

**BEFORE THE MAHARASHTRA REAL ESTATE  
APPELLATE TRIBUNAL, MUMBAI**

Appeal No. AT006/000000345507 of 2024  
In  
Complaint No. CC006000000251889

1. Janak Laxmichand Bhavsar ]
2. Dina Janak Bhavsar ]  
Both adult Indian Inhabitant ]  
of Mumbai, Residing at Flat ]  
No. 15, 2<sup>nd</sup> Floor, Ratna-Abad ]  
Building, Tukaram Javji ]  
Road, Grant Road (West), ] ...Appellants  
Mumbai – 400 007. ]

Versus

1. M/s. Aditya Developers ]  
Address:- A-101, Jeevan ]  
Mandir CHS Ltd., Opp. Amba ]  
mata Temple, Factory Lane, ]  
Borivali(West), ]  
Mumbai – 400 092. ]
2. SBI Employees Prashant CHS ]  
Ltd. ]  
Address:- Prashant Kasturba ]  
Cross Road No. 4, Borivali ]  
(E), Mumbai – 400 066. ]
3. URNA Evolved Living Private ]  
Limited ]  
(Formerly known as Living ]  
Habitats Pvt. Ltd.) ]  
Address:- 171, Mittal Towers, ]  
A-Wing, Nariman Point, ]  
Mumbai – 400 021. ] ...Respondents

ALONGWITH  
Appeal No. AT006/000000345508 of 2024  
In  
Complaint No. CC006000000292227

1. Jitesh Futarmal Solanki ]
2. Poonam J. Solanki ]  
Both adult Indian Inhabitants ]  
of Mumbai ]  
Residing at Flat No. 3, Triloke ]  
Darshan Bldgs., Carter Road ]  
No. 4, Borivali(E), ]  
Mumbai – 400 007. ] ...Appellants

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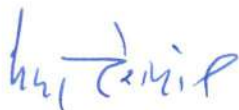
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ALONGWITH  
Appeal No. AT006/000000345509/2024  
In  
Complaint No. CC006000000292232

Bhaskar Seenu Naidu ]  
Adult Indian Inhabitant of ]  
Mumbai ]  
Residing at Flat No. 1604/ ]  
1605, 16<sup>th</sup> Floor, Bhoomi ]  
Flora Building No. 5, Raheja ]  
Estate, Near W.E. Highway, ]  
Borivali (E), ]  
Mumbai – 400092. ] ...Appellant

Versus

1. M/s. Aditya Developers ]  
Address:- A-101, Jeevan ]  
Mandir CHS Ltd., Opp. Amba ]  
mata Temple, Factory Lane, ]  
Borivali (West), Mumbai – ]  
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Address:- 171, Mittal Towers, ]  
A-Wing, Nariman Point, ]  
Mumbai – 400 021. ] ...Respondents



ALONGWITH  
Appeal No. AT006/000000345510 of 2024  
In  
Complaint No. CC006000000292234

1. Prakash Hiralal Mistry ]
2. Anita Prakash Mistry ]  
Both adult Indian Inhabitants ]  
of Mumbai ]  
Residing at 1A/103, Devdaya ]  
Park CHSL, Pokhran Road ]  
No. 1, Samta Nagar, Thane, ]  
West, 400 606. ] ...Appellants

Versus

1. M/s. Aditya Developers ]  
Address:- A-101, Jeevan ]  
Mandir CHS Ltd., Opp. Amba ]  
mata Temple, Factory Lane, ]  
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400 092 ]
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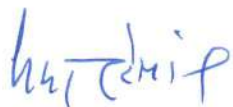
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ALONGWITH  
Appeal No. AT006/000000345511 of 2024  
In  
Complaint No. CC006000000292238

1. Mukesh Hiralal Mistry ]
2. Hiralal Bhuraji Mistry ]  
Both adult Indian Inhabitants ]  
of Mumbai ]  
Residing at A/204, Yashwant ]  
Shopping Arcade, Kasturba ]  
Cross Road, Opp. Railway ]  
Station, Borivali (E), ]  
Mumbai – 400 066. ] ...Appellants

Versus

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Address:- A-101, Jeevan ]  
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Address:- 171, Mittal Towers, ]  
A-Wing, Nariman Point, ]  
Mumbai – 400 021. ] ...Respondents



ALONGWITH  
Appeal No. AT006/000000345512 of 2024  
In  
Complaint No. CC006000000292240

Maniben K. Haria ]  
Adult Indian Inhabitant of ]  
Mumbai ]  
Residing at Flat No. 901, ]  
Bhoomi Tower, Near ]  
Banarasi Hotel, Opposite ]  
Kalikund Jain Derasar, ]  
Santacruz(E), ]  
Mumbai400055. ] ...Appellants

Versus

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400 092 ]
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Mumbai – 400 021. ] ...Respondents

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ALONGWITH  
Appeal No. AT006/000000345617 of 2024  
In  
Complaint No. CC006000000354472

Manali Rajesh Dalvi ]  
Flat No.H-17/702, Press ]  
Enclave CHS Ltd., Pratiksha ]  
Nagar, Sion (East), ] ...Appellant  
Mumbai-400 022. ]

Versus

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Address:- A-101, Jeevan ]  
Mandir CHS Ltd., Opp. Amba ]  
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Borivali (West), Mumbai – ]  
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]
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Mumbai – 400 021. ] ...Respondents

ALONGWITH  
Appeal No. AT006/000000345639 of 2024  
In  
Complaint No. CC006000000251890

1. Adhish Manakchand Rathod ]
2. Manakchand P. Rathod ]

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Both adult Indian Inhabitants ]  
of Mumbai ]  
Residing at A/5 Camron ]  
Heights, 403/404, Sunderyan ]  
Complex, Next to Shashtri ]  
Nagar, Lokhandwala Road, ]  
Andheri(W),Mumbai-400053. ] ...Appellants

Versus

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*Adv. Mr. Krishna Agarwal for Appellants in all appeals except appeal  
no. 345617/2024.*

*Adv. Mr. Atreya Tambe h/f. Adv. Mr. Harshad Bhadbhade for  
appellant in Appeal No.345617/2024.*

*Adv. Mr. Mohd. Mustafa Ansari for respondent No1 in all the appeals.*

*Adv. Mr. Floyd Gracias for respondent no.3 in all the appeals.*  
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CORAM: SHRI S. S. SHINDE J., CHAIRPERSON &  
SHRI SHRIKANT M. DESHPANDE, MEMBER (A)

*hri Tambe*

RESERVED ON : 6<sup>th</sup> April, 2026

PRONOUNCED ON : 22<sup>nd</sup> April, 2026

(THROUGH VIDEO CONFERENCING)

**JUDGMENT**

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

1. The captioned appeals arise from the common order dated 26.08.2024 passed by the learned Member-I, Maharashtra Real Estate Regulatory Authority (for short "the Authority") in the captioned complaints filed by the appellants herein/allottees.
2. M/s. Aditya Developers, is an erstwhile developer of the project in the name and style as "SBI Employees Prashant Co-op. Housing Society" bearing MahaRERA Registration No. P51800009323 located at Borivali, Mumbai, by virtue of development agreement executed by SBI Employees Prashant CHS Ltd., the society land owner of the project land, with M/s. Aditya Developers. The said project was registered by M/s. Aditya Developers, the erstwhile promoter with the MahaRERA with project registration no. P51800009323. M/s. URNA Evolved Living Private Limited is the new promoter of the project, pursuant to the termination of the development agreement by the society with the erstwhile promoter, and registered the project with the MahaRERA having project registration no. P51800051383. The society executed the new development Agreement dated 09.08.2022 with M/s. URNA Evolved Living Private Limited.
3. For the sake of convenience M/s. Aditya Developers will be hereinafter referred to as "the erstwhile promoter", SBI



Employees Prashant CHS Ltd., as "the land owner society" and M/s. URNA Evolved Living Private Limited as "the new promoter" of the project, and appellants as "complainants/allottees" respectively.

