



2026:KER:37190

WA Nos. 1058, 1059, 1060,
1063, 1064 & 1076 of 2026

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V

&

THE HONOURABLE MR. JUSTICE K. V. JAYAKUMAR

TUESDAY, THE 2ND DAY OF JUNE 2026 / 12TH JYAISHTA, 1948

WA NO. 1058 OF 2026

AGAINST THE ORDER DATED IN WP(C) NO.36488 OF 2024 OF THE
HIGH COURT OF KERALA

APPELLANTS/RESPONDENT NOS. 4 AND 5:

- 1 PRASANTH B
AGED 41 YEARS
17/156, THEKKEGRAMAM POST, CHITTUR,
PALAKKAD, PIN - 678103

- 2 THUSHARAA P V
AGED 34 YEARS
17/156, THEKKEGRAMAM POST, CHITTUR,
PALAKKAD, PIN - 678103

BY ADVS.
SRI.K.SHAJ
SMT.BEENA N.KARTHA
SRI.ARUN CHAND
SHRI.BHARAT VIJAY P.
SHRI.KEVIN JAMES
SMT.GOPIKA GOPAL



2026:KER:37190

WA Nos. 1058, 1059, 1060,
1063, 1064 & 1076 of 2026

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RESPONDENTS/PETITIONER AND RESPONDENT NOS. 1 TO 3 AND
6 TO 11:

- 1 HOYSALA PROJECTS PRIVATE LIMITED
AGED 56 YEARS
REPRESENTED BY ITS AUTHORIZED SIGNATORY,
JIBU K.K. NO. 104, GROUND FLOOR, INFANTRY TECHNO PARK,
INFANTRY ROAD, BANGALORE, PIN - 560001
- 2 STATE OF KERALA
REPRESENTED BY THE CHIEF SECRETARY SECRETARIAT,
THIRUVANANTHAPURAM, PIN - 695001
- 3 THE KERALA REAL ESTATE REGULATORY AUTHORITY
REPRESENTED BY ITS CHAIRMAN, 5TH FLOOR, SWARAJ BHAVAN,
NANTHANCOD, KOWDIAR P.O., THIRUVANANTHAPURAM, PIN -
695003
- 4 THE ADJUDICATION OFFICER
KERALA REAL ESTATE REGULATORY AUTHORITY, 5TH FLOOR,
SWARAJ BHAVAN, NANTHANCODE, KOWDIAR P.O.,
THIRUVANANTHAPURAM, PIN - 695003
- 5 E.V. MATHAI & SONS
EDAKKATTUKUYIL, KOTHAMANGALAM P.O.,
ERNAKULAM REPRESENTED BY ITS MANAGING PARTNER,
E.M. JOHNY,
PIN - 686691
- 6 E.M. PAUL
S/O E.V. MATHAI, EDAKKATTUKUYIL,
KOTHAMANGALAM P.O., ERNAKULAM, PIN - 686691
- 7 JOSE MATHEW
S/O. E.V. MATHAI, EDAKKATTUKUYIL,
KOTHAMANGALAM P.O., ERNAKULAM, PIN - 686691
- 8 E.M. JOHNNY
S/O. E.V. MATHAI, EDAKKATTUKUYIL,
KOTHAMANGALAM P.O., ERNAKULAM, PIN - 686691
- 9 TOMY MATHEW



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WA Nos. 1058, 1059, 1060,
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S/O. E.V. MATHAI, EDAKKATTUKUYIL,
KOTHAMANGALAM P.O., ERNAKULAM, PIN - 686691

10 KERALA REAL ESTATE APPELLATE TRIBUNAL
REPRESENTED BY ITS REGISTRAR, KURUVI BUILDING,
ST VINCENT ROAD, NEAR NORTH RAILWAY STATION
PIN - 682018
(SOUGHT TO BE IMPLEADED)

BY ADVS
ADV. E.K NANDAKUMAR (SENIOR COUNSEL)
ADV. SAIJO HASSAN
ADV. NANDAGOPAL S KURUP, SC FOR R3

THIS WRIT APPEAL HAVING COME UP FOR FINAL HEARING ON
02.06.2026, ALONG WITH WA.1059/2026, 1060/2026 AND
CONNECTED CASES, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:



2026:KER:37190

WA Nos. 1058, 1059, 1060,
1063, 1064 & 1076 of 2026

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IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT
THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V
&
THE HONOURABLE MR. JUSTICE K. V. JAYAKUMAR
TUESDAY, THE 2ND DAY OF JUNE 2026 / 12TH JYAISHTA, 1948

WA NO. 1059 OF 2026

AGAINST THE ORDER DATED 24.03.2026 IN WP(C) NO.36503 OF
2024 OF HIGH COURT OF KERALA

APPELLANT/4TH RESPONDENT:

BABU AHMED KABIR
AGED 78 YEARS, S/O ABDULLA, 12A, ALDEBARAN,
KOTTAPURAM ROAD, PUMKUNNAM P.O, THRISSUR,
PIN - 680002

BY ADVS.
SRI.K.SHAJ
SHRI.BHARAT VIJAY P.
SHRI.KEVIN JAMES

RESPONDENTS/PETITIONER:

- 1 HOYSALA PROJECTS PRIVATE LIMITED
REPRESENTED BY ITS AUTHORIZED SIGNATORY,
JIBU K.K. NO. 104, GROUND FLOOR,
INFANTRY TECHNO PARK, INFANTRY ROAD, BANGALORE,
PIN - 560001
- 2 STATE OF KERALA
REPRESENTED BY THE CHIEF SECRETARY, SECRETARIAT,
THIRUVANANTHAPURAM, PIN - 695001
- 3 THE KERALA REAL ESTATE REGULATORY AUTHORITY
REPRESENTED BY ITS CHAIRMAN, 5TH FLOOR, SWARAJ BHAVAN,
NANTHANCOD, KOWDIAR P.O., THIRUVANANTHAPURAM,
PIN - 695003



2026:KER:37190

WA Nos. 1058, 1059, 1060,
1063, 1064 & 1076 of 2026

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- 4 THE ADJUDICATION OFFICER
KERALA REAL ESTATE REGULATORY AUTHORITY, 5TH FLOOR,
SWARAJ BHAVAN, NANTHANCODE, KOWDIAR P.O.,
THIRUVANANTHAPURAM, PIN - 695003
- 5 E.V. MATHAI & SONS
EDAKKATTUKUYIL, KOTHAMANGALAM P.O., ERNAKULAM,
REPRESENTED BY ITS MANAGING PARTNER, E.M. JOHNNY,
PIN - 686691
- 6 E.M. PAUL
S/O E.V. MATHAI, EDAKKATTUKUYIL, KOTHAMANGALAM P.O.,
ERNAKULAM, PIN - 686691
- 7 JOSE MATHEW
S/O. E.V. MATHAI, EDAKKATTUKUYIL, KOTHAMANGALAM P.O.,
ERNAKULAM, PIN - 686691
- 8 E.M. JOHNNY
S/O. E.V. MATHAI, EDAKKATTUKUYIL, KOTHAMANGALAM P.O.,
ERNAKULAM, PIN - 686691
- 9 TOMY MATHEW
S/O. E.V. MATHAI, EDAKKATTUKUYIL, KOTHAMANGALAM P.O.,
ERNAKULAM, PIN - 686691
- 10 KERALA REAL ESTATE APPELLATE TRIBUNAL
REPRESENTED BY ITS REGISTRAR, KURUVI BUILDING,
ST VINCENT ROAD, NEAR NORTH RAILWAY STATION,
PIN - 682018
(SOUGHT TO BE IMPLEADED)

