BEFORE THE MAHARASHTRA REAL ESTATE APPELLATE TRIBUNAL, MUMBAI

MISC. APPLICATION NO.770 OF 2025 (Stay)
IN
Appeal No. AT06/00774/2025

Sanju Daulatraj Desai].. Applicant
Versus

Realgem Buildtech Private Limited & Ors.]..Non-applicants

Adv. Mr. Nimay Dave for Applicant
Adv. Mr. Abir Patel for Non-applicant No.1
Adv. Mr. Vikram Jakhadi for Non-applicant No.3

CORAM: SHRI S. S. SHINDE J., CHAIRPERSON &
SHRI SHRIKANT M. DESHPANDE, MEMBER (A)

RESERVED ON : 15th December, 2025

PRONOUNCED ON : 6th January, 2026

(THROUGH VIDEO CONFERENCING)

ORDER

[PER: SHRIKANT M. DESHPANDE, MEMBER (A)]

1. The applicant/allottee has filed the captioned appeal challenging the common order dated 26.12.2024 passed by the learned Chairperson, Maharashtra Real Estate Regulatory Authority (for short "the Authority") in complaint No. CC12400133 (for short "the first impugned order") and Order dated 10.07.2024 passed by the Authority in review application No. CC12500261 (for short "the second impugned order").
2. By the captioned complaint the applicant/allottee had sought the following reliefs (1) the execution and registration of the agreement for sale and handing over the possession of the flat

No. 2603 on the 26th Floor of the pavilion-A in Tower C in the project and two car parking spaces (for short " the apartment"), (2) The letter dated 13th June, 2024 terminating the allotment of the apartment to the complainant/applicant herein be stayed and the promoters/non-applicants herein directed to handover the possession of the apartment and (3) the non-applicants/promoters be directed to pay the interest for delayed possession from December, 2014 till the date of actual handing over the possession of the apartment.

3. By the said first impugned order, the Authority passed the order disposing of the captioned complaint and directing the complainant/applicant herein to take recourse to the arbitration clause mentioned in the application form dated 30.10.2012. Thus, the Authority directed the parties to arbitration to adjudicate their disputes in accordance with the terms in the application form.
4. By the second impugned order the review complaint filed by the applicant was dismissed for want of merits.
5. The brief factual matrix as revealed from the pleadings and the material on record as well as the impugned order is that the applicant has purchased the subject flat vide an application form (allotment form) dated 31.10.2012 with terms and conditions mentioned therein. The said flat was purchased for the total consideration of Rs. 6,52,04,000/- based on the plans and designs shown to the allottee by the non-applicants/promoters. Since the execution of allotment form, the appellant/allottee has paid sum of Rs. 1,34,73,167/- towards the consideration of the said flat. Thus, the appellant even prior to the execution of the

agreement for sale had made payments of more than 10% of the total consideration amount. On execution of the allotment form, the appellants were assured that the possession of the flat will be handed over in or around December 2014. However, the project completion date was unilaterally extended by the promoters to June, 2016, which was never mutually agreed upon between the parties or otherwise accepted by appellant. From the period between 2014 and 2016 the appellant noted that there was no progress in construction and that the project was stalled. Thereafter, when the RERA Act, 2016 came into force, the project was registered under the provision of RERA Act, 2016. The promoters showed the completion date of project on the website of the MahaRERA as 30.06.2020 which was further revised to 30.12.2023 and thereafter further extended to 29.12.2025. However, the project is still incomplete.

6. Since purchasing of the said flat the appellants have time and again followed with the promoters for execution of the agreement for sale and the possession of the said subject flat, however, the same was of no avail. Although the promoter had sent the draft of the agreement for sale on few occasions, the area and consideration amounts set out in the said draft were incorrect and no corrected draft was shared by the promoters. In or around April, 2018 respondent No.1 by an email announced its association with "Rustomjee Group" and that respondent No.4 would take over as the development manager of the said project, pursuant to the execution of development/ management agreement dated 18th March, 2018. As a result of

such association respondent No.4 took over the role of developer/development manager of the said project from respondent Nos.1 and 3. Respondent No.4 was then onboarded as an additional/co-promoter of the project along with the respondent Nos.1 to 3.