4. Since the facts in all these appeals are almost identical and law points involved in these appeals being identical, all these appeals were heard together and have been decided by this common judgment.
5. The brief facts culled out from the pleadings, documents on record, and the impugned order are that the society is the owner of the project land and it has total 26 members. The society has undertaken the redevelopment of its old building lying and situated at plot of land bearing CTS No.444/B, village Kanheri, Mumbai Suburban District. By virtue of the development agreement dated 06.09.2013, the society assigned the development rights with respect to the said redevelopment project to the erstwhile promoter. By virtue of the said development rights, the erstwhile promoter obtained IOD for the said project on 07.01.2015 and commencement certificate on 20.05.2016, which was further extended till 10<sup>th</sup> floors on 09.10.2017.
6. After commencement of Real Estate (Regulation and Development) Act, 2016 [for short the "RERA Act, 2016"] the erstwhile promoter registered the said project with the MahaRERA being an on-going project by filing registration application on 02.08.2017. Accordingly, registration certificate was granted to the erstwhile promoter by the MahaRERA on 22.08.2017 under the project registration no. P51800009323.



While registering the said project with MahaRERA, the erstwhile promoter has mentioned the proposed date of completion as 18.05.2020, which was revised and extended till 18.05.2022. As per the requisite permissions granted by the concerned competent authorities, the erstwhile promoter carried out construction till 4<sup>th</sup> slab on site. In the meanwhile, the erstwhile promoter has also created third party rights in respect of the said project by executing registered agreements for sale with total 12 flat purchasers including these appellants from the sale component of the said project as per the terms in the said development agreement.

7. However, alleging the delay in completion of the said project as per the terms and conditions of the said development agreement dated 06.09.2013, the society invoked arbitration proceedings by filing Arbitration Petition No.711 of 2018 against the erstwhile promoter. In the said arbitration petition, the erstwhile promoter submitted an undertaking by outlining the timelines for further construction of the project. However, during the course of hearing held in the arbitration petition, the Hon'ble Bombay High Court directed the erstwhile promoter to submit the list of flat purchasers to whom the flats have been sold. Accordingly, the erstwhile promoter has informed to the Hon'ble Bombay High Court that there were 13 flats which have been sold to the third parties and the rest of the flats remained unsold.
8. Taking into account the status of the project, the Hon'ble High Court vide its orders dated 04.08.2018 and 26.10.2018 directed the erstwhile promoter not to create any third-party

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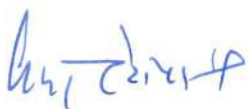
interests in the project and also to deposit the monies to be recovered from the said 13 flat purchasers in a separate account. However, the erstwhile promoter breached the said undertaking submitted before the Hon'ble High Court and also failed to make any further progress in the project.

9. Therefore, the society issued a termination notice dated 20.04.2019 to the erstwhile promoter and also filed another Arbitration Petition No.1470 of 2019 before the Hon'ble Bombay High Court. In the said proceedings, the Hon'ble Bombay High Court was pleased to pass an order dated 12.12.2019 and confirmed the said termination done by the society and permitted the said society to complete the construction of the project on its own by appointing contractor or by appointing a new promoter. Pursuant to the said order dated 12.12.2019 passed by the Hon'ble Bombay High Court, the society issued public notice dated 07.02.2022 and appointed the new promoter as the promoter of the project to complete the said project. Further, the said appointment of the new promoter was confirmed in the General Body Meeting of the society convened on 05.06.2022. Accordingly, the society has executed a fresh development agreement with the new promoter on 10.08.2022
10. After obtaining development rights from the society, the new promoter filed an application for change of promoter on record of Municipal Corporation of Greater Mumbai (for short "MCGM") and obtained revised IOD on 02.03.2023 and revised commencement (till plinth level) on 28.04.2023. After obtaining the said revised permissions, the new promoter

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applied for fresh registration to MahaRERA by filing an application on 10.05.2023 and obtained registration on 08.06.2023 with project registration no. P51800051383. Further, the new promoter demolished the part construction carried out by the erstwhile promoter in the said project till 4<sup>th</sup> slab.

11. Aggrieved by the above development, the appellants filed the captioned complaints seeking relief of possession of the respective flats and interest on account of delay in handing over of possession of their flats. During the course of complaint proceedings, they also prayed relief of cancellation of the new registration obtained by the new promoter on the ground of violation of Section 15 of the RERA Act, 2016.
12. The Authority after hearing the parties, passed the impugned order. The Authority framed the following issues for determination:
  - i) Whether the new registration certificate obtained by the new promoter is legal and valid under the provisions of RERA Act, 2016?
  - ii) Whether the society and the new promoter can be held liable to fulfil the liabilities of the erstwhile promoter towards the complainants/allottees and whether the complainants/allottees need to be protected in redevelopment project of the society?
13. The complainants/allottees contended that the new promoter and the society after termination of the development agreement dated 06.09.2013 executed with the erstwhile promoter should have applied for change of promoter under

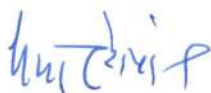


section 15 of the RERA Act, 2016 in the project having registration no. P51800009323. However, they illegally obtained new project registration from the MahaRERA bearing project registration no. P51800051382. Hence, the society and the new promoter have violated Section 15 of the RERA Act, 2016. Further, the complainants/allottees have challenged the demolition of the construction carried out by the erstwhile promoter, mainly on the ground that the Hon'ble High Court vide its order dated 12.12.2019 in the Arbitration Petition directed the society to complete the construction by appointing a contractor or a new promoter. Hence, the dual registration obtained by the society and the new promoter need to be cancelled and their rights are required to be protected under Section 15 of the RERA Act, 2016.

14. The erstwhile promoter contended that the after obtaining development rights from the society, it obtained IOD till 18<sup>th</sup> floor and the commencement certificate till 10<sup>th</sup> floors, however the project got delayed mainly due to delay in vacating their respective flats by the members of the society. Further, after termination of the said development agreement dated 06.09.2013, the society has issued a public notice dated 07.02.2022 for appointing a new promoter. At that time, it has disclosed the list of 12 flat purchasers of the said project. However, the society while executing the development agreement dated 10.08.2022 with the new promoter has ignored the list of those 12 flat purchasers. Further, the society and new promoter violated the order dated 12.12.2019 of the Hon'ble Bombay High Court and instead of filing an application

for change of promoter have obtained fresh registration. The erstwhile promoter contended that the new registration obtained by the new promoter is required to be cancelled in order to protect the rights of the allottees.

15. The society contended that that there is no privity of contract between the society and the allottees. The agreements for sale with the allottees have been executed by the erstwhile promoter. Further, consideration amounts have been paid by the complainants/allottees to the erstwhile promoter. Therefore, on the ground of privity of contract, the complaints are liable to be dismissed and the complainants cannot seek any entitlement of their flats arising out of agreements for sale against the society or the new promoter.
16. The new promoter contended that the development agreement between the society and the erstwhile promoter has been terminated as per the orders dated 26.10.2018 passed in the Arbitration Petition No.711 of 2018 and order dated 12.12.2019 passed by the Hon'ble High Court in the Arbitration Petition No.1470 of 2019. Vide the said orders, the Hon'ble Bombay High Court permitted the society to complete the construction of the project by appointing a contractor or a new promoter. Hence, there is no violation of Section 15 of the RERA Act, 2016. Accordingly, the society after following due process of law has executed fresh development agreement with the new promoter on 10.08.2022. Further, the construction carried out by the erstwhile promoter up to 4<sup>th</sup> slab remained the same till 2022, which was dilapidated and faulty structure, hence it was demolished. Also, to ensure



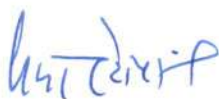
clarity and transparency, the said project was freshly registered with the MahaRERA with project registration no. P51800051382. The new promoter further contended that all pending litigations were disclosed and that the new promoter bears no liability for any obligation of the erstwhile promoter while registering the project. Further, the allottees have claimed their entitlement through erstwhile promoter, whose development agreement has already been lawfully terminated.

