



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.8792 OF 2025**

Katmandu Apparel Private Limited,
Having its registered address at
14, 15, 16 Prabhadevi Industrial Estate,
Opp. Siddhivinayak Temple,
408, Veer Savarkar Marg, Prabhadevi
Mumbai – 400 025,
through its Authorized Signatory
Mr. Md. Adil Ayub Ansari, Age 50 years,
Email : adilansari.infinzi@gmail.com

... Petitioner

versus

1. The Inspector General of Registration
& Superintendent of Stamps, Pune,
Ground Floor, New Administrative
Building, Bund Garden Road,
Opp. Vidhan Bhavan, Agarkar Nagar,
Pune 411 001.
email : do12igro@igrmaharashtra.gov.in
2. The Collector of Stamps, Mumbai
Old Custom House,
310-3011, Old Custom House, Fort,
Mumbai.
Email : cos.mumbai@igrmaharashtra.gov.in
3. State of Maharashtra,
through Assistant Government Pleader,
High Court, Bombay

... Respondents

Mr. Mohit Khanna with Mr. Robin Fernandes, Mr. Sukrit Parashar i/by Vesta
Legal, for Petitioner.
Ms. D.S.Deshmukh, AGP for Respondent Nos.1 to 3.

CORAM: N.J.JAMADAR, J.

RESERVED ON : 1 JULY 2025
PRONOUNCED ON : 4 SEPTEMBER 2025

JUDGMENT :

1. Rule. Rule made returnable forthwith, and, with the consent of the parties, heard finally at the stage of admission.

2. The Petitioner, a private limited Company, registered under the Micro Small Medium Enterprise Act, 2016, takes exception to the order dated 13 March 2025 passed by the Chief Controlling Revenue Authority and Inspector General of Stamps (R1), on an application for refund of the stamp duty, being Application No.187 of 2023, whereby the Respondent No.1 rejected the said application for the refund of the stamp duty under Section 52A of the Maharashtra Stamp Act, 1958 (the Stamp Act, 1958).

3. Shorn of unnecessary details, the background facts can be stated as under :

3.1 The Petitioner had entered into a registered Agreement for Sale with Jawala Real Estate Pvt. Ltd., a wholly owned subsidiary of Lodha Developers Limited, to purchase Flat No.A-5703 in a building to be known as 'Lodha Allura' for a consideration of Rs.5,12,79,327/-. The Petitioner paid a stamp duty of Rs.25,64,120/- along with the registration charges on 26 December 2013.

3.2 Under the terms of the said Agreement for Sale, the developer was to deliver possession of the subject flat for fit-outs by 31 December 2017. The developer failed to deliver possession of the flat, as agreed, and, unilaterally extended the date of delivery of possession to 31 December 2018.

3.3 The Petitioner asserts, the developer committed default in the delivery of possession of the subject flat even by the extended date. Thus, vide letter dated 25 March 2019, the Petitioner terminated the Agreement for Sale and called upon the developer to refund the consideration paid by the Petitioner, along with interest. As the developer failed to refund the amount along with interest, the Petitioner was constrained to file a complaint under Section 18 of the Real Estate (Regulation and Development) Act, 2016 before the Real Estate Regulatory Authority (RERA) seeking appropriate reliefs.

3.4 By an order dated 11 December 2020, RERA dismissed the Petitioner's complaint holding, inter alia, that the developer was entitled to further grace period of one year i.e. till 31 December 2019.

3.5 Being aggrieved, the Petitioner preferred an appeal before the Maharashtra Real Estate Appellate Tribunal. By a judgment and order dated 10 March 2022, the Appellate Tribunal quashed and set aside the order dated 11 December 2020 passed by the RERA, and, inter alia, directed the developer to refund the amount paid by the Petitioner along with interest. The developer preferred a Second Appeal before this Court being Second Appeal

No.492 of 2022.

3.6 In the meanwhile, during the pendency of the Second Appeal, the developer and the Petitioner amicably resolved the dispute and on 24 November 2022, Consent Minutes of Order were filed. In terms thereto, the developer undertook to pay an amount of Rs.6,80,00,000/- to the Petitioner and the parties agreed to execute and register a Deed of Cancellation, and, thereupon, the Petitioner would be entitled to claim refund of stamp duty. Accordingly, a Deed of Cancellation came to be executed and registered on 28 December 2022.