BY ADVS

ADV. E.K NANDAKUMAR (SENIOR COUNSEL)

ADV. SAIJO HASSAN

ADV. NANDAGOPAL S KURUP, SC FOR R3

THIS WRIT APPEAL HAVING COME UP FOR FINAL HEARING ON
02.06.2026, ALONG WITH WA.1058/2026 AND CONNECTED CASES, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



2026:KER:37190

WA Nos. 1058, 1059, 1060,
1063, 1064 & 1076 of 2026

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V

&

THE HONOURABLE MR. JUSTICE K. V. JAYAKUMAR

TUESDAY, THE 2ND DAY OF JUNE 2026 / 12TH JYAISHTA, 1948

WA NO. 1060 OF 2026

AGAINST THE ORDER DATED 24.03.2026 IN WP(C) NO.35451 OF
2024 OF THE HIGH COURT OF KERALA

APPELLANT/RESPONDENT NO.1:

EMILY EASO
AGED 56 YEARS
A/33, KRANTI TOWER, SHREENAGAR, WAGLE ESTATE, THANE,
MAHARASHTRA, PIN - 400604

BY ADVS.
SRI.K.SHAJ
SMT.BEENA N.KARTHA
SRI.ARUN CHAND
SHRI.BHARAT VIJAY P.
SHRI.KEVIN JAMES
SMT.GOPIKA GOPAL

RESPONDENT/PETITIONER & RESPONDENT NOS. 2 TO 7:

- 1 M/S HOYSALA PROJECTS PRIVATE LIMITED
REPRESENTED BY ITS AUTHORIZED SIGNATORY, JIBU K.K. NO.
104, GROUND FLOOR, INFANTRY TECHNO PARK, INFANTRY ROAD,
BANGALORE, PIN - 560001
- 2 E.V. MATHAI & SONS
EDAkkATTUKUYIL, KOTHAMANGALAM P.O., ERNAKULAM,



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WA Nos. 1058, 1059, 1060,
1063, 1064 & 1076 of 2026

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REPRESENTED BY ITS MANAGING PARTNER,
E.M. JOHNY, PIN - 686691

- 3 E.M. PAUL
S/O E.V. MATHAI, EDAKKATTUKUYIL,
KOTHAMANGALAM P.O., ERNAKULAM, PIN - 686691
- 4 JOSE MATHEW
S/O. E.V. MATHAI, EDAKKATTUKUYIL,
KOTHAMANGALAM P.O., ERNAKULAM, PIN - 686691
- 5 E.M. JOHNNY
S/O. E.V.MATHAI, EDAKKATTUKUYIL,
KOTHAMANGALAM P.O., ERNAKULAM, PIN - 686691
- 6 TOMY MATHEW
S/O. E.V.MATHAI, EDAKKATTUKUYIL, KOTHAMANGALAM P.O.,
ERNAKULAM, PIN - 686691
- 7 KERALA REAL ESTATE APPELLATE TRIBUNAL
REPRESENTED BY ITS REGISTRAR, KURUVI BUILDING, ST
VINCENT ROAD, NEAR NORTH RAILWAY STATION, PIN - 682018
(SOUGHT TO BE IMPLEADED)

BY ADVS.

ADV. E.K NANDAKUMAR (SENIOR COUNSEL)
ADV. NANDAGOPAL S KURUP, SC FOR R3
ADV. SAIJO HASSAN
ADV. BENOJ C AUGUSTIN
ADV. ABRAHAM J. KANIYAMPADY
ADV. SANGEETH MOHAN

THIS WRIT APPEAL HAVING COME UP FOR FINAL HEARING ON
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COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



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1063, 1064 & 1076 of 2026

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V

&

THE HONOURABLE MR. JUSTICE K. V. JAYAKUMAR

TUESDAY, THE 2ND DAY OF JUNE 2026 / 12TH JYAISHTA, 1948

WA NO. 1063 OF 2026

AGAINST THE ORDER DATED 24.03.2026 IN WP(C) NO.36421 OF
2024 OF THE HIGH COURT OF KERALA

APPELLANTS/RESPONDENT NOS. 4 AND 5:

- 1 PRAMOD BALAN
AGED 43 YEARS
S/O. LATE BALAN A, FLAT NO.11A,
VARMADRPAL'S HERITAGE, SASTHRI NAGAR, PAI ROAD,
POOJAPPURA, THIRUVANANTHAPURAM,
PIN - 695012
- 2 NIMISHA PRAMOD
AGED 41 YEARS
W/O. PRAMODBALAN, FLAT NO.11A,
VARMADRPAL'S HERITAGE, SASTHRI NAGAR, PAI ROAD,
POOJAPPURA, THIRUVANANTHAPURAM,
PIN - 695012

BY ADVS.
SRI.K.SHAJ
SMT.BEENA N.KARTHA
SRI.ARUN CHAND
SHRI.BHARAT VIJAY P.
SHRI.KEVIN JAMES
SMT.GOPIKA GOPAL



2026:KER:37190

WA Nos. 1058, 1059, 1060,
1063, 1064 & 1076 of 2026

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RESPONDENTS/PETITIONER & RESPONDENTS NOS. 1 TO 3 AND
6 TO 10:

- 1 HOYSALA PROJECTS PRIVATE LIMITED
REPRESENTED BY ITS AUTHORIZED SIGNATORY,
JIBU K.K. NO. 104, GROUND FLOOR,
INFANTRY TECHNO PARK, INFANTRY ROAD,
BANGALORE, PIN - 560001
- 2 STATE OF KERALA
REPRESENTED BY THE CHIEF SECRETARY SECRETARIAT,
THIRUVANANTHAPURAM, PIN - 695001
- 3 THE KERALA REAL ESTATE REGULATORY AUTHORITY
REPRESENTED BY ITS CHAIRMAN, 5TH FLOOR,
SWARAJ BHAVAN, NANTHANCOD, KOWDIAR P.O.,
THIRUVANANTHAPURAM,
PIN - 695003
- 4 THE ADJUDICATION OFFICER
KERALA REAL ESTATE REGULATORY AUTHORITY, 5TH FLOOR,
SWARAJ BHAVAN, NANTHANCODE, KOWDIAR P.O.,
THIRUVANANTHAPURAM, PIN - 695003
- 5 E.V. MATHAI & SONS
EDAKKATTUKUYIL, KOTHAMANGALAM P.O., ERNAKULAM,
REPRESENTED BY ITS MANAGING PARTNER,
E.M. JOHNY,
PIN - 686691
- 6 E.M. PAUL
S/O E.V. MATHAI, EDAKKATTUKUYIL,
KOTHAMANGALAM P.O., ERNAKULAM,
PIN - 686691
- 7 JOSE MATHEW
S/O. E.V. MATHAI, EDAKKATTUKUYIL,
KOTHAMANGALAM P.O., ERNAKULAM,
PIN - 686691
- 8 E.M. JOHNNY