17. After hearing the parties at length, the Authority passed the impugned order. While passing the said order, the Authority observed that Section 15 of the RERA Act, 2016 provides that the promoter is not entitled to transfer the liability of his rights or interests in the project without obtaining consent of 2/3<sup>rd</sup> allottees of the project. However, in the present case, termination of the erstwhile promoter and appointment of new promoter has been done as the orders passed by the Hon'ble High Court in arbitration proceedings. Hence, the question of obtaining consent of 2/3<sup>rd</sup> allottees of the project as well as violation of Section 15 of the RERA Act, do not arise.

18. The Authority further observed that the new promoter has demolished the old structure carried out by the erstwhile promoter and has obtained revised permissions from the competent authorities. On the basis of the said revised permission, the new promoter has registered the said project with registration no. P51800051382. With regard to the earlier project registration no. P51800009323 obtained by the erstwhile promoter, the Authority observed that the said registration has already been lapsed on 18.05.2022. Further,

the development agreement dated 06.09.2013 executed in favour of the erstwhile promoter has been terminated and has been confirmed by the Hon'ble Bombay High Court vide its order dated 12.2.2019. Hence, the project of erstwhile promoter is now not in existence.

19. The Authority held that the fresh registration obtained by the new promoter is not illegal or bad in law as the same is issued after considering the valid permissions granted by the competent authorities in favour of the new promoter. Further, the new promoter also disclosed all pending litigations pertaining to the said project. Hence, the Authority held that there is no question of cancellation of the new project registration obtained by the new promoter.
20. With regard to the claim of the complainants against the society, the Authority observed that the said society has not been shown as promoter having any revenue sharing or area sharing arrangement with the erstwhile promoter. Relying on the judgment of the Hon'ble Bombay High Court in case of *Goregaon Pearls CHSL Versus Dr. Seema Mahadev Paryekar & Ors. [Appeal from Order (Stamp) No.22143 of 2019 decided on 14<sup>th</sup> September, 2019 by the Hon'ble Bombay High Court]* wherein the Hon'ble Bombay High Court has held that if any such land owner is entitled to share in the total revenue generated from sale of apartment or any area sharing arrangement from sale component, it would fall under the definition of 'promoter' under the RERA Act, 2016. However, in the present case, the complainants have failed to prove that the society is entitled to such an area sharing arrangement



from the sale component or any revenue sharing arrangement in the project. The Authority therefore held that the society is not "promoter" of the said project of the erstwhile promoter.

21. With regard to the liabilities of new promoter towards complainants, the Authority observed that there is no privity of contract with the new promoter. Further, there are no directions by the Hon'ble Bombay High Court in the order dated 12.12.2019 passed in the Arbitration Petition No. 1470 of 2019 despite of the fact that the Hon'ble Bombay High Court noted the third-party rights already created by the erstwhile promoter. The Authority further observed that despite of the orders of the Hon'ble Bombay High Court not to create any third-party rights, the erstwhile promoter executed agreement for sale with one of the complainants. Further, the erstwhile promoter executed agreements for sale with some of the complainants without having valid commencement certificate obtained for the said respective flats. With these observations, the Authority held that the MahaRERA cannot recognize the rights of the complainants against the new promoter.
22. With these observations and findings, the Authority dismissed the captioned complaints. However, the Authority granted liberty to the complainants to agitate their claims against the erstwhile promoter in the pending arbitration proceedings in Arbitration Petition No.1470 of 2019 filed by the society or otherwise.
23. Aggrieved by the impugned order, the appellants/allottees Have filed the captioned appeals on the grounds set out in the



respective memorandums of appeal, seeking inter-alia, following reliefs:

- i) Quash and set aside the impugned order,
- ii) Directions to MahaRERA to cancel the project registration no. P51800051382,
- iii) Direction to the new promoter to apply for change of promoter in the old registration no. P51800009323 obtained by the erstwhile promoter,
- iv) Direction to the society and new promoter restraining from amending sanctioned plans under the project registration no. P51800051382 without express consent of the appellants/allottees and other flat purchasers.
- v) Directions to enforce the agreements for sale executed by the erstwhile promoter with the appellants/allottees against the new promoter by transfer of the project from erstwhile promoter to new promoter under Section 15 of the RERA Act, 2016

24. We have heard the learned Advocates for the parties. Their submissions are nothing but reiteration of the contents of the memorandums of appeal, reply, and written submissions.

25. The learned Advocate for the appellants/allottees has submitted that the society has executed development agreement dated 06.09.2013 with the erstwhile promoter and also executed the power of attorney dated 06.09.2013 in favour of the erstwhile promoter. By the said development agreement and power of attorney, the society granted the rights to the erstwhile promoter to sale, transfer the flats from the sale component of the project. Considering this



representation, the appellants have executed agreements for sale with erstwhile promoter and paid substantial consideration amounts to the erstwhile promoter.

26. The learned Advocate submitted that in the Arbitration Petition No.711 of 2018 filed by the society, the Hon'ble High Court directed the erstwhile promoter to submit affidavit containing details of the flats sold by the erstwhile promoter to the third-party purchasers and details of accounts. In the said affidavit, the names of the flat purchasers are disclosed, wherein the appellants are reflected in the said list. The learned Advocate submitted that the society who was party to the said arbitration petition and even after knowing about the facts that the appellants and other flat purchasers have purchased their flats thereby having stake in the project, the society acted hand in glove with the new promoter and executed development agreement dated 10.08.2022 with the new promoter leaving rights and entitlements of the appellants and other flat purchasers at risk. From the above conduct, it is apparent that the society by executing the development agreement with the new promoter, intended to defeat the rights of the appellants in the said project.

27. The learned Advocate further submitted that MahaRERA vide its circulator No.12 of 2017 dated 04.12.2017 has categorically declared that the land owners are also promoters as defined under Section 2(zk) of the RERA Act, 2016. Therefore, the society being land owner also got benefit of 52% extra area of their flats to its members in the re-habilitation component and therefore there is area sharing arrangement with the erstwhile



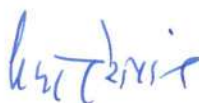
promoter. Hence, the society is "promoter" within the meaning of Section 2(zk) of the RERA Act, 2016 and are obligated to comply with all the functions and liabilities of promoter under the provisions of the RERA Act, 2016.

28. The learned Advocate further submitted that the new promoter despite having knowledge of the liabilities of all flat purchasers before entering into the development agreement with the society, executed the development agreements with the society. Further, vide Clause 12.4 of the development agreement dated 10.08.2022 executed by the society with the new promoter, the new promoter has specifically accepted to discharge the liabilities on behalf of the society. Hence, the new promoter is obligated to discharge the liabilities towards the appellants/allottees.
29. The learned Advocate submitted that the new promoter obtained fresh project registration from MahaRERA which is clear violation of Section 15 of the RERA Act, 2016. The new promoter ought to have filed application under section 15 of the RERA Act, 2016 for change of promoter in the old project registration to safeguard the interest and rights of the allottees. However, the new promoter obtained new project registration only to defeat the rights and entitlements of the appellants/allottees. With these submissions, the learned Advocate for the appellants prayed to allow the appeals.
30. The learned Advocate for the erstwhile promoter has submitted that no reliefs are sought against the erstwhile promoter in these appeals. Therefore, the appeals may be dismissed *qua* the erstwhile promoter. The learned Advocate submitted that



pursuant to the execution of development agreement with the society, the project got delayed due to non-cooperation from the society, by not vacating the flats by the society members for a long time, illegal encroachments in the project land, delay in receiving the possession of the building for demolition, etc. Further, the erstwhile promoter discovered shortage of project area affecting the viability of the project. All these factors put burden of additional costs on the erstwhile promoter. The learned Advocate submitted that pursuant to the development agreement and power of attorney, the erstwhile promoter entered into an agreement for sale with the flat purchasers including appellants. Further, the said agreements for sale not having been challenged in court of law and hence are subsisting.

