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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL (ST) NO. 29204 OF 2023
WITH
INTERIM APPLICATION NO. 17561 OF 2023
WITH
INTERIM APPLICATION NO. 11260 OF 2024

Shikara Constructions Pvt. Ltd.

... Applicant

Vs.

S. Vijayakumar

... Respondent

Ms. Nikita Mandaniyan a/w. Ms. Padma Chinta for the Applicant.

Ms. Shilpa Kapil for the Respondent.

CORAM : GAURI GODSE, J.

DATE : 7th AUGUST 2024

P.C.

Interim Application No. 17561 of 2023

1. This application is for condonation of delay of one day in filing the appeal. There is no opposition to the application for condonation of delay.

2. For the reasons stated in the application, delay of one day in filing the appeal is condoned and the application is allowed in terms of prayer clause (a).

Second Appeal (St) No. 29204 of 2023

3. Heard learned counsel for the parties. This appeal is filed by the respondent-developer to challenge the order passed by the Maharashtra Real Estate Regulatory Authority Appellate Tribunal (“Appellate Tribunal”), partly allowing the appeal of the original complainant. By the impugned order, the appellant-promoter is directed to register the project under Section 3 of the Real Estate (Regulation and Development) Act, 2016 (“RERA”). The impugned order further directs the remand of the complaint to the RERA Tribunal for a decision on merits.

4. Learned counsel for the appellant submits that the project was completed much before RERA came into force. She submits that the respondent-complainant was also occupying his flat much before the Act came into force. She submits that the project was completed in 2012. To support her contention that the project was already completed in the year 2012, she relied upon the completion certificate of the Gram Panchayat dated 13th October 2014. Learned counsel for the appellant submits that since the project is already complete, registration is not necessary under the Act. Hence the Second Appeal

would require consideration on the point of requirement of registration with respect to the certificate of completion issued by the Gram Panchayat.

5. Learned counsel for the respondent submits that the Gram Panchayat is not a competent authority to issue a completion certificate. She submits that CIDCO is the planning authority so far as the present project is concerned. She submits that even otherwise, the Gram Panchayat is not a planning authority and has never approved plans or issued completion certificate. According to the learned counsel for the respondent, the concerned authority to approve the plan and issue a completion certificate is the District Collector. Learned counsel for the respondent relies upon a Government Circular dated 10th January 2013, by which CIDCO has been appointed as the planning authority.

6. I have considered the submissions made by the respective parties. By the impugned order, the Appellate Tribunal has recorded a finding with regard to the requirement of registration in terms of sub-section (1) of Section 3 of RERA. After perusing the documents placed on record, the Appellate Tribunal observed that the promoter has

undertaken sale transactions even after commencement of RERA. The Appellate Tribunal further observed that since the project is not completed, the promoter is under obligation to register the project under the Act. Except for the certificate issued by the Gram Panchayat, nothing has been placed on record to show that the competent authority has issued any completion certificate. Section 3 of the Act is clear, which provides that for ongoing projects on the date of commencement of the Act for which a completion certificate is not issued, the promoter is under obligation to make an application for registration under the Act.

7. Except for the certificate issued by the Gram Panchayat, the appellant has not relied upon any valid document to show that the competent authority issued a completion certificate. Learned counsel for the appellant is unable to point out that the Gram Panchayat is a competent authority to issue the certificate for completion of the project.

8. Thus, I do not find any error or illegality in the reasons recorded in the impugned order. In view of the aforesaid, the Second Appeal does not raise any question of law required to be considered by this

court. The Second Appeal is therefore dismissed.

9. In view of the disposal of the Second Appeal, Interim Application No. 11260 of 2024 is disposed of as infructuous.

[GAURI GODSE, J.]