

**BEFORE THE MAHARASHTRA REAL ESTATE
APPELLATE TRIBUNAL, MUMBAI
Misc. Application No. 1021/25 (Stay)**

IN

Appeal No. AT06/01035/2025

Kamlesh Valji Balsara & Anr. ... Appellants

V/s.

M/s. Shree Siddhivinayak Infrastructure
and Realty & Ors. ... Respondents

ALONGWITH

Misc. Application No. 1022/25 (Stay)

IN

Appeal No. AT06/01036/2025

Mitesh Krishnakant Dave & Anr. ... Appellants

V/s.

M/s. Shree Siddhivinayak Infrastructure
and Realty & Ors. ... Respondents

ALONGWITH

Misc. Application No. 1023/25 (Stay)

IN

Appeal No. AT06/01037/2025

Hema Malav Shah & Anr. ... Appellants

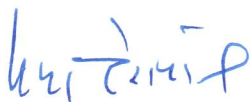
V/s.

M/s. Shree Siddhivinayak Infrastructure
and Realty & Ors. ... Respondents

ALONGWITH

Misc. Application No. 1024/25 (Stay)

IN



Appeal No. AT06/01038/2025

Sailesh Bhatia & Anr

... Appellants

V/s.

M/s. Shree Siddhivinayak Infrastructure

and Realty & Ors.

... Respondents

ALONGWITH

Misc. Application No. 1025/25 (Stay)

IN

Appeal No. AT06/01039/2025

Karsan Khima Goyal & Anr.

... Appellants

V/s.

M/s. Shree Siddhivinayak Infrastructure

and Realty & Ors.

... Respondents

ALONGWITH

Misc. Application No. 1032/25 (Stay)

IN

Appeal No. AT06/01040/2025

Tanuja Nilesh Mehta & Anr

... Appellants

V/s.

M/s. Shree Siddhivinayak Infrastructure

and Realty & Ors.

... Respondents

ALONGWITH

Misc. Application No. 1033/25 (Stay)

IN

Appeal No. AT06/01041/2025

Julie Himanshu Raja & Anr

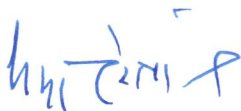
... Appellants

V/s.

M/s. Shree Siddhivinayak Infrastructure

and Realty & Ors.

... Respondents



ALONGWITH

Misc. Application No. 1034/25 (Stay)

IN

Appeal No. AT06/01043/2025

Sangam Shrichand Ranglani & Anr ... Appellants

V/s.

M/s. Shree Siddhivinayak Infrastructure
and Realty & Ors. ... Respondents

ALONGWITH

Misc. Application No. 1035/25 (Stay)

IN

Appeal No. AT06/01044/2025

Kalpana Vinod Kavadia & Anr ... Appellants

V/s.

M/s. Shree Siddhivinayak Infrastructure
and Realty & Ors. ... Respondents

ALONGWITH

Misc. Application No. 1036/25 (Stay)

IN

Appeal No. AT06/01046/2025

Priya Shyamnarayan Dubey & Anr ... Appellants

V/s.

M/s. Shree Siddhivinayak Infrastructure
and Realty & Ors. ... Respondents

ALONGWITH

Misc. Application No. 1037/25 (Stay)

IN

Appeal No. AT06/01047/2025

Urmila Devi Agarwal & Anr ... Appellants

V/s.



M/s. Shree Siddhivinayak Infrastructure
and Realty & Ors. ... Respondents

ALONGWITH

Misc. Application No. 1077/25 (Stay)

IN

Appeal No. AT06/01042/2025

Vinod Bhanwarlal Kavadia & Anr. ... Appellants

V/s.

M/s. Shree Siddhivinayak Infrastructure
and Realty & Ors. ... Respondents

ALONGWITH

Misc. Application No. 1078/25 (Stay)

IN

Appeal No. AT06/01058/2025

Mrs. Sujata Vijay Yeldarkar & Anr. ... Appellants

V/s.