31. The learned Advocate has submitted that in the Arbitration Petition No.711 of 2019, the Hon'ble Bombay High Court has passed various orders and possession of the said project land was taken over by the Court Receiver vide order dated 12.12.2019. The society thereafter did not allow the erstwhile promoter to carry out any further work. In the said arbitration petition, the erstwhile promoter has also disclosed the third-party rights created and also lodged its claims. The said petition is still pending.
32. The learned Advocate submitted that despite knowing that the third-party rights have already been created, the new promoter executed development agreement dated 10.08.2022 in violation of the rights of the allottees. After termination of the development agreement of erstwhile promoter with the



society, the entire liability of the flat purchasers lies with the society and new promoter. With these submissions, the learned Advocate for the erstwhile promoter prayed to cancel the new registration of the project obtained by the new promoter and dismiss the appeals *qua* erstwhile promoter

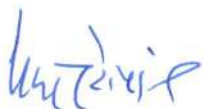
33. Although, the learned Advocate for the society did not file written arguments, but the society has filed reply to the appeals. In the said reply the society has contended that the development agreement with the erstwhile promoter was terminated due to prolonged delays, non-performance and failure of erstwhile promoter to complete the project within the agreed timelines. This constrained the society to initiate legal proceedings in the Hon'ble Bombay High Court for termination of the development agreement. The Hon'ble Bombay High Court in the Arbitration Petition No.1470 of 2019 acknowledge the development failure on the part of the erstwhile promoter and permitted the society to appoint new promoter. Pursuant to this, the society entered into fresh development agreement dated 10.08.2022 with the new promoter after following due procedure and necessary approvals.

34. It is also the contention of the society that the Hon'ble Bombay High Court passed the order in Arbitration Petition No.711 of 2018 including the appointment of Court Receiver, injunction against the sale of unsold flats and direction to the erstwhile promoter to provide bank guarantees and disclosure of financial details. However, the erstwhile promoter failed to comply with the order of the Hon'ble Bombay High Court resulting in appointment of Court Receiver and eventual

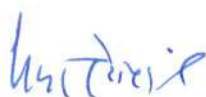


termination of the development agreement. Since the development agreement with the erstwhile promoter was terminated pursuant to the order of the Hon'ble High Court, therefore, the fresh registration was necessary for the promoter with whom the society entered into development agreement dated 10.08.2022. The new registration is lawfully obtained and is legally valid. This is not the case of transfer of the rights and interest from the erstwhile promoter to new promoter, hence, provisions of Section 15 of RERA Act, 2016 do not apply. Appointment of new promoter is done pursuant to the direction of the Hon'ble High Court.

35. It is also the contention of the society that there is no privity of contract with the appellants, hence society is not under obligation towards allottees, which arise from the erstwhile promoter, whose development rights were already terminated. The validity and enforceability of the said agreements for sale, remain subject to prevailing statutory and contractual framework. The society cannot be held accountable for obligation arising from the agreement executed between the appellants and the erstwhile promoter.
36. The society contended that the members of the society have been without permanent housing since 2014, more than 11 years and have encountered significant challenges related to shelter, non-receipt of rent from erstwhile promoter, and covid-19 pandemic. Hence, the equity lies with the members of the society. With these submissions, the society has prayed to dismiss the appeals.



37. The learned Advocate for the new promoter has submitted that the Hon'ble Bombay High Court vide its order dated 12.12.2019 in the Arbitration Petition No.1470 of 2019 expressly permitted the society to either complete the project on its own by appointing contractor or appoint a new promoter. Pursuant thereto, society appointed the new promoter as the promoter of the said project by executing development agreement dated 10.08.2022 and such appointment was made in due compliance with the said order dated 12.12.2019 of the Hon'ble Bombay High Court. Further, erstwhile registration of the project lapsed on 18.05.2022 and development rights of the erstwhile promoter were already lawfully terminated by the society and confirmed by the Hon'ble High Court in the Arbitration Petition No.1470 of 2019.
38. The learned Advocate submitted that the new promoter in full compliance with the provisions of RERA Act, 2016 submitted an application for fresh registration of the project before the MahaRERA on 10.05.2023 and subsequently registration was duly granted vide registration certificate dated 08.06.2023. The development agreement dated 10.08.2022 is completely a fresh development agreement and not a takeover of project from erstwhile promoter. The new project registration was duly granted by the MahaRERA after considering the valid approvals from the competent authorities. Further, the new promoter made full disclosure as required under the provisions of the Act and therefore the said registration is not required to be interfered by a private dispute between the appellants and the erstwhile promoter. Since the new promoter has no



involvement in the erstwhile project, no relief of refund, possession, interest and penalty or compensation can be fastened against the new promoter. The appellants grievance if any, lie against the erstwhile promoter.

39. The learned Advocate submitted that the appellants have not disclosed any specific act, omission, representation, or assurance on the part of the new promoter. Neither appellants made out any case of transfer of funds to new promoter, nor any brochure, advertisement, or assurance issued by new promoter towards the appellants. No consideration is paid to the new promoter nor any contractual liability created between the appellants and the new promoter. Thus, there is absolutely no privity of contract between the appellants and new promoter. Arbitration proceedings are between the society and the erstwhile promoter. The appellant being neither party to the development agreement nor to the arbitration proceedings, cannot claim independent reliefs against the new promoter. The contractual obligations from the agreements for sale are strictly inter-se, between the parties to the agreements of sale. New promoter has not derived any rights, benefits or interest nor has it assumed or undertaken any liabilities or obligations arising from the agreements for sale. Consequently, any claim sought to be enforced by the appellants under said agreement for sale are legally maintainable, if any, only against the erstwhile promoter and not against the new promoter.
40. The learned Advocate submitted that the allegations of non-performance of non-compliance with Section 15 of the RERA



Act, are wholly misconceived and devoid of any merits. All the requisite approvals, permissions and procedural formalities were duly complied with and the transfer of development rights in favour of new promoter was carried out in strict conformity with the applicable statutory provisions. The termination of the erstwhile promoter and the appointment of new promoter were effected pursuant to and in accordance with the order dated 12.12.2019 of the Hon'ble High Court in the Arbitration Petition No.1470 of 2019. Consequently, the question of obtaining the consent of 2/3<sup>rd</sup> allottees under section 15 of RERA Act, 2016 does not arise since the change of promoter was effected pursuant to the said order dated 12.12.2019 passed by the Hon'ble High Court and not by way of voluntary transfer of interests from the erstwhile promoter to the new promoter. The present case is not transfer of the development rights or interests between the erstwhile promoter and new promoter. Hence, the assets and liabilities of the erstwhile promoter are not binding upon the new promoter. Hence, the present case is not covered by Section 15 of the RERA Act, 2016 and there are no violations of the said provisions. With these submissions, the learned Advocate for the new promoter prayed to dismiss the appeals.

41. In support of the above contentions, the learned Advocate for the new promoter has placed reliance on the following judgement.

*Tuvin Constructions LLP V/s. State of Maharashtra,  
(Through Urban Development Department) and another*

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[Writ Petition No.1673 of 2025 decided by the Hon'ble  
Bombay High Court on 9<sup>th</sup> September, 2025]

42. After hearing the learned Advocate for the parties at length and on examination of the pleading, the material on record, the impugned order, reply, written submissions, the points that arise for our consideration as under and we have recorded our findings thereupon, for the reasons to follow, as below.

