

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 10124 OF 2024

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Rohan Developers Private Limited

.. Petitioner

Versus

State of Maharashtra & Ors.

.. Respondents

**Mr. Cyrus Ardeshir, Sr. Counsel, a/w. Mr. Manish Gala Mr. Nilesh Gala,
Mr. Minil Gala i/b. Law square Advocates for the Petitioner.**

Mr. S. R. Crasto, AGP for Respondent/State.

**Mr. Karl Tamboly, Mr. Abhinav Chandrachud, Mr. Rohit Halwani, Ms.
Sayli Shinde, Ms. Amita Band, Mr. Vaibhav More, Advocates for
Respondent No.4.**

**CORAM: B. P. COLABAWALLA &
FIRDOSH P. POONIWALLA, JJ.**

DATE: AUGUST 5, 2024

P. C.

1. The above Writ Petition is filed seeking to quash and set aside the Order dated 12th June 2024, pursuant to which a recovery warrant dated 24th June 2024 is issued for non compliance of the order passed by MahaRERA dated 12th February 2024. By the order dated 12th February 2024, the Petitioner before us was directed to pay interest for the delay in handing over possession of the flat purchased by Respondent No.4 from 1st April 2020 till actual hand over of possession with the Occupation Certificate.

2. Mr. Ardeshir, the learned Senior Counsel appearing on behalf of the Petitioner, submitted that though the Petitioner has filed an Appeal [under Section 43(5) of the Real Estate (Regulation and Development) Act, 2016 (for short “RERA 2016”)] challenging the order impugned in the present Petition, the Appellate Authority is not listing the stay application or the Appeal for hearing.

3. Mr. Tamboly, the learned Counsel appearing on behalf of Respondent No.4, submitted that this Writ Petition itself is not maintainable because the Order dated 12th June 2024, and which is impugned in the present Petition, is an order directing the issuance of the recovery warrant against the Petitioner as per the Order dated 12th February 2024. In the present Writ Petition, the Order dated 12th February 2024 is not challenged and which is also the subject matter of a separate Appeal filed by the Petitioner before the Appellate Authority under Section 43(5) of RERA, 2016.

4. Mr. Tamboly, also pointed out that for an Appeal to be entertained by the Appellate Authority [under Section 43(5)] the promoter would first have to deposit with the Appellate Tribunal the total amount to be paid to the allottee (in the present case Respondent No.4) including interest and compensation imposed on the promoter, if any, or with both, as the case

may be, before the Appeal is heard. Since, the Petitioner (being a co-promoter), has not deposited any amount with the Appellate Authority whilst challenging the main Order dated 12th February 2024, the execution is proceeding/continuing.

5. Faced with this situation, Mr. Ardeshir, the learned Senior Counsel appearing on behalf of the Petitioner, on taking instructions, has stated and undertaken that without prejudice to the rights and contentions of the Petitioner, the Petitioner shall deposit with the Appellate Authority the entire amount that the Petitioner is directed to pay to Respondent No.4 under the Order dated 12th February 2024, within a period of eight weeks from today.

6. Once this is the statement and undertaking, we dispose of the above Writ Petition by holding the Petitioner to its undertaking and direct the Petitioner to deposit with the Appellate Authority the entire amount due under the Order dated 12th February 2024. That amount, according to Respondent No.4 is Rs.14,30,34,609/-. It is this amount that will be deposited by the Petitioner with the Appellate Authority within a period of eight weeks from today. If the aforesaid amount is deposited, the Appellate Authority shall entertain and decide the Appeals filed by the Petitioner, not

only against the Order dated 12th February 2024 but also the orders impugned in the present Writ Petition. The Appellate Authority is requested to decide the aforesaid Appeals as expeditiously as possible and in any event within a period of three months from the date of deposit.

7. It is needless to clarify that in the event the amount is not deposited, the aforesaid Appeals [before the Appellate Authority] shall automatically stand dismissed and Respondent No.4 shall proceed with its execution proceedings in accordance with law.

8. In the meanwhile, and for a period of eight weeks from today the execution initiated against the Petitioner (pursuant to the Order dated 12th February 2024) shall not be taken any further. In other words, any attachments levied will continue to operate but the executing court shall not proceed further with the execution. If the amount of Rs. 14,30,34,609/- is deposited within eight weeks from today, then the execution initiated against the Petitioner shall not proceed further till the disposal of the Appeals filed by the Petitioner herein before the Appellate Authority.

9. It is needless to clarify that all contentions are expressly kept open (including quantum), to be agitated before the Appellate Authority. We

have not opined on the merits of the matter one way or other, which on the Petitioner depositing Rs.14,30,34,609/- [with the Appellate Authority], shall be decided by it in accordance with law.

10. In the event the amount directed by us is deposited, the Petitioner would be at liberty to apply to the Appellate Authority to seek permission to sell the flats which are attached and if such an Application is made, the same shall be decided on its own merit and in accordance with law by the Appellate Authority.

11. The Writ Petition is disposed of in the aforesaid terms. However, there shall be no order as to costs.

12. This order will be digitally signed by the Private Secretary/ Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

[FIRDOSH P. POONIWALLA, J.]

[B. P. COLABAWALLA, J.]