IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 121 OF 2026
WITH
INTERIM APPLICATION NO. 1837 OF 2026

Rare Townships Private Limited ...Appellant

Versus

Mitul Gada ...Respondent

WITH
SECOND APPEAL NO. 122 OF 2026
WITH
INTERIM APPLICATION NO. 1838 OF 2026

Rare Townships Private Limited ...Appellant

Versus

Mitul Gada ...Respondent

Mr. Rubin Vakil, a/w Sonam Mhatre, Amit Mishra and Soham Salunkhe, i/b Dhaval Vassonji and Associates, for the Appellant in both SA.
Mr. Mithil Sampat, for the Respondent in both SA.

CORAM: N. J. JAMADAR, J.
Reserved On: 11th MARCH, 2026
Pronounced On: 30th MARCH, 2026

ORDER:-

1. These appeals under Section 43 of the Real Estate (Regulation and Development) Act, 2016 ("RERA, 2016") are directed against a common order dated 6th January, 2026 passed by the Maharashtra Real Estate Appellate Tribunal, Mumbai, ("Appellate Tribunal"), in Misc. Application No.925/2025 in Appeal No.AT06/01019/2025 and Misc.

Application No.923/2025 in Appeal No.AT06/01020/2025, preferred by appellant for stay to the execution and operation of the order dated 9th September, 2025 passed by the Maharashtra Real Estate Regulatory Authority ("the Authority") in the complaints filed by the respondent – allottee, to the extent the Appellate Tribunal permitted the allottee to withdraw the amounts deposited by the appellant.

2. Shorn of superfluities, the background facts necessary for the determination of these appeals can be summarized as under:

2.1 The appellants are the promoters in relation to a project, "North Sea Heights (A1), 19th floor, registered with MahaRERA. The respondent – allottee claimed that on the basis of the representations and assurances of the appellant, he had agreed to purchase Flat Nos.1503 and 1504 in the said project. Agreements for Sale were executed on 2nd November, 2015. The total consideration for Flat No.1504 was at Rs.1,60,61,350/- and for Flat No.1503 the agreed consideration was Rs.1,56,37,500/-. The allottee had paid an amount of Rs.98,92,960/- towards the consideration for Flat No.1504 and Rs.69,66,437/- towards Flat No.1503.

2.2 Under the terms of the said agreements the appellant

agreed to deliver the possession of the subject flats by 31st December, 2018. Asserting that the promoter committed default in the performance of its obligations under the Agreements for Sale, the promoter did not deliver the possession of the subject flats within the stipulated period, the construction activity at the project site had come to a standstill, and even the requisite permissions from the Planning Authority were not in place, and there was no reply to the legal notices addressed on behalf of the allottee, the allottee filed the complaints before the MahaRERA.

2.3 The allottee sought the refund of the amount paid by him to the promoter alongwith interest and compensation on account of delay in the completion of the project and the delivery of the subject flats under Section 18 of RERA, 2016.

2.4 By an order dated 17th February, 2020 passed by the Authority those complaints were referred to the Adjudicating Officer for suitable decision under the provisions of the RERA, 2016 and the Rules made thereunder. By orders dated 19th March, 2021, the Adjudicating Officer directed the refund of the amount paid by the allottee alongwith interest and compensation.

2.5 Being aggrieved by the order passed by the Adjudicating

Officer dated 19th March, 2021, the promoter - appellant preferred petitions, being WP/7636/2021 and WP/7637/2021, before this court. During the pendency of those petitions, this Court directed the petitioner - appellant to deposit the amounts directed to be refunded by the Adjudicating Officer, in this Court. Pursuant to the said direction dated 20th March, 2025 the appellant deposited a sum of Rs.1,76,28,138/- in WP/7636/2021 and Rs.1,50,09,055/- in WP/7637/2021.