<b>Sr.No.</b>	<b>Points</b>	<b>Findings</b>
1	Does the society fall under the of "promoter" under the provisions of RERA Act, 2016 and therefore obligated to discharge the liabilities created by erstwhile promoter towards the appellants/ allottees?	In the negative.
2.	Is the new promoter is obligated to discharge the liabilities created by the erstwhile promoter towards the appellants/ allottees?	In the negative.
3.	What is the remedy available to the appellants/allottees to seek relief under the	As per the final order

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	respective agreements for sale?	
4.	Whether there is any violation of Section 15 of the RERA Act, 2016?	In the negative.
5.	Does impugned order warrants interference in these appeals	In the negative.
6.	What order?	As per final order.

## **REASONS**

### **Point No.1, 2 and 3**

43. From the pleadings and submissions made by the parties it reveals that the society is owner of project property and had entered into development agreement dated 06.09.2013 with the erstwhile promoter for redevelopment of its property to redevelop, envisaging construction of the society building to accommodate its members, and also construction of flats/premises to be sold to the outsiders by the erstwhile promoter. The development agreement entitles the erstwhile promoter to construct buildings and sell flats/premises therein to outsiders. Such authority or entitlement is to the promoter's own account and in its own right as an independent contractor. After obtaining the requisite permissions from the concerned authorities, the erstwhile promoter launched the subject project, appellants/allottees purchased subject flats from the sale component of the project and paid substantial amounts to



the erstwhile promoter, which are used for construction of rehabilitation building as well as and sale component.

44. It is seen from the submissions of the parties and the material on record particularly the development agreement dated 06.09.2013 that the terms of the development agreement executed by and between the society and the erstwhile promoter have clearly provided in no uncertain manner that the erstwhile promoter was entitled to construct free sale component on his own account as an independent contractor and erstwhile promoter alone would be liable and responsible to the flat buyers in case of delay in construction and other issues and shall bear all the related consequences. Thus, society is kept absolved of any obligations relating to the erstwhile promoter towards allottees, who executed agreements for sale with the erstwhile promoter. Thus, the terms of the development agreement create no vested rights or obligations of the allottees which the society is liable to discharge as a "promoter" nor there is any document to establish that the society has privity of contract with allottees. All the agreements for sale have been issued by the erstwhile promoter with the allottees and society is not party to such agreements. Therefore, it is the contention of the society that it cannot be termed as promoter, liable to perform obligations towards the allottees.

45. It is the contention of the appellants that the society is a promoter under Section 2(zk) by virtue of RERA Circular No.12 of 2017 dated 04.12.2017 whereby the Authority has directed the land owners/investors to register society as co-promoter if



they have area sharing or revenue sharing arrangement with the promoter. It is the contention of the appellants that the members of the society were getting 52% additional area above existing areas of their flats in the re-habilitation component along with rent and corpus fund from the erstwhile promoter. Further, out of the monies paid by the appellants and other flat purchasers society was getting area sharing revenue sharing arrangement, out of the project free of cost. Hence, the society is promoter of the project.

46. We do not find any merits in the said contentions. There is no provision in the development agreement in respect of area sharing and revenue sharing arrangement out of the sale component and additional area of the flat of members of the re-habilitation component in no manner can be construed as area sharing arrangement or profit-sharing arrangement with the erstwhile promoter out of the sale component.
47. It is not the case of the allottees that there is privity of contract with the society nor the society was party to the agreements for sale executed by the erstwhile promoter with the allottees. It is also not in dispute that while the erstwhile promoter registered the project with the MahaRERA as an ongoing project, the society was not shown as promoter or co-promoter of the project. The erstwhile promoter was alone shown as promoter of the said project. Further, the development agreement was executed with the erstwhile promoter on principal-to-principal basis and there is no principal agent relationship between the society and the erstwhile promoter.

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48. The society on non-performance or deficiency on the part of the erstwhile promoter to complete the building project in accordance with the terms of the development agreement, terminated the said development agreement, which is confirmed by the order of the Hon'ble Bombay High Court dated 12.12.2019 in the arbitration petition no.1470 of 2019, whereby the society was permitted to complete the project either on its own by appointing a contractor or appointing new promoter.
49. In the above circumstances, the issue of whether the allottees who have executed and registered the agreements for sale with the erstwhile promoter can enforce their agreements for sale or any entitlements against the society or its property or the new promoter appointed by the society as well as whether the society can be termed as promoter within section 2 (zk) of the RERA Act, 2016 have been answered by the series of judgments of the Hon'ble Bombay High Court.
50. The Hon'ble Bombay High Court in case of *Vaidehi Akash Housing Pvt. Ltd. Versus New D. N. Nagar Co.-Op. Housing Society Union Ltd. & Ors [2014 SCC Online Bom.5068]* has held as under.

*"88. The Society is the owner of the property and has entered into an agreement with the developers, i.e. Vaidehi, for redevelopment of its property. The redevelopment envisages construction of the Society's building to accommodate its members and also construction of building/s of flats/premises to be sold to outsiders. The agreement authorizes or entitles the*

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*developers to construct such building/s and sell flats/premises therein to outsiders. Such authority or entitlement is to the developers account and in their own right and as an independent contractor. If in exercise of such authority or entitlement, a building is constructed by the developers, it cannot be said that such building is caused to be constructed by the Society within the meaning of Section 2(c) of the MOFA.*

*89. Any other interpretation would lead to anomalous consequences, which could never have been contemplated by MOFA..."*

51. In the case of *Goregaon Pearls CHSL Versus Dr. Seema Mahadev Paryekar & Ors. [Appeal from Order (Stamp) No.22143 of 2019 decided on 14<sup>th</sup> September, 2019 by the Hon'ble Bombay High Court]*, the Hon'ble Bombay High Court reiterated the above position in *Vaidehi Akash Housing Pvt. Ltd. (supra)* in the context of RERA. The Hon'ble High Court in para-6 and 8 of the said judgement has held as under:

*"6. Learned Counsel for Respondent No.1, however, makes a few legal submissions based on the provisions of the newly enacted Real Estate (Regulation and Development) Act, 2016 ('RERA'). Relying on these provisions and in particular, the definition of "promoter" contained in Clause (zk) of Section 2 thereof, learned Counsel submits that the Appellant society is one, who has caused to be constructed a building consisting of apartments for the purpose of selling apartments to other persons and as much as Respondent No.2 developer, it*



*must be treated as a promoter of the project under the provisions of RERA. I am afraid, prima facie It is not possible to accept this submission. This court, in its judgment delivered in the case of Vaidehi Akash Housing Pvt. Ltd. vs. New D.N. Nagar Co-op. Housing Society Union Ltd., has considered a more or less similarly worded definition of "promoter" in Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 ("MOFA") in the context of a similar development agreement, where the landowner society had terminated the agreement on account of breaches of the developer and third party purchasers claiming under the developer had claimed that the society should be treated as a promoter and be asked to complete the project. This court held that there was no privity of contract in such a case as between the society and third-party purchasers, claiming through the developer. If, for any justifiable reason, the development agreement is terminated by the society and the developer is unable to obtain specific performance of the development agreement as against the society, no third-party purchaser claiming under the developer can likewise seek specific performance against the society. This Court, in Vaidehi Akash, observed as follows:*

*"15.7 Let us now consider if these third-party purchasers have any rights under MOFA against the Society. It is submitted on their behalf that the Society is very much a 'promoter' within the meaning*

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*of MOFA as regards their respective agreements for sale. Learned Counsel for the purchasers rely upon the definition of "promoter" contained in Section 2(c) of MOFA. The definition is in the following terms:*

*"promoter" means a person and includes a partnership firm or a body or association of persons, whether registered or not who constructs or causes to be constructed a block or building of flats, or apartments for the purpose of selling some or all of them to other persons, or to a company, co-operative society or other association of persons, and includes his assignees; and where the person who builds and the person who sells are different persons, the term includes both."*

*It is submitted that the Society can at any rate be said to have caused the building of flats to be constructed for the purpose of selling the same, and as a person, who causes such building to be built, is as much a promoter as a person who sells premises in such building.*

