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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE EASWARAN S.

WEDNESDAY, THE 8<sup>TH</sup> DAY OF APRIL 2026 / 18TH CHAITHRA, 1948

MSA NO. 121 OF 2025

AGAINST THE JUDGMENT DATED IN REFA NO.104 OF 2025 OF KERALA  
REAL ESTATE APPELLATE TRIBUNAL, ERNAKULAM ARISING OUT OF THE ORDER  
DATED IN EP NO.28 OF 2025 OF KERALA REAL ESTATE REGULATORY  
AUTHORITY, THIRUVANANTHAPURAM.

APPELLANT (S) / APPELLANTS / JUDGMENT DEBTORS:

- 1 SANROYAL BUILDERS AND CONTRACTORS PVT LIMITED,  
TC 2/118 KDPMRA - 01 SYDNEY LANE, KESAVADASAPURAM,  
THIRUVANTHAPURAM, REPRESENTED BY ITS MANAGING DIRECTOR  
MR. SANJUDAS NS, PIN - 695004.
  
- 2 SANJU DAS N. S.  
S/O. NARAYANA DAS, RESIDING AT 5/417,  
ROHINI BHAVAN, INDIRA NAGAR, PEROOKADA,  
THRIVANATHAPURAM, PIN - 695005.

BY ADVS.

SRI. LEGITH T. KOTTAKKAL

SRI. P. R. BANERJI

RESPONDENT (S) / RESPONDENTS / DECREE HOLDER:

DIVYA BALU  
NANDANAM, HOUSE NO. 94, KOIMARPADAM,  
NEAR OLD AGE HOME, T K THARA,  
KODUVAYUR PO, PALAKKAD, PIN - 678501.

THIS MISC. SECOND APPEAL HAVING COME UP FOR ADMISSION ON  
08.04.2026, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



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**‘C.R.’****EASWARAN S., J.**-----  
**MSA No. 121 of 2025**  
-----Dated this the 08<sup>th</sup> day of April, 2026**JUDGMENT**

This appeal arises out of the order in REFA No. 104 of 2025 of the Kerala Real Estate Appellate Tribunal, Ernakulam, which affirmed the order dated 25.07.2025 in E.P. No. 28 of 2025 of the Kerala Real Estate Regulatory Authority, Thiruvananthapuram.

2. The short point which falls for consideration in this appeal is; whether for execution of an order passed by the RERA, revenue recovery proceedings can be initiated? The appellants contend that there is no power to recover the amounts ordered by the RERA through revenue recovery proceedings under Section 40(1) of the Real Estate (Regulation & Development) Act, 2016 (hereinafter referred to as the ‘Act of 2016’ for short). Reliance is placed on Rule 27 of the Kerala Real Estate (Regulation & Development) Rules, 2018 (hereinafter referred to as the ‘Rules of 2018’ for short) provides that the Order of the RERA shall be executed as though it is a decree passed by the Civil Court. Learned Counsel further asserts before this Court that the Order passed by the RERA cannot be put in execution



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through revenue recovery proceedings because there is no amount liable to be recovered for and on behalf of the institution namely, the RERA. He further points out that for enabling the initiation of the revenue recovery proceedings, the notification under Section 71 of the Kerala Revenue Recovery Act, 1968 (hereinafter referred to as the 'Act of 1968' for short) is required and that by Notification dated 28.12.2020, the State Government had declared that the provisions of the Act of 1968 shall be applicable for the recovery of amounts due from any persons or class of persons to the K-RERA. Therefore, the contention now raised is that if an amount is due from a promoter to an allottee, and that amount portrays the character of penalty, interest or compensation, the provisions of the Revenue Recovery Act cannot be put into motion and the only possible method for execution is to file an execution petition before the Civil Court and execute the order as though it is a decree passed by the Court of competent jurisdiction.

3. Heard Sri. Legith T. Kottakkal, the learned Counsel for the appellants.

4. Before proceeding further, this court must consider whether any substantial question of law arises for consideration or not, warranting issuance of notice to the respondents. What is contended in this appeal is that despite the enabling provision under Section 40(1) of the Act of 2016,



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there should be a notification under Section 71 of the Act of 1968 for enabling the RERA to recover the amounts due from a promoter.

5. Section 40(1) of the Real Estate (Regulation & Development) Act, 2016 reads as under;

**"40. Recovery of interest or penalty or compensation and enforcement of order, etc.—**(1) If a promoter or an allottee or a real estate agent, as the case may be, fails to pay any interest or penalty or compensation imposed on him, by the adjudicating officer or the Regulatory Authority or the Appellate Authority, as the case may be, under this Act or the rules and regulations made thereunder, it shall be recoverable from such promoter or allottee or real estate agent, in such manner as may be prescribed as an arrears of land revenue."