M/s. Shree Siddhivinayak Infrastructure
and Realty & Ors. ... Respondents

Adv. Mr. Vinay Kate for Appellants in all the Appeals.

Adv. Jashweta Jagtap for Respondent no.1 in all the Appeals except in Appeal Nos.01035/2025 and 01047/2025.

Adv. Ms. Kaizin Irani for Respondent no. 1 in Appeal No.01035/2025 and Appeal No.01047/2025.

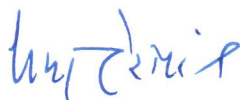
Adv. Ms. Dipali Jadhav for Respondent nos. 2 and 3 in all the Appeals Except in Appeal No.01038/2025

CORAM: SHRI S. S. SHINDE J., CHAIRPERSON &
SHRI SHRIKANT M. DESHPANDE, MEMBER (A)

RESERVED ON : 20th April, 2026

PRONOUNCED ON : 24th April, 2026

(THROUGH VIDEO CONFERENCING)

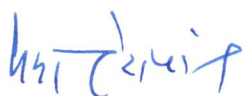


ORDER

[PER: SHRIKANT M. DESHPANDE, MEMBER (A)]

1. The captioned appeals arise from the common order dated 31.07.2025 passed by the learned Chairperson, Maharashtra Real Estate Regulatory Authority (for short the 'Authority') in the captioned complaints filed by the applicants/appellants herein, who are allottees.
2. The appellants in the captioned appeals are allottees of the project being developed by the respondent no.1. Therefore, the respondent no.1 is promoter of the said project. The respondent no.2 is a Non-Banking Financial Company (for short 'the bank') that disbursed the loan on behalf of the allottees under subvention scheme. The respondent no.3 is Asset Reconstruction Company, assignee of the loan accounts of the allottees from respondent no.2 under the provisions of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest (for short 'the SARFAESI Act, 2002').
3. The applicants/allottees have filed the captioned Misc. Applications for stay seeking following reliefs:

"a) Restrain, injunct and/or prohibit Respondent no. 1 by itself, its servants, agents and/or assigns from in any manner (directly and/or indirectly) alienating, encumbering, selling, transferring and/or creating any third party right in respect of the Said premises viz. Flat no. C-3503 on the 35th floor of the project till the payment, as prayed, paid to the Applicants.



b) Pending the hearing and final disposal of the present Appeal, this Adjudicating Authority be pleased to stay all the proceedings initiated by Respondent Nos. 2 and 3 under section 13(2) of the SARFAESI Act, 2002 and any other proceedings arising out of loan account no. 13900002645, if any.

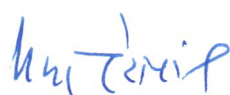
c) That ad interim and interim orders in terms of prayer (a) and (b) clauses above be granted.

d) That such other further reliefs as the nature and circumstance of the case may require be granted."

4. The learned Advocate for the applicants/allottees has submitted that the applicants booked/purchased their respective flats from the respondent no.1 promoter from the promoter's subject project under the subvention scheme and paid substantial amounts towards consideration of their flats. The Authority in the impugned order granted various reliefs under Section 18 of the Real Estate (Regulation and Development) Act, 2016 (for short 'the RERA Act, 2016') including the refund of the paid amount with interest in some cases and interest on account of delay in possession in other cases.
5. The learned Advocate for the applicants/allottees has submitted that the respondent no.2 is engaged in various financial services business and secured creditors has been impleaded in the complaint as well as in the appeals by virtue of Hon'ble Supreme Court order in Petition for Special Leave to Appeal (L) 1861-1871 of 2022 decided on 14.02.2022 in the matter of *Union Bank of India V/s. Rajasthan Real Estate Regulatory Authority & Ors etc. etc.* [2022 LiveLaw (SC) 171], in which the Hon'ble

Supreme Court has observed that the "*RERA Authority has the jurisdiction to entertain the complaint by an aggrieved person against the bank as a secured creditor if the bank takes recourse to any of the provisions contained in Section 13(4) of the SARFAESI Act*". The respondent no.3 is Asset Reconstruction Company registered with the Reserve Bank of India under the SARFAESI Act, engaged in the business of acquiring non-performing financial assets from banks/financial institutions and resolving them and it is the assignee of the loan accounts of the allottees from respondent no.2.

