

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

Misc. Application No. 552/20 (Stay)

In

Appeal No. AT00600000021213

Ekta Parksville Homes Pvt. Ltd. ... Appellant

Versus

Sunil Kriplani & Anr. ... Respondents

Adv. Abir Patel for Appellant.

Adv. Abhishek Walwaikar for Respondents.

**CORAM : SUMANT KOLHE, MEMBER (J)
S. S. SANDHU, MEMBER (A)**

DATE : 6th JANUARY, 2021.

**ORDER BELOW MISC. APPLICATION NO. 552/20 IN
APPEAL NO. AT00600000021213**

[PER: SUMANT KOLHE, MEMBER (J)]

Application for stay arises out of the following facts.

2. Appellant has challenged the order dated 19th December, 2018 passed by Adjudicating Officer in Complaint No. CC00600000023358, whereby Appellant is directed to refund the amount along with interest and costs.

Appellant has filed Misc. Application No. 552/20 in the Appeal and has prayed to stay the operation and effect of the order which is challenged in this Appeal.

3. Heard learned counsel for Appellant and the learned counsel for Respondents. Perused the impugned order and papers on record.

4. Following points arise for our determination.

POINTS

- i) Whether Appellant has made out a prima-facie case to stay the execution of the impugned order?
- ii) What order?

5. Our findings on the points for the reasons stated below are as under.

FINDINGS

- i) Affirmative
- ii) As per final order

REASONS

6. As per impugned order, Appellant is directed to refund the amount with interest and costs. Impugned order is challenged in this Appeal. Appellant has complied with proviso

W/S

of Section 43(5) of RERA by depositing 50% amount as per impugned order in the office of the Tribunal.

7. Respondents have filed reply to stay Application. Admittedly, Respondents also filed petition for executing the impugned order before the MahaRERA. Both the parties are attending the execution proceeding before MahaRERA. The learned counsel for Appellant submits that the impugned order be stayed till disposal of the Appeal. According to him, if impugned order is executed by MahaRERA, Appeal may become infructuous and Appellant will suffer irreparable loss. On the other hand, the learned counsel for Respondent submits to reject the application for stay as Appellant has not made out a prima facie case.

WS

8. Considering the submissions of both the sides it is evident that the impugned order which is challenged in the Appeal is being executed by MahaRERA and both the parties are attending execution proceeding before MahaRERA. Appellant has made out a prima facie case to stay the impugned order as prayed. Apprehension of Appellant that Appeal may become infructuous if impugned order is executed by MahaRERA is reasonable and acceptable. Appellant may suffer irreparable loss if Appeal becomes infructuous on account of execution of the impugned order during the pendency of the Appeal. In the circumstances, it is just and proper to stay the operation and execution of the impugned

order till decision of the Appeal. So, we answer points accordingly and pass the following order.

ORDER

- MS
- i) Misc. Application No. 552/20 in Appeal No. AT00600000021213 is allowed.
 - ii) Operation and execution of the impugned dated 19th December, 2018 passed by learned Adjudicating Officer in Complaint No. CC00600000023358 is stayed till decision of the Appeal.
 - iii) Copy of the order be sent to both the parties and MahaRERA as per Section 44(4) of RERA.


(S. S. SANDHU)
-SJD/-36


(SUMANT KOLHE)
66-01-21