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WA Nos. 1058, 1059, 1060,
1063, 1064 & 1076 of 2026

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S/O. E.V. MATHAI, EDAKKATTUKUYIL,
KOTHAMANGALAM P.O., ERNAKULAM,
PIN - 686691

9 TOMY MATHEW
S/O. E.V. MATHAI, EDAKKATTUKUYIL,
KOTHAMANGALAM P.O., ERNAKULAM, PIN - 686691

10 KERALA REAL ESTATE APPELLATE TRIBUNAL
REPRESENTED BY ITS REGISTRAR, KURUVI BUILDING,
ST VINCENT ROAD, NEAR NORTH RAILWAY STATION,
PIN - 682018
(SOUGHT TO BE IMPLEADED)

BY ADVS
ADV. E.K NANDAKUMAR (SENIOR COUNSEL)
ADV. SAIJO HASSAN
ADV. NANDAGOPAL S KURUP, SC FOR R3

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THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



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WA Nos. 1058, 1059, 1060,
1063, 1064 & 1076 of 2026

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V

&

THE HONOURABLE MR. JUSTICE K. V. JAYAKUMAR

TUESDAY, THE 2ND DAY OF JUNE 2026 / 12TH JYAISHTA, 1948

WA NO. 1064 OF 2026

AGAINST THE ORDER DATED 24.03.2026 IN WP(C) NO.36658 OF
2024 OF THE HIGH COURT OF KERALA

APPELLANTS/RESPONDENT NOS. 4 AND 5:

- 1 RAVINDRA P NAIR
AGED 68 YEARS
G-44, MAHINDRA PARK, OPPO. NAVAL DEPOT,
NARAYAN NAGAR, LBS MARG, GHATKOPAR (W),
MUMBAI, PIN - 400086

- 2 SUJATHA R NAIR
AGED 63 YEARS
G-44, MAHINDRA PARK, OPPO. NAVAL DEPOT,
NARAYAN NAGAR, LBS MARG, GHATKOPAR (W),
MUMBAI, PIN - 400086

BY ADVS.
SRI.K.SHAJ
SMT.BEENA N.KARTHA
SRI.ARUN CHAND
SHRI.BHARAT VIJAY P.
SHRI.KEVIN JAMES
SMT.GOPIKA GOPAL



2026:KER:37190

WA Nos. 1058, 1059, 1060,
1063, 1064 & 1076 of 2026

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RESPONDENTS/PETITIONER & RESPONDENTS NO. 1 TO 3 AND
6 TO 10:

- 1 HOYSALA PROJECTS PRIVATE LIMITED
REPRESENTED BY ITS AUTHORIZED SIGNATORY,
JIBU K.K. NO. 104, GROUND FLOOR,
INFANTRY TECHNO PARK,
INFANTRY ROAD, BANGALORE, PIN - 560001
- 2 STATE OF KERALA
REPRESENTED BY THE CHIEF SECRETARY,
SECRETARIAT, THIRUVANANTHAPURAM, PIN - 695001
- 3 THE KERALA REAL ESTATE REGULATORY AUTHORITY
REPRESENTED BY ITS CHAIRMAN, 5TH FLOOR,
SWARAJ BHAVAN, NANTHANCOD, KOWDIAR P.O.,
THIRUVANANTHAPURAM, PIN - 695003
- 4 THE ADJUDICATION OFFICER
KERALA REAL ESTATE REGULATORY AUTHORITY,
5TH FLOOR, SWARAJ BHAVAN, NANTHANCOD,
KOWDIAR P.O., THIRUVANANTHAPURAM, PIN - 695003
- 5 E.V. MATHAI & SONS
EDAKKATTUKUYIL, KOTHAMANGALAM P.O., ERNAKULAM
REPRESENTED BY ITS MANAGING PARTNER,
E.M. JOHNY, PIN - 686691
- 6 E.M. PAUL
S/O E.V. MATHAI, EDAKKATTUKUYIL,
KOTHAMANGALAM P.O., ERNAKULAM, PIN - 686691
- 7 JOSE MATHEW
S/O. E.V. MATHAI, EDAKKATTUKUYIL,
KOTHAMANGALAM P.O., ERNAKULAM, PIN - 686691
- 8 E.M. JOHNNY
S/O. E.V. MATHAI, EDAKKATTUKUYIL,
KOTHAMANGALAM P.O., ERNAKULAM, PIN - 686691
- 9 TOMY MATHEW
S/O. E.V. MATHAI, EDAKKATTUKUYIL,



2026:KER:37190

WA Nos. 1058, 1059, 1060,
1063, 1064 & 1076 of 2026

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KOTHAMANGALAM P.O., ERNAKULAM, PIN - 686691

10 KERALA REAL ESTATE APPELLATE TRIBUNAL
TRIBUNAL REPRESENTED BY ITS REGISTRAR,
KURUVI BUILDING, ST VINCENT ROAD,
NEAR NORTH RAILWAY STATION,
PIN - 682018
(SOUGHT TO BE IMPLEADED)

BY ADVS.

ADV. E.K NANDAKUMAR (SENIOR COUNSEL)

ADV. SAIJO HASSAN

ADV. NANDAGOPAL S KURUP, SC FOR R3

ADV. BENOJ C AUGUSTIN

ADV. ABRAHAM J. KANIYAMPADY

ADV. SANGEETH MOHAN

THIS WRIT APPEAL HAVING COME UP FOR FINAL HEARING ON
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COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



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1063, 1064 & 1076 of 2026

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V

&

THE HONOURABLE MR. JUSTICE K. V. JAYAKUMAR

TUESDAY, THE 2ND DAY OF JUNE 2026 / 12TH JYAISHTA, 1948

WA NO. 1076 OF 2026

AGAINST THE ORDER DATED 24.03.2026 IN WP(C) NO.36492 OF
2024 OF HIGH COURT OF KERALA

APPELLANTS/RESPONDENT NO. 4 AND 5:

- 1 M R GURU PRASAD
AGED 58 YEARS
FLAT NO.202, GARDEN GATE APARTMENT, MAVELI ROAD,
GANDHI NAGAR, KADAVANTHRA, ERNAKULAM, PIN - 682020
- 2 G N JAYA LAKSHMI
AGED 64 YEARS
FLAT NO.202, GARDEN GATE APARTMENT, MAVELI ROAD,
GANDHI NAGAR, KADAVANTHRA, ERNAKULAM, PIN - 682020