6. The learned Advocate for the applicants/allottees submitted that during initial discussions with the promoter, it was represented by the promoter that there was a subvention scheme (5:90:5) wherein the payment of pre equated monthly installments (pre-EMI) from the month of the first disbursement of loan amount till the possession shall be the responsibility of the promoter. Under the subvention scheme, the liability of the payment of any amount till the possession shall be of the respondent no.1 and the applicants could not be burdened with the same and applicants shall be liable to pay EMI only on possession. The said subvention scheme of the promoter and representation of the representative of the respondent no.2, was the sole reason for booking the of their premises in their project. Believing upon the categorical representation, the applicants executed an agreement for sale with the promoter. The promoter insisted the applicants to avail the loan not from any other bank or institution, but from the respondent no.2. The applicants thus agreed to avail the loan from the respondent no.2



7. Before the execution of agreement for sale with respect of their respective premises, the terms of financing to be provided by respondent no.2 were agreed, the respondent no.2 was asked the applicants to sign blank copies of the agreements. The applicants have contended that any such loan agreements have been vitiated by the fraudulent conduct of the respondent no.2 in procuring signature on blank documents without any terms specified therein and then dishonestly inserting terms without intimation or consent of the applicants.
8. The learned Advocate submitted that the respondent no.2 violated the guidelines of National Housing Bank circular dated 18.11.2013 and 01.07.2016, wherein the housing finance companies were advised that the disbursal of housing loans sanctioned to individual should be closely linked to the stages of construction of the housing project and upfront disbursal should not be made in cases of incomplete/under construction/green field housing projects.
9. The learned Advocate submitted that respondent no.2 made substantial payments to the promoter on behalf of the applicants without following due process of law and due to fraud played by the respondents upon the applicants and cheated the applicants. Therefore, the applicants are not liable to pay any amounts viz: principal amount, interest, interest on interest, penal interest, late payment charges arising out of their loan amounts. The promoter has failed to hand over possession on the specified date of possession and hence the applicants are entitled to withdrawn from the project and seek refund of the amounts paid along with interest or interest on account of delay

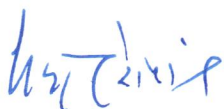
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in possession along with possession, as the case may be in the complaints.

10. The learned Advocate submitted that due to fraud and cheating committed by the respondents upon the applicants and induced the applicants to execute the loan agreements and agreements for sale thereby the promoter illegally received substantial amounts from the respondent no.2 in the name of the applicants causing harassment, as recovery and collection agency of respondent no.2 harassing the applicants by making frequent calls and personal visits to the applicants by threatening the applicants to face dire consequences, if the alleged default amounts are not paid to the respondent no.2, apart from verbal abuse.
11. With these submissions, the learned Advocate for the applicants prayed to allow the applications and restrain the respondent no.1 from creating any third-party interests in respect of the subject flats till the payments as prayed for are paid to the applicants. Further, pending the hearing and final disposal of the appeals, the Tribunal may stay all the proceedings initiated by the respondent nos.2 and 3 under Section 13(2) of the SARFAESI Act, 2002 and in other proceedings arising out of their loan accounts.
12. The learned Advocate for the respondent no.1/promoter has submitted that it appears from the applications that the applicants have some grievances against the respondent no.2 owing to action initiated by the respondent no.2 against the applicants for default of payments of EMIs. The promoter has no role to play in so far as the recovery action initiated by

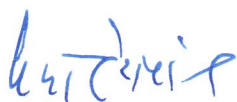
respondent no.2 is concerned. The learned Advocate submitted that it is necessary that the applicants maintain title to the subject flat in the event that they want to claim refund with interest on account of delay in possession.