7. Thereafter, on 7th February, 2019 the promoters informed the appellant that the plans pertaining to the project have been revised as also area of the subject flat. As a result, the consideration in respect of the flat had also been changed. The appellants never accepted this change nor the above changes made in accordance with the procedure prescribed under the RERA Act, 2016. The appellants never consented to the said changes in plans and area of the subject flat.
8. On 15th July, 2019 the promoters by an email raised a demand on the appellant for interest and payment of the remaining consideration despite the fact that no progress was made on the construction of the project and the promoter failed in their obligation to handover the possession by agreed date. In response, on 19th August, 2019 the appellant replied to the above email and disputed the levy of interest on account of promoter's delay in completing project and also there was still no clarity on completion which entitled appellant for compensation. On 14th November, 2019 the promoters by the email ultimately waived interest on the first slab invoice which was raised in 2016.
9. Thereafter, the promoters address further emails on various dates in February 2020 to June 2020 purporting the reminders for outstanding balance payments. However, these emails had

no attachment thereto and thus it was impossible for appellant to know about the status of the completion of the project, the amounts to be paid, the statutory liability in respect thereof etc. Moreover, at the relevant time COVID restrictions were imposed by the government and as such there was no liability on the appellant to make any payment at the relevant time.

10. On 15th August 2020, during the COVID-19 pandemic, the promoters then called upon the appellant to execute an agreement for sale in the subject project, 8 years after the allotment form was entered into. In response, on 18th August, 2020, the appellant while confirming that he was ready and willing to execute an agreement for sale, informed that he was unable to do so on account of pandemic and therefore, sought to defer the execution and registration of the agreement.
11. The promoters thereafter addressed emails asking for the making payments, however, none of the emails had any clarity as to when the project will be completed. The project was still not completed and there was no commitment from the promoters.
12. On 13th June, 2024 without any prior intimation respondent No.1 by letter purported to terminate the allotment in favour of the appellant for alleged failure to execute and register the agreement and making payments and sent to the appellant a pay order dated 12th June 2024 for the sum of Rs. 1,09,73,167/- towards refund as purported therein. Further, the letter and pay order failed to account for the sum of Rs. 25 Lakhs paid by the appellants to the promoters.

13. In reply on 1st July, 2024, the appellant disputed the termination *inter alia* as it was contrary to the terms of the allotment form, particularly Clause 8.1 thereof which required the promoters to give 21 days' notice to cure any defect before termination. No such notice was ever given, thus the allotment continued to be valid, binding and subsisting. The appellants further called upon the promoters to perform their part of obligation of execution of the agreement and the appellant is ready and willing to pay the balance consideration amount. The respondent failed to reply. On 22nd July, 2024 the appellant once again called upon the respondent No.1 to perform their part of the obligations and execute and register the agreement for sale with appellant.

14. The promoters failed to execute an agreement for sale despite of having received more than 10% of total consideration amount. Further, the promoters made substantial changes in the layout of the buildings and the area of the flat without consent of the allottees. The appellant along with the letter dated 22nd July, 2024 returned the aforesaid pay order of Rs. 1,09,73,167/-. Subsequently, on 25th July, 2024 the promoters by letter reaffirmed the termination. While doing so the promoters did not, despite that they had not terminated the allotment in the terms Clause 8.1 of allotment form or that they themselves were operating in breach of RERA Act, 2016. The promoters returned the pay order and once again confirmed the termination. On 8th August, 2024 the appellant responded to the above letter and once again returned the aforesaid pay order to the respondent No.1, however, expressed his readiness and willingness to perform their part of the contract in respect of the

said flat by executing and registering the agreement for sale and payment of balance consideration. By the said letter, the appellant called upon the promoters to perform their part of the contract, more particularly set out therein. The promoters have not replied to this letter and they in fact accepted back the pay order. Since the promoters failed to formally withdraw the termination and failed to take steps in furtherance of the execution for agreement for sale for the subject flat, the appellant filed the captioned complaint before the authority.