6. Rule 27 of the Rules of 2018, provides for manner of implementation of order or direction or decisions of the adjudicating authority. Rule 27 of the Kerala Real Estate (Regulation & Development) Rules, 2018 reads as under;

**"Rule - 27. Manner of implementation of order, direction or decisions of the adjudicating officer, the Authority or the Appellate Tribunal.**

For the purpose of sub-section (2) of Section 40, every order passed by the adjudicating officer, authority or Appellate Tribunal, as the case may be,



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under the Act or the rules and regulations made thereunder, shall be enforced by the adjudicating officer, Authority or the Appellate Tribunal in the same manner as if it were a decree or order made by the principal Civil Court in a suit pending therein and it shall be lawful for the adjudicating officer, regulatory authority or Appellate Tribunal, as the case may be, in the event of its inability to execute the order, send such order to the principal Civil Court, to execute such order either within the local limits of whose jurisdiction the real estate project is located or in the principal Civil Court within the local limits of whose jurisdiction the person against whom the order is being issued, actually and voluntarily resides, or carries on business, or personally works for gain."

7. What is required to be considered by this Court is, whether Rule 27 of the Rules of 2018 can stand in isolation to the charging provision under Section 40(1) of the Act of 2016? It is trite law that subordinate legislation cannot control the main enactment. Section 40 of the Act of 2016, provides for recovery of the amount ordered by the K-RERA which represents the penalty, interest and compensation, through the mechanism under the Act of 2016. To enable filing of execution petition the primary impediment is Section 79 of the Act of 2016 which bars the Jurisdiction of Civil Court. Section 79 reads as under;

**"79. Bar of jurisdiction.**—No civil court shall have jurisdiction to



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entertain any suit or proceeding in respect of any matter which the Authority or the adjudicating officer or the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.”

Thus, it is clear that the when Section 79 of the Act of 2016 is read with Rule 27 of the Kerala Real Estate (Regulation & Development) Rules, 2018, there is a clear conflict and necessarily, the Section of the Act of 2016 will have to prevail over the Rules of 2018.

8. That apart, it will difficult for the court to hold that the proceedings before RERA is akin to that of a Civil Court and that the order passed by the RERA tantamounts to a “decree’

9. The ‘decree’ as defined under Section 2(2) of the Code of Civil Procedure 1908 means a formal expression of an adjudication which conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit.

Section 2(2) of the CPC, 1908 is as under:

“decree” means the formal expression of an adjudication which, so far as regards the Court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either



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preliminary or final. It shall be deemed to include the rejection of a plaint and the determination of any question within Section 144, but shall not include-

(a) any adjudication from which an appeal lies as an appeal from an order, or

(b) any order of dismissal for default.

Explanation-A decree is preliminary when further proceedings have to be taken before the suit can be completely disposed of. It is final when such adjudication completely disposes of the suit. It may be partly preliminary and partly final;

10. The use of the words 'adjudication', 'court' and 'suit' conclusively show that adjudication by the court in a suit only results in a decree. It is also necessary to note that the suit commences with a plaint and ends when a judgment and order is pronounced which culminates into a decree. The decision or the order of the Appellate Tribunal or that of R.E.R.A. do not conform to any of the above requirements of a decree as defined in Section 2(2) CPC, 1908.

11. Admittedly, the proceedings before the R.E.R.A. are not in the nature of a suit rather on a complaint. Hence, the decision or order of R.E.R.A. or by the Appellate Tribunal in an appeal arising out of such proceedings would not be a decree within the meaning of Section 2(2) CPC, 1908.



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12. In *Newtech Promoters and Developers Private Limited v. State of Uttar Pradesh & Others [(2021) 18 SCC 1]*, the Supreme Court considered whether the authority is competent to issue a certificate of recovery under Section 40(1) of the Act. The answer was in affirmative. Para 137 to 140 reads as under;

"137. To examine this question, it will be apposite to take note of Section 40 that states regarding the recovery of interest or penalty or compensation to be recovered as arrears of land revenue, and reads as under:

"40. Recovery of interest or penalty or compensation and enforcement of order, etc.— (1) If a promoter or an allottee or a real estate agent, as the case may be, fails to pay any interest or penalty or compensation imposed on him, by the adjudicating officer or the Regulatory Authority or the Appellate Authority, as the case may be, under this Act or the rules and regulations made thereunder, it shall be recoverable from such promoter or allottee or real estate agent, in such manner as may be prescribed as an arrears of land revenue.

