Shraddha/Sonali/Arjun

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.251 OF 2022
WITH
CIVIL APPLICATION NO.288 OF 2019
IN
SECOND APPEAL NO.251 OF 2022
WITH
CIVIL APPLICATION NO.1529 OF 2018
IN
SECOND APPEAL NO.251 OF 2022
WITH
CIVIL APPLICATION NO.40 OF 2022
IN
SECOND APPEAL NO.251 OF 2022
WITH
CIVIL APPLICATION (ST) NO.5789 OF 2019
IN
SECOND APPEAL NO.251 OF 2022

Runwal Constructions Registered Partnership Firm ...Appellant/ Applicant

Versus

Bharat Shah ...Respondent

WITH
SECOND APPEAL NO.253 OF 2022
WITH
CIVIL APPLICATION NO.1526 OF 2018
IN
SECOND APPEAL NO.253 OF 2022
WITH
CIVIL APPLICATION NO.41 OF 2022
IN
SECOND APPEAL NO.253 OF 2022

Runwal Constructions Runwal & Omkar Esquare, Mumbai ...Appellant/ Applicant

Versus

Nitin Korgaonkar ...Respondent

WITH
SECOND APPEAL NO.254 OF 2022
WITH
CIVIL APPLICATION NO.1521 OF 2018
IN
SECOND APPEAL NO.254 OF 2022
WITH
CIVIL APPLICATION NO.42 OF 2022
IN
SECOND APPEAL NO.254 OF 2022

Runwal Constructions Runwal & Omkar Esquare, Mumbai ...Appellant/ Applicant

Versus

Pravir Karmokar ...Respondent

WITH
SECOND APPEAL NO.255 OF 2022
WITH
CIVIL APPLICATION NO.43 OF 2022
IN
SECOND APPEAL NO.255 OF 2022
WITH
CIVIL APPLICATION NO.1530 OF 2018
IN
SECOND APPEAL NO.255 OF 2022

Runwal Constructions Runwal & Omkar Esquare, Mumbai ...Appellant/ Applicant

Versus

Garfield Deepak D'Souza ...Respondent

WITH
SECOND APPEAL NO.256 OF 2022
WITH
CIVIL APPLICATION NO.44 OF 2022
IN
SECOND APPEAL NO.256 OF 2022

Runwal Constructions Runwal & Omkar Esquare, Mumbai ...Appellant/ Applicant

Versus

Satish Kumar & Ors. ...Respondents

WITH

CIVIL APPLICATION NO.1532 OF 2018
IN
SECOND APPEAL NO.256 OF 2022

Runwal Constructions Runwal & Omkar Esquare, Mumbai …Applicant

Versus

Srinivasan Sundaresan & Ors. ...Respondents

WITH
SECOND APPEAL NO.257 OF 2022

Runwal Constructions Runwal & Omkar Esquare, Mumbai …Appellant

Versus

Satish Maruti Shirsekar …Respondents

WITH
INTERIM APPLICATION NO.3352 OF 2019
IN
SECOND APPEAL NO.257 OF 2022

Satish Maruti Shirsekar …Applicant

Versus

Runwal Constructions …Respondent

WITH
CIVIL APPLICATION NO.45 OF 2022
IN
SECOND APPEAL NO.257 OF 2022
WITH
CIVIL APPLICATION NO.1523 OF 2018
IN
SECOND APPEAL NO.257 OF 2022

Runwal Constructions Runwal & Omkar Esquare, Mumbai …Applicant

Versus

Satish Maruti Shirsekar …Respondents

WITH
SECOND APPEAL NO.258 OF 2022
WITH
CIVIL APPLICATION NO.46 OF 2022
IN

SECOND APPEAL NO.258 OF 2022
WITH
CIVIL APPLICATION NO.1531 OF 2018
IN
SECOND APPEAL NO.258 OF 2022

Runwal Constructions Runwal & Omkar Esquare, Mumbai …Appellant/ Applicant

Versus

Sudhir Ray …Respondent

WITH
SECOND APPEAL NO.259 OF 2022
WITH
CIVIL APPLICATION NO.47 OF 2022
IN
SECOND APPEAL NO.259 OF 2022
WITH
CIVIL APPLICATION NO.1524 OF 2018
IN
SECOND APPEAL NO.259 OF 2022

Runwal Constructions Runwal & Omkar Esquare, Mumbai …Appellant/ Applicant

Versus

Prachi Chindarkar …Respondent

WITH
SECOND APPEAL NO.260 OF 2022
WITH
CIVIL APPLICATION NO.48 OF 2022
IN
SECOND APPEAL NO.260 OF 2022
WITH
CIVIL APPLICATION NO.1527 OF 2018
IN
SECOND APPEAL NO.260 OF 2022

Runwal Constructions Runwal & Omkar Esquare, Mumbai …Appellant/ Applicant

Versus

Samira Sultana Halim Mohammed …Respondent

WITH
SECOND APPEAL NO.261 OF 2022

WITH
CIVIL APPLICATION NO.1528 OF 2018
IN
SECOND APPEAL NO.261 OF 2022
WITH
CIVIL APPLICATION NO.49 OF 2022
IN
SECOND APPEAL NO.261 OF 2022

Runwal Constructions Runwal & Omkar Esquare, Mumbai …Appellant/ Applicant

Versus

Parag Chandrakant Sawant & Anr. …Respondents

Mr. Atul Damle, Senior Advocate with Mr. Ditendra Mishra, instructing Advocate, for the Appellants in SA No.260 of 2022.

Mr. Rajiv Chavan, Senior Advocate with Mr. Ditendra Mishra, for the Appellants in SA No.253 of 2022.

Mr. Ashish Kamat, Senior Advocate with Mr. Ditendra Mishra, instructing Advocate, for the Appellants in SA No.251 of 2022.

Mr. Saket Mone with Mr. Ditendra Mishra, for the Appellants in SA Nos.256 of 2022 and 258 of 2022.

Mr. Rubin Vakil, Advocate with Mr. Ditendra Mishra, for the Appellants in SA No.254 of 2022.

Mr. Ditendra Mishra with Mr. Abhishek Puranik, Mr. Prerith Menon, Mr. Dhiraj Kanade, for the Appellants in SA Nos.255 of 2022, 257 of 2022