13. The learned Advocate submitted that the promoter has only demanded and received monies as per the completed milestones and that no consideration than for completed construction has been accepted. In case of the applicants seek refund with interest and have confirmed they are not interested in the subject flat, it is contradictory for them to seek injunction against creation of third-party rights in respect of a property they no longer wish to pursue. Additionally, no evidence has been provided to show that the respondent no.1 has terminated the same or alienated the flats or intends to alienate the flats. It is settled that injunction cannot be granted in a mere apprehension or presumption. Further the applicants have not shown any urgency whatsoever, so far as the promoter is concerned.
14. The learned Advocate submitted that there is no prima-facie case has been made out so far as the relief sought against the promoter is concerned. Further, no prejudice would be caused to the applicants if the reliefs is not granted and as such the balance of convenience does not rest with the applicants.
15. With these submissions, the learned Advocate for the promoter prayed to reject the application.
16. The learned Advocate for respondent no.2 and 3 has submitted that the respondent no.2 executed an assignment agreement dated 29.03.2023 with the respondent no.3. The



applicants/appellants have availed loan facility from the respondent no.2 to purchase their flats. The said loan approved by the respondent no.2 was disbursed as per the requests made by the applicants. Due to non-payment of the loan amounts, the respondent no.3 initiated legal proceedings in respect of the loan accounts. However, by filing complaints the applicants approached this Tribunal against the respondents and also tried to create hurdles in legitimate legal recovery of public money advanced to them.

17. The learned Advocate submitted that as per the Clause 2.4 of the loan agreement, the respondent no.2 had the discretion to disburse the loan in one lump sum amount or installments. Pertinently, the receipts were attached along with the loan agreement which shows that the amounts received by the promoter, however the applicants had not raised any objection at that time. The applicants intentionally have not produced their tripartite agreement execution between the applicants, promoter and respondent no.2. As per the Clause 10 and 16 of the tripartite agreement, the applicants are ultimately responsible to pay loan and interest on loan amount.
18. The learned Advocate submitted that the reliance placed on the judgment of the Hon'ble Supreme Court in case of *Union Bank of India V/s. Rajasthan Real Estate Regulatory Authority & Ors.* [Petition for Special Leave to Appeal (L) 1861-1871 of 2022 decided on 14.02.2022 [2022 LiveLaw (SC) 171], are not applicable to the present case since the loan has been given to the allottees and not to the promoter. The learned Advocate submitted that now the applicants cannot run from the liability



to pay loan amount to respondent no.2 and seek any relief to stay legal proceedings initiated by the respondent no.2 for loan recovery under SURFAESI Act. Therefore, the appeals against the respondent nos. 2 and 3 are not maintainable and the applicants are not entitled to any reliefs at the interim stage as well as the final stage.

19. With these submissions, the learned Advocate for respondent nos. 2 and 3 prayed to reject the application.
20. We have given due consideration to the averments made in the applications, submissions of the learned Advocates for the parties and material placed on record.
21. It would be relevant to reproduce the order passed by the Hon'ble Supreme Court in the case of *Union Bank of India V/s. Rajasthan Real Estate Regulatory Authority* (supra), as under:

"ORDER

We have heard Shri Tushar Mehta, learned Solicitor General appearing on behalf of the petitioner/Bank and Shri Ritin Rai, learned senior counsel appearing on behalf of one of the respondents/Caveator/one of the home buyers.

We are in complete agreement with the view taken by the High Court by which the High Court has ultimately concluded in para 36, as under -

"36, Our conclusions can thus be summarised as under:-

- (i) Regulation 9 of the Regulations of 2017 is not ultra vires the Act or is otherwise not invalid.*
- (ii) The delegation of powers in the single member of RERA to decide complaints filed under the Act even*

otherwise flows from Section 81 of the Act and such delegation can be made in absence of Regulation 9 also.

(iii) As held by the Supreme Court in the case of Bikram Chatterji (supra) in the event of conflict between RERA and SARFAESI Act the provisions contained in RERA would prevail.

(iv) RERA would not apply in relation to the transaction between the borrower and the banks and financial institutions in cases where security interest has been created by mortgaging the property prior to the introduction of the Act unless and until it is found that the creation of such mortgage or such transaction is fraudulent or collusive.