BY ADVS.
SRI.K.SHAJ
SMT.BEENA N.KARTHA
SRI.ARUN CHAND
SHRI.BHARAT VIJAY P.
SHRI.KEVIN JAMES
SMT.GOPIKA GOPAL



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WA Nos. 1058, 1059, 1060,
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**RESPONDENTS/PETITIONER & RESPONDENT NOS. 1 TO 3 AND
6 TO 11:**

- 1 HOYSALA PROJECTS PRIVATE LIMITED
REPRESENTED BY ITS AUTHORIZED SIGNATORY,
JIBU K.K., NO. 104, GROUND FLOOR,
INFANTRY TECHNO PARK,
INFANTRY ROAD, BANGALORE,
PIN - 560001
- 2 STATE OF KERALA
REPRESENTED BY THE CHIEF SECRETARY,
SECRETARIAT, THIRUVANANTHAPURAM, PIN - 695001
- 3 THE KERALA REAL ESTATE REGULATORY AUTHORITY
REPRESENTED BY ITS CHAIRMAN, 5TH FLOOR, SWARAJ BHAVAN,
NANTHANCOD, KOWDIAR P.O., THIRUVANANTHAPURAM,
PIN - 695003
- 4 THE ADJUDICATION OFFICER
REAL ESTATE REGULATORY AUTHORITY,
5TH FLOOR, SWARAJ BHAVAN, NANTHANCOD,
KOWDIAR P.O.,
THIRUVANANTHAPURAM,
PIN - 695003
- 5 E.V. MATHAI & SONS
EDAKKATTUKUYIL, KOTHAMANGALAM P.O.,
ERNAKULAM REPRESENTED BY ITS MANAGING PARTNER,
E.M. JOHNY,
PIN - 686691
- 6 E.M. PAUL
S/O E.V. MATHAI, EDAKKATTUKUYIL,
KOTHAMANGALAM P.O., ERNAKULAM,
PIN - 686691
- 7 JOSE MATHEW
S/O. E.V. MATHAI, EDAKKATTUKUYIL,
KOTHAMANGALAM P.O., ERNAKULAM,
PIN - 686691



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- 8 E.M. JOHNNY
 S/O. E.V. MATHAI, EDAKKATTUKUYIL,
 KOTHAMANGALAM P.O., ERNAKULAM,
 PIN - 686691
- 9 TOMY MATHEW
 S/O. E.V. MATHAI, EDAKKATTUKUYIL,
 KOTHAMANGALAM P.O., ERNAKULAM, PIN - 686691

BY ADV
ADV. E.K NANDAKUMAR (SENIOR COUNSEL)
ADV. SAIJO HASSAN
ADV. NANDAGOPAL S KURUP, SC FOR R3

THIS WRIT APPEAL HAVING COME UP FOR FINAL HEARING ON
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"CR"

COMMON JUDGMENT

[WA Nos. 1058, 1059, 1060, 1063, 1064 & 1076 of 2026]

These Writ Appeals have been preferred challenging the common order dated 24.03.2026 passed by the learned Single Judge of this Court in W.P.(C) Nos. 35451, 36421, 36488, 36492, 36503 and 36658 of 2024. By the said order, as an interim measure, the learned Single Judge permitted the writ petitioner who is a promoter/builder, to make payment of the pre-deposit as mandated under the proviso to sub-section (5) of Section 43 of the Real Estate (Regulation and Development) Act, 2016 (Act 16 of 2016), calculated on the basis of the Marginal Cost of Funds based Lending Rate (MCLR) prevailing as on the date of passing of the order. The said order is under challenge in these intra-court appeals filed under Section 5 of the Kerala High Court Act, 1958.

2. Before dealing with the contentions, it would be profitable to refer to the facts which led the writ petitioner to approach this Court.

3. As identical issues are involved, for the sake of clarity, W.A.No. 1063 of 2026 shall be taken as the lead case. The parties shall hereinafter be referred to as "allottee/buyer" and "promoter/builder" as the case may be.



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4. The allottees/buyers of a housing project by name "Hoysala EVM" apartments approached RERA and filed separate complaints. The gist of the allegations in the complaint are as under.

a) M/s. Hoysala Projects Pvt. Ltd. is the promoter/builder who entered into a Joint Venture Agreement with the other respondents for the development of a housing project by name "Hoysala EVM". The allottees/buyers agreed to purchase apartments in the said project each measuring approximately 962 sq.ft. An agreement for sale and construction was entered into on 28.10.2013, as per which the project was to be completed and handed over within a period of 36 months, i.e., by October, 2016. The total sale consideration of Rs. 38,24,396/- was transferred to the builder. The allottees/buyers contended that the construction was not carried out as per specifications, and the project was not completed. In the said circumstances, legal notice was issued on 14.07.2021. Thereafter, separate complaints were lodged seeking issuance of directions to the builder to complete and hand over the apartment with covered car parking, after completing the common areas and amenities, and to execute the conveyance deed.

b) The RERA, after evaluation of the materials, came to the conclusion that the allottees/buyers had remitted a total amount of Rs.34,02,496/- before the assured date of completion, i.e., on 28.10.2016, and that thereafter, the balance amount, thus totalling Rs.38,24,396/-. Taking note of the above, it was held that the



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promoter/builder is liable to pay interest to the allottees/buyers as per the proviso to Section 18(1) of Real Estate (Regulation and Development) Act, 2016. The authority took note that as per Rule 18 of the Kerala Real Estate (Regulation and Development) Rules, 2018, the rate of interest payable by the promoter/builder shall be State Bank of India's Benchmark Prime Lending Rate (BMPLR) plus 2% and shall be computed as simple interest. Holding so, the authority directed the promoter/builder to pay simple interest at 16.85% per annum on the amounts paid, calculated from the dates of payment. The authority also directed that if the amounts were not paid, the allottees/buyers were at liberty to recover the amount from the promoter/builder and its assets by initiating execution.

c) Being aggrieved, separate appeals were preferred by the promoter/builder before the Real Estate Appellate Tribunal, Ernakulam. Along with the appeal, an application was filed purportedly under the proviso to Section 43(5) of Act 16 of 2016, seeking exemption from depositing 30% of the penalty/compensation and to hear the appeal on its merits.

d) The Tribunal considered the request for exemption and also the objection filed by the allottees/buyers and dismissed the application, holding that the proviso to Section 43(5) of the Act 16 of 2016 mandates that for entertaining an appeal filed by a promoters/builders against any order, directing payment of money or penalty, the promoters/builders will have to deposit 30% of the amount of penalty



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ordered by the authority or the full amount otherwise ordered by way of interest or by way of compensation with the Appellate Tribunal. The Appellate Tribunal further held that the proviso does not permit any discretion or relaxation in the matter of deposit. As the order under challenge was an order directing payment of interest, in order to proceed with the appeal, the promoters/builders would have to make deposit of the entire amount due as on the date of the impugned order.