*15.8 The Society is the owner of the property and has entered into an agreement with the developers, i.e. Vaidehi, for redevelopment of its property. The redevelopment envisages construction of the Society's building to accommodate its members and also construction of building/s of flats/premises to be sold to outsiders. The agreement authorizes or*

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*entitles the developers to construct such building/s and sell flats/premises therein to outsiders. Such authority or entitlement is to the developers' account and in their own right, and as an independent contractor. If in exercise of such authority or entitlement, a building is constructed by the developers, it cannot be said that such building is caused to be constructed by the Society within the meaning of Section 2(c) of MOFA.*

*15.9 Any other interpretation would lead to anomalous consequences, which could never have been contemplated by MOFA. The owners of lands entering into agreements for sale or development agreements with promoters/developers would be held as being subject all liabilities of a promoter, such as liability of disclosure of plans and specifications, outgoings etc. under Section 3 of MOFA, entering into agreements in accordance with Section 4, giving possession of flats and suffering the consequences of Section 8, forming co-operative societies of flat purchasers under Section 10, and so on. This would be plainly inconceivable.*

*15.10 Prima facie, thus, there is no case to treat the Society, who is merely in the position of an owner vis-a-vis the third party purchasers, as a 'promoter' within the meaning of MOFA and foist the obligations of a promoter on the Society in relation to the purchasers."*

8. *The provisions of RERA do not make any difference either. RERA has been introduced to establish a regulatory authority for regulation and promotion of the real estate sector and to ensure sales in the sector in an efficient and transparent manner and to protect consumers of the sector. The definition of 'promoter' in RERA, for our purposes, is on similar lines as MOFA. Section 18 of RERA, on which strong reliance is placed by learned Counsel for Respondent No.1, requires promoters to discharge their obligations and provides remedies for the purchasers, without prejudice to the purchasers' other rights, in the event of the promoters' failure to discharge the obligations. Section 19, which follows, entitles the allottee to obtain possession of the flat or apartment. Any grievance of the purchaser under RERA is redressed by the regulatory authority appointed under It. None of these provisions either make the owner of the freehold or leasehold interest in the land, who enters into a development agreement with a developer (who, in turn, enters into flat purchase agreements with third parties on the basis of such development agreement), liable for complying with the obligations of the developer under RERA. In fact, if at all there is any doubt in respect of the position of landowners vis-a-vis development projects registered under RERA, particularly where such landowners are entitled to a share in the total revenue generated from sale of apartments, the same has now been clarified by Maharashtra Real Estate Regulatory*

*Authority that only such individuals/organizations would fall within the definition of 'promoter' in RERA, on account of being landowners, as would be specified as such at the time of on-line registration with the Authority. It is nobody's case that the Appellant society is such specified promoter in the on-line registration. Besides, grievance, if any, in this behalf must be addressed to the regulatory authority thereunder, and not to a civil court. There is, thus, no merit in any of the submissions of learned Counsel based on RERA."*

Thus, the said judgment has also reiterated the ratio as held by the Hon'ble Bombay High Court in the case of *Vaidehi Akash Housing Pvt. Ltd. (supra)*. Pertinently, in the present case, the society has not been shown as land owner promoter while the registration of the project with the MahaRERA by the erstwhile promoter.

52. The Division Bench of Hon'ble Bombay High Court in the case of *Deepak Prabhakar Thakoor & Ors. Versus Maharashtra Housing and Area Development Authority (MHADA) & Ors [W.P. (L) No.1776 of 2023 decided on 12<sup>th</sup> October, 2023 by the Division Bench of Hon'ble Bombay High Court]* in para-7 and 14 has reaffirmed the ratio of the judgement in *Goregaon Pearl (supra)* has held as under:

*"7. These two provisions read together are nothing more than an indemnity. They do not and cannot be held to create substantive right in praesenti to the Society building and properties nor in respect of the development rights of the Society in regard to the property that the*

*Society itself owns. At best, if there is a claim that the Petitioners have against the developer, it may be open for the developer to then claim that the developer is fully indemnified by the undertaking given by the Society and which is Condition 16 of the MHADA permission.*

*14. We now reaffirm Goregaon Pearl as well."*

In the above judgment also, the Hon'ble High Court has reaffirmed and confirmed the ratio in case *Goregaon Pearls* (supra).

53. The Hon'ble Bombay High Court in the case of *Kapilkunj Co-operative Housing Society Ltd Versus State of Maharashtra & Ors [W.P.No.2157 of 2021 decided on 12<sup>th</sup> & 13<sup>th</sup> December, 2023 by the Division Bench of Hon'ble Bombay High Court]* in para-23 and 42 has held as under:

*"23. The Society will have to now take an informed decision in regard to its redevelopment agreement and about the completion of the construction at the Society's cost. We understand that there are third party sale agreements that may have been entered into by Ved. These will not be allowed to compromise the rights of the members. In any case, even as against the rights of the Society, the claims of third party purchasers and their rights are issues that have been decided by this Court in *Vaidehi Aakash Housing Pvt Ltd v New DN Nagar Co-op Housing Society Union Ltd & Ors* and *Goregaon Pearl CHSL v Dr Seema Mahadev Paryekar & Ors.*, and both of which our Division Bench in *Deepak Prabhakar Thakoor & Ors v MHADA & Ors* has reaffirmed. Third party purchasers will*

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*have no rights over the assets of the Society. If, therefore, the balance development is done by the Society following a termination of its redevelopment agreement, then any additional Floor Space Index ("FSI") or buildable area benefits will be to the benefit of the Society and may be used to defray costs.*

*41. Some of the Respondents to the Petition are third party flat purchasers. Once again, as we have set out above, their rights as against Ved are preserved intact in law by series of judgements including our own reaffirmation as a Division Bench of two decisions of the Single judge in Vaidehi Akash and Goregaon Pearl. This necessarily means that after termination of the agreement, third party flat purchasers have no rights, claims or equities in respect of assets of the Society. This means not only the original structure but the entire redevelopment project including all additional FSI and all free sale components. It is always open to those flat purchasers to negotiate with the Society. It is, however, clear that amounts paid to Ved cannot possibly given credit to by the Society. This Court has already repeatedly held that in such a situation, in law, there is absolutely no privity of contract between third party purchasers and the Society or its members. We decline to revisit that aspect of the law or permit fresh arguments re-agitating the same issue. This law is no longer res integra.*

*42. It is impossible for any authority or tribunal, such as Maharashtra Real Estate Regulatory Authority*

*("MahaRERA"), to take a different view in law. The law declared by this court will control every single tribunal in the State of Maharashtra including MahaRERA."*

54. The Division Bench of the Hon'ble High Court in the case of *Rakhi Kamal Thakur nee Rakhi Hiralal Rohra Versus M/s. Rebuilt & Ors [Appeal from Order No.534 of 2023 with I.A.No.13262 of 2023 decided on 31<sup>st</sup> August 2023 by the Hon'ble Bombay High Court]* in para-10 has held as under:

*"10. Ms. Khanwilkar, the learned counsel for the defendant No. 5 would urge that the controversy sought to be raised on behalf of the plaintiff as regards the liability of the society and the subsequent developer, as the promoters, is no longer res integra. A Single Judge of this Court in the case of Vaidehi Akash Housing Pvt Ltd Vs. New D. N. Nagar Co-op Housing Society Union Ltd and Others has enunciated the law in clear and explicit terms that if the rights of a prior developer are brought to an end upon a lawful termination of the Development Agreement, the third party purchasers cannot lay any independent claim against the Society or anyone claiming through the Society."*

