

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 376 OF 2022
ALONGWITH
INTERIM APPLICATION NO. 2713 OF 2022 (for stay)**

Mohammed Akram Hussain Nirban

**....Appellant
(Orig. Appellant)**

V/s.

Mohammed Masood Ghulam Husain
Chagani & Anr., through their Power
of Attorney Holder, Miss. Ghulam
Hussain Chagani

**....Respondents
(Orig. Respondents)**

Mr. Shakeeb Shaikh a/w. Noorain Patel i/by. Diamondwala &
Co., *for the Appellant.*

Mr. Kaustubh Gupta, *for the Respondents.*

CORAM : SANDEEP V. MARNE, J.

Dated : 1 February 2024.

P.C. :

1. This Appeal is filed challenging the Order dated 3 December 2021 passed by the MahaRERA Appellate Tribunal rejecting Misc. Application No. 470 of 2020 filed by the Appellant seeking stay to the operation and implementation to the Order dated 17 September 2020 passed by the Member, MahaRERA.

2. It appears that in addition to the Appellant getting aggrieved by the MahaRERA's Order dated 17 September 2020, the Respondents are also aggrieved by the same to the extent of non-grant of certain reliefs and have filed a petition for review of the order dated 17 September 2020 before the MahaRERA. After taking up the Review Petition filed by the Respondent for hearing, the hearing of the same was adjourned on the ground of pendency of Appeal before the MahaRERA Appellate Tribunal. Thus pendency of Appeal before the MahaRERA Appellate Tribunal is the reason why MahaRERA is not deciding Respondents' Review Petition. At the same time, the pendency of Review Petition is the reason cited by the MahaRERA Appellate Tribunal for rejecting Misc. Application No.470 of 2020 filed by the Appellant for stay of MahaRERA's Order dated 17 September 2020.

3. It thus appears that, filing of Review Petition by Respondents before the MahaRERA and Appeal by the Appellants before the Appellate Tribunal is being treated as an impediment both by MahaRERA and by the Appellate Tribunal to decide proceedings pending before them.

4. In the facts and circumstances of the case, the correct course of action to be adopted is to first decide Review Petition filed by the Respondents before the MahaRERA. The learned Counsel for the Appellant is quick enough to point out that the Review Petition is not maintainable in view of filing of substantive Appeal against the Order dated 17 September 2000 before the Appellate Tribunal in view of provisions of Section 39 of the Real Estate (Regulation and Development) Act, 2016 (**RERA Act**).

This is something which the MahaRERA would consider when the Review Petition is taken up for decision. Depending on the outcome of the Review Petition, finality to the Order dated 17 September 2020 qua MahaRERA would be achieved so that parties would have a fair idea about challenge to be maintained to the Order before the Appellate Tribunal.

5. Accordingly, the Appeal is **disposed off** by permitting the MahaRERA to hear and decide the Review Petition filed by the Respondents. Depending on the outcome of the Review Petition filed by the Respondents before the MahaRERA, the Appellants herein would be at liberty to file an application before the Appellate Tribunal for seeking appropriate orders in respect the order originally passed on 17 September 2020 or in respect of the order that would be passed in the Review Petition. Since the outcome of Review Petition filed by the Respondents would give clear picture about final directions of MahaRERA, the Appellate Tribunal is requested not to proceed with hearing of the Appeal till decision of the Review Petition. Similarly, the Adjudicating Officer also needs to stay his/her hands till decision of the Review Petition. With the above directions, the Second Appeal is **disposed of**. The Interim Application also stands disposed of.

5. All rights and contentions of the parties are left open.

NEETA
SHAILESH
SAWANT

SANDEEP V. MARNE, J.