

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

Misc. Application No. 122/20 (Stay)

In

Appeal No. AT00600000052181

Mr. Rajesh Jain

... Appellant

Versus

Xercis Sumariwala & 2 Ors.

... Respondents

Mr. Anwar Landge, Advocate for Appellant.

Mr. Hursh Meghani, Advocate for Respondent No. 1.

*Mr. Abir Patel a/w Ms. Lavina Bhargava i/b Wadia Ghandy & Co.,
Advocate for Respondent No. 2.*

Mr. Utkarsh Muzumdar, Advocate for Respondent No. 3.

**CORAM : INDIRA JAIN J., CHAIRPERSON &
S. S. SANDHU, MEMBER (A)**

DATE : 13th OCTOBER, 2021.

(THROUGH VIDEO CONFERENCING)

PER: S. S. SANDHU, MEMBER (A)

Heard learned counsel for the parties. Present Application is filed for staying the operation and implementation of the impugned order dated 02.08.2019.

2. Brief facts for the limited purpose of disposing of Application for stay are that Respondent No. 1 (Allottee) booked a flat No. 2603 in the project '**Neumec Terraces**' of Neumec Builders and Developers Joint Venture in which Appellant and

Respondent No. 3 were partners for consideration of Rs. 2.26 Cr. Allottee paid Rs. 10 lacs to Respondent No. 3 on 09.12.2011. Allottee was assured that the building would be completed in a period of about 3.5 years. After considerable time elapsed, Allottee did not find much progress in construction of sale building in which the flat would be situated. Pursuant to continuous follow up, letter of Allotment (LoA) was issued on 20.02.2014.

3. According to Allottee, around the end of December, 2014 on being informed by Appellant that all necessary approvals have been obtained for sale building and funding for the project was already sanctioned, Allottee decided to continue with the project. Allottee claimed that on demand made by Appellant, Allottee paid additional amount of Rs. 50 lacs through RTGS on 25.11.2014 in favour of Neumec Builders and Developers for Tilaknagar project pursuant to the request made by Respondent No. 3.

4. Seeing no further development in the project and in order to buy ready-to-move-in-flat, Allottee sought refund of the amount. Pending refund, Allottee purchased another flat by taking loan. Allottee came across the fact in April, 2018 that Respondent No. 2 had become the Promoter who launched the project with a different name '**The Autograph**' without there being any information to and consent of Allottee. Feeling cheated, Allottee pursued refund of amount with Respondent Nos. 2 and 3 and in

turn was offered a flat at Ghatkopar to effect recovery of the refund amount. However, as the proposal did not materialise and the project registered under RERA as 'The Autograph' showed completion date as 2022, Allottee decided to withdraw from the project.

5. On account of the aforesaid circumstances, Allottee filed complaint against Respondent Nos. 2 and 3 seeking directions *inter alia* to Respondent Nos. 2 and 3 to jointly and/or severally refund the paid amount with interest along with compensation of Rs. 50 lacs. Appellant, Respondent Nos. 2 and 3 appeared before the Adjudicating Officer (AO) and filed their written submissions. Respondent No.2 denied obligations towards Allottee as it neither sold the flat nor received any consideration amount being entitled only to unsold carpet area in the project. Appellant also denied any liability claiming that Allottee did not make him a party and he was summoned to appear only as a witness. In his affidavit he admitted that amount of Rs. 50 lacs was paid by Allottee to Neumec Builders and Developers on behalf of Respondent No. 3 for Tilaknagar project. Taking almost similar stand, Respondent No. 3 also accepted receipt of Rs. 10 lacs and denied receipt of Rs. 50 lacs claiming that the said amount was paid for Tilaknagar project which was unconnected to the flat purchased by Allottee in 'Neumec Terraces' project.

6. After examining respective contentions of the parties, the AO concluded that while no liability could be fastened