15. The appellants have filed misc. application No. 770 of 2025 seeking following reliefs;

a. *pending the hearing and final disposal of this appeal, this Hon'ble Tribunal be pleased to injunct the Respondents their servants, agents, employees, representatives, heirs, assigns, nominees, successors-in-interest and/or any persons claiming through or under them, from in any manner handing over possession of the subject Premises namely Apartment No. 2603 on the 26th Floor of Tower C in the project "Rustomjee Crown situate at Prabhadevi, Mumbai with two car parks, to any third-party purchasers, including Respondent Nos. 5 to 7, and to further restrain the Respondents from acting upon, or giving effect to, any agreement for sale or other document purportedly executed in their favour,*

b. *pending the hearing and final disposal of this appeal, this Hon'ble Tribunal be pleased to restrain Respondent Nos. 5 to 7. their servants, agents, employees, representatives, heirs, assigns, nominees, successors-in-interest and/or any persons claiming through or under them, from in any manner creating third-party rights, executing agreements for sale, leave and license agreements, deeds of conveyance or transfer, creating any mortgage, charge, lien, encumbrance or security interest, or otherwise parting with possession or dealing with or disposing of the Subject Premises namely, Apartment No.2603 on the 26th Floor of Tower C in the project "Rustomjee Crown", situate at Prabhadevi, Mumbai together with two car parking space or any part thereof, directly or indirectly, in any manner whatsoever,*

c. *pending the hearing and final disposal of this appeal, this Hon'ble Tribunal be pleased to restrain all the Respondents. their servants, agents, employees, representatives, heirs. assigns, nominees, successors-in-interest and/or any persons claiming through or under them, from giving effect to/acting in furtherance of the Agreement for Sale dated 30th August 2024 bearing registration no. BB15/14309/2024 executed by and between Respondent no. 1,3,4,5,6 and 7.*

16. The learned advocate for the applicant has submitted that the present application is filed seeking grant of interim injunction against the promoters refraining them from creating any third-party rights in respect of the subject flat until disposal of the appeal as well as for other reliefs as stated herein. The learned advocate submitted that the respondents created third party rights in favour of respondent No.5 to 7 and thereby frustrating rights of the appellant as an allottee of the subject project. The appellant further apprehends that the respondent No. 1 to 4 have already negotiated and accepted an earnest deposit amount from the respondent No.5 to 7 prior to the issuance of the purported termination letter dated 13.06.2024 to the appellant. This clearly indicates that third party negotiations and commitments were entered into by the respondents even prior to the issuance of the purported termination letter dated 13.06.2024. Learned advocate submitted that the respondents have acted malafide by executing the sale in favour of respondent Nos. 5 to 7 even prior to issuance of the termination letter of the appellant. The chronology and facts demonstrated with termination was pretextual and aimed solely at enabling a resale of the subject premises to the higher prices. The conduct of the respondent Nos.1 to 4 in entertaining and accepting consideration from third party while rights of the appellant

continued to subsist demonstrates clear intent to create adverse third-party interests in breach of the allottees/appellants. This not only evidences bad faith but also supports the legitimate apprehension of the appellant that further acts of alienation are likely to follow unless injunction is granted. The learned advocate submitted that in these circumstances their exists a real and present danger that the respondent Nos. 5 to 7 may themselves proceed to create third party rights or incumbrances in favour of other purchasers or financiers. No safeguards are in place to prevent such further transfer and no undertaking has been given by the respondents. In the absence of the injunction, the situation may rapidly become irreversible and will result in multiplicity of proceedings and further clouding of title.