5. Challenging the said order, separate Writ Petitions were filed before this Court. When the matter came up for consideration before the learned Single Judge, taking note of the nature of the contentions raised in the Writ Petitions, an interim order was passed directing the Appellate Authority to retain the appeals on file. The said order was challenged before this Court by the allottees/buyers, and this Court, taking note of the fact that the order passed by the RERA had not been stayed, observed that the aggrieved party could approach the Appellate Authority and seek implementation of the order. Immediately thereafter, an application was filed to amend the Writ Petitions, seeking a declaration that Rule 18, insofar as it prescribes the BMPLR for calculation of interest, is ultra vires the provisions of Act 16 of 2016, and to incorporate the Marginal Cost of Funds based Lending Rate (MCLR) in Rule 18 of the Rules, 2018. Thereafter, the interim order impugned herein was passed on 24.03.2026, directing the Appellate Authority to entertain the appeal by calculating interest at the MCLR rate. The said order is under challenge.



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6. We have heard the submissions of Sri. K. Shaj, the learned counsel appearing for the appellants and Sri. E.K. Nandakumar, the learned Senior Counsel appearing for the respondents as instructed by Sri. Saijo Hassan, the learned counsel.

7. Sri. K.Shaj, the learned counsel advanced the following submissions:

a. Section 43 of Act 16 of 2016 mandates that any person aggrieved by any direction or decision or order made by the Authority may prefer an appeal before the Appellate Tribunal and the same shall be entertained only on deposit of the total amount to be paid to the allottee including interest and compensation imposed on him before the said appeal is heard. Rule 18 of the Kerala RERA Rules, 2018 expressly prescribes SBI's BMPLR plus 2% as the benchmark for calculating interest. By directing computation on the basis of MCLR instead, the Single Judge has, in substance, substituted the Statutory Rules with general guidelines issued by the Reserve Bank to Banks. According to the learned counsel, the learned Single Judge clearly erred in carrying out such an exercise.

b. The learned counsel urged that the retention of BMPLR in the Rule was a conscious legislative policy choice and not an oversight. The RBI introduced MCLR in 2015 and the legislature, consciously, framed Rule 18 in 2018 while consciously retaining BMPLR+2%. This was done to ensure a deterrent benchmark to protect allottees/buyers under a beneficial enactment.



c. It is further submitted that the Hon'ble Supreme Court in **Newtech Promoters and Developers Pvt. Ltd. v. State of UP**¹ has categorically held that the mandatory pre-deposit condition under the proviso to Section 43(5) is not onerous, not violative of Articles 14 or 19(1)(g) and constitutionally valid. In that view of the matter, there was no justification for the learned Single Judge to either entertain the Writ Petitions or grant a direction to substitute BMPLR with MCLR.

d. It is submitted that the builder had a statutory remedy under Section 58(1) of Act 16 of 2016 to challenge the order passed by the Appellate Tribunal. The builder has bypassed Section 58(1) and approached this Court under Article 226 of the Constitution.

e. The learned counsel urged that the impugned order has cascading consequences as promoters/builders across the board who have been served with adverse orders passed by the Authority would demand that their Appeals be admitted by permitting pre-deposits at MCLR rates. This would undermine the mandatory pre-deposit and cause serious prejudice to the allottees/buyers.

f. The learned counsel pointed out that a reading of the impugned order would reveal that the learned Single Judge was persuaded by the fact that the State, which was arrayed as a respondent had not filed its counter. It is urged that when the constitutional validity of a statutory provision is challenged, the affidavits of the

¹ 2021 SCC OnLine SC 1044



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parties or of the Government do not have much relevance. To substantiate the said contention profuse reliance was placed on the law laid down by this Court in **Managing Director, KSRTC v. Union of India and Others**².

g. Much reliance was placed by the learned counsel on the law laid down by the Apex Court in **Charanjit Chowdhury v. Union of India and Others**³ and **Waqf Amendment Act, 2025 (1), In re**⁴ and it was argued that the Courts shall not ordinarily suspend statutory provisions, and can do so only in rare cases of ex facie unconstitutionality.

8. Sri. E.K. Nandakumar, the learned Senior Counsel has advanced the following submissions.

a. Relying on the law laid down by a Full Bench of this Court in **K.S. Das v. State of Kerala**⁵, and in **P.T. Thomas and Others v Bijo Thomas and Others**⁶ and it was urged that normally discretionary orders passed by the learned Single Judge are not interfered with unless the impugned orders are without jurisdiction, contrary to law or are perverse and they also cause serious prejudice to the parties in such a manner that it might be difficult to restore the status quo ante

² [2010 (1) KHC 49]

³ [AIR 1951 SC 41]

⁴ [(2025) 10 SCC 1]

⁵ [1992 KHC 366]

⁶ [2021 (6) KHC 279]



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or grant adequate compensation. In the instant case, the learned Single Judge only wanted to resolve the stalemate and permit the matter to be adjudicated by the Appellate Tribunal so that a decision either way could be taken.

b. It is submitted by the learned counsel that the proviso to Section 43(5) is onerous, unconstitutional, and violates Articles 14 and 19(1)(g). It was urged that mandating deposit of the entire delay period interest as a pre-condition for appeal renders the right of appeal illusory, particularly since the builder is financially distressed and the building is already completed.

c. It is submitted that BMPLR has been abolished by RBI since 2015 and is therefore an unworkable benchmark. Since all banks have migrated to MCLR as directed by RBI, prescribing BMPLR in Rule 18 makes the provision unworkable. The learned counsel further urged that several States have adopted MCLR as the benchmark in their respective RERA Rules and in that view of the matter, incorporation of BMPLR in the Kerala Rules was unwarranted.

9. We have carefully considered the submissions.

10. Before dealing with the submissions, it would be appropriate to refer to the statutory provisions.

11. Real Estate (Regulation and Development) Act, 2016 was enacted to establish the Real Estate Regulatory Authority for regulation and promotion of the



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real estate sector and to ensure sale of plot, apartment or building, as the case may be, or sale of real estate project, in an efficient and transparent manner and to protect the interest of consumers in the real estate sector. The enactment was brought in to establish an adjudicating mechanism for speedy dispute redressal and also to establish the Appellate Tribunal to hear appeals from the decisions, directions or orders of the Real Estate Regulatory Authority and the adjudicating officer and for matters connected thereto.

12. In the case on hand, the allottees/buyers had approached the RERA complaining that about Rs.38,24,396/- was received from them in the year 2013 assuring completion of the project in the year 2016. Admittedly the undertaking was not complied with. The Authority passed the order on 29.12.2023 directing the promoters/builders to pay simple interest at 16.85% per annum for the amounts paid and calculated from the time on which it was paid. The said direction was issued in view of Rule 18 of the Kerala Real Estate (Regulation and Development) Rules, 2018 which reads as under:

Rule 18 Rate of interest payable by the promoter and the allottee.--

- (1) The annual rate of interest payable by the promoter to the allottee or by the allottee to the promoter, as the case may be, shall be the State Bank of India's Benchmark Prime Lending Rate plus two percent and shall be computed as simple interest.



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- (2) In case of payment from the promoter due to the allottee, the interest on amount due shall be computed at the rate as per sub-rule (1) above from the agreed date of payment of such amount from the allottee to the promoter as per the agreed payment schedule as part of the agreement of construction or sale.
- (3) In case of payment from the allottee to the promoter, the interest on amount due shall be computed at the rate as per sub-rule (1) above from the agreed date of payment of such amount from the allottee to the promoter as per the agreed payment schedule as part of the agreement of construction or sale.

