

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

**Misc. Application No.220 of 2019**

**In**

**AT006000000031621**

The Bombay Dyeing & Manufacturing  
Company Ltd.

... Applicant

Versus

M/s Pinkcity Brokerage Services  
Pvt.Ltd. & Anr.

... Respondents

(Mr.Vaibhav Ghogare a/w Ms. Niyathi Kalra i/b Negandhi  
Shah & Himayatullah, Advocates for Applicant  
C.A Mr.Ramesh Prabhu, authorized representative of  
Respondent)

**CORAM : SUMANT M. KOLHE, MEMBER (J)**

**DATE : 03<sup>rd</sup> OCTOBER, 2019.**

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Applicant is promoter. The opponents/respondents are the allottees. The allottees had filed the complaint No.CC006000000068158 against promoter U/Sec.31 of RERA,2016. The promoter has preferred the appeal No.AT006000000031621 against impugned order dated 16.5.2019 passed in complaint No.CC006000000068158 of 2019. The promoter is directed to refund of the amount paid by the allottee without any interest as per impugned order.

The promoter has filed MA 220/19 and prayed for stay to execution of impugned order dated 16.5.2019. The allottees have filed reply to stay application.

2. Heard learned Counsel for promoter. Heard learned C.A. Mr.Ramesh Prabhu, authorized representative of allottees.

3. The following points arise for my determination –

**POINTS**

1. Whether promoter has made out prima facie case for grant of stay as prayed ?
2. What order ?

My finding to above points for the reasons stated below are as under –

1. Affirmative subject to conditions.
2. As per final order.

**POINTS NO.1 :**

4. In complaint No.CC006000000068158 of 2019, learned Chairperson of MahaRERA passed impugned order dated 16.5.2019 and directed the promoter to refund all the

amount without interest to the allottees. Being dissatisfied with this order, the promoter has preferred the appeal No. AT006000000031621 challenging the legality, propriety and correctness of impugned order. Appeal AT006000000031621 preferred by promoter is entertained, as the promoter has made the compliance of order dated 9.9.2019 passed by this Tribunal regarding deposit of 40% amount in view of proviso to Sec.43(5) of RERA,2016. The promoter has challenged order dated 16.5.2019 on various grounds such as passing order without assigning reasons, without giving personal hearing to promoter and without following the principle of natural justice and misinterpretation of clause 18 of model agreement for sale. If we carefully peruse the complaint and impugned order, it is revealed that various grounds pleaded in the appeal memo are material as well as relevant and require an inquiry.

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3. Considering the nature of reliefs sought in the complaint and nature of reliefs granted in impugned order and reasons assigned for the same, it appears that promoter has made out prima facie case to adjudicate the correctness propriety and legality of impugned order in the appeal by following the principle of natural justice and allowing both

parties to make submissions for deciding the dispute on merits. Now, promoter apprehends that the allottees may execute impugned order during pendency of this appeal. It is contended by promoter that the allottees had filed Company Petition before the Hon'ble National Company Law Tribunal for execution of impugned order. The allottees have contended in para-12(i) that allottees have filed Company Petition before the Hon'ble National Company Law Tribunal in the capacity as financial creditors and said petition is entertained and has nothing to do with impugned order. The allottees have further contended that petition preferred before the Hon'ble National Company Law Tribunal is based on many grounds, out of which, impugned order is one of the ground. It is further contended that allottees have not yet preferred the proceedings before MahaRERA for execution of impugned order.

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4            Learned C.A. for allottees refers case law of **Pioneer Urban Land and Infrastructure Limited & Anr. vs. Union of India & Ors. Writ Petition (Civil) No. 43 of 2019 passed on 9.8.2019** by Hon'ble Apex Court in which it is held that even by process of harmonious construction RERA and Code be held to co-exist and proceedings before Hon'ble National Company Law Tribunal cannot affect

proceedings before Maharashtra Real Estate Regulatory Authority and Appellate Tribunal.