2.6 Eventually, by an order dated 22nd April, 2025, those writ petitions were disposed by this Court with a direction that the complaints filed by the allottee be determined afresh by the Regulatory Authority under RERA 2016. It was held that the Adjudicating Officer had assumed jurisdiction not vested in him by law as the complaints pertaining to the refund of the principal amount alongwith interest were required to be determined by the Regulatory Authority and not the Adjudicating Officer, whose remit of jurisdiction was confined to claim for compensation and interest in specified cases.

2.7 This Court further directed that the amounts deposited by the appellant - promoter shall be transferred to the account of the Regulatory Authority and the said amount shall abide the final outcome of the complaints and further order to be passed

by that Authority. It was also made clear that, it would be open for the Authority to appropriate or disburse the amount so transmitted if the Authority found merit in the respondent's complaints and passed orders in favor of the respondent - allottee.

2.8 Pursuant to the aforesaid directions, by an order dated 9th September, 2025, the Authority determined both the complaints. The Authority, *inter alia,* returned the finding that the promoter - appellant committed default in its obligation to deliver the possession of the subject flat within the stipulated period. The Authority did not find any substance in the defences sought to be raised by the appellant. The promoter was, thus, directed to refund the entire amount paid by the complainant towards the consideration of the subject flats alongwith interest at the rate of SBI's highest marginal cost of lending rate plus 2%, as prescribed under the provisions of Section 18 of the RERA 2016 and the Rules made thereunder, from the date of the payment till actual realization. The promoter was, however, held entitled to claim the benefit of the moratorium period as mentioned in the Notification/orders in the wake of the COVID-19 pandemic. The allottee was, in turn, directed to execute the cancellation deeds upon the receipt of the payment from the

promoter.

2.9 Being aggrieved, the promoter – appellant preferred appeals before the Appellate Tribunal. In those appeals, the appellant preferred applications for stay to the execution and operation of the aforesaid order passed by the Authority.

2.10 By the impugned common order, while granting stay to the execution and operation of the order passed by the Authority in regard to future recovery of the amount exceeding the amount deposited by the appellant before the Authority, the Appellate Tribunal permitted the complainant - allottee to withdraw the amounts deposited by the appellant - promoter with the Authority subject to an undertaking to bring back the said amount alongwith interest as may be directed to be paid, in the event the appellant - promoter succeeds in those appeals.

3. Being aggrieved by and dissatisfied with the permission for withdrawal granted by the Appellate Tribunal to the respondent – allottee, the promoter has preferred these appeals.

4. I have heard Mr. Rubin Vakil, the learned Counsel for the appellant, and Mr. Mithil Sampat, the learned counsel for the respondents, in both the appeals. The learned Counsel took the Court through the relevant pleadings and the documents on

record.

5. Mr. Vakil, the learned Counsel for the appellant, would submit that the impugned permission for withdrawal of the amount deposited by the appellant with the Authority, during the pendency of the appeals, was clearly in transgression of the jurisdiction vested in the Appellate Tribunal. Amplifying this submission, Mr. Vakil would urge that, the grant of permission to withdraw the amount deposited by the promoter in terms of the provisions contained in the proviso to Section 43(5) of RERA, 2016, during the pendency of the appeal, is legally impermissible. The Appellate Tribunal has, thus, committed a grave error in law in permitting the withdrawal of the amount by virtually pre-judging the case of the promoter.

6. Mr. Vakil strenuously submitted that once the allottee is permitted to withdraw the amount deposited by the promoter, the appeals would be rendered virtually infructuous as the appellant would be left in the lurch even if it succeeds in the appeal. Mr. Vakil would urge that, the amount which the promoter is obligated to deposit under the proviso to Section 43(5), being only to safeguard the interest of the allottee, cannot be permitted to be released in favor of the allottee while the challenge to the order directing such payment remains

sub-judice. Thus, the substantial questions of jurisdictional competence of the Appellate Tribunal to release the amount and the legality of such course, during the pendency of the appeal, in the context of the provisions of Section 43 of the RERA 2016, arise for consideration, submitted Mr. Vakil.