Rule 18 (1) is specific and it says that the annual rate of interest payable by the promoter/builder to the allottee/buyer or by the allottee/buyer to the promoter/builder, as the case may be, shall be the State Bank of India's Benchmark Prime Lending Rate plus two percent and shall be computed as simple interest. It was on that basis the RERA had calculated the interest.

13. Any person aggrieved by the order passed by the RERA is entitled to prefer an appeal before the Appellate Authority. The relevant provision is Section 43 (5) of the Real Estate (Regulation and Development) Act which reads as follows.

Section 43 Establishment of Real Estate Appellate Tribunal.--

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



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

Thus a remedy by way of appeal to the Appellate Tribunal is provided but the same is hedged with conditions. It says that if the RERA imposes a penalty, at least 30 percent of the same has to be deposited as a pre condition for entertaining the appeal. If the RERA has awarded interest and compensation, then for entertaining the appeal, the total amount is to be paid as a precondition for entertaining the appeal.

14. The statute further provides an appeal to the High Court. Section 58 of the Act 16 of 2016 deals with the same. The said provision reads as follows:

Section 58 Appeal to High Court.--

- (1) Any person aggrieved by any decision or order of the Appellate Tribunal, may, file an appeal to the High Court, within a period of sixty days from the date of communication of the decision or order of the Appellate Tribunal, to him, on any one or more of the grounds specified in Section 100 of the Code of Civil Procedure, 1908 (5 of 1908):



Provided that the High Court may entertain the appeal after the expiry of the said period of sixty days, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal in time.

Explanation.-- The expression "High Court" means the High Court of a State or Union Territory where the real estate project is situated.

- (2) No appeal shall lie against any decision or order made by the Appellate Tribunal with the consent of the parties.

15. In **Newtech Promoters And Developers Pvt. Ltd.** (supra), real estate developers, by name Newtech filed a batch of appeals challenging the validity of the Real Estate (Regulation and Development) Act, 2016. The respondents therein were allottees/buyers who invested their savings in the belief that the developers would hand over possession of the unit in accordance with the home buyer's agreement. However, the developers failed to do so, and the home buyers filed complaints for refund of their investment under Section 31 of the Act. The RERA ordered the developers to refund the principal amount along with interest. Various contentions were raised before the Apex Court and the foremost among them were the following:

- a. Whether the Act 16 of 2016 is retrospective or retroactive in its operation and what will be its legal consequence if tested on the anvil of the Constitution of India?



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- b. Whether the condition of pre-deposit under proviso to Section 43(5) of the Act for entertaining substantive right of appeal is sustainable in law?

16. The Apex Court noted that the Act was introduced with the object of ensuring greater accountability towards consumers, significantly reducing frauds, delays, and the prevailing high transaction costs in the real estate sector, while simultaneously balancing the interests of consumers and promoter/builder by imposing corresponding responsibilities on both. The Act also seeks to bring transparency to contractual conditions, prescribe minimum standards of accountability, and establish a fast-track dispute resolution mechanism. Further, it aims to infuse professionalism and standardisation into the sector, thereby paving the way for accelerated growth and long-term investment. It was further observed that the unqualified right of an allottee to seek refund under Sections 18(1)(a) and 19(4) of the Act 16 of 2016 is not dependent upon any contingencies or stipulations. The Apex Court held that the legislature has consciously conferred upon the allottee an unconditional and absolute right to claim refund on demand where the promoter/builder fails to hand over possession of the apartment, plot, or building within the time stipulated under the agreement. Such right is enforceable irrespective of unforeseen events or stay orders passed by any Court or Tribunal, so long as the delay is not attributable to the allottee/buyer. The Court further held that, in such circumstances, the promoter/builder is under a statutory obligation to refund the amount received, together with interest at the rate prescribed by the State Government, along with compensation in the manner



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contemplated under the Act. At the same time, if the allottee/buyer does not wish to withdraw from the project, the allottee/buyer would be entitled to interest for the entire period of delay until possession is handed over, at the prescribed rate. The Apex Court also held that, having regard to the scheme of the Act 16 of 2016, its operation is retroactive in character. However, projects which had already been completed or had obtained completion certificates prior to the enactment do not fall within its ambit. At the same time, the Act would apply to ongoing and future projects upon registration under Section 3, and such projects are thereafter required to prospectively comply with the mandate of the Act 16 of 2016.

17. Insofar as the requirement of pre-deposit is concerned, the Apex Court noted that several statutes prescribe the deposit of a stipulated statutory amount as a condition precedent for entertaining an appeal before an appellate forum or tribunal for reappraisal of facts and law at the appellate stage. In that context, the Apex Court considered the principles of law in **Narayan Chandra Ghosh v. UCO Bank**⁷, which dealt with the requirement of pre-deposit under Section 18 of the SARFAESI Act; **Har Devi Asnani v. State of Rajasthan**⁸, which considered the validity of the proviso to Section 65(1) of the Rajasthan Stamp Act, 1998; **State of Haryana v. Maruti Udyog Ltd.**⁹ and **Shreenath Corporation v. Consumer Education and Research Society**¹⁰, dealing with pre-deposit under the Consumer Protection Act,

⁷ [(2011) 4 SCC 548]

⁸ [(2011) 14 SCC 160]

⁹ [(2000) 7 SCC 348]

¹⁰ [(2014) 8 SCC 657]



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1988; and **Tecnimont Pvt. Ltd. (formerly known as Tecnimont ICB Private Limited) v. State of Punjab**¹¹, which examined the validity of the pre-deposit requirement under the Punjab Value Added Tax Act, 2005 (PVAT). After considering the aforesaid decisions, the Apex Court in **Newtech** (supra) observed as follows :

"134. To be noticed, the intention of the instant legislation appears to be that the promoters ought to show their bona fides by depositing the amount so contemplated.

135. It is indeed the right of appeal which is a creature of the statute, without a statutory provision, creating such a right the person aggrieved is not entitled to file the appeal. It is neither an absolute right nor an ingredient of natural justice, the principles of which must be followed in all judicial and quasi-judicial litigations and it is always be circumscribed with the conditions of grant. At the given time, it is open for the legislature in its wisdom to enact a law that no appeal shall lie or it may lie on fulfilment of precondition, if any, against the order passed by the Authority in question.

136. In our considered view, the obligation cast upon the promoter of pre-deposit under Section 43(5) of the Act, being a class in itself, and the promoters who are in receipt of money which is being claimed by the home buyers/allottees for refund and determined in the first place by the competent authority, if legislature in its wisdom intended to ensure that money once determined by the authority be saved if appeal is to be preferred at the instance of the promoter after due compliance of pre-deposit as envisaged under Section 43(5) of the Act, in no circumstance can be said to be onerous as prayed for or in violation of Articles 14 or 19(1)(g) of the Constitution of India".

