

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

**AT006000000021295**

M/s Wadhwa Residency Pvt. Ltd. ... Appellant

Versus

Mr. Ketan Kataria ... Respondent

(Mr. Chirag Kamdar a/w Garima Agrawal i/b Wadia, Ghandhy &  
Co., Advocates for Appellant

Mr. Anand R. Pai a/w Nilesh Gala i/b Law Square, Advocates for  
Respondent No.1

Jalpa Pithadia i/b S.I. Joshi & Co. Advocate for Respondent No.2)

**CORAM:**

**INDIRA JAIN, J. CHAIRPERSON,**

**SUMANT KOLHE, MEMBER (J)**

**S. S. SANDHU, MEMBER (A)**

**DATE :**

**18<sup>TH</sup> NOVEBER, 2019**

Heard Learned Counsel for the parties on the point of stay.

Perused record and the impugned order in particular.

Learned Counsel for appellant submits that there was no agreed date for possession in booking form or in allotment letter. It is submitted that at the time of registration of project, date of possession declared on MahaRERA website is 31.12.2018. According to Learned Counsel for appellant, date of possession was to be fixed as agreed in agreement for sale. Admittedly, agreement for sale was never executed.

Per contra, Learned Counsel for respondent No.1 strongly resists the stay application and submits that agreed date for possession was 31.3.2017. In support thereof, Learned Counsel heavily placed reliance on admission of respondent No.1 in reply filed before



MahaRERA and also declaration of date of possession as 31.03.2017 before MahaRERA. It is submitted by respondent No.1 that as loan has been borrowed, he has to pay EMI regularly and balance of convenience is strongly in his favour. It is submitted that if no stay is granted, nothing is going to happen as complainant was allowed to withdraw from the project and he is entitled to refund and interest on delayed handing over possession.

Learned Counsel for respondent No.2 adopts the submissions of learned Counsel for respondent No.1.

On hearing the parties and perusal of record, we see that there is no whisper in booking form and letter of allotment regarding the date of possession and the learned Member has considered the date of possession from brochure forwarded on e-mail dated 9.6.2018 by one Mr. Tejas Talathi to respondent No.1 for holding that the date of possession agreed between the parties is March, 2017. In this background, we find that as agreement for sale is not executed between the parties and as allotment letter and booking form are silent on the date of possession, appellant has an arguable case.

Appellant has deposited 60% of the amount due in pursuance to the order dated 23.9.2019.

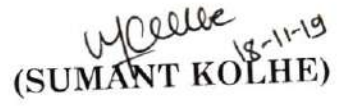
We thus find it a fit case to grant stay to the execution and implementation of the impugned order.



Hence, execution and implementation of order dated 7.2.2019 passed by MahaRERA in complaint No.CC006000000054749 is stayed till the decision of appeal.

Stand over to 16.12.2019 for reply.

  
(S. S. SANDHU)

  
(SUMANT KOLHE)

  
(INDIRA JAIN, J.)

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