17. The learned advocate submitted that it is pertinent that the appellant is allottee prior in time and has valid right in the subject premises have been created in their favour. The rights of such prior allottees cannot be extinguished unilaterally, arbitrarily or clandestinely. Given the pending adjudication on the legality of the termination and the reliefs claimed in the appeal, the equities lie squarely in favour of the appellant. In the light of the above and to preserve the sanctity of the subject matter of appeal, it is incumbent that the status quo be maintained and that all respondents be restrained from taking any steps whatsoever in furtherance of the purported transfer of the subject premises, including but not limited to handing over the possession, creating incumbrances, executing agreements or inducting any third party into the subject premises. If the respondents are permitted to proceed with

handing over possession or creating third party rights the very subject matter of the appeal will be lost. This would render the appellate remedy illusory and cause miscarriage of justice. The learned advocate submitted that the applicant/appellant has made out a strong prima facie case as impugned order is contrary to the settled law especially the binding judgment of the Hon'ble Bombay High Court in the case of *Rashmi Realty Builders Pvt. Ltd. vs. Rahul Pagariya* and other judgments which have hold the disputes under the RERA are non-arbitral. Existence of an arbitration clause cannot oust RERA's jurisdiction. Termination of allotment does not deprive and allottee of remedies under RERA Act, 2016.

18. The learned advocate submitted that impugned orders have failed to adjudicate the legality of the termination and have instead accepted the unilateral action of the non-applicants/ promoters as fait accompli. This directly prejudices the appellant's rights under RERA Act, 2016. But appellant has already paid substantial amount of Rs. 1,34,73,167/- towards the subject premises and continues to assert valid allotment. On the other hand, the respondents have not demonstrated any urgency that justifies transfer of possession or alienation of the subject premises during pendency by this appeal. Grant of status quo/interim relief will cause no prejudice to the respondents, on the contrary, denial of the same will cause grave and irreversible harm to the appellant. The learned advocate submitted that if the injunction as prayed for is granted, then no harm, loss and prejudice will be caused to the respondents. However, on the contrary if the injunction as

prayed for is not granted then grave harm loss and prejudice will be caused to the applicant/allottee. The appellant has very good case on merits and the balance of convenience is in favour of the appellant. In view of this, with these submissions the learned advocate for the appellant prayed the allow the application.

19. The learned advocate for the non-applicant No.1 and 3 remonstrated the application by filing reply contending therein that the application is misconceived in law and facts and deserves to be rejected. Further, the applicant has not made out any sufficient ground in order to allow the application.

20. The learned advocate for the applicant No.1 has submitted that the application is entirely devoid of merit and provides absolutely no valid reason or ground as to why the order impugned in this appeal should be stayed. The learned advocate submitted that the said application was filed on 6th August, 2025 but has not been moved out of turn for urgency even on one occasion nor has any ad interim relief been pressed for till date. The appeal had been listed before this Tribunal on three occasions and not once any urgency been shown by the applicant for pressing the reliefs sought in the said application.

21. The learned advocated submitted that it is pertinent to note that the applicant has not challenged the termination notices dated 13.06.2024 and 25.07.2025 and protested only in September, 2024 i.e. three months after the same were issued. There is no stay on the termination either. No party has sought execution of the order impugned in the said appeal and the said application does not show how its continued operation

prejudices the applicant in any way for causes grave harm or loss.

22. The learned advocate submitted that the applicant is a party in breach and has defaulted in several clauses of the allotment form dated 31.10.2012 and the provisions of RERA Act 2016. The terms of in terms of clause 5.4 of the application form, the appellant was to execute and register and agreement for sale for the subject flat. The applicant has avoided executing and registering an agreement for sale despite being called upon to do so on several occasions such as 16.05.2019, 29.05.2019, 05.06.2019 and 14.06.2019. The learned advocate submitted that the applicant has only paid 17.03 % of the consideration amount while the construction of the super structure is completed as on date and internal work is in progress. Respondent No.1 has continued construction even when the applicant has blocked payments by deliberately avoiding signing the agreement for sale and misusing the 10% threshold prescribed under Section 13 of the RERA Act, 2016. The amounts received from the applicant towards part consideration of the subject flat has been offered as refund to them vide pay order dated 12.06.2024. The refund has been offered without any forfeiture despite respondent No.1 upon contractually and statutorily entitled to forfeit amounts in the event on termination as per clause 8.1 of the application form.

23. The learned advocate submitted that subject flat has been sold to respondent Nos. 5 to 7 vide registered agreement for sale dated 30.08.2024. The applicant failed to move any court to obtain any stay on the termination or on the orders under

challenge and there was no embargo in selling the subject flat. The applicant being a defaulter cannot be shown any equities nor seek to restrain Bonafide purchasers of the subject flat.