(v) RERA authority has the jurisdiction to entertain a complaint by an aggrieved person against the bank as a secured creditor if the bank takes recourse to any of the provisions contained in Section 13(4) of the SARFAESI Act."

However, it is clarified that para 36(v) reproduced hereinabove shall be applicable in a case where proceedings before the RERA authority are initiated by the home buyers to protect their rights. With this, the Special Leave Petitions are dismissed.

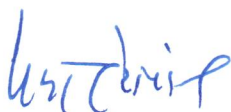
Pending application(s) shall stand disposed of."

22. Placing reliance on the said judgment, the learned Advocate for the applicants has contended that the RERA has jurisdiction to entertain a complaint by an aggrieved person against bank as

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secured creditor if the bank takes recourse to any of the provisions contained in section 13(4) of the SARFAESI Act.

23. The moot question for our consideration is whether the RERA has jurisdiction to entertain a grievance against the bank who have initiated action under the SARFAESI Act, against the defaulting allottees. It is pertinent that the respondent no.2 bank has lent loan to the allottees and not to the promoter.
24. It is pertinent to note the context of the said judgment wherein the Hon'ble Supreme Court has passed the said order. The said order arises from the judgment of Hon'ble Rajasthan High Court in the case of *Union Bank of India V/s. Rajasthan Real Estate Regulatory Authority & Ors.* [Petition for Special Leave to Appeal (L) 1861-1871 of 2022 decided on 14.02.2022 [2022 LiveLaw (SC) 171], wherein the concerned bank had given loan to the promoter. In the said case a promoter created a mortgage in favour of the bank and due to failure to repay the loan amount, the concerned bank took action under the SAERFAESI Act, against the promoter.
25. In that context, the issue for consideration was whether the bank being an assignee of the promoter would fall within the definition of promoter under RERA. The question that came up for consideration before the Hon'ble High Court was "does the RERA has the authority to issue any directions against a bank or financial institutions which claims security interest over the properties which are subject matter of agreement between the allottees and the developers", wherein the Hon'ble Rajasthan High Court in the said judgment in para-33, 34, 35 and 36 has held as under:



“33. In terms of SARFAESI Act and particularly Section 13, once a borrower is unable to repay the debt and the asset is classified as non-performing asset, it is open for the secured creditor to enforce the rights without intervention of the Court. After issuance of notice under Section 13(2) and disposing of the objections of the borrower in terms of Section 13 (3A), a secured creditor could proceed to take steps as envisaged in sub-section (4) These measures which a secured creditor can take include taking possession of the secured asset including right to transfer by way of lease, assignment or sale for realising the secured asset; to take over the management of business of the borrower including the right to transfer by way of lease, assignment or sale for realising the secured asset; appoint any person to manage the secured assets the possession of which has been taken over by the secured creditor and require at any time any person who has acquired any of the secured assets from the borrower and from whom any money is due or may become due to the borrower to pay the secured creditor so much of the money as is sufficient to pay secured debt.

34. Clauses (a) to (c) of sub-section (4) are all in the nature of rights that a secured creditor can exercise which originally vest in the borrower. Clause (d) on the other hand, is in the nature of a garnishee enabling the secured creditor to recover the dues from a person other than the borrower who has acquired any of the secured assets and from whom any money is due or may become due to the borrower.

35. Clauses (a), (b) and (c) of sub-section (4) of Section 13 vest power in the secured creditor to take all steps as the borrower himself could take in relation to the secured asset. Clause (d) goes a step further and enables the bank to recover its dues directly from a debtor or the borrower who has acquired any of the secured assets. For all purposes thus the secured creditor steps in the shoes of

the borrower in relation to the secured asset. This is thus a case of assignment of rights of the borrower in the secured creditor by operation of law. In other words the moment the bank takes recourse to any of the measures under sub-section (4) of Section 13, it triggers statutory assignment of right of the borrower in the secured creditor. Till this stage arises the bank or financial institutions in whose favour secured interest may have been created may not be in isolation in absence of the borrower be amenable to the jurisdiction of RERA. However the moment the bank or the financial institution takes recourse to any of the measures available in sub section (4) of Section 13 of the SARFAESI Act, RERA authority would have Jurisdiction to entertain the complaint filed by an aggrieved person.