¹¹ [AIR 2019 SC 4489]



18. The questions posed before the Apex Court in **Tirupati Steels (M/s.) v. M/s. Shubh Industrial Component and Another**¹² was whether the pre-deposit of 75% of the awarded amount as per Section 19 of the MSMED Act, 2006, while challenging the award under Section 34 of the Arbitration Act, 1996, is made mandatory. The Apex Court observed as under:

8. The question which is posed for consideration of this Court is, whether, the pre-deposit of 75% of the awarded amount as per Section 19 of the Msmed Act, 2006, while challenge to the award under Section 34 of the Arbitration Act, 1996, is made mandatory or not, is now no longer res integra in view of the decision of this Court in Gujarat State Disaster Management Authority v. Aska Equipments Ltd. (2022) 1 SCC 61 While interpreting Section 19 of the Msmed Act, 2006 and after taking into consideration the earlier decision of this Court in Goodyear India Ltd. v. Norton Intech Rubbers (P) Ltd. (2012) 6 SCC 345, it is observed and held that the requirement of deposit of 75% of the amount in terms of the award as a pre-deposit as per Section 19 of the Msmed Act, is mandatory. It is also observed that however, at the same time, considering the hardship which may be projected before the appellate court and if the appellate court is satisfied that there shall be undue hardship caused to the appellant/applicant to deposit 75% of the awarded amount as a pre-deposit at a time, the court may allow the pre-deposit to be made in instalments. Therefore, it is specifically observed and held that pre-deposit of 75% of the awarded amount under Section 19 of the Msmed Act, 2006 is a mandatory requirement.

¹² [AIR 2022 SC 1939]



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19. Thus, the requirement of pre-deposit mandated under the statute is binding on the appellant, and under no circumstances can the same be diluted. In view of the law laid down in **Newtech** (supra), the effect of the order passed by the learned Single Judge is, in substance, an amendment of a statutory rule through judicial intervention. Rule 18 of the Kerala Real Estate (Regulation and Development) Rules, 2018 is a piece of delegated legislation framed under Section 84 of the Act 16 of 2016. The Rule specifically prescribes SBI's BMPLR plus 2% as the applicable benchmark for determining interest. The said prescription, consciously fixed by the rule-making authority, cannot be characterised as obsolete merely because the Reserve Bank of India subsequently issued directions to banks regarding the adoption of alternative lending benchmarks. Furthermore, the Rules were framed in 2018, nearly three years after the introduction of MCLR by the RBI. It can only be taken that the rule-making authority was fully aware of the MCLR regime and despite the same they consciously chose to retain BMPLR plus 2% as the statutory benchmark. We have no hesitation in observing that the same constitutes a policy decision of the State intended to protect the interests of homebuyers under a beneficial legislation. The validity of the provision having already been upheld by the Apex Court, this Court could not have substituted that legislative policy choice with an alternative benchmark through an interim order.

20. We would like to observe, at this juncture, that accepting the argument and contention of the promoter/builder would lead to wholly untenable consequences.



To understand the consequences, it would be profitable to understand the subtle distinction between Benchmark Prime Lending Rate (BMPLR), Marginal Cost of Funds Based Lending Rate (MCLR) and the newly introduced External Benchmark Lending Rate (EBLR) based on the Repo rate of the Reserve Bank.

21. The Benchmark Prime Lending Rate (BMPLR), was originally used by banks as their internal reference rate for lending. Each bank fixed its own BPLR based on its cost of funds, operating expenses and profit margin. The system was opaque and did not always move with monetary policy. This was because when RBI cut rates, banks could simply ignore the signal and keep BPLR unchanged. It was also noticed that large corporate borrowers routinely got loans below BPLR while retail borrowers paid above it, making the "benchmark" largely fictional. To fix the above issue, RBI introduced the Marginal Cost of Funds Based Lending Rate (MCLR) from April 2016. Unlike BPLR, MCLR was built on the marginal cost of raising fresh funds, the cost of maintaining mandatory reserves, operating costs, and a tenor premium. Banks were required to publish MCLR across multiple tenors monthly, and most home loans were linked to the one-year MCLR. SBI's one-year MCLR currently stands at approximately 8.75 – 9%, roughly half its BPLR. Finding that MCLR was still not serving the purpose, RBI mandated from October 2019 that all new floating rate retail loans and MSME loans must be linked to an External Benchmark Lending Rate (EBLR), which in practice, is the RBI Repo Rate. This has been adopted by all the banks now. Since the Repo Rate component resets immediately on every RBI policy change, monetary



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transmission is now near-instantaneous. With the Repo Rate currently at 6.00%, SBI's repo-linked home loan rates sit in the range of 8.50–9.25% depending on the borrower's credit profile. It would be pertinent to note that BMPLR, though phased out as ordered by the RBI, is still used for certain contingencies and SBI's BPLR as of September 2023 stood at 14.85%.

22. The practical consequence of these three regimes in the RERA context is illuminating. If the facts of this case are taken as a basis, on a principal of Rs.36 lakhs over a seven-year delay period, simple interest at BMPLR+2% (16.85%) yields a liability of approximately Rs.42–45 lakhs. If the MCLR (9%) is adopted, it drops to Rs.22–23 lakhs; and at the repo-linked rate it is marginally lower still. The gap between BMPLR+2% and MCLR alone is nearly Rs.20 lakhs on a single flat. This is exactly the reason why the promoter/builder sought to adopt MCLR instead of BMPLR. The legislature framed Rule 18 in 2018, three years after MCLR was already the prevailing banking standard, and chose BMPLR+2% anyway. We are of the view that the intent of the Legislature was deliberate and the same was to fix a deterrent rate that would compensate allottees/buyers meaningfully and discourage promoter/builder defaults. If the order is allowed to stand, every promoter/builder against whom an order is issued by the RERA would at the stage of filing of the appeal insist on refixation of the pre-deposit with External Benchmark Lending Rate (EBLR), which would lower their burden even further. This would render Rule 18 a dead letter and deprive the provision of certainty and enforceability. More importantly, such an



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interpretation would seriously undermine the interests of allottees/buyers and dilute the very safeguards which the Act was enacted to secure.

23. One needs to bear in mind that RERA is a beneficial legislation enacted specifically to protect allottees/buyers. As in the instant case, the legislature took note of a situation where allottees/buyers would have availed loans to purchase the apartment expecting that the same would be delivered on time. After giving such an undertaking, stating one reason or another and citing force majeure events, the promoter/builder would delay the handover. It was taking note of the above eventuality that the higher interest rate (BMPLR+2%) was insisted on. This was intended to be deliberately deterrent and designed to discourage promoter/builder from retaining money and delaying possession. In the instant case, the promoter/builder received the buyer's money, failed to deliver possession by 2016 and the buyer almost certainly serviced a home loan throughout. Diluting the interest rate to MCLR is a direct financial benefit to the defaulting promoter/builder at the expense of the allottee which is against the intent of the enactment.

24. There is yet another important aspect to the matter. The principal reliefs sought in the Writ Petition are as follows:

- (i) To set aside Ext.P9 order dated 24.05.2024 passed by the Kerala Real Estate Appellate Tribunal.