55. The Hon'ble Bombay High Court in case of *Tuvin Constructions LLP V/s. State of Maharashtra, (Through Urban Development Department) and another [Writ Petition No.1673 of 2025]* decided by the Hon'ble Bombay High Court on 9<sup>th</sup> September, 2025], has reiterated the law laid down in *Vaidehi Akash Housing Pvt. Ltd. (supra)* and *Goregaon Pearl CHSL (supra)*, *Deepak Prabhakar Thakoor and others (supra)*. The Hon'ble

Bombay High Court in paras-14 and 15 of the said judgement has held as under:

*14. We are of the considered view that such a condition imposed by MahaRERA vide the impugned communication, is contrary to the settled law, as laid down by this Court in Vaidehi Akash Housing Pvt. Ltd. vs. New D. N. Nagar Co-op. Housing Society Union Ltd. and others (supra), Goregaon Pearl CHSL vs. Dr. Seema Mahadev Paryekar and others (supra) and as confirmed by the Division Bench of this Court in Deepak Prabhakar Thakoor and others vs. Maharashtra Housing and Area Development Authority (MHADA) and others (supra). It has been the consistent view of this Court that there is no privity of contract between the Society or new developer, as in the present case, with third party purchasers claiming through the erstwhile developer. Where the Development Agreement is terminated by the Society and the erstwhile developer is unable to obtain specific performance of the Development Agreement against the Society, no third party developer can seek specific performance against the Society or new developer, as in the present case.*

*15. In the present case, the promoter is the Petitioner-new developer, who has made the application for registration of the Petitioner's project with MahaRERA. The contention on behalf of Respondent No.2-MahaRERA that the Society is the co-promoter and in view of the Society having transferred its majority rights in the RERA project to the new developer, prior written consent from 2/3rd allottees is*

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*mandated is in our view, misconceived. The Society cannot be considered as co-promoter as it is the erstwhile developer, who alone can be considered as the erstwhile promoter of the project and upon termination of the erstwhile developer vide Arbitral Award dated 28.11.2023 passed in Arbitration Petition No.44 of 2022, any allottee of the erstwhile developer cannot make a claim against the new developer, who is appointed pursuant to the Development Agreement and Power of Attorney executed by the Society on 03.10.2024."*

From the above settled position of law, the society clearly does not fall within the terms "promoter" under section 2(zk) (i) of the RERA Act.

56. The development agreement having been lawfully terminated, the allottees who have executed agreements for sale with the erstwhile promoter cannot claim performance of their agreements for sale against the society as well as the new promoter. The Hon'ble Bombay High Court has laid down this position and reiterated the same in series of judgments as mentioned above. This Tribunal also re-iterated the above settled position of law in various judgments viz: *Samudra Darshan CHS Ltd Versus Peter Almeida & Ors* [Appeal No.AT006000000053403 decided on 6<sup>th</sup> May, 2022 by the Maharashtra Real Estate Appellate Tribunal, Mumbai] and *Hava Hira CHS Ltd Versus Hava Hira Flat Purchasers Association and Ors.* [MA No.614 of 2019 in Appeal No.AT006000000052078 decided on 6<sup>th</sup> January, 2021 by the Maharashtra Real Estate Appellate Tribunal, Mumbai].

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57. The definition of "promoter" is very wide. However, in the context of definition of "promoter" under RERA, the Division Bench of the Hon'ble Bombay High Court in the case of *Goregaon Pearl CHSL* (supra) has categorically held that "The provisions of RERA do not make any difference either. RERA has been introduced to establish a regulatory authority for regulation and promotion of the real estate sector and to ensure sales in the sector in an efficient and transparent manner and to protect consumers of the sector. The definition of 'promoter' in RERA, for our purposes, is on similar lines as MOFA. Section 18 of RERA, on which strong reliance is placed by learned Counsel for Respondent No.1, requires promoters to discharge their obligations and provides remedies for the purchasers, without prejudice to the purchasers' other rights, in the event of the promoters' failure to discharge the obligations. Section 19, which follows, entitles the allottee to obtain possession of the flat or apartment. Any grievance of the purchaser under RERA is redressed by the regulatory authority appointed under It. None of these provisions either make the owner of the freehold or leasehold interest in the land, who enters into a development agreement with a developer (who, in turn, enters into flat purchase agreements with third parties on the basis of such development agreement), liable for complying with the obligations of the developer under RERA". [emphasis added]
58. In the present cases, there is no privity of contract with the Society, who has validly terminated development agreement with the erstwhile promoter. As the law laid down in *Vaidehi*

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*Akash Housing Pvt. Ltd.* (supra) and *Goregaon Pearl CHSL* (supra), *Deepak Prabhakar Thakoor and others* (supra) is that the "society" is not the promoter and third-party purchasers from the erstwhile developer cannot claim their rights against the society or anyone claiming through society including the new promoter.

59. Normally, in redevelopment project there can be hardly cash consideration for rehabilitation component, which is the fact of the matter in the present cases. In other words, there is no cash contribution on the part of the members of the society in construction of such rehabilitation component of building. The society executed the power of attorney in favour of erstwhile promoter and by virtue of Development Agreement the society authorized the erstwhile promoter to construct building/s, flats to be sold to the outsiders. It is the contention of the allottees that the erstwhile promoter used their money for construction of the building and thus the society derived the benefits from the amounts from the allottees in constructing the building. Thus, the allottees financed the construction of the project from the monies of the allottees.

60. However, in both *Goregaon Pearl CHSL versus Dr. Seema Mahadev Paryekar & Others* [Para 3] and in *Vaidehi Akash Housing Pvt Ltd. versus New D. N. Nagar C.H.S. Union Ltd & Others* [Para 9], (supra) despite partial construction having been carried out by the erstwhile promoters in those cases, the Hon'ble Bombay High Court had held the "societies" therein to not be promoters *qua* the third-party flat purchasers who were claiming through the erstwhile promoters. Further, the Hon'ble

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Bombay High Court in the case of *Kapilkunj Co-operative Housing Society Ltd.* (supra) has categorically held that “*Some of the Respondents to the Petition are third party flat purchasers. Once again, as we have set out above, their rights as against Ved are preserved intact in law by series of judgements including our own reaffirmation as a Division Bench of two decisions of the Single judge in Vaidehi Akash and Goregaon Pearl. This necessarily means that after termination of the agreement, third party flat purchasers have no rights, claims or equities in respect of assets of the Society. This means not only the original structure but the entire redevelopment project including all additional FSI and all free sale components. It is always open to those flat purchasers to negotiate with the Society. It is, however, clear that amounts paid to Ved cannot possibly given credit to by the Society.*” [Emphasis added] From the above, it is clear that allottees having the project financed do not make any material difference so far as their claim against the society or anyone through the society including the new promoter.

61. As already observed above, the Hon’ble Bombay High Court has laid down the law and re-iterated in the judgments discussed above, wherein it has been held that the third-party purchasers have no privity of contract and therefore cannot claim their rights against the society or anyone through the society including the new promoter.
62. Reiterating above position of law, the Hon’ble Bombay High Court in the case of *Kapilkunj Co-operative Housing Society Ltd.(supra)* in para-23 and 42 has categorically held as under:



"23. *The Society will have to now take an informed decision in regard to its redevelopment agreement and about the completion of the construction at the Society's cost. We understand that there are third party sale agreements that may have been entered into by Ved. These will not be allowed to compromise the rights of the members. In any case, even as against the rights of the Society, the claims of third party purchasers and their rights are issues that have been decided by this Court in Vaidehi Aakash Housing Pvt Ltd v New DN Nagar Co-op Housing Society Union Ltd & Ors and Goregaon Pearl CHSL v Dr Seema Mahadev Paryekar & Ors., and both of which our Division Bench in Deepak Prabhakar Thakoor & Ors v MHADA & Ors has reaffirmed. Third party purchasers will have no rights over the assets of the Society. If, therefore, the balance development is done by the Society following a termination of its redevelopment agreement, then any additional Floor Space Index ("FSI") or buildable area benefits will be to the benefit of the Society and may be used to defray costs.*

41. *Some of the Respondents to the Petition are third party flat purchasers. Once again, as we have set out above, their rights as against Ved are preserved intact in law by series of judgements including our own reaffirmation as a Division Bench of two decisions of the Single judge in Vaidehi Akash and Goregaon Pearl. This necessarily means that after termination of the agreement, third party flat purchasers have no rights,*

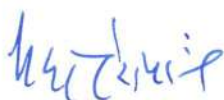
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*claims or equities in respect of assets of the Society. This means not only the original structure but the entire redevelopment project including all additional FSI and all free sale components. It is always open to those flat purchasers to negotiate with the Society. It is, however, clear that amounts paid to Ved cannot possibly given credit to by the Society. This Court has already repeatedly held that in such a situation, in law, there is absolutely no privity of contract between third party purchasers and the Society or its members. We decline to revisit that aspect of the law or permit fresh arguments re-agitating the same issue. This law is no longer res integra.*

42. It is impossible for any authority or tribunal, such as Maharashtra Real Estate Regulatory Authority ("MahaRERA"), to take a different view in law. The law declared by this court will control every single tribunal in the State of Maharashtra including MahaRERA."