36. Our conclusions can thus be summarised as under:-

(i) Regulation 9 of the Regulations of 2017 is not ultra vires the Act or is otherwise not invalid.

(ii) The delegation of powers in the single member of RERA to decide complaints filed under the Act even otherwise flows from Sec. 81 of the Act and such delegation can be made in absence of Regu. 9 also.

(iii) As held by the Supreme Court in the case of Bikram Chatterji (supra) in the event of conflict between RERA and SARFAESI Act the provisions contained in RERA would prevail.

(iv) RERA would not apply in relation to the transaction between the borrower and the banks and financial institutions in cases where security interest has been created by mortgaging the property prior to the introduction of the Act unless and until it is found that the creation of such mortgage or such transaction is fraudulent or collusive.

(iv) RERA authority has the jurisdiction to entertain a complaint by an aggrieved person against the bank as a secured creditor if the bank takes recourse to any of the provisions contained in Section 13(4) of the SARFAESI Act."

26. In view of the above, in the context where the bank has lent loan to the promoter and the promoter makes default in payments triggering action by the bank under SARFAESI Act and bank takes recourse under section 13(4) of the SARFAESI Act, the bank in that case is covered under the definition of "promoter" under the RERA. Once the bank takes recourse to the provisions contained in Section 13(4) of the SARFAESI Act, the bank steps into the shoes of the promoter and therefore the RERA assumes jurisdiction to hear the complaint against such bank and pass an appropriate order against the bank.
27. In the present case the loan is given to the allottees and not to the promoter. Hence, said judgment is not relevant in the present case. Further, the tripartite agreement between the allottees, promoter and the bank has provided contractual arrangement which cannot be enforced under the provisions of RERA Act, 2016. The applicants in that case may file appropriate remedy under the law.
28. In view of the aforesaid, we are of the view that the Tribunal has no jurisdiction to hear any complaint by allottees against the lending bank, who has lent loan to the allottees, and pass any order against the bank, who has initiated action under the SARFAESI Act against the allottees. Therefore, so far as the prayer Clause (b) in the said application, the said relief cannot

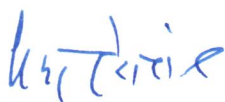


be granted. The applicants can take appropriate recourse under the law.

29. However, we are of the view that the allottees have made substantial payments to the promoter and if any third-party interests are created by the promoter in their flats at this stage, it will cause serious prejudice to the applicants and therefore we are inclined to grant the relief under prayer Clause (a) of the application.
30. In view of the above, we pass the following order.

ORDER

1. Misc. Application No. 1021 of 2025 (Stay), No. 1022 of 2025 (Stay), No. 1023 of 2025 (Stay), No. 1024 of 2025 (Stay), No. 1025 of 2025 (Stay), No. 1033 of 2025 (Stay), No. 1034 of 2025 (Stay), No. 1035 of 2025 (Stay), No. 1036 of 2025 (Stay), No. 1037 of 2025 (Stay), No. 1077 of 2025 (Stay) and No. 1078 of 2025 (Stay) are partly allowed with following directions:
- i) The respondent No.1/promoter is hereby restrained by itself, its servants, agents and/or assigns from in any manner (directly and/or indirectly) alienating, encumbering, selling, transferring and/or creating any third-party rights in respect of the subject flats of the applicants/allottees till the pending hearing and final disposal of these appeals.
 - ii) Prayer Clause (b) in the applications seeking relief of direction to stay all the proceedings initiated by the respondent nos. 2 and 3 under SARFAESI Act,



and any other proceedings arising out of loan accounts is rejected.

- 2) Parties to bear their own costs.
- 3) All the captioned Misc. Applications are accordingly disposed of.
- 4) Copy of this order be communicated to the Authority and the respective parties as per Section 44(4) of RERA Act, 2016.

(SHRIKANT M. DESHPANDE)

(S.S.SHINDE, J.)

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