

**BEFORE THE MAHARASHTRA REAL ESTATE  
APPELLATE TRIBUNAL, MUMBAI  
M.A. 229/19  
In  
AT006000000010955**

Ruchi Priya Developers Private Ltd. ... Applicant  
Versus

Shamala Suresh Baheti. ... Respondent

(Mr. Jatin Lalwani, Advocate for Applicant  
Mr. Shreyas Mamania, Advocate for Respondent)

**CORAM : SUMANT M. KOLHE, MEMBER (J)  
DATE : 07TH OCTOBER, 2019.**

**ORDER BELOW APPLICATION FOR STAY**

The applicant has filed this application for stay to execution of impugned order dated 29.11.2018 passed by learned Member & Adjudicating Officer, MahaRERA, Mumbai in the complaint No. CC006000000055835.

2. The applicant is promoter. The respondent is allottee. The promoter has challenged the legality, propriety and correctness of above mentioned impugned order by preferring an appeal No. AT006000000010955. The appeal is entertained as proviso to Sec.43 of Sub sec. 5 of RERA, 2016 is duly complied. The promoter has deposited

50% of total amount as per impugned order with the office of appellate Tribunal.

3. Read the application for stay and say filed. Heard both sides. Perused papers.

4. The following points arise for my determination.

### **POINTS**

- 1) Whether the promoter has made out prima facie case for grant of stay to execution of impugned order ?
- 2) What order ?

My findings to above points for the reasons as stated are as under :-

### **FINDINGS**

- 1) Affirmative.
- 2) As per final order.

### **POINT NO.1**

5. The allottee had filed the complaint No.CC006000000055835 against the promoter for refund of the amount along with interest. The allottee had withdrawn

from the project. The learned Member & Adjudicating Officer of MahaRERA, Mumbai passed order dated 29.11.2018 in the complaint No.CC006000000055835 and directed the promoter to refund the amount of Rs.6,84,992/- along with simple interest at the rate of 10.5% per annum from the date of payment of such amount till the amount is refunded. The promoter was also directed to pay cost of Rs.20,000/- to the allottee. The promoter was directed to refund the amount in three months in equal instalments starting from 31.12.2018.

5. The promoter failed to comply with order of refund with interest. So, the allottee has filed execution proceeding before MahaRERA Authority for recovery of refund amount along with interest as per impugned order. The promoter has challenged the said order in the appeal No.AT006000000010955. The promoter has already deposited 50% of the amount as per impugned order in the office of appellate Tribunal. If execution of impugned order is not stayed till decision of the appeal on merits, allottee may execute the order and in that case the present appeal may become infructuous. The learned counsel for the promoter submits that financial condition of the promoter is not sound to refund the entire amount with interest to the

allottee. According to him, the promoter had offered the amount and interest to the allottee when the financial condition of the promoter was sound but at that time the allottee refused to accept the same. The learned counsel for the allottee urges that the promoter is <sup>✓ Permitted. ✓</sup> already submitted to pay and refund the amount with interest in instalments but the promoter failed to refund the amount with interest to the allottee in instalments. He submits that an allottee is senior citizen. He further submits that the entire amount and interest must be paid by the promoter since the allottee has withdrawn from project.

6. In order to avoid multiplicity of proceedings and to save the appeal from becoming infructuous, it is just, proper and necessary to stay execution of the impugned order till decision of this appeal. However, such stay must be with condition that the promoter should deposit 20% amount as per the impugned order on or before the next date in the office of appellate Tribunal so that the total deposit by promoter would be 70% and only 30% will be balance amount with the promoter. Thus, the promoter is entitled for order of stay in this appeal. Prima facie case is made out by the promoter for grant of conditional stay order. I answer point accordingly and pass order accordingly.

### ORDER

3) MA 229/19 in Appeal No AT006000000010955 is allowed.

4) Operation and execution of impugned order dated 29.11.2018 passed by learned Member & Adjudicating Officer of MahaRERA Authority in Complaint No. CC006000000055835 is stayed till decision of this appeal on conditions that –

- mys
- (i) The promoter shall deposit 20% of the amount as per impugned order in this Appellate Tribunal on or before 13.11.2019.
  - (ii) This 20% amount shall be in addition to the 50% amount which the promoter has already deposited in office as per proviso of Sec.43(5) of RERA,2016 for entertaining the appeal.

If promoter fails to deposit the amount as directed above, MA 229/19 shall stand dismissed.

2. No order as to costs.

Date: 07.10.2019

 07-10-19.  
(SUMANT KOLHE)  
MEMBER (J)

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