7. Per contra, Mr. Sampat, the learned Counsel for the respondent, would urge that the impugned order is in consonance with the order passed by this Court in WP/7636/2021 and WP/7637/2021, which expressly gave liberty to the Authority to appropriate or disburse the said amount deposited by the appellant. Mr. Sampat submitted that, the release of the said amount cannot be said to be without any safeguard as the allottee has been directed to furnish an undertaking to bring back the said amount alongwith such interest as may be directed.

8. Mr. Sampat submitted with tenacity that, the beneficial object of the provisions contained in RERA 2016, needs to be kept in view. The impugned order, according to Mr. Sampat, is in tune with the legislative object behind enacting RERA 2016. The promoter, who has committed flagrant violation of the contractual obligations and the provisions of RERA 2016 and the Rules thereunder cannot be heard to say that the allottee be

deprived of the amount of refund and the interest thereon while he continues to bear the brunt of the liability to pay interest on the amount which he has borrowed to finance the acquisition of the subject flat. If the facts of the case are appraised in correct perspective, especially in the context of the time that has elapsed from the date of the execution of the agreement for sale, the impugned order cannot be faulted at. The impugned order is thus equitable and, therefore, does not warrant any interference, submitted Mr. Sampat.

9. At any rate, Mr. Sampat would urge, no question of law much less a substantial question of law arises for consideration, as the impugned order is an interim arrangement made by the Appellate Tribunal in exercise of its discretionary jurisdiction.

10. Before appreciating the aforesaid rival submissions canvassed across the bar, it may be apposite to note that there is not much controversy over the facts necessary for the determination of these appeals. The execution of registered agreements for sale between the promoter and allottee is incontestable. The payment of consideration by the respective allottee is also not much in contest. Under the terms of the contract between the parties, the promoter - appellant was to deliver the possession of the subject flat to the allottee by 31st

December, 2018. Indisputably, the possession of the subject flats could not be delivered by the promoter to the allottee by 31st December, 2018. Nay, under the disclosure filed with RERA the revised date for the delivery of possession was shown 30th December, 2025. The facts that the promoter – appellant deposited Rs.1,76,28,138/- in WP/7636/2021 and Rs.1,50,09,055/- in WP/7637/2021 in this Court and those amounts were further transmitted to the Authority are mattes of record.

11. At the outset, it is necessary to note that, since the appeals against the orders passed by the Authority directing the refund of the amount alongwith the interest at the specified rate are sub-judice before the Appellate Tribunal, it may not be appropriate for this Court to delve deep into the merits of the matter in regard to the legality and justifiability of the said direction to refund the amount alongwith interest, passed by the Authority. The only question that wrenches to the fore is, whether the Appellate Tribunal has the power to permit the allottee to withdraw the amount deposited by the promoter under the proviso to Section 43(5) of RERA, 2016, during the pendency of the appeal?

12. The thrust of the submission of Mr. Vakil was that, under

the provisions of RERA 2016, there is no power in the Appellate Tribunal to release the amount deposited by the promoter during the pendency of appeal. Elaborating the submission, Mr. Vakil would urge, the only power which the Appellate Tribunal has under Section 43 of the RERA 2016 is to direct the promoter to deposit with the Appellate Tribunal at least 30% of the penalty or such higher percentage as may be determined or the total amount to be paid to the allottee including interest and compensation imposed on him. The said power flowing from the proviso to sub-section (5) of Section 43 does not confer any jurisdiction on the Appellate Tribunal to release the amount so deposited in favour of the allottee during the pendency of the appeal. Lest, the very purpose of providing an appeal against the order passed by the Authority would be defeated.

