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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 534 OF 2024
WITH
INTERIM APPLICATION NO. 12197 OF 2024
IN
SECOND APPEAL NO. 534 OF 2024**

Sachin Bajla ... Appellant/Applicant

vs.

Honest Shelters Private Limited ... Respondent

**WITH
INTERIM APPLICATION (ST) NO. 574 OF 2025
IN
SECOND APPEAL NO. 534 OF 2024**

Honest Shelters Private Limited ... Applicant

vs.

Sachin Bajla ... Respondent

Mr. Kunal Mehta, Mr. Robin Fernandes, Mr. Sukrit Parashar i/b.
Vesta Legal for Appellant/Applicant.

Mr. Mayur Khandeparkar a/w. Rubin Vakil a/w. Saloni Sulakhe and
Declan Fernandes i/b. Dhaval Vussonji for Respondent.

CORAM : GAURI GODSE, J.

DATED : 7th JANUARY 2025

ORDER:

1. Heard learned counsels for the parties. The second appeal

has already been admitted by order dated 6th September 2024. By the said order, ad-interim relief was granted in terms of prayer clause (b), which reads as under:

“b) Pending the hearing and final disposal of the captioned Second Appeal, this Hon’ble Court be pleased to restrain and/or pass an injunction order restraining the Respondents, either by themselves and/or their employees, servants, and/or agents or otherwise howsoever, from in any manner selling, transferring, disposing off, or alienating or encumbering or mortgaging or parting with possession of or transferring, or inducting anyone else into or creating any right, title or interest with respect to Flat No. 46 NW, on the 46th Floor, in the building known as ‘Palais Royale’ constructed on land bearing C.S. No. 288, 289(part), 1/154(part), 2/1540(part) collectively forming Plot Nos. 5B + 6 situated at Worli Estate, Lower Parel, Mumbai 400 013”.

2. The complaint before the RERA authority is to challenge the termination letter issued by the respondents, who are the subsequent developers. The complainant also prayed for specific performance of the allotment letter issued by the erstwhile developer. The allotment letter is dated 20th January 2010. After the respondent took over the project, according to the respondents, a letter dated 4th January 2022 was issued to the complainant to provide certain details. According to the respondents, as there was

no response from the complainant, a termination letter dated 6th October 2022 was issued.

3. The complaint was dismissed on the ground that RERA authority would not have jurisdiction to decide the termination of allotment. Hence, the complainant filed an appeal. The appeal is still pending before the appellate tribunal. Pending the appeal, the complainant filed an interim application, which was decided by the impugned order. By the impugned order, the application for maintaining the status quo with respect to the subject property is allowed, subject to the complainant depositing an amount of Rs. 38.18 Crores in the tribunal. The complainant, being aggrieved by this condition, has preferred the second appeal.

4. Confirmation of ad-interim relief in this second appeal is opposed by the respondents on the ground that the allotment letter of the year 2010 itself provided for an obligation on the complainant to pay an amount of Rs. 38.18 Crores. Learned counsel for the respondents further submitted that since the erstwhile developer failed to provide the necessary particulars, the complainant was called upon to provide the same. He submits that since there was no response, the respondents were justified in terminating the allotment. He submits that the complainant is bound by the terms

and conditions of the allotment letter, which is a contract between the parties. Thus, he submits that the court cannot rewrite the contract by entertaining the complaint without the complainant complying with the contract terms of paying the amount as reflected in the allotment letter. He submits that by the impugned order, the RERA Appellate Tribunal has directed only to deposit the said amount. He, thus, submits that if the complainant's appeal before the RERA Appellate Tribunal is to be heard, the interim relief cannot be confirmed without the complainant complying with his obligation under the allotment letter.

5. Learned counsel for the respondents relies upon sub-section 5 of Section 11 of the RERA to support his submissions that the promoter is well within his power to cancel the allotment in terms of the agreement. Thus, he supports the impugned order on the ground that the same is in terms of the allotment letter, which is the contract between the parties.

6. Learned counsel for the appellant/complainant submits that after the allotment letter in the year 2010, no steps have been taken to complete the project. He submits that the amount of Rs. 5.51 Crores paid by the complainant to the erstwhile developer has been used by the developers since 2010-2011. He submits that under the

provisions of the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 ("MOFA") prevailing at the relevant time, the promoter was not entitled to accept the amount more than 20% of the total consideration amount. He further submits that even under the provisions of the Real Estate (Regulation and Development) Act, 2016 ("RERA"), the promoter is not entitled to receive more than 10% of the total consideration without executing the agreement. He submits that the allotment letter provides a payment schedule. He, however, submits that neither any steps were taken for registration of the agreement, nor was the complainant intimated about the stage of construction, calling upon the complainant to make further payment. He submits that in such facts and circumstances, the complainant cannot be put to terms for the grant of interim relief.

7. I have considered the submissions made by the parties. It is not in dispute that the complainant had paid the amount of Rs. 5.51 Crores at the time of allotment. The said amount is 7% of the total consideration. There cannot be any debate on the provisions of law that oblige the developer to execute the agreement for accepting the amount beyond 10% of the total consideration as per the RERA. Even as per the provisions of MOFA, the promoter was not entitled

to accept more than 20% of the total consideration without executing the agreement.

8. There is no dispute that from the date of allotment, i.e. 20th January 2010, till the letter dated 4th January 2022, no correspondence was made with the appellant/complainant for completion of the contract. From the aforesaid facts, it is clear that the amount of Rs. 5.51 Crores was with the developer without any further progress. Since, under the law, the promoter cannot accept more than 10% of the total consideration without execution of the agreement, there cannot be any justification to direct the complainant to deposit an amount that is 50% of the total consideration.

9. The issue regarding the validity of the respondent's termination letter is pending before the RERA Appellate Tribunal. The complainant's claim for specific performance of the allotment letter is also pending before the Appellate Tribunal. The time-lapse from 2010 to 2022 cannot be attributed to the complainant. The complainant has already suffered because of the delay in completing the project by the erstwhile developer. There cannot be justification for using the complainant's amount since 2010 and terminating the allotment without any fault on the part of the

complainant. The impugned order imposes a condition for depositing 50% of the total consideration without any justifiable reason.

10. For the reasons recorded above, ad-interim relief granted by order dated 6th September 2024 is confirmed. There will be interim relief in terms of prayer clause (a) during the pendency of the second appeal.

11. Interim application is allowed in the aforesaid terms.

12. Learned counsel for the appellant has tendered an order dated 16th October 2024, passed by the RERA Appellate Tribunal. By the said order, the RERA Appellate Tribunal has adjourned the appeal *sine die*, in view of the pendency of the second appeal. The second appeal arises out of an interim order. This court has not granted any stay to the proceedings before the RERA Appellate Tribunal. It is, therefore, clarified that the pendency of the second appeal shall not be treated as a stay to the proceedings of the appeal before the RERA Appellate Tribunal. The appeal proceedings before the RERA Appellate Tribunal shall proceed.

13. Learned counsel for the appellant submits that though the

second appeal is admitted and interim relief is confirmed, the appellant is still agreeable to resolve the dispute amicably. He submits that if the termination is revoked and the agreement is executed, the appellant is agreeable to make the payments.

14. Learned counsel for the respondent, however, submits that he has no instructions for exploring the possibility of an amicable settlement. It is, therefore, clarified that though the second appeal is admitted and interim relief is confirmed, the parties are at liberty to explore the possibility of an amicable settlement.

(GAURI GODSE, J.)