

MJ Jadhav

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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 58 OF 2025
WITH
INTERIM APPLICATION NO. 13599 OF 2023
IN
SECOND APPEAL NO. 58 OF 2025**

Anil Patel

... Appellant

vs.

Mala Sen and Anr.

... Respondents

Mr. Robin Fernandes a/w Kunal Mehta (through VC) a/w Sukrit Parashar a/w Lillyan Thangkiew i/b Vesta Legal for the Appellant.
Mr. Prathamesh Kamath a/w Kayush Zaiwalla a/w Harsh Behany i/b Dinesh Mishra for Respondent No.1.

CORAM : GAURI GODSE, J.

DATED : 3rd FEBRUARY 2025

ORDER:

1. Heard learned counsels for the parties. This appeal is preferred by the original opponent no.2 to challenge the concurrent judgments and orders passed by the Maharashtra Real Estate Regulatory Authority ("RERA Authority") and the Maharashtra Real Estate Appellate Tribunal ("RERA Appellate Tribunal").

2. By the orders impugned in the second appeal, the appellant and the respondent no.2 is directed to execute registered

agreement for sale with the complainant for Flat No.C-304, subject to payment of Rs.10,00,000/-. This order was challenged in an appeal preferred by present the appellant. Original opponent no.2, i.e. M/s. Ahimsa Builders, who has constructed the building, where the concerned flat is situated filed a separate Appeal. Both the appeals are dismissed. However, M/s. Ahimsa Builders have accepted the order and not preferred any second appeal. Original opponent no.2 has preferred the present second appeal.

3. Learned counsel for the appellant submits that the registered agreement with the complainant was executed by the erstwhile developer, i.e. M/s. Ankush Enterprises. He submits that the appellant was director of M/s. Ankush Enterprises. He submits that in 2009, the balance interest in the land of the ongoing project was sold to M/s. Ahimsa Builders. He submits that since the registered agreement was for Flat No.B-601 and B-602, the possession could not be handed over as there was no permission received for construction for upper floors. He submits that before the Mahila Aayog, the complainant had filed a complaint, raising grievance about not handing over the possession and the present appellant had signed a letter for allotment of Flat No.C-304 in the building constructed by M/s. Ahimsa Builders. He, therefore, submits that in view of the letter signed before the Mahila Aayog, the appellant

cannot be termed as an allottee as defined under clause (d) of Section 2 of The Real Estate (Regulation and Development) Act, 2016 ("RERA"). He submits that the complainant would not be entitled for registration of an agreement in the building constructed by M/s. Ahimsa Builders as the complainant cannot be termed as an allottee as defined under RERA for the ongoing project. He relies upon the definition of real estate project under clause (z)(n) of Section 2 of RERA. He thus submits that the impugned orders are passed by ignoring these provisions. He thus submits that the second appeal would raise substantial questions of law on the aforesaid grounds.

4. Learned counsel for the complainant submits that the appellant had never filed any reply before the RERA authority. He submits that all these submissions were never pleaded before the RERA authority. He submits that before the RERA authority, the appellant admitted allotment of Flat No.C-304 in the project of Ahimsa Heights. He points out that before the RERA authority, the present appellant had agreed and accepted the claim of the complainant for Flat No.C-304 on payment of Rs.14,00,000/-. He submits that in fact, the complainant had disputed the amount of Rs.14,00,000/-. He further submits that the RERA authority has thus directed to execute agreement for Flat No.C-304, subject to

payment of Rs.10,00,000/- as agreed by the advocate for the complainant during the hearing. He, thus, submits that the aforesaid grounds argued on behalf of the appellant cannot be considered for the first time in the present appeal as these facts were not pointed out before the RERA authority or the RERA appellate tribunal.

5. I have perused both the judgments. Learned counsel for the complainant is right in submitting that the RERA authority in its order has recorded that the present appellant had accepted the complainant's claim for allotment of Flat No.C-304. There is no dispute that the complainant had paid Rs.21,00,000/- at the time of registration of the agreements for two flats. It has not been disputed that pursuant to the agreement the flats were never handed over to the complainant. In view of the concession given by the present appellant as recorded in the order passed by the RERA authority, I do not find any substance in the arguments raised on behalf of the appellant that the complainant would not be entitled to Flat No.C-304.

6. The RERA appellate tribunal has also considered the aspect regarding registration of the agreements in favour of the complainant and the amount accepted pursuant to the agreements. The claim regarding the confirmation of the Flat No.C-304 by the

Ex-Promoter as recorded in letter dated 7th February 2014 is referred by the RERA appellate tribunal. The confirmation in the form of NOC and LOA issued by the Promoter on 26th November 2014 is also considered by the RERA Appellate Tribunal. The letter referred by the RERA appellate tribunal is annexed in the interim application in the second appeal. The said letter was signed by the present appellant regarding allotment of the Flat No.C-304 to the complainant. Signing of the said letter, is not disputed by the appellant. The facts regarding execution of the agreement in respect of two flats, is therefore considered for the complainant's entitlement to receive Flat No.C-304. It is not in dispute that the flats as agreed in the registered agreement were never constructed. Hence, in view of the agreements between the parties as recorded in the letter dated 7th February 2014, the claim of the complainant is rightly accepted by the RERA authority and the RERA appellate tribunal.

7. Once the agreements in favour of the complainant is not in dispute; the letter dated 7th February 2014 is not in dispute, I do not find any substance in the objections raised on behalf of the appellant on the definition of allottee and the real estate project as defined under RERA.

8. It is necessary to note that the appellant did not file any reply

before the RERA authority raising all these factual aspects, which are argued in this second appeal. All the factual aspects are correctly considered by the RERA authority and the RERA appellate tribunal. There is no illegality or perversity in the reasons recorded in the impugned orders.

9. All the grounds argued in the present second appeal, do not raise any substantial question of law. The second appeal is, therefore, dismissed.

10. In view of the dismissal of the second appeal, interim application is disposed of as infructuous.

(GAURI GODSE, J.)