13. To buttress this submission Mr. Vakil placed a very strong reliance on the judgment of the Supreme Court in the case of ***Newtech Promoters and Developers Prt. Ltd. vs. State of UP and others***[1]. Mr. Vakil would urge that, in the said case, the Supreme Court, *inter alia,* considered the question, whether the condition of pre-deposit under the proviso to Section 43(5) of the Act, 2016 for entertaining substantive right of appeal is

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1 2021 SCC Online SC 1044.

sustainable in law. The Supreme Court, while upholding the constitutionality of the said provision, has expounded the object of the said provision. Mr. Vakil would urge that, the Supreme Court has enunciated in no uncertain terms that the object of the said proviso was to safeguard the interest of the allottee by directing the deposit of the amount of penalty or the amount ordered to be refunded to the allottee. However, the provisions contained in Section 43 of RERA 2016 can never be the repository of the power to release the amount, which is required to be secured to protect the interest of the allottee, during the pendency of the appeal. Mr. Vakil laid emphasis on the following observations of the Supreme Court in paragraphs 128 and 129:

> "128. It may further be noticed that under the present real estate sector which is now being regulated under the provisions of the Act 2016, the complaint for refund of the amount of payment which the allottee/consumer has deposited with the promoter and at a later stage, when the promoter is unable to hand over possession in breach of the conditions of the agreement between the parties, are being instituted at the instance of the consumer/allottee demanding for refund of the amount deposited by them and after the scrutiny of facts being made based on the contemporaneous documentary evidence on record made available by the respective parties, the legislature in its wisdom has intended to ensure that the money which has been computed by the Authority at least must be safeguarded if the promoter intends to prefer an appeal before the tribunal and in case, the appeal fails at a later stage, it becomes difficult for the consumer/allottee to get the amount recovered which has been determined by the Authority and to avoid the consumer/allottee to go from pillar to post for recovery of the amount that has been determined by the Authority in fact, belongs to the allottee at a later stage could

be saved from all the miseries which come forward against him.

129. At the same time, it will avoid unscrupulous and uncalled for litigation at the appellate stage and restrict the promoter if feels that there is some manifest material irregularity being committed or his defence has not been properly appreciated at the first stage, would prefer an appeal for reappraisal of the evidence on record provided substantive compliance of the condition of predeposit is made over, the rights of the parties *inter se* could easily be saved for adjudication at the appellate stage."

(emphasis supplied)

14. To appreciate the aforesaid submissions, it may be necessary to retain emphasis on the text of Sub-section (5) of Section 43 of the RERA 2016. It reads as under:

"43 (5) Any person aggrieved by any direction or decision or order made by the Authority or by an adjudicating officer under this Act may prefer an appeal before the Appellate Tribunal having jurisdiction over the matter:

Provided that where a promoter files an appeal with the Appellate Tribunal, it shall not be entertained, without the promoter first having deposited with the Appellate Tribunal atleast thirty per cent. of the penalty, or such higher percentage as may be determined by the Appellate Tribunal, or the total amount to be paid to the allottee including interest and compensation imposed on him, if any, or with both, as the case may be, before the said appeal is heard.

Explanation.-- For the purpose of this sub-section "person" shall include the association of allottees or any voluntary consumer association registered under any law for the time being in force."

15. A plain textual meaning of the aforesaid provision indicates that, the proviso contains an interdict against the very entertainment of an appeal against the order passed by the Authority or an adjudicating officer, if the appeal is at the instance of the promoter, without the promoter first having

deposited with the Appellate Tribunal at least 30% of the penalty or such higher percentage as may be determined by the Appellate Tribunal or the total amount to be paid to the allottee including interest and compensation imposed on him, before the said appeal is heard.

16. It is well recognized that there is a subtle yet significant distinction between the entertainability and maintainability of a proceeding. Even if a proceeding may be maintainable, yet, the Court may have the discretion to entertain or not to entertain the proceeding. The issue of maintainability, thus, cannot be confused with the entertainability of the proceeding. A useful reference in this context can be made to the judgment of the Supreme Court in the case of ***Godrej Sara Lee Ltd. vs. Excise and Taxation Officer-cum-Assessing Authority and others.***[2]

17. However, if a statutory right of appeal is provided, different considerations come into play. If the appeal is maintainable, the Appellate Authority may not have the discretion to refuse to entertain the appeal, unless the statute prescribes condition precedent to entertain the appeal. The proviso to Section 43(5) of RERA 2016, incorporates such a condition for entertainability of appeal though the main part of sub-section (5) confers a right

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2 2023 SCC OnLine SC 95.

of appeal.