3.7 Under four months of the said Deed of Cancellation, the Petitioner filed an application before the Collector of Stamps (R2) and sought refund of the stamp duty of Rs.25,64,120/- paid under the said Agreement for Sale. The proceedings were eventually transferred to the Respondent No.1 and by the impugned order dated 13 March 2025, Respondent No.1 rejected the application holding, inter alia, that the Cancellation agreement was not executed within five years of the Agreement for Sale dated 26 December 2013, and, thus, in view of the proviso to Section 48(1) of the Stamp Act, 1958, the claim for refund of the stamp duty was not maintainable.

3.8 Being aggrieved, the Petitioner has invoked the writ jurisdiction.

4. I have heard Mr. Mohit Khanna, learned Counsel for the Petitioner, and Ms. D.S.Deshmukh, learned AGP for Respondent Nos.1 to 3. I have also

perused the material on record.

5. Mr. Khanna, learned Counsel for the Petitioner submitted that the Respondent No.1 has rejected the claim for refund in a mechanical manner without appreciating the circumstances on account of which the claim for refund got delayed. In the process, the Respondent No.1 completely lost sight of the fact that the Petitioner was required to institute proceedings before the RERA for the cancellation of the Agreement for Sale and the refund of the amount paid by the Petitioner to the developer therein. The Petitioner was not at all at fault. Without appreciating the genuineness and bonafide of the claim, the Respondent No.1 rejected the application by taking a hyper technical view of the matter.

6. Mr. Khanna would urge, the issue is no longer *res-integra* and is covered by the decision of this Court in the case of **Satish Buba Shetty V/s. Inspector General of Registration and Collector of Stamps and Ors.**¹, wherein in an almost identical fact-situation, this Court had directed the refund of the stamp duty on an agreement for sale which came to be cancelled consequent to the proceedings initiated by the purchasers.

7. Mr. Khanna would urge, in the case at hand, not only the authorities are bound to refund the stamp duty paid in respect of the transaction which did not materialize, but the Petitioner must be compensated by award of interest

1 2024 SCC Online Bom 108

for having been unjustifiably deprived of the substantial amount of the stamp duty. To support this submission, Mr. Khanna placed reliance on the judgments of the Supreme Court in the cases of **Dr. Poornima Advani and Anr. V/s. Govt. of NCT and Anr.**², **Rajeev Nohwar V/s. Chief Controlling Revenue Authority, Maharashtra State and Ors.**³ and **Harshit Harish Jain and Anr. V/s. State of Maharashtra and Ors.**⁴, wherein the Supreme Court had awarded interest on the amount of the stamp duty which was directed to be refunded.

8. In contrast to this, Ms. Deshmukh, learned AGP strongly resisted the prayers in the Petition. Ms. Deshmukh would urge, a cumulative reading of the provisions contained in Sections 47 and 48 of the Stamp Act, 1958, would indicate that, to successively claim the refund in a case of the present nature, two conditions are required to be satisfied. First, the Deed of Cancellation of the Agreement for Sale must have been executed within a period of five years from the date of the execution of the Agreement for Sale. Second, the application for refund of the stamp duty was required to be filed within six months from the date of registration of the cancellation deed, as provided in the proviso to Section 48(1), as it then stood.

9. In the case at hand, though the second condition is satisfied, yet, the first has not been fulfilled in as much as the deed of cancellation has not been

² 2025 SCC Online SC 419

³ (2021) 13 SCC 754

⁴ (2025) 3 SCC 365

executed within a period of five years from the execution of the agreement for sale. Respondent No.1 was, thus, justified in rejecting the prayer for refund of the stamp duty.

10. Ms. Deshmukh would urge, if the applications for refund of the stamp duty are entertained beyond the stipulated period, then the statutory provision would be rendered otiose. At any rate, according to Ms. Deshmukh, no interest can be awarded on the amount of stamp duty as the impugned order cannot be said to be illegal.

