

**BEFORE THE MAHARASHTRA REAL ESTATE
APPELLATE TRIBUNAL, MUMBAI.**

Misc. Application No.600/19

In

Appeal No.AT006000000041857

Rushi Builders & Developers ... Appellant

Versus

Rekha G. Yadav ... Respondent

*(Advocates Mr.Chirag Kamdar a/w Mr. Pranav Khatkul i/b
Advocate Janu Gulati for Appellant
Advocate Mr.Makarand Raut a/w Advocate Hima Khuman
for Respondent)*

CORAM : SUMANT KOLKHE, MEMBER (J)

S. S. SANDHU, MEMBER (A)

DATE : 2ND JANUARY, 2020

ORDER BELOW MISC. APPLICATION No.600/19

- 1 Read application for stay with affidavit. Perused duly notarized say filed by respondent.
2. The appellant is a promoter. Respondent is an allottee.
3. The order dated 22.8.2019 passed by Learned Member-2, MahaRERA in Complaint No.56793 is challenged in this appeal.
4. It is revealed from record that allottee has filed execution proceedings before MahaRERA in respect of impugned order dated 22.8.2019. It is further revealed from record that MahaRERA issued the warrant on 26.11.2019

U/Sec. 14(1) of MahaRERA,2016 for non-compliance of impugned order. The Collector, Mumbai Suburban is directed to execute the warrant. The promoter has challenged the said order in this appeal on various grounds. Accordingly, impugned order is subjudice in this appeal. The promoter has deposited 40% of the amount as per the impugned ^{order} pursuant to the order of this Tribunal in compliance of proviso to Sec.43(5) of RER Act, 2016. Accordingly, the appeal is entertained.

5. It is revealed from the grounds of appeal that appellant has an arguable case. If the order which is challenged in this appeal is allowed to be executed in terms of the warrant issued by MahaRERA by issuing the warrant, the subject matter of the appeal will become infructuous and the very purpose of preferring the appeal will be defeated.

6. In view of the fact that appellant has deposited 40% of the amount as per impugned order in compliance of proviso to Sec.43(5) of RER Act, 2016 and appellant has an arguable case in this appeal, we are of the opinion that appellant has made out prima facie case for passing the order of stay to execution of impugned order. There will be no prejudice caused to respondent, if operation and execution of impugned order is stayed during pendency of this appeal. Moreover, appellant will suffer an irreparable loss, if operation and

execution of impugned order is not stayed during pendency of appeal. Accordingly, we allow the application for stay and pass the following order.

: ORDER:

- 1) Misc. Application No.600/19 is allowed.
- 2) Execution and operation of impugned order dated 22.8.2019 passed by Learned Member-2 in Complaint No. 56793 is stayed till decision of this appeal.
- 3) The warrant dated 26.11.2019 issued by MahaRERA for execution of impugned order is stayed.
- 4) Office to inform MahaRERA and Collector, Mumbai Suburban accordingly.
- 5) List the appeal on 6.2.2019 for reply.


(S. S. SANDHU)


(SUMANT KOLHE)