18. In the case of ***Newtech Promoters*** (supra) the Supreme Court, examined the constitutionality of the aforesaid condition of pre-deposit. After analysing the provisions of Section 43(5) and the provisions under other enactments which also incorporate such condition of pre-deposit for exercise of the right of appeal, which is a creature of statute, the Supreme Court held that, the classification made by the Parliament in the matter of the appeal at the instance of the allottee and promoter was based on an intelligible differentia. The intention of the legislature appeared to be that, the promoter ought to show its *bona fide* by depositing the amount so computed. In addition to the observations in paragraphs 127 and 128 of the judgment (extracted above), in which the Supreme Court emphasized that the legislature intended to ensure that the money which has been computed by the Authority must be safeguarded if the promoter intended to prefer an appeal before the Tribunal, the observations of the Supreme Court in paragraph 138 deserve to be noted. They read as under:

> "138. In our considered view, the obligation cast upon the promoter of predeposit under Section 43(5) of the Act, being a class in itself, and the promoters who are in receipt of money which is being claimed by the home buyers/allottees for refund and determined in the first place by the competent Authority, if legislature in its wisdom intended to ensure that

> money once determined by the Authority be saved if appeal is to be preferred at the instance of the promoter after due compliance of predeposit as envisaged under Section 43(5) of the Act, in no circumstance can be said to be onerous as prayed for or in violation of Articles 14 or 19(1)(g) of the Constitution of India."
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> (emphasis supplied)

19. The avowed object of the provisions contained in the proviso to Section 43(5) of RERA 2016 is to obviate a situation where the allottee, despite succeeding before the Authority as well as the Appellate Tribunal is left in the lurch. Thus, to ensure that the interest of the allottee is adequately protected when the promoter prefers an appeal against an order passed by the Authority or Adjudicating Officer directing the payment of any amount to the allottee, the legislature has provided that the promoter shall deposit the said amount.

20. To the extent, Mr. Vakil premised his submissions on the aforesaid avowed object of the proviso, namely to safeguard the interest of the allottee, the submission appears impeccable. However, the further sequitur sought to be drawn by Mr. Vakil that the Appellate Tribunal is empowered only to secure the amount and, under no circumstances, the amount so secured can be released during the pendency of the appeal, cannot be acceded to unreservedly, for reasons more than one.

21. Firstly, it is pertinent to note that, the proviso to section

43(5) contains an interdict against entertainability of the appeal. Until, the said pre-deposit, wherever ordered by the Appellate Tribunal, is made, the appeal cannot be heard. Nonetheless, the pre-deposit under Section 43(5) cannot be equated with the condition for stay to the execution and operation of the order impugned before the Appellate Tribunal. The distinction between these two concepts, if ignored, may lead to an erroneous conclusion.

22. Secondly, the character of the amount which is ordered to be refunded by the Authority under Section 18 of the RERA 2016 is of critical salience. Section 18(1) casts an obligation on the promoter to return the amount received by him from the allottee in the event of failure to perform his obligation, at the prescribed rate. What is thus directed to be refunded is the amount which was, in the first place, paid by the allottee to the promoter, and, in a fair number of cases, like the case at hand, years ago. What the promoter is often directed is to return the very amount paid by the allottee, alongwith interest on the amount so paid by the allottee to the promoter. It is this liability to pay the interest that is, more often than not, at the heart of the controversy. In law, interest whether statutory or contractual, represents the profit the person deprived of the

money, would have made if he had the use of the money to which he was entitled to. (***S.R.Y. Shivram vs. Commissioner of Income Tax.***[3]***)***

23. Thirdly, the Appellate Tribunal having secured the amount of penalty or the money ordered to be paid to the allottee, cannot be said to be completely denuded of the power to release the said amount or a portion thereof, during the pendency of the appeal. Albeit, the determination on the aspect of the release of the amount would be governed by the attendant facts and circumstances of the given case. The Appellate Tribunal in a majority of cases may exercise the discretion not to release the amount so secured during the pendency of the appeal. However, that does not imply that the Appellate Tribunal cannot exercise the discretion to release the amount in a deserving case.