11. Relevant part of Section 47, subsumed under Chapter 5 of the Stamp Act, 1958, "Allowances for Stamps in Certain Cases" reads as under :

"47. Allowance for spoiled stamps :

Subject to such rules as may be made by the State Government as to the evidence to be required, or the inquiry to be made, the Collector may on application, made within the period prescribed in section 48, and if he is satisfied as to the facts, make allowance for impressed stamps spoiled in the cases hereinafter mentioned, namely: -

(a).....

(b).....

(c) the stamp used for an instrument executed by any party thereto which -

.....

(5) by reason of the refusal of any person to act under the same, or to advance any money intended to be thereby secured, or by the refusal or non-acceptance of any office thereby granted, totally fails of the intended purpose;

.....

Provided that, in the case of an executed instrument (except falling under sub-clause (1A), no legal proceeding has been commenced in which the instrument could or would have been given or offered in evidence and that the instrument is given up to the cancelled or has been already given up to the Court to be cancelled.

Explanation.- The Certificate of the Collector under section 32 that the full duty with which an instrument is chargeable has been paid is an impressed stamp within the meaning of this section.”

12. Section 47 enumerates the contingencies in which upon being satisfied, the Collector of Stamps can make allowance for impressed stamp. In this Petition, we are concerned with clause (c) (5), which authorizes the refund of the stamp duty where the stamp used for an instrument, totally fails of the intended purpose. Allowance to be made under Section 47 is subject to the rules, as may be framed by the State Government and the period of limitation prescribed under Section 48 of the Stamp Act, 1958.

13. At this juncture, it may be necessary to notice the time stipulated by Section 48 to make an application for refund under Section 47. Section 48, as it then stood, read as under :

“48. Application for relief under section 47 when to be made

The Application for relief under section 47 shall be made within the following period, that is to say, -

(1) in the cases mentioned in clause (c) (5), within six months of the date of the instruments :

Provided that where an agreement to sale of immovable property on which stamp duty is paid under Article 25 of the SCHEDULE I, is registered under the provisions of the Registration Act, 1908, and thereafter such agreement is cancelled by a registered cancellation deed for whatsoever reasons before taking the possession of the property which is the subject matter of such agreement, within a period of five years from the date of execution of the agreement to sale, then the application for relief may be made within a period of six months from the date of registration of cancellation deed;

(2) in the case when for unavoidable circumstances any instrument for which another instrument has been substituted cannot be given up to be cancelled, the application may be made within six months after the date of execution of the substituted instrument,

(3) in any other case, within six months from the date of purchase of stamp.”

14. In the case of **Satish Buba Shetty (supra)**, this Court had an occasion to consider the import of the time frame stipulated by the proviso to Section 48(1) of the Stamp Act, 1958. The facts in the said case have resemblance to the facts of the case at hand. In the said case, the Petitioner was a retired bank official. The Petitioner therein had entered into an agreement to purchase a flat with the developer on 10 November 2014 and parted with consideration therein. The Petitioner had paid a stamp duty of Rs.4,76,000/-

on the said instrument. As the developer committed default, the Petitioner was constrained to approach RERA. Despite directions by the RERA to refund the consideration and also execute the deed of cancellation, the developer committed default. Eventually, the Appellate Tribunal dismissed the appeal preferred by the developer, and, thereupon, consent terms were arrived at between the Petitioner and the developer. Accordingly, a Deed of cancellation came to be executed on 9 March 2021. On 31 March 2021, the Petitioner had applied for refund of the stamp duty paid on the said instrument. The authorities under the Stamp Act, rejected the application on a similar ground, like the case at hand, namely, the deed of cancellation was not executed within five years of the execution of the agreement for sale. This Court was persuaded to allow the said Petition observing, inter alia, as under :

“14. The learned counsel for the petitioner made a painstaking effort to draw home the point that the aforesaid approach of the authorities under the Stamp Act, 1958 is not in consonance with law and, in any event, betrays a complete disregard to the equitable considerations and the bonafide of the petitioner. The fact that there was, in a sense, an enforced impossibility of fulfillment of said stipulation was not properly appreciated by the authorities under the Stamp Act, 1958, urged Mr. Bhatt.

