IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.145 OF 2025
WITH
INTERIM APPLICATION NO.1841 OF 2025
IN
SECOND APPEAL NO.145 OF 2025

Aishwarya Avant Builders Pvt. Ltd. ....Appellant
V/S
Rajeshwari Ramesh Pillai & Anr. ....Respondents

Ms. Rashmin Khandekar i/b Mr. Ismail Shaikh and Mr. Aditya Lele *for the Appellant/Applicant.*

Mr. Amin Shukla *for Respondents.*

CORAM: SANDEEP V. MARNE, J.
DATE : 10 MARCH 2025.

P.C.:

1 The Appeal challenges judgment and order dated 27 September 2024 passed by the Maharashtra Real Estate Appellate Tribunal, Mumbai, (**Appellate Tribunal**) partly allowing the Appeal filed by the Respondent and setting aside order dated 12 January 2021 passed by the Maharashtra Real Estate Regulatory Authority (**MahaRERA**). The Appellate Tribunal has directed the Appellant to refund the amount of Rs.13,50,000/- to the Respondent with interest at the rate of 2% above the State Bank of India highest Marginal Cost Lending Rate from the date of the payment till realization of the entire amount.

2 I have heard Mr. Khandekar, the learned counsel appearing for the Appellant and Mr. Lele, the learned counsel appearing for the Respondents.

3 It appears that the Respondents had booked Flat No.1603 and allotment letter dated 28 May 2019 was issued in their names, under which the Flat was sold at agreed amount of consideration of Rs.1,04,00,110/-. The allotment letter records that the original cost of the Flat was Rs.1,15,00,000/- but the Appellant-Developer allowed discretionary discount of Rs.11,00,000/- and this is how the final price of the Flat was fixed at Rs.1,04,00,110/-. There is no dispute to the position that the total amount paid by the Respondents to the Appellant is Rs.13,50,000/-. However, no agreement was executed by the Appellant in favour of the Respondents as required under the provisions of Section 13 of the Real Estate (Regulation and Development) Act, 2016 (**RERA Act**). It is sought to be contended by Mr. Khandekar that the actual consideration payable in respect of the Flat was only Rs. 88,94,100/- and not Rs.1,04,00,110/- as the balance amounts represented stamp duty, registration fees, possession charges and GST. However careful perusal of the allotment letter would indicate that the same provided that the 'final price' of the Flat shall be Rs.1,04,00,110/-. Therefore as per the allotment letter itself, the price of the Flat was fixed at Rs.1,04,00,110/-. In that view of the matter, there is clear violation on the part of the Appellant in not executing written agreement with the Respondents despite securing amount of Rs.13,50,000/- from the Respondents.

4 It is sought to be urged that under the allotment letter, in the event of cancellation of the transaction by the Respondents, the Appellant was entitled to deduct and forfeit an amount of 10% of total sale proceeds as liquidated damages and refund the balance without any interest. It is therefore pointed out on behalf of the Appellant that the correct interpretation of the order dated 12 January 2021 passed by the MahaRERA was that refund was only in terms of the allotment letter. Reliance is placed on letter dated 14 May 2021 by which Appellant apparently deducted 10% amount calculated on total consideration of Rs.1.15 crores i.e. Rs.11,50,011/- and refunded only Rs.1,99,989/- to Respondents. It is contended that after accepting the said refund amount of Rs.1,99,989/-, Respondents turned around and filed Appeal before the Appellate Tribunal.

5 I am unable to agree with the contention that the order passed by the MahaRERA contemplated any forfeiture or deduction in terms of the allotment letter. Paragraph 10 of the order passed by the MahaRERA reads thus:

> "10 In view of these facts the MahaRERA directs both the parties to execute a registered agreement for sale as per the provision of section 13 of the RERA and the relevant Rules made there under within a period of one month accordance with the allotment letter dated 20-05-2019 failing which the money paid by the complainant be refunded as agreed by the respondent within a period of next one month."

6 Thus MahaRERA had clearly directed either execution of registered agreement or refund of the money paid by the Respondents. The expression 'as agreed by the respondent' appearing in paragraph 10 of the MahaRERA's order cannot be

interpreted to mean that the Appellant was given license to deduct 10% amount from the amount to be refunded to the Respondents. In fact, the Respondents were apparently not aggrieved by the order passed by the MahaRERA and were required to file Appeal before the Appellate Tribunal only on account of arbitrary action of the Appellant in deducting amount of Rs.11,50,011/- from the refund sanctioned to the Respondents. Thus despite paying amount of Rs.13,50,000/- towards booking of the Flat in the year 2019, the arbitrary action of the Appellant has resulted in refund of paltry sum of Rs.1,99,989/- in the year 2021.

7 More interestingly the Appellant was never interested in exercising the first option given by the MahaRERA under which it was directed to execute registered agreement for sale. There is nothing on record to indicate that after the order passed by the MahaRERA on 12 January 2021, the Appellant even wrote to the Respondents that it was willing to execute registered agreement for sale with them. Thus, Appellant was never really interested in executing the registered agreement after passing of the order dated 12 January 2021. It sought to unjustly enrich itself by arbitrarily deducting almost 85% of refund amount (Rs. 11,50,001) and offered to refund only Rs.1,99,989/- to the Respondents.

8 The order passed by the Appellate Tribunal ensures that the Respondents would receive atleast the entire amount paid by them towards booking of the flat alongwith interest thereon.

9 I do not find that any substantial question of law is involved in the present Appeal. The appeal therefore deserves to be dismissed.

10 In fact, this Court does not appreciate the conduct on the part of the Appellant-Developer in driving the Respondents to unnecessary litigations before the Appellate Tribunal and now before this Court. The order passed by the MahaRERA was clear and unambiguous and it directed refund of the entire amount paid by the Respondents. If Appellant was to obey the order passed by the MahaRERA on 12 January 2021 by refunding the entire amount of Rs.13,50,000/-, there would not have been any occasion for the Respondents to incur expenditure in filing Appeal before the Appellate Tribunal. After driving Respondents to unnecessary round of litigation before the Appellate Tribunal, the Appellant has continued with its litigative spirit and has filed the baseless Appeal, forcing the Respondents to incur further expenses. In that view of the matter, dismissal of the Appeal cannot be without consequences.

11 The Second Appeal is accordingly **dismissed** by imposition of costs of Rs.1,00,000/- on the Appellant. The Appellant shall pay the entire amount arising out of the order passed by the Appellate Tribunal together with the costs imposed in the present order to the Respondents on or before 15 April 2025.

12 With the disposal of the Second Appeal, nothing would survive in the Interim Application and the same is also accordingly **disposed of**.

(SANDEEP V. MARNE, J.)

SUDARSHAN RAJALINGAM KATKAM
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