24. The learned advocate submitted that applicant is seeking injunction on creation of third-party rights in respect of the subject flat. When he himself is not interested in the subject flat and have defaulted in payment obligations and has refused to enter into an agreement for sale, agenda of the applicant is to block the flat until some monetary award is obtained and then try to get a discount on the consideration amount. This is not possible as not only does the applicant has no right, title or interest in the flat as the same has been sold while the applicant failed to take any steps under law.

25. The learned advocate submitted the apprehension of the applicant is entirely speculative and presumptive. Without credible prima facie evidence, no interim relief can be granted. The applicant has failed to show any Bonafide whatsoever and not signed or offered to sign the agreement for sale, not paid nor offered to pay, not complied with the order under challenged and simply filed the said appeal without moving it urgently. The law cannot protect a defaulter and definitely not protect someone who conveniently slept over his rights while the situation irreversibly changed. The learned advocate submitted that applicant is seeking reliefs that are outside of the four corners of the RERA Act, 2016. The applicant's case can only be heard by the civil Judicial Court and sought reliefs can be granted by such court. This application, therefore, cannot be entertained for want of jurisdiction. With these submissions the

learned advocate for the non-applicant No.1 prayed to reject the application.

26. The learned advocate for the non-applicant No.3 has submitted that the applicant has failed to justify the grounds on which the reliefs prayed by the applicant in application should be granted against the respondent No.3. None of the reliefs should be granted as prayed by the applicant against the respondent No.3. the learned advocate submitted that the said application is not maintainable as the applicant willful refused to execute and register the agreement for sale which is in contravention of Section 19 (6) and (7) of RERA Act 2016. Moreover, the Authority by its order directed the applicant to take recourse to the arbitration clauses mention in the application form dated 30.10.2012. Therefore, the application is ought to be dismissed on this count.

27. The learned advocate submitted that the respondent No.3 is merely a land owner of the project having no role in developing, constructing and promoting the project in any manner whatsoever. Moreover, the consideration of the flat was never paid to the respondent No.3 by the applicant and no correspondence has been exchanged between the applicant and respondent No.3 as on date. The termination letter dated 13.06.2024 was solely addressed by the respondent No.1 to the applicant and not by the respondent No.3. Therefore, there is no cause on action made out by the applicant against the respondent No.3. With these submissions the learned advocate for the respondent No.3 prayed to reject the application so far as the respondent No.3 is concerned.

28. We have given due consideration to the averments made in the application, replies of the respondent No.1 and respondent No.3 and oral submissions of the learned advocate for the parties. Having heard parties and with due regards to material placed on record, the only point arise for our consideration is whether applicant has made out the case in order to allow the application? We have given our findings with reasons as follow.

REASONS

29. The allotment letter issued by the promoter in favour of the applicant/allottee fulfills all the ingredients of the valid and concluded contract between the parties and therefore the same is enforceable under the provisions of RERA Act, 2016.

30. The Authority in the impugned order has directed the parties to avail the arbitration in accordance with the arbitration clause in the said allotment letter. The issue of whether the jurisdiction of RERA Act, 2016 is ousted if the agreement specifically provides the arbitration clause in the agreement for sale or allotment letter, has been considered by the Hon'ble Bombay High Court in case of *M/s. Rashmi Realty Builders Pvt. Ltd. v/s Mr. Rahul Rajendrakumar Pagariya and Ors.* [Second Appeal No. 434 of 2023 with Interim Application (st) No. 16005 of 2023 decided on 25th October 2024 by the Hon'ble Bombay High Court]. Wherein in para-3 the Hon'ble Bombay High Court has framed the substantial question of law which reads as under:

> *"Whether the jurisdiction of Real Estate Regulatory Authority established under Section 20 of the Real Estate Regulation and Development Act, 2016 is ousted, if the agreement between the promoter and the allottee contains arbitration clause?"*

31. The Hon'ble Bombay High Court while answering the said substantial question of law in paragraph 63 held as under by reaching following conclusions:

> "*(i) The dispute between the individual allottee and the promoter or the dispute between the Association of the Allottees and the Promoter covered under Real Estate Regulation and Development Act, 2016 is non-arbitral in nature.*
>
> *(ii) The jurisdiction of Real Estate Regulatory Authority established under Section 20 of the Real Estate Regulation and Development Act, 2016 is not ousted, even if the agreement between the promoter and the allottee contains arbitration clause".*

In the light of authoritative pronouncement by the Hon'ble Bombay High Court in case of *M/s. Rashmi Realty* (supra) the jurisdiction of Real Estate Regulatory Authority established under Section 20 of the Real Estate Regulation and Development Act, 2016 is not ousted even if the agreement between the promoter and the allottee contains arbitration clause.

32. In view of the above authoritative pronouncement of the position of law we are of the considered view that the impugned order is prima-facie is not in accordance with law and settled position in the judgment of the Hon'ble Bombay High Court in the case of *M/s. Rashmi Realty* (supra), which is binding on this Tribunal.

33. It is not in dispute that the promoter has accepted more than 10% consideration amount and not executed and registered the agreement for sale. This is violation of Section 13 of the RERA Act, 2016, which prohibits the promoter to accept more than 10% consideration amount without first executing and

registering the agreement for sale. The promoter terminated the allotment on the ground of non-payment of the remaining consideration amount by subsequent demands raised. As we have already observed above that the promoter has failed to execute an agreement for sale as required under section 13 of the RERA Act, 2016, the promoter cannot seek demand any additional amount which is more than 10% of the consideration amount without first entering into and registering the agreement for sale. Therefore, the subsequent demands raised by the promoter are prima-facie unlawful and therefore termination of the allotment on the ground of non-payment of the amounts as demanded is not in accordance with the law.

34. The Hon'ble Supreme Court in the case of *Dr. Amit Arya v/s Kamleh Kumari* [Civil Appeal arising out of SLP (C) No.20091 of 2022 decided on 19.12.2025] in para 7 of the said judgement has held as under.

> *"7. Unquestionably, the power to extend the time granted within the decree for performance of its conditions can be extended on such terms as the Court may deem fit. However, it is matter of record that in this case no such extension was granted. However, such non-grant of extension of time cannot, in our view, be the end of the transaction. Taking such a view would be classic example of a hyper-technical approach which, this Court has observed, ought to be eschewed [see Ramankutty Gupta v/s Avara 1994 2 SCC 642]. We are supported in such a view by a recent order of this Court in Ram Lal v.s Jairnal Singh 2025 SCC OnLine SC 584, whereby it has been*

observed that, "the non-payment of balance sale consideration within the time period fixed by the trial Court does not amount to abandonment of the contract and consequent rescinding the same. The real test must be to see of the conduct of the plaintiff will amount to a positive refusal to complete his part of the contract."

In the present case, the applicant has expressed his readiness and willingness to perform its part of the contract in respect of the said flat by executing and registering the agreement for sale and payment of balance consideration. Therefore, the termination of the allotment letter prima facie is not legally sustainable.

35. The termination of the allotment letter is subject matter of the appeal so also legality and validity of the impugned order. Despite substantial payment of the consideration amount, the promoter has terminated the allotment and also created third party rights by selling the subject flats to respondent nos. 5 to 7, who are also party to this appeal. The applicant apprehends that the said respondents to whom the promoter has sold the subject flats may also create third party rights, which will create complications to the entitlement of the applicant/allottee. This would create multiplicity of litigations and therefore in our view it would be appropriate if all respondents/non-applicants are directed to maintain status quo pending the final disposal of the appeal. Accordingly, we proceed to pass the following order.

ORDER

i) The Misc. Application No.770 of 2025 is partly allowed.

ii) The respondents/non-applicants are directed to maintain status quo and not to create any further encumbrances/rights/interests on the subject flat till the disposal of this appeal.

iii) Misc. Application No.770 of 2025 is accordingly disposed of.

iv) Copy of this Order be communicated to the Authority and the respective parties, as per Section 44(4) of RERA Act, 2016.

(SHRIKANT M. DESHPANDE) **(S. S. SHINDE, J.)**

Avinash/Mulla