15. The aforesaid submission if considered in the light of the facts which have transpired and noted above, cannot be said to be unworthy of consideration. In the evening of their life, the petitioner and his wife had booked a flat with the

Developer. An Agreement for sale was duly registered on 19th November, 2014. They had parted with 25% of the total consideration of Rs. 95 lakhs. On account of default on the part of the Developer, the petitioner was required to work out his remedies before the RERA Authority. Despite the order of RERA Authority to refund the consideration and execute a Deed of Cancellation, the Developer did not execute such Deed of Cancellation. The petitioner was made to take out Execution Application. The order passed in the Execution Application was challenged by the Developer in an appeal before RERA Appellate Tribunal. Even the order passed by the RERA Appellate Tribunal was not complied with. The petitioner was constrained to file an Execution Application before RERA Appellate Tribunal to purportedly to execute the interim order. Only thereafter, the Developer turned up for the resolution of the dispute. Eventually, the Deed of Cancellation came to be executed on 9th March, 2021. The petitioner lodged the claim for refund on 31st March, 2021.

16. The aforesaid facts would indicate that there was no indolence or other blameworthy conduct attributable to the petitioner. The petitioner promptly approached the Authorities under RERA. The remedies before the Authorities under RERA were diligently pursued. The delay in execution of the Cancellation Deed surely could not have been attributed to the petitioner.

17. The question that wrenches to the fore is, in such a situation, can a party who does all that which is in its control, be saddled with the consequence of non-compliance of a statutory prescription ? In my considered view, the answer has to be in the negative. The law recognizes impossibility of

performance as a ground to relieve a person from forfeiture and penalty.

18. In the case of Shaikh Salim Khayumsab (supra) wherein the question arose in the context of the extension of time to file written statement beyond 90 days, the Supreme Court, inter alia, adverted to two maxims, “actus curiae neminem gravabit”; an act of Court shall prejudice no man. And “lex non cogit ad impossibilia”; the law does not compel a man to do what he cannot possibly perform. And found that, in the facts of the said case, the petitioner therein deserved the extension of time beyond 90 days. The observations in paragraph 20 read as under:-

“20] In the facts and circumstances of the case, the maxim of equity, namely, actus curiae neminem gravabit, an act of court shall prejudice no man, shall be applicable. This maxim is founded upon justice and good sense which serves a safe and certain guide for the administration of law. The other maxim is, lex non cogit ad impossibilia, the law does not compel a man to do what he cannot possibly perform. The law itself and its administration is understood to disclaim as it does in its general aphorisms, all intention of compelling impossibilities, and the administration of law must adopt that general exception in the consideration of particular cases. The applicability of the aforesaid maxims has been approved by this Court in Raj Kumar Dey v. Tarapada Dey (1987 (4) SCC 398), Gursharan Singh v. New Delhi Municipal Committee (1996 (2) SCC 459) and Mohammad Gazi v. State of M.P. and others (2000(4) SCC 342).” (emphasis supplied)

19. In the facts of the case, the first of aforesaid maxims may have an application in the context of the time which was

consumed in prosecuting the remedies before the authorities under RERA. The petitioner could have compelled the Developer to execute the Deed of Cancellation if the transaction was not to materialize, only by invoking the remedies under the law. The time spent in pursuing legitimate remedies, in the absence of any bad faith or want of due diligence, can not be arrayed against the petitioner.

20. Secondly, the petitioner could not have lodged a claim for refund of the stamp duty without there being a registered instrument to cancel the registered Agreement to Sale. Cancellation of earlier registered Agreement to Sale by another registered instrument is a prerequisite for the applicability of the proviso to sub section (1) of section 48, which provides an enhanced period for making a claim for relief under section 47. Thus non cancellation of the Agreement for Sale within the stipulated period of five years cannot be construed as a default on the part of the petitioner. To insist for the compliance of the said stipulation in the circumstances of the case, would amount to compelling a party to perform the impossible.”

15. This Court had also referred to the pronouncement of the Supreme Court in the case of **Committee GFIL vs. Libra Buildtech Private Limited and Others**⁵ and **Rajeev Nohwar (supra)**, and thereafter, concluded as under :

“22. I am mindful the Supreme Court has resorted to the plenary power under Article 142 of the Constitution.

