IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 619 OF 2025

Ultra Lifespace Pvt Ltd ...Appellant
Versus
Vijay Thakkar (HUF) & Anr …Respondents

SECOND APPEAL NO. 620 OF 2025

Ultra Lifespace Pvt Ltd ...Appellant
Versus
Dev Thakkar & Anr …Respondents

SECOND APPEAL NO. 621 OF 2025

Ultra Lifespace Pvt Ltd ...Appellant
Versus
Tanam Thakkar & Anr …Respondents

Mr. Ashish Kamat, Senior Advocate, with Mohit Khana, Mohit Advani, Devika Nigde and Darshana Manjrekar, i/b One Point Legal Solutions, for the Appellant in all Appeals.
Mr. Pravin Samdani, Senior Advocate, i/b Makarand Raut and Hima K, for the Respondents in all Appeals.

CORAM: N. J. JAMADAR, J.
DATED : 17th DECEMBER 2025

ORDER:

1. These Appeals are directed against a common order dated 25th September 2025 passed by the Maharashtra Real Estate Appellate Tribunal, Mumbai ("the Appellate Tribunal"), in Misc Application Nos.

778 of 2025, 779 of 2025 and 780 of 2025, in the respective Appeals, preferred by the Appellant seeking stay to the execution and operation of a common order dated 23rd June 2023 passed by the Maharashtra Real Estate Regulatory Authority ("MahaRERA") in the complaints filed by the Appellant-Promoter and the Respondent in the respective Appeals.

2. The Respondents-Allottees had booked the flats in a project developed by the Appellant-Promoter known as "81 AUREATE". Initially the project was named, "LE 88" by the erstwhile developer, Satra Buildcon Private Limited. Subsequently, the project was taken over by the Appellants. The registered Agreements for Sale came to be executed on 29th December 2014.

3. The Allottees-Respondents in Appeal Nos. 619 of 2025 and 621 of 2025 had paid an amount of Rs.1,50,00,000/-, each, out of the total consideration of Rs.11,00,00,000/-, each, and the Allottee/Respondent in Appeal No. 620 of 2025, had paid an initial amount of Rs.2,12,50,000/-, out of the total consideration of Rs.11,75,00,000/-; exclusive of taxes and service tax, etc.

4. Under the terms of the Agreement for Sale, the Appellant had assured to deliver the flats to the Respondents on or before December 2017. An undertaking was also executed by the Promoter on 29th December 2014, *inter alia,* acknowledging the liability to pay penalty to the Allottees @18% per annum in case of delay in delivery of the possession and not to forfeit the initial consideration for any reason whatsoever.

5. The Promoter did not deliver the possession of the subject flats as agreed. Thus the Allottees called upon the Promoter vide letter dated 5th February 2018 to cancel the bookings and refund the consideration paid by the Allottees, alongwith interest and compensation. A revised undertaking was executed by the Promoter on 21st March 2018, whereunder the Promoter acknowledged that the Allottees would not be liable to pay any interest over the balance consideration.

6. In breach of the contractual obligations and undertakings, the Allottees allege, the Appellant professed to terminate the contract vide termination letter dated 13th March 2020. Allottees thus approached the MahaRERA and lodged complaints seeking to set aside the termination letter and directions to the Promoter to handover the possession of their respective flats along with interest and compensation. The Promoter, in turn, filed complaints to terminate the Agreement for Sale, execution of Cancellation Deed and award of interest and compensation.

7. By the said common order dated 23rd June 2023, MahaRERA partly allowed the three complaints filed by the Allottees as well as the three complaints filed by the Promoter, whereby, *inter alia,* the termination notice dated 13th March 2020 issued by the Promoter was set aside, the allottees were directed to pay the balance consideration of the respective flats within a period of three months from the date of the said order along with interest on the delayed payment at the rate of SBI's Highest Marginal Cost Lending Rate (MCLR) plus 2% from the date of issuance of the first demand notice dated 25th March 2019 till the date of filing of the complaints before the MahaRERA. The Promoter was also directed to pay interest for the delayed possession to the Allottees on actual amounts paid by the allottees towards the consideration of their respective flats for every month of delay at the rate of SBI's Highest MCLR plus 2% till the date of issue of Occupancy Certificate, i.e., 2nd March 2020. In addition, the Promoter was directed to forthwith handover the possession of the flat to the allottees on receipt of the balance consideration along with interest, as ordered.

8. Being aggrieved the Promoter preferred Appeals before the Appellate Tribunal. In the said Appeals, the Appellant preferred Applications seeking stay to the execution and operation of the aforesaid common order passed by the MahaRERA.

9. By the impugned order, the Appellate Tribunal was persuaded to partly allow the Applications only to the extent of stay to the direction to the Promoter to pay interest to the Allottees on the consideration paid by the Allottees, on account of delayed possession. The Appellate Tribunal, thus, refused to stay the execution and operation of the order passed by the MahaRERA to handover the possession of the subject flats to the Allottees by accepting the balance consideration amount with interest from the Allottees.

