima facie*” opinion about entitlement of the Appellants to claim reliefs in respect of transfer of their bookings in another project. In my view, once the regulatory authority refused to entertain the joint complaint and desired that individual complaints ought to have been filed, it should not have gone into the merits of the joint complaint. In any case, recording of “prima facie” conclusion while finally dismissing the complaint was otherwise not desirable. In my view therefore, the “prima facie” conclusion recorded by the regulatory authority in paragraph 16 of its order would not come in the way of Appellants prosecuting individual complaints before the Regulatory Authority. In order to enable them to do so, it is necessary to set aside order dated 26 October 2023 passed by the Appellate Tribunal.

5. Accordingly, the Second Appeal is disposed of by setting aside order dated 26 October 2023 passed by the Appellate Tribunal.

However, instead of remanding the appeal for decision on merits before the Appellate Tribunal, the Appellants are granted liberty to file individual complaints before the Regulatory Authority with a clarification that the observations made by the Regulatory Authority in paragraph 16 of its order would not come in the way of decision of such complaints.

6. It is pointed out that Respondent Nos. 4 to 9 are part of group of the original 34 complainants before the Regulatory Authority. Therefore this order shall also enure to the benefit of Respondent Nos.4 to 9.

7. With the above directions, the Second Appeal is disposed of. No costs.

[SANDEEP V. MARNE, J.]