5 (2015) 16 SCC 31

However, in my considered view the principle enunciated by the Supreme Court that where a party would suffer consequences of judicial delay or would be prejudiced for non-compliance of the condition which was impossible for it to perform, such course would violate equity, justice and fairness, deserves to be followed.

23. The authorities under the Stamp Act, 1958 may be justified in rejecting the application in strict adherence to the letter of the law. The statutory provision does not vest any discretion in the authorities. It is trite, refund of the amount paid under any enactment is a matter of a statutory right. Reading down the proviso to sub section (1) of section 48 of the Stamp Act, 1958 as directory may have serious repercussions on the revenue. But, the High Court in exercise of the extraordinary writ jurisdiction cannot be denuded of the power to delve into the question as to whether the non-compliance of the stipulation as to time was brought about by factors which were beyond the control of the affected party and to insist performance would have amounted to compelling such party to do impossible and, thus, relieve such party of the hardship in deserving cases, where injustice is writ large.

24. In the backdrop of the circumstances which are adverted to above, refusal to grant refund would be wholly unjust and unconscionable.”

16. The aforesaid pronouncement appears to be on all four with the facts of the case at hand. The default on the part of the developer is writ large. Indubitably, the Petitioner was constrained to approach the authorities under

RERA seeking the cancellation of the agreement for sale and the refund of the consideration parted with by the Petitioner. It was only in the Second Appeal before this Court, against an order of the Appellate Tribunal, the developer caved in, and agreed to refund the consideration and execute the deed of cancellation. Absent deed of cancellation, the Petitioner could not have sought refund of the stamp duty. Both the principles adverted to by this Court in the aforesaid case, namely, the act of Court shall prejudice no man and the law does not compel a man to do what he cannot possibly perform, apply with equal force to the facts of the case at hand.

17. It is necessary to note that the aforesaid judgment of this Court was cited before the Respondent No.1. However, the Respondent No.1 distinguished the aforesaid judgment on the ground that, in the said case, the Petitioner therein had approached the RERA within five years of the execution of the Agreement for Sale, and, in the instant case, such proceedings were initiated by the Petitioner after five years. The distinction sought to be drawn by the Respondent No.1 appears to be artificial. Respondent No.1 lost sight of the fact that under the terms of the agreement for sale, the time for delivery of possession was 31 December 2017 and the Petitioner alleged that it was unilaterally extended to 31 December 2018. By the time the extended period expired, five years period from the date of the execution of the agreement for sale had already elapsed. Respondent No.1, thus, ought to have considered

the hard facts of the case and the substance of the matter, rather than taking a technical view.

18. The fact remains that to seek the cancellation of the agreement for sale and refund of the consideration, the Petitioner was constrained to approach the authorities under the RERA. The cancellation deed came to be executed pursuant to the settlement arrived at between the parties in the Second Appeal. I am, therefore, inclined to hold that to deny the refund of the stamp duty to the Petitioner would be wholly unjustified and inequitable.

19. Can the refund be ordered to be paid along with interest ? Mr. Khanna, learned Counsel for the Petitioner submitted that the award of interest is normal incident of deprivation of money or property to a person who is otherwise legitimately entitled to the same. In the case at hand, Respondent No.1 rejected the claim for refund, despite the decision in the case of **Satish Buba Shetty (Supra)**, having been specifically brought to the notice of the Respondent No.1. Moreover, as no orders were passed on the application for refund, the Petitioner was required to approach this Court and file WP No.642 of 2022 and pursuant to the orders passed by this Court, the application for refund came to be decided.

20. Mr. Khanna would urge that the Supreme Court has consistently awarded interest where the citizen has been unjustifiably deprived of the refund of the stamp duty. Attention of the Court was invited to the decision in

the case of **Dr. Poornima Advani and Anr. V/s. Govt. of NCT and Anr. (supra)**. In the said case, the challenge before the Supreme Court was only confined to the denial of interest on the refund of the stamp duty. The Supreme Court expounded the concept of awarding interest on delayed payment, and, held that if, on facts of a case, the doctrine of restitution is attracted, interest should follow. The observations of the Supreme Court in paragraph Nos.25 to 27 read as under :

“25. If on facts of a case, the doctrine of restitution is attracted, interest should follow. Restitution in its etymological sense means restoring to a party on the modification, variation or reversal of a decree or order what has been lost to him in execution of decree or order of the Court or in direct consequence of a decree or order. The term “restitution” is used in three senses, firstly, return or restoration of some specific thing to its rightful owner or status, secondly, the compensation for benefits derived from wrong done to another and, thirdly, compensation or reparation for the loss caused to another.