5. Admittedly, allottees have not yet filed proceedings before MahaRERA Authority for execution of impugned order. It is true that allottees have preferred Company Petition before Hon'ble National Company Law Tribunal against promoter on various grounds. One of grounds is the impugned order. The allottees have denied that for execution of impugned order they have filed Company Petition before Hon'ble National Company Law Tribunal. The Hon'ble Apex Court has laid down in above referred case law that –

“The RERA is to be read harmoniously with the Code as amended by the Amendment Act. It is only in the event of conflict that the Code will prevail over the RERA. Remedies that are given to allottees of flats/apartments are therefore concurrent remedies, such allottees of flats/apartments being in a position to avail of remedies under the Consumer Protection Act, 1986, RERA as well as the triggering of the Code.

It is also observed by Hon'ble Apex Court that RERA and Code operate in completely different spheres. The Code deals with a proceeding in rem in which the focus is the rehabilitation of the corporate debtor. This is to take place by replacing the management of the corporate debtor by means of a resolution plan which must be accepted by 66% of the Committee Creditors, which is now put at the helm of affairs, in deciding the fate of the corporate

debtor. Such resolution plan then puts the same or another management in the saddle, subject to the provisions of the Code, so that the corporate debtor may be pulled out of the woods and may continue as a going concern, thus benefitting all stakeholders involved. It is only as a last resort that winding up of the corporate debtor is resorted to, so that its assets may be liquidated and paid out in the manner provided by Section 53 of the Code. On the other hand, RERA protects the interests of the individual investor in real estate projects by requiring the promoter to strictly adhere to its provisions. The object of RERA is to see that real estate projects come to fruition within the stated period and to see that allottees of such projects are not left in the lurch and are finally able to realise their dream of a home, or be paid compensation if such dream is shattered, or at least get back monies that they had advanced towards the project with interest. At the same time, recalcitrant allottees are not to be tolerated, as they must also perform their part of the bargain, namely, to pay instalments as and when they become due and payable. Given the different spheres within which these two enactments operate, different parallel remedies are given to allottee – under RERA to see that their flat/apartment is constructed and delivered to them in time, barring which compensation for the same and/or refund of amounts paid together with interest at the very least comes their way. If, however, the allottee wants that the corporate debtor's management itself be removed and replaced, so that the corporate debtor can be rehabilitated, he may prefer a Section 7 application under the Code. That another parallel remedy is available is recognized by RERA itself in the proviso to Section 71(1), by which an allottee may continue with an application already filed before the Consumer Protection fora, he being given the choice to withdraw such complaint and file an application before the adjudicating officer under RERA read with Section 88".

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6. Considering above observations of the Hon'ble Apex Court and fact that the allottees have not filed petition for execution of impugned order before MahaRERA Authority till date, the apprehension of promoter regarding immediate action for execution of impugned order during pendency of this appeal by the allottees is not substantiated.

7. At the same time, the allottees have never submitted and contended that they will not execute order dated 16.5.2019 which is challenged in this appeal. So, allottees may file execution proceeding at any time during pendency of this appeal though the said order is challenged in this appeal and applicant has made compliance of impugned order by depositing some amount in this Tribunal, it is just and equitable to stay operation of impugned order till decision of this appeal. There will be no irreparable loss to allottees, if stay to operation of impugned order is granted till decision of this appeal. I think it just and proper to direct the promoter to deposit 10% of amount as per impugned order within a week from the date of this order in the office of appellate Tribunal. So, conditional stay order will balance the strike between both parties. Thus, prima facie case exists to grant conditional stay. After all, promoter will suffer great irreparable loss, if impugned order challenged by

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promoter in the appeal is allowed to be executed without testing on merits. In fact, if impugned order is executed during pendency of the appeal then the appeal may become infructuous and there will be multiplicity of proceedings between parties in such scenario. So, promoter has made out prima facie case for grant of conditional stay to execution of impugned order during pendency of this appeal. I answer point No.1 in affirmative. In the result, I pass the following order.

### ORDER

- 1) MA 220/19 in Appeal No AT006000000031621 is allowed.
- 2) Operation and execution of impugned order dated 16.5.2019 passed by learned Chairperson of MahaRERA in Complaint No. CC006000000068158 is stayed till decision of this appeal on conditions that –

- (i) The promoter shall deposit 10% of the amount as per impugned order in this Appellate Tribunal within a week i.e. on or before 10.10.2019.

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- (ii) This 10% amount shall be in addition to the 40% 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 220/19 shall stand dismissed.

2. No order as to costs.

Date: 03.10.2019

  
03-10-19  
(SUMANT KOLHE)  
MEMBER (J)