24. If viewed through the aforesaid prism, in the considered view of this Court, the provisions contained in Section 43(5) especially the proviso thereto, cannot be so construed as to preclude the appellate tribunal from excising the discretion in a deserving case from releasing the amount in favor of the allottee during the pendency of the appeal. Undoubtedly, whether the

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3 (1971) 3 SCC 726.

discretion is to be exercised or not is a matter governed by the facts and circumstances of the given cases. Generally following factors may bear upon the exercise of the discretion by the Appellate Tribunal:

(i) Whether there is a dispute about the quantum of the amount paid by the allottee to the promoter, of which the refund is ordered?

(ii) What is the period of time that has elapsed since the payment made by the allottee to the promoter?

(iii) What is the stage of the development of the project in question?

(iv) Whether the project was complete when the Authority passed the order of refund of the amount, paid by the allottee?

(v) Whether the promoter had offered the possession of the subject apartment, and, if so, whether the refusal on the part of the allottee to accept possession of the apartment is justifiable?

25. In a given case, one or more of the aforesaid factors may influence the exercise of discretion one way or the other by the Appellate Tribunal. However, it cannot be laid down as a inviolable rule that, under no circumstances, the Appellate Tribunal would be justified in directing the release of the

amount in favor of the allottee, subject to conditions as it deems appropriate in the facts of the case.

26. On the anvil of aforesaid considerations, re-adverting to the facts of the case at hand, the most important factor which exacerbates the situation is the failure on the part of the promoter to complete the project, even after the lapse of a period of seven years from the expiry of the agreed date of delivery of possession. Over a period of 11 years has elapsed since the execution of the agreement for sale. The allottee parted with substantial consideration, much before the agreed date of delivery of possession. The observations of the Appellate Tribunal that the allottee boar the brunt of both the ends of the stick, in the sense that, on the one hand, the allottee was required to pay EMIs towards repayment of the loans availed by him and, on the other hand, the amount which he had paid to the promoter got blocked up, cannot be said to be unsustainable.

27. In a situation of the present nature, it is no solace to an allottee that, the amount ordered to be refunded is secured and kept in a deposit. The release of the amount ameliorates the situation of the allottee by relieving him of the financial constraints and also the mental anguish caused by the breach

of obligations by the promoter for over a decade. The promoter and allottee cannot be placed on an equal footing. The capacity to withstand the deprivation of the legitimate amount vastly differs and the position of the allottee is generally very vulnerable.

28. In the case at hand, the fact that in WP/7636/2021 and WP/7637/2021 this Court had reserved the liberty to the Authority to pass appropriate order for appropriation or disbursement of the amount deposited by the appellant also deserves to be appropriately considered. The attendant factors were taken into account by this Court while granting the said liberty to the Authority. The impugned order, thus, can also be said to have been passed availing the said liberty granted by this Court.

29. For the foregoing reasons, in the facts of the case at hand, this Court finds that the Appellate Tribunal has exercised the discretion in a judicious manner. A party, who has deprived the adversary of his hard earned money for over a decade cannot be heard to urge that, if the amount is released in favor of the allottee, and, eventually, he succeeds, he would find it difficult to recover the amount. Thus, in the considered view of this

Court, no substantial question of law arises for consideration. The appeals, therefore, deserve to be dismissed.

30. Hence, the following order:

: O R D E R :

(i) The appeals stand dismissed with costs.

(ii) In view of the dismissal of the appeal, Interim Applications also stand disposed.

[N. J. JAMADAR, J.]