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- (ii) To declare that the State Bank of India's Bench Mark Prime Lending Rate fixed in Rule 18 of the Kerala Real Estate (Regulation and Development) Rules 2018 is ultra vires to the Real Estate (Regulation and Development) Act, 2016 and thereafter to incorporate Marginal Cost of Lending Rate (MCLR) in Rule 18 instead of State Bank of India's Bench Mark Prime Lending Rate.

The relief sought, is in effect, the substitution of MCLR in place of BMPLR under Rule 18. Such a prayer essentially would require this Court to enter the legislative domain, which is impermissible under the doctrine of separation of powers. At best, the Court may declare a provision unconstitutional and leave it to the legislature to cure the defect, or read down the provision to save it from invalidity. However, this Court cannot rewrite a statutory rule or insert new language into it under the guise of judicial interpretation. Further, when the constitutionality of a statutory provision is under challenge, the affidavits filed by the parties or even by the Government do not assume decisive significance. As held by this Court in **Managing Director, KSRTC** (supra), the validity of a statutory provision must be tested on settled constitutional principles and not on the basis of pleadings alone. Therefore, merely because a counter affidavit had not been filed by the State, no interim order could have been granted suspending or diluting the operation of Rule 18.

25. We are not impressed with the contention advanced by the learned senior counsel that the Writ Appeals are not maintainable as it has been filed against



an interim order. The question whether an appeal lies to a Division Bench under Section 5(i) of the Kerala High Court Act, 1958 against an interlocutory order in a writ petition, while the main writ petition is pending and if so, what are the circumstances under which or the types of cases in which such an appeal would lie, has been examined by a Larger Bench of this Court in **K.S. Das** (supra). The majority opinion in the said case is as follows:

"46. xxxx xxxx xxxxx

Conclusion

(1) The word 'order' in S.5(i) of the Kerala High Court Act, 1958 includes, apart from other orders, orders passed by the High Court in Miscellaneous Petitions filed in the Writ Petitions provided the orders are to be in force pending the Writ Petition. An appeal would lie against such orders only if the orders substantially affect or touch upon the substantial rights or liabilities of the parties or are matters of moment and cause substantial prejudice to the parties. The nature of the 'order' appealable belongs to the category of 'intermediate orders' referred to by the Supreme Court in Madhu Limaye's case, (1977) 4 SCC 551. The word 'order' is not confined to 'final order' which disposes of the Writ Petition. The 'orders' should not, however, be ad interim orders in force pending the Miscellaneous Petition or orders merely of a procedural nature.

(2) But this does not mean that the Division Bench hearing the appeal against such 'orders' will have to admit the appeal or have to modify the impugned order or set it aside the same in every



case. There is difference between the question whether an appeal lies to a Division Bench and as to the scope of interference. Normally, discretionary orders are not interfered with unless the impugned orders are without jurisdiction, contrary to law, or are perverse, and they also cause serious prejudice to the parties in such a manner that it might be difficult to restore the status quo ante or grant adequate compensation. The idea is to provide an internal remedy in such cases without compelling the parties to go all the way to the Supreme Court under Art. 136 of the Constitution of India or increase the burden of that court unnecessarily,

(3) It will, however, be incumbent upon the appellant to serve the counsel who has appeared before the Single Judge for the opposite party (unless of course the counsel's authority has been revoked or he is dead) and when such appeals against orders come up in appeal for admission before the Division Bench, it will be open to the Bench to treat such service as mentioned above as sufficient service on the parties (unless the court, in the circumstances of the case, thinks otherwise) and to dispose of the appeal either at the stage of admission or soon thereafter, after considering the facts of the case or subsequent events. This would generally obviate admission of the Writ Appeals, issue of notice and the passing of interim orders pending Writ Appeals."

26. In other words, even though an appeal could be filed against an interlocutory order passed in a writ petition, the order which is impugned has to be of such a nature as one without jurisdiction, contrary to law, or are perverse, and they also cause serious prejudice to the parties in such a manner that it might be difficult to



restore the status quo ante or grant adequate compensation. The nature of the order appealable would belong to the category of intermediate orders referred to by the Apex Court in **Madhu Limaye v. State Of Maharashtra**¹³. It was, however, clarified by the Larger Bench in the said case that such orders should not, however, be ad interim orders or orders merely of a procedural nature.

27. Insofar as the orders impugned in these appeals are concerned, the same effectively substitutes MCLR for BMPLR+2%. This is not as a tentative arrangement pending hearing, but as a direction for actual computation and deposit. Once the builder deposits at MCLR rate and the Appellate Tribunal entertains the appeal on that basis, the pre-deposit requirement under the proviso to Section 43(5) is treated as satisfied. This is a conclusion that operates with finality. There is no requirement for the appellate authority to wait till the writ petition is heard and disposed of. If that occurs, the builder would be able to get over the pre-deposit requirement under the statute despite the larger question remaining unanswered by the Court. The pre-deposit is a jurisdictional condition precedent to the Appellate Tribunal entertaining the appeal filed by the promoter/builder. By reducing its quantum through an interim order, the Single Judge has effectively conferred jurisdiction on the Appellate Tribunal that the statute, read with Rule 18, does not permit.

28. In view of the discussion above, the appellants are entitled to succeed.

¹³ (1977) 4 SCC 551



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- a) The interim order dated 24.03.2026 passed by the learned Single Judge in W.P.(C) Nos. 35451, 36421, 36488, 36492, 36503 and 36658 of 2024 are vacated.\
- b) The appellants in REFA Nos. 39, 40, 41, 42, 43 and 44 of 2024 pending before the Kerala Real Estate Appellate Tribunal, Ernakulam, are granted two weeks time from today to deposit the entire amount towards interest and compensation strictly in accordance with Rule 18 of the Kerala Real Estate (Regulation and Development) Rules, 2018 r/w. Section 18 of the Real Estate (Regulation and Development) Act, 2016, as directed by the Appellate Tribunal in its order dated 24.05.2024 in I.A.No. 83 of 2024 in REFA No. 43 of 2024.
- c) It is made clear that the credit for any amount already deposited by the promoter/builder pursuant to the impugned interim order shall be taken into account while computing the balance to be deposited, and the shortfall, if any, between the amount so deposited and the amount due under Rule 18 of the Kerala Real Estate (Regulation and Development) Rules, 2018 shall be made good within the said period of two weeks.
- d) If the amounts are not deposited as ordered by the Appellate Tribunal in its order dated 24.05.2024, the Appellate Tribunal shall be entitled to pass such orders as it may deem fit and proper in the facts and



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circumstances of the case, including rejection or dismissal of the appeal for non-compliance with the mandatory pre-deposit condition under the proviso to Section 43(5) of the Real Estate (Regulation and Development) Act, 2016.

- e) There will be no order as to costs.

sd/-
RAJA VIJAYARAGHAVAN V,
JUDGE

sd/-
K.V. JAYAKUMAR,
JUDGE

PS & APM/28/05/26