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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
INTERIM APPLICATION NO. 11164 OF 2024
WITH
INTERIM APPLICATION NO. 11165 OF 2024
IN
SECOND APPEAL NO (St) NO. 9965 OF 2024**

Jay Infrastructures ... Appellants/Applicants
Through its partner Vijay V. Lalwani and Others
Vs.

Sharad Pundlikrao Wagh ... Respondent

Mr. Shashank Mangle a/w. Mr. Saurabh Butala and Ms. Manvi Sharma
for the Appellants/Applicants.

Mr. Prashant Darandale for the Respondent.

CORAM : GAURI GODSE, J.

DATE : 9th DECEMBER 2024

ORDER :

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1. Not on board. Taken on board. This application is for condonation of delay of two days in filing the second appeal. Since delay is only of two days there is no serious opposition.

2. Hence, delay is condoned and the application is allowed in terms of prayer clause 12(a).

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3. Learned counsel for the appellant submits that the second appeal is pressed only qua the direction issued in the impugned order in clauses (3) and (5). He submits that there is no finding recorded on ascertaining the liability on the appellants to make payment of interest for delayed possession from 23rd May 2018, till the allottee gets possession.

4. Learned counsel for the appellants submits that the appellants are agreeable to pay interest for the delayed possession from 23rd May 2018 till the date of receipt of occupation certificate i.e. 16th July 2019. Learned counsel for the appellants submits that the appellants were ready and willing to handover possession after the date of occupation certificate, however, it was the complainant who refused to accept. He submits that the First Appellate Court has not recorded any finding on the aforesaid aspects.

5. I have perused the impugned judgments and orders. The second appeal is admitted on the following substantial questions of law only to the extent of the directions issued in clauses (3) and (5) of the operative order of the judgment and order of the appellate tribunal :

- (i) Whether the appellants can be held liable to pay interest for the delayed possession after the date of occupation certificate ?
 - (ii) Whether the Appellate Tribunal could have issued directions for payment of interest on delayed possession without recording any specific findings attributing any willful delay on the part of the appellants ?
 - (iii) In the absence of any findings recorded on the appellants' default regarding delayed possession, whether the directions issued in clauses (3) and (5) of the operative order would be sustainable ?
- 6. Learned Advocate for the respondent waives notice.
 - 7. Call for record and proceedings.
 - 8. Printing is dispensed with.
 - 9. Learned Advocate for the appellants shall file private paper book within one year from today.

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10. Rule on interim relief in terms of prayer clauses (a) to (d) is made returnable forthwith by consent of the parties.

11. Learned counsel for the applicants on instructions submits that since the respondent is not agreeable to take possession as per the impugned order, applicants be permitted to sell the flat and deposit the entire consideration amount in this court. He submits that the impugned order directing the appellants to execute agreement without accepting consideration amount for the additional area is not challenged by the respondent; however, respondent is not agreeable to come forward for execution of the agreement.

12. Learned counsel for the applicants therefore submits that in such eventuality the applicants would suffer financial loss by keeping the flat vacant and also pay amount for delayed possession. In any event the learned counsel for the applicants submits that the applicants are agreeable to pay an amount for delayed possession from 23rd May 2018 till the date of occupation certificate i.e. 16th July 2019.

13. Learned counsel for the respondent submits that he has

instructions from the respondent and an affidavit in reply in response to the aforesaid submission would not be necessary. He submits that the respondent has not challenged the impugned order, however, the respondent is not agreeable to implement the direction in clause (2) of the impugned order.

14. With regard to delayed possession, learned counsel for the respondent submits that since possession is not handed over the applicants would be liable to pay interest from 23rd May 2018 till the applicant actually hands over possession to the respondent.

15. Learned counsel for the respondent submits that since respondent has already exercised his right to withdraw from the project, he would be entitled to refund with interest as directed by the impugned order.

16. He further submits that the respondent would have no objection if the appellants are permitted to sell the flat to a third party and deposit the entire consideration amount in this court. The appellants are therefore permitted to sell the flat and deposit the entire consideration amount in this court along with an affidavit and copy of the agreement.

17. It is clarified that if the consideration amount received from the sale of the subject flat is not sufficient to secure the amount directed to be paid in terms of clause (5) of the order, the appellants shall deposit the differential amount in this court.

18. Learned counsel for the appellants on instructions submits that within a period of six weeks the appellants would secure the entire amount as per clause (5) of the impugned order. Statement made on behalf of the appellants is accepted as an undertaking to this court. Subject to the appellants securing the entire amount either by selling the said flat or otherwise within six weeks from today, the execution of the impugned order shall remain stayed.

19. Interim Application is allowed in aforesaid terms.

20. List the application for compliance on 3rd February 2025.

[GAURI GODSE, J.]