

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

Rajesh V. Chittewan  
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SECOND APPEAL (STAMP) NO. 5329 OF 2020  
WITH  
INTERIM APPLICATION (STAMP) NO. 94180 OF 2020  
IN  
SECOND APPEAL (STAMP) NO. 5329 OF 2020

Westin Developers Pvt. Ltd. ...Appellant/Applicant  
vs.  
Raymond Alexis Nunes ...Respondent

...

Mr. Dakshesh Vyas a/w Mr. Dominic D'Souza and Mr. Sumit Kothari i/b. Agrud Partners, for Appellant/Applicant.  
Mr. Huzefa Nasikwala a/w Mr. Sujit S. Mashal i/b. Nasikwala Law Office, for Respondent.

...

CORAM : S.C. GUPTE, J.

DATE : 4 DECEMBER 2020

**P.C. :**

1. Heard learned Counsel for the parties.

2. This second appeal challenges an order passed by RERA Appellate Tribunal at Mumbai. The subject matter of controversy is the original complaint by the Respondent, who was a flat purchaser and who had claimed interest from the Appellant/Promoter for delay in handing over of possession of the premises, for the period from the date of possession stipulated under the agreement till the date of actual possession. The adjudicating authority under Maharashtra Real Estate (Regulation and Development) Act, 2016, while accepting the Respondent's claim, awarded interest from January 2018; the adjudicating authority gave six

months extension on unilateral basis to the Appellant/Promoter by way of a grace period. The Respondent-complainant carried the matter in appeal before the RERA Appellate Tribunal, who by its impugned order, held that there was no specific clause in the agreement, entitling the promoter to any grace period of six months or otherwise. The Appellate Tribunal observed that the date of delivery of possession of the premises stipulated under the agreement, was on or before 30 June 2017 and, accordingly, directed payment of interest from 1 July 2017 till the date of delivery of possession of the premises. No substantial question of law arises from the impugned order.

3. Learned Counsel for the Appellant submits that the agreement contains a clause to the effect that the date of possession was subject *inter-alia* to any cause beyond the control of the Developer including any order of the Central Government, Local Authority or Body or due to delay in issuing completion certificate or occupation certificate by the Authorities. The clause referred to by learned Counsel is nothing but an ordinary force majeure clause, where the promoter cannot be faulted for delay in delivery of possession, if such delay is caused by any reason beyond his control. This clause by itself does not provide for any grace period to the promoter. The promoter has to make out a case that delay caused in handing over possession of the premises was due to any of the elements referred to in the majeure clause. It is apparent from the record that the adjudicating authority was not impressed by any of the reasons submitted by the Appellant herein towards justification for this delay. Yet, the order of the adjudicating authority proceeded on the basis that even if facts pointed out by the Promoter were to be taken into consideration as justification for the delay, a six months' grace period could be granted for delivery of

possession to the Promoter. The Appellate Tribunal held that there was no warrant for any such extension under the agreement between the parties and accordingly, ordered interest with effect from the date of delivery of possession stipulated in the agreement. It is important to note that neither the Appellate Tribunal nor the adjudicating authority found in favour of the Appellant/Promoter insofar as its case for justification of the delay is concerned. In the premises, the grace period of six months considered by the adjudicating authority was nothing but an ad-hoc measure and was rightly not accepted by the Appellate Tribunal. Accordingly, no substantial question of law arises in connection with the impugned order of the Appellate Tribunal.

4. The second appeal is, accordingly, dismissed.

5. In view of dismissal of the second appeal, the interim application does not survive and is disposed of.

6. This order will be digitally signed by the Private Secretary of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

**(S.C. GUPTE, J.)**