

**BEFORE MAHARASHTRA REAL ESTATE
APPELLATE TRIBUNAL MUMBAI**

**27] M. A. No. 278/23 (Stay)
In
Appeal No. AT006000000134162/22**

Balaji Construction Company

... Appellant

V/s.

Jayantilal Makwana

...Respondent

**28] M. A. No. 276/23 (Stay)
In
Appeal No. AT006000000134167/22**

Balaji Construction Company

... Appellant

V/s.

Prashant S. Mahajan

...Respondent

**29] M. A. No. 277/23 (Stay)
In
Appeal No. AT006000000134185/22**

Balaji Construction Company

... Appellant

V/s.

Hetal B. Shah & Anr.

...Respondents



30] M. A. No. 273/23 (Stay)
In
Appeal No. AT006000000134186/22

Balaji Construction Company ... Appellant

V/s.

Shashikumar Mishra & Anr. ... Respondents

31] M. A. No. 280/23 (Stay)
In
Appeal No. AT006000000134187/22

Balaji Construction Company ... Appellant

V/s.

Achala Abhijit Patil ... Respondent

32] M. A. No. 275/23 (Stay)
In
Appeal No. AT006000000134188/22

Balaji Construction Company ... Appellant

V/s.

Chintan Mahesh Shah & Anr. ... Respondents

33] M. A. No. 274/23 (Stay)
In
Appeal No. AT006000000134189/22

Balaji Construction Company ... Appellant

V/s.

Anjusha Ajit Kadam & Anr. ... Respondents



34] M. A. No. 279/23 (Stay)
In
Appeal No. AT006000000134199/22

Balaji Construction Company

... Appellant

V/s.

Vikram B Shah & Anr.

...Respondents

Adv. Mr. Gauraj Shah for Appellant/ Promoter. (Sr. Nos. 27 to 34)

Adv. Ms. Neha Shah for Respondent/ Allottee. (Sr. No. 27)

Mr. Prashant Mahajan, Respondent/ Allottee in person (Sr. No. 28)

Adv. Ms. Padma Chinta for Respondents/ Allottees (Sr. Nos. 29 to 34)

CORAM : SHRI SHRIRAM. R. JAGTAP, MEMBER (J), &

DR. K. SHIVAJI, MEMBER (A)

DATE : 19th December, 2023

(THROUGH VIDEO CONFERENCE)

Advocate Mr. Gauraj Shah submits that pursuant to earlier Order the Appellant has paid cost of Rs.5,000/- to each of the Allottees.

2] Advocate Ms. Neha Shah, Mr. Prashant Mahajan and Advocate Ms. Padma Chinta submit that they have received cheques of Rs.5,000/- each from the Appellant and the cheques are yet to be deposited in the bank for encashment.

3] Advocate Mr. Gauraj Shah submits that being dissatisfied with the Order passed by this Tribunal, the Appellant/ Promoter had filed Writ Petition in the Hon'ble High Court but objection for maintainability of Writ Petition against the Order of compliance of proviso to Section 43(5) of RERA was taken and liberty was granted



to Appellant to file second Appeal in the Hon'ble High Court. The Appellant has withdrawn the Writ Petition and filed second Appeals against the Order passed by this Tribunal and the second Appeals are listed on 21.12.2023 for consideration. He requests to adjourn the matter after 21.12.2023.

4] A perusal of record reveals that by Order dated 27.10.2023 this Tribunal has directed the Appellant to deposit amount in the respective Appeals towards compliance of proviso to Section 43(5) of RERA within three weeks from the date of uploading of the said Order. It further reveals that Appellant instead of depositing the amount as ordered by this Tribunal had filed Writ Petition in the Hon'ble High Court and sought time to comply with the Order passed by this Tribunal.

5] The record further reveals that the progress of the matter is at standstill because of Appellant only. Despite ample opportunities the Appellant has failed to comply with the Order passed by this Tribunal. It further reveals that on the last date opportunity was granted to Appellant to comply with the Order subject to payment of cost of Rs.5,000/- to Allottees. Till date the Appellant has not complied with the Order passed by this Tribunal.

6] As indicated above, the progress of the matter is at standstill because of Appellant only, therefore we are of the view that the Appellant has deliberately not complied with the Order passed by this Tribunal and intentionally failed to deposit the amount towards compliance of proviso to Section 43(5) of RERA. It is mandatory for



Promoter/ Appellant to deposit the amount towards compliance of proviso to Section 43(5) of RERA and without compliance of proviso to Section 43(5) of RERA the Appeal cannot be heard. Since the Appellant has miserably failed to deposit the amount towards compliance of proviso to Section 43(5) of RERA the Appeals stand dismissed for want of compliance of proviso to Section 43(5) of RERA.

7] Pending Misc. Application, if any, also stands disposed of accordingly.


(DR. K. SHIVAJI)

MBT/27-34


(SHRIRAM. R. JAGTAP)