(2) If any adjudicating officer or the Regulatory Authority or the Appellate Tribunal, as the case may be, issues any order



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or directs any person to do any act, or refrain from doing any act, which it is empowered to do under this Act or the rules or regulations made thereunder, then in case of failure by any person to comply with such order or direction, the same shall be enforced, in such manner as may be prescribed."

138. The submission of the appellants/promoters is that under Section 40(1) of the Act only the interest or penalty imposed by the Authority can be recovered as arrears of land revenue and no recovery certificate for the principal amount as determined by the Authority can be issued. If we examine the scheme of the Act, the power of Authority to direct the refund of the principal amount is explicit in Section 18 and the interest that is payable is on the principal amount in other words, there is no interest in the absence of a principal amount being determined by the competent authority. Further, the statute as such is read to mean that the principal sum with interest has become a composite amount quantified upon to be recovered as arrears of land revenue under Section 40(1) of the Act.

139. It is settled principle of law that if the plain interpretation does not fulfil the mandate and object of the Act, this Court has to interpret the law in consonance with the spirit and purpose of the statute. There is indeed a visible inconsistency in the powers of the Authority regarding refund of the amount



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received by the promoter and the provision of law in Section 18 and the text of the provision by which such refund can be referred under Section 40(1). While harmonising the construction of the scheme of the Act with the right of recovery as mandated in Section 40(1) of the Act keeping in mind the intention of the legislature to provide for a speedy recovery of the amount invested by the allottee along with the interest incurred thereon is self-explanatory. However, if Section 40(1) is strictly construed and it is understood to mean that only penalty and interest on the principal amount are recoverable as arrears of land revenue, it would defeat the basic purpose of the Act.

140. Taking into consideration the scheme of the Act what is to be returned to the allottee is his own life savings with interest on computed/quantified by the Authority becomes recoverable and such arrear becomes enforceable in law. There appears some ambiguity in Section 40(1) of the Act that in our view, by harmonising the provision with the purpose of the Act, is given effect to the provisions is allowed to operate rather running either of them redundant, noticing purport of the legislature and the above stated principle into consideration, we make it clear that the amount which has been determined and refundable to the allottees/homebuyers either by the Authority or the adjudicating officer in terms of the order is recoverable within the ambit of Section 40(1) of the Act."



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In the light of the categorical pronouncement of law by the apex court, it is far fetched to contend that because of operation of Rule 27 of the Kerala Real Estate (Regulation & Development) Rules, 2018, the order of the K-RERA could be executed only through the Civil Court.

13. Yet another contention raised is that, the notification issued by the State Government under Section 71 of the Act of 1968, on 28.12.2020 enables revenue recovery proceedings to be initiated for recovery of amounts due from any person or class of persons through the RERA alone and thus the amount adjudged to be paid by any promoter is taken out of purview.

14. This Court is unable to subscribe to the above contention primarily for two reasons. When the charging section in the Central Act enables the amount ordered by the RERA in terms of the Act of 2016, to be recovered as arrears of land revenue, a notification under Section 71 of the Act of 1968 is not an absolute requirement of law. Therefore, dehors the notification dated 28.12.2020, the RERA is empowered to draw a certificate of the liability adjudged on the promoter and send it for execution to the jurisdictional collector in terms of the provisions contained under Kerala Revenue Recovery Act, 1968.

15. That apart, the notification dated 28.12.2020 issued under Section 71 of the Act of 1968 is concerned, the notification can at the best be



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interpreted in such a manner conferring the power on the RERA to independently proceed with the revenue recovery measures of any amount due to it. The issuance of the notification under Section 71 of the Act of 1968 by the State Government by itself will not denude the power of the RERA which is otherwise conferred under the charging section under the Act of 2016. In other words, issuance of a notification under Section 71 of the Act of 1968 is not sine qua non for initiation of revenue recovery measures for the amount adjudged under the provisions of the Act from the promoter.

16. In the present case, it is admitted that the liability quantified by the RERA in the complaint filed by the allottee stands confirmed by the Appellate Tribunal and there is no further appeal against the decision. That be so, it is futile for the appellants to resist the execution now being attempted. No other point raised.

Resultantly, this Court is of the view that no substantial question of law arises for consideration and the appeal is bereft of merit and does not warrant admission, Accordingly, this appeal fails and the same is dismissed.

**Sd/-**  
**EASWARAN S.**  
**JUDGE**

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