10. Being further aggrieved, the Promoter has preferred these Appeals.

11. I have heard Mr. Ashish Kamat, the learned Senior Advocate for the Appellant, and Mr. Pravin Samdani, the learned Senior Advocate for the Respondents-Allottees, at some length. With the assistance of the learned Senior Advocate for the parties, I have perused the material on record.

12. Mr. Kamat would urge that, the Appellate Tribunal committed a manifest error in staying the execution and operation of the order passed by the MahaRERA only to the extent of the payment of interest on the amount of consideration paid by the Allottees for the alleged delay in delivery of the possession of the subject flats. Mr. Kamat laid emphasis on the fact that indisputably the Allottees had not made the payment in accordance with the schedule of payment incorporated in the registered Agreement for Sale. Instead, the Allottees relied upon the side letter, contents of which are in teeth with the contents of the registered Agreement for Sale and, therefore, do not command any consideration in view of the terms of the contract having been reduced in writing, and the instrument registered.

13. Mr. Kamat further submitted that, the Appellant has already deposited the amount of interest on the part consideration paid by the Allottees. In such circumstances, when the Appeal was preferred in the year 2023 and the Application for stay to the execution and operation of the common order passed by the MahaRERA was heard in the year **2025**, the Appellate Tribunal could not have left the Appellants without any protection during the pendency of the Appeals. Mr. Kamat made an endeavour to draw home the point that the Appellate Tribunal misdirected itself in rejecting the prayer to stay the execution and operation of the order passed by the MahaRERA for delivery of possession on an incorrect premise that the Appellant has an efficacious remedy of restitution under Section 144 of the Code of Civil Procedure, 1908 ("the Code").

14. In opposition to this, Mr. Samdani, the learned Senior Advocate for the Respondents, urged with tenacity that the possession was agreed to be delivered in the year 2017. The Respondents had parted with valuable consideration in the year 2014. Despite a request of the Respondents to cancel the allotment and refund the amount alongwith interest and compensation, in the year 2018 itself, the Appellant did not refund the amount and instead chose to terminate the allotment vide letter dated 13th March 2020, a couple of weeks prior to the issue of the Occupation Certificate, *mala fide.* In this backdrop as the Allottees have an indefeasible statutory right under Section 19(3) of the Real Estate (Regulation and Development) Act, 2016 ("the RERA Act 2016"), the Appellate Tribunal was fully justified in declining to stay the execution and operation of the order passed by the MahaRERA to the extent of delivery of possession of the subject flats.

15. Mr. Samdani would further urge that, since the Appeals are governed by the regime enshrined in Section 100 of the Code, in the facts of the case at hand, no substantial question of law arises for consideration and, therefore, the Appeals deserve to be dismissed, *in limine.*

16. Under Section 58(1) of the RERA Act, 2016, any person aggrieved by any decision or order of the Appellate Tribunal may, file an Appeal to the High Court, on one or more of the grounds specified in Section 100 of the Code. Undoubtedly, the Appeal under Section 58 is governed by the regime under Section 100 of the Code. This Court is of the considered view that, in the facts of the case at hand, where the orders impugned before the Appellate Tribunal were for delivery of possession of the subject flats, a substantial question of law as to whether the Appellate Tribunal has exercised the discretion in a judicious manner, arises for consideration.

17. Incontrovertibly, against the agreed sale consideration of Rs.11,00,00,000/- in respect of Flat Nos. 1701 and 1704, the Allottees had paid a sum of Rs.1,50,00,000/- at the time of execution of Agreement for Sale in the year 2014 and in respect of Flat No.1702, the Allottee had paid a part consideration of Rs.2,12,50,000/- against the agreed consideration of Rs.11,75,00,000/-. The controversy between the parties essentially revolved around the question as to who was in default?

18. The Appellant asserted that the Allottees committed the default in payment of the balance consideration in accordance with the schedule of payment and, thus, professed to terminate the contract vide letter dated 13th March 2020. In contrast to this, the stand of the Allottees was that in view of the side letter executed on 29th December 2014 and the further undertaking by the Promoter, they were not required to pay balance consideration till the actual delivery of possession of the subject flats. Incontrovertibly the Occupation Certificate was issued on 2nd March 2020.

19. It is true the MahaRERA has cancelled the termination letter dated 13th Mach 2020 and directed the Promoter to accept the balance consideration along with interest thereon and deliver the possession of the subject flats. However, the legality, propriety and correctness of the said order awaits adjudication before the Appellate Tribunal. As noted above, the Appellant has already deposited the amount towards the interest on the part consideration paid by the Allottees.

20. In this backdrop the question as to whether the Appellate Tribunal could have stayed the execution and operation of the common order passed by the MahaRERA subject to conditions deemed appropriate, or relegated the Appellants to the remedy of restitution under Section 144 of the Code in the event they succeeded in Appeals, merits consideration.