26. In Hari Chand v. State of U.P. 2012(1) AWC 316, the Allahabad High Court dealing with similar controversy in a stamp matter held that the payment of interest is a necessary corollary to the retention of the money to be returned under order of the appellate or revisional authority. The High Court directed the State to pay interest @ 8% for the period, the money was so retained i.e. from the date of deposit till the date of actual repayment/refund.

27. In the case of O.N.G.C. Ltd. V/s. Commissioner of

Customs Mumbai, JT 2007 (10) SC 76, (para 6), the facts were that the assessment orders passed in the Customs creating huge demands were ultimately set aside by this Court. However, during pendency of appeals, a sum of Rs. 54,72,87,536/- was realized by way of custom duties and interest thereon. In such circumstances, an application was filed before this Court to direct the respondent to pay interest on the aforesaid amount w.e.f. the date of recovery till the date of payment. The appellants relied upon the judgment in the case of South Eastern Coal Field Ltd. v. State of M.P., (2003) 8 SCC 648. This Court explained the principles of restitution in the case of O.N.G.C. Ltd. (supra) as under:-

“Appellant is a public sector undertaking. Respondent is the Central Government. We agree that in principle as also in equity the appellant is entitled to interest on the amount deposited on application of principle of restitution. In the facts and circumstances of this case and particularly having regard to the fact that the amount paid by the appellant has already been refunded, we direct that the amount deposited by the appellant shall carry interest at the rate of 6% per annum. Reference in this connection may be made to Pure Helium India (P) Ltd. V/s. Oil and Natural Gas Commissioner, JT 2003 Supp (2) SC 596 and McDermott International Inc. v/s. Burn Standard Co. Ltd. JT (2006) 11 SC 376.”(Emphasis supplied)”

21. In the case of **Rajeev Nohwar (supra)**, the Supreme Court found that the case of the appellant therein for refund was not barred by any substantive provision and while exercising its power under Article 142, directed that the

refund be made along with interest @ 6% p.a.

22. In the case of **Harshit Harish Jain and Anr. (supra)**, the Supreme Court found that the amount of stamp duty was wrongfully retained by the State for almost seven years, and, thus, directed the refund of the said amount along with interest @ 6% p.a.

23. Interest connotes a payment to be made by the debtor to the creditor when money was due to the creditor, but was not paid or, in other words, was withheld from the creditor by the debtor after the time when the payment should have been made. Interest whether it is statutory, contractual or awarded by the Courts and Tribunals, represents the profit the creditor would have made if he had the use of the money to which he was entitled to.

24. In the case at hand, Respondent No.1 unjustifiably rejected the application for refund of the stamp duty, and, thereby deprived the Petitioner of the amount covered by the stamp duty from the date of the application. The fact that the Petitioner was required to approach this Court for seeking expeditious determination of the said application, further exacerbates the situation.

25. In these circumstances, in my considered view, the Petitioner is entitled to simple interest on the amount of the stamp duty to be refunded to the Petitioner @ 6% p.a. from the date of the application.

26. The upshot of aforesaid discussion is that the Petition deserves to be

allowed.

27. Hence, the following order :

ORDER

- (i) The Writ Petition stands allowed.
- (ii) The impugned order dated 13 March 2025 passed by the Respondent No.1 in Application No.187 of 2023 stands quashed and set aside.
- (iii) The Application filed by the Petitioner for refund of the stamp duty stands allowed.
- (iv) The Petitioner is entitled to refund of the stamp duty paid on the agreement for sale dated 26 December 2013 along with simple interest @ 6% p.a. from 6 April 2023.
- (v) The claim for refund be processed within a period of one month of the date of communication of this Court.
- (vi) Rule made absolute in the aforesaid terms.
- (vii) No costs.

(N.J.JAMADAR, J.)