*[emphasis added]*

63. From the discussion above, the position of law is now clear that the society is not "promoter" under the provisions of RERA Act, 2016. Further, the allottees who have executed agreements for sale with the erstwhile promoter have no privity of contract with the society or the new promoter and therefore cannot claim their rights against the society or anyone through the society including the promoter. The only remedy available to the third-party purchasers/allottees is against the erstwhile developer, who have executed the agreements for sale with

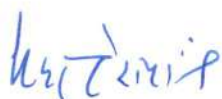


the allottees. Accordingly, we answer the point no.1 and point no.2 in the negative and point no.3 accordingly.

**Point No.4, 5, and 6**

64. It is the contention of the appellants/allottees that the new promoter has violated Section 15 of the RERA Act, 2016. It is pertinent that the MahaRERA granted new registration to the new promoter after ascertaining that the new promoter has obtained necessary approvals, permissions and following procedural formalities duly complied with. This is not the case that the transfer of development rights or interests arising in favour of new promoter from the erstwhile promoter. The termination of the erstwhile promoter and appointment of new promoter were effected pursuant to and in accordance with the order dated 12.12.2019 in the Arbitration Petition No.1470 of 2019 passed by the Hon'ble Bombay High Court. Consequently, the question of obtaining consent of 2/3<sup>rd</sup> allottees does not arise. Such change of promoter was effected pursuant to the said order dated 12.12.2019 passed by the Hon'ble Bombay High Court and not due to any voluntary transfer of rights from the erstwhile promoter to new promoter. The present case is not a transfer of development rights from the erstwhile promoter to a new promoter and therefore the provisions of Section 15 of the RERA Act, 2016 are not attracted in the present case.

65. It is pertinent that the Hon'ble Bombay High Court in the case of *Tuvin Constructions LLP V/s. State of Maharashtra, through Urban Development Department and another* [Writ Petition No.1673 of 2025 decided on 09.09.2025 by the Hon'ble



Bombay High Court] has considered the issue where the petitioner (new promoter) therein was seeking direction to MahaRERA to process petitioner's application for change of name of the erstwhile promoter of the project in the name of petitioner and/or record fresh registration of the project in the name of petitioner without the liability of the allottees of the erstwhile promoter, by cancelling existing registration of the said erstwhile promoter. The petitioner had also sought to dispense with the condition of obtaining 2/3<sup>rd</sup> consent of allottees or any consent from the allottees of the erstwhile promoter, if any, to change the name of promoter from the name of erstwhile promoter to the name of the petitioner.

66. While answering the said issue, the Hon'ble Bombay High Court in para-14 , 15,16 and 17 has held as under:

*"14. We are of the considered view that such a condition imposed by MahaRERA vide the impugned communication, is contrary to the settled law, as laid down by this Court in **Vaidehi Akash Housing Pvt. Ltd. V/s. New D.N. Nagar Co-op. Housing Society Union Ltd. and others (supra)**, **Goregaon Pearl CHSL Vs. Dr. Seema Mahadev Paryekar and others (supra)** and as confirmed by the Division Bench of this Court in **Deepak Prabhakar Thakoor and others vs. Maharashtra Housing and Area Development Authority (MHADA) and others (supra)**. It has been the consistent view of this Court that there is no privity of contract between the Society or new developer, as in the present case, with third party purchasers claiming through the erstwhile*

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*developer. Where the Development Agreement is terminated by the Society and the erstwhile developer is unable to obtain specific performance of the Development Agreement against the Society, no third party developer can seek specific performance against the Society or new developer, as in the present case.*

*15. In the present case, the promoter is the Petitioner-new developer, who has made the application for registration of the Petitioner's project with MahaRERA. The contention on behalf of Respondent No.2-MahaRERA that the Society is the co-promoter and in view of the Society having transferred its majority rights in the RERA project to the new developer, prior written consent from 2/3<sup>rd</sup> allottees is mandated is in our view, misconceived. The Society cannot be considered as co-promoter as it is the erstwhile developer, who alone can be considered as the erstwhile promoter of the project and upon termination of the erstwhile developer vide Arbitral Award dated 28.11.2023 passed in Arbitration Petition No.44 of 2022, any allottee of the erstwhile developer cannot make a claim against the new developer, who is appointed pursuant to the Development Agreement and Power of Attorney executed by the Society on 03.10.2024.*

*16. In view thereof, the petitioner is entitled to dispensation of the condition of obtaining consent of 2/3<sup>rd</sup> allottees of the erstwhile developer for changing the name of the promoter i.e. from the erstwhile developer to that of the Petitioner.*

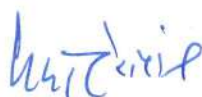
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17. Hence, the petition is allowed in terms of prayer clauses (a) and (b) which read thus:

*"a) This Hon'ble Court be pleased to issue Writ of Mandamus or Writ in the nature of Mandamus or any other appropriate Writ, Order or Direction under Article 226 of the Constitution of India, directing Respondent No.2 to process the application of Petitioner for change of name of the promoter of the project in the name of the Petitioner and/or record fresh registration of the project in the name of the Petitioner without the liability of the allottees of the erstwhile developer, by cancelling the existing registration of the said erstwhile developer.*

*b) that this Hon'ble Court be pleased to dispense with the condition of obtaining 2/3<sup>rd</sup> consent or any consent from the allottees of the erstwhile developer if any, to change the name of the promoter from the name of the erstwhile developer to the name of Petitioner."*

67. From the above, it is clear that the Hon'ble High Court directed the Authority to process the application of the new promoter for change of name of erstwhile promoter of the project in the name of new promoter and/or record fresh registration of the project in the name of new promoter without the liability of the allottees of the erstwhile promoter or cancelling the existing registration of the said erstwhile promoter. The Hon'ble Bombay High Court also directed to dispense with the condition of obtaining 2/3<sup>rd</sup> consent allottees or consent from the



erstwhile promoter to change the name of the promoter from erstwhile promoter to the new promote. Therefore, the position of law is very clear that the new promoter can obtain new registration of the project without carrying any liability of the allottees of the erstwhile promoter.

68. In view of the aforesaid discussion, we are of the view that the view taken by the Authority is legally sustainable and does not warrant any interference in these appeals. Accordingly, we answer point no.4 and 5 in the negative and Point no.6 accordingly.

69. In view of the above, we pass the following order.

**ORDER**

1. The captioned Appeal No. AT006/000000345507 of 2024, AT006/000000345508 of 2024, AT006/000000345509 of 2024, AT006/000000345510 of 2024, AT006/000000345511 of 2024, AT006/000000345512 of 2024, AT006/000000345617 of 2024 and AT006/000000345639 of 2024, are dismissed
2. Parties to bear their own costs.
3. Accordingly, all the captioned appeals stand 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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