21. Under the provisions of Order 41 Rule 5 of the Code, the Appellate Court is empowered, for a sufficient cause, to order stay of the execution of the decree appealed against. The power to order stay to the execution of the decree is, however, circumscribed by the conditions stipulated in a sub-Rule (3) of Rule 5 of Order 41 of the Code. It provides that no order of stay of execution shall be made unless the Court is satisfied that substantial loss may result to the party applying for stay of execution unless the order is made; that the Application has been made without unreasonable delay and that security has been given by the Applicant for the due performance of such decree or oder as may ultimately be binding upon him.

22. The terms sufficient cause is required to be construed in the context of the “substantial loss” that may ensue if the stay to the execution of the impugned order is not granted. The power to stay the execution of the decree is discretionary. However, the discretion is required to be exercised judiciously having regard to all the attendant circumstances.

23. In a recent pronouncement in the case of **Lifestyle Equities C.V. and Anr Vs Amazon Technologies Inc**[1] in the context of a stay of a money decree, the Supreme Court enunciated the law as under:

> "64. The provisions of Order XLI Rule 5 of the CPC govern the question of grant or refusal of stay of execution of the decree by the appellate court. A mere reading of the provision makes it clear that it does not make any distinction between a money decree and other decrees. The powers of the Appellate Court to order stay of execution of the decree are not fettered in any way if there is "sufficient cause" for passing such an order. Even with regard to money decrees, the discretion of the court is circumscribed by the same limitations imposed under the provisions of Order XLI Rule 5. There is no reason why decrees for payment of money should receive a consideration different from the other decrees in the matter of stay pending appeals. In suitable cases, where the court is satisfied that substantial loss may result to the applicant, if no stay is granted or there are any exceptional circumstances, the court may grant stay as prayed for either with or without any condition whatsoever. Otherwise, in the absence of any exceptional circumstance, money decree ordinarily would not be stayed unconditionally from its execution by the appellate court pending the final disposal of appeal on its own merits."

1 2025 SCC OnLine SC 2153.

24. Under the provisions of Section 19(3) of the RERA Act, the Allottees have a statutory right to receive possession of the subject flats. In a case where there are disputed questions of facts as to the delay in payment of the balance consideration and the consequences thereof and the fact remained that balance consideration was not paid, the Court would be required to embark upon an exercise of balancing the equities lest the Appeal would be rendered infructuous. The remedy of restitution adverted to by the Appellate Tribunal cannot, in all case, be said to be an efficacious remedy, where with the passage of time equities intervene and often third party rights are created.

25. As noted above, sub-Rule (3) of Rule 5 of Order 41 of the Code empowers the Appellate Court to impose appropriate conditions while staying the execution and operation of the decree appealed against. This Court is of the view that, in the facts of the case, the Appellate Tribunal could have imposed appropriate conditions and stayed the execution of the order passed by the MahaRERA, even in regard to the delivery of possession of the subject flats.

26. For the forgoing reasons, and especially in view of the fact that the Appeals await adjudication before the Appellate Tribunal, this Court is inclined to allow the Appeals and stay the execution, operation and order directing the delivery of possession of the subject flats subject to certain conditions.

27. Hence the following order:

: O R D E R :

(i) The Appeals stand allowed.

(ii) The impugned order to the extent it rejected the Applications for stay to the execution and operation of the decree for stay of possession of the subject flats, stands quashed and set aside.

(iii) There shall be stay to the execution and operation of the order passed by the MahaRERA directing delivery of possession of the subject flats to the respective Allottees, till the final decision of the Appeals pending before the Appellate Tribunal, subject to following conditions:

(a) Appellant shall deposit the amount paid towards the part consideration by the Allottees, i.e. Rs. 1,50,00,000/- for Flat No. 1701, Rs. 1,50,00,000/- for Flat No. 1704 and Rs.2,12,50,000/- for Flat No. 1702, before the Appellate Tribunal within a period of two weeks from the date of uploading of this order.

(b) The Appellant-Promoter shall clear all the outstanding dues towards maintenance and other charges raised by the society, within a period of four weeks from the date of uploading of this order and continue to pay the maintenance and other charges as the they fall due, in respect of the Allottees-Respondents, till the final disposal of the Appeals.

(c) The Appellant-Promoter shall not alienate, transfer or otherwise create any third party interest in Flat Nos. 1701, 1702, and 1704, till the final disposal of the Appeals by the Appellate Tribunal.

(d) The Appellant-Promoter shall not restrain or otherwise create any hindrance in the Allottees-Respondents participating in the meetings of the Society.

(e) The Appellate Tribunal is requested to hear and decide the Appeals as expeditiously as possible and, preferably, within a period of three months from the next scheduled listing of the Appeals before the Appellate Tribunal.

No costs.

[N. J. JAMADAR, J.]