

Gitalaxmi

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 786 OF 2024
WITH
INTERIM APPLICATION NO. 15406 OF 2024
IN
SECOND APPEAL NO. 786 OF 2024**

Altaa Constructions,
A proprietary concern of Mukesh J. Shah ... Appellant/
Applicant

Vs.

Mrs. Kokilaben Ajitbhai Dalal and Ors. ... Respondents

Mr. Rohan Sawant a/w Mr. Rakesh Agrawal, Mr. Darpan Jain and
Mr. Sandeep Nirban for Appellant/Applicant.

Mr. Akshay R. Kapadia for Respondent No. 2.

Mr. Karthyayani Amblimath i/b Asahi Legal LLP for Respondent No.
3.

CORAM : GAURI GODSE, J.

DATED : 10th DECEMBER 2024.

ORDER :

1. The Second Appeal is preferred to challenge the rejection of Appellant's Application for restoration of the Appeal before the Maharashtra Real Estate Appellate Tribunal, Mumbai ("RERA Appellate Tribunal"). The Appellant had filed an Application for restoration of the Appeal, which was dismissed on 29th June 2021

for non-compliance of the proviso to Section 43(5) of the Real Estate (Regulation and Development) Act, 2016 ("RERA").

2. Learned counsel for the Appellant, on instructions, submits that the Appellant is willing to comply with the statutory requirement by depositing the amount within three weeks from today. He submits that the Appellant be permitted to comply with the statutory requirement and his Appeal be restored.

3. Learned counsel for the Complainant submits that the order on the complaint passed in his favour, is of November 2020. He submits that the present Appeal is filed only with an intention to delay the execution proceedings initiated by the Complainant.

4. Learned counsel for the Appellant, on instructions, submits that the Appellant would pay cost of Rs. 25,000/- to the Complainant.

5. Since the Appellant has shown his willingness to pay cost and also comply with the statutory requirement, I see no reason not to grant an opportunity to the Appellant to comply with the statutory requirement and argue his Appeal on merits. Hence, in view of the aforesaid, the Appeal is partly allowed by passing the following order :-

ORDER

- a. The Appellant is permitted to deposit the amount for making compliance of the statutory requirement as per the proviso to Section 43(5) of the RERA within a period of three weeks from today. Subject to making payment within a period of three weeks before the RERA Appellate Tribunal and subject to payment of cost of Rs. 25,000/- to the Complainant within a period of two weeks from today, Miscellaneous Application Nos. 675 of 2023 and 193 of 2023 will stand allowed.
 - b. If the aforesaid compliance is made, the Appeal preferred by the Appellant before the RERA Appellate Tribunal shall be heard on merits as per the procedure.
 - c. Subject to compliance of the aforesaid conditions, no coercive action to be taken against the Appellant for a period of four weeks pursuant to the Execution Application filed by the Complainant.
 - d. Needless to clarify that if the aforesaid statements are not complied, the present Second Appeal will stand dismissed and the impugned order will stand confirmed.
6. The statements made on behalf of the Appellant regarding

compliance of the statutory requirement and payment of the cost, are accepted as an undertaking to this Court.

7. The Second Appeal is disposed of on the aforesaid terms.

8. In view of disposal of the Second Appeal, pending Applications are disposed of as infructuous.

(GAURI GODSE, J.)

GITALAXMI
KRISHNA
KOTAWADEKAR

Digitally signed
by GITALAXMI
KRISHNA
KOTAWADEKAR
Date:
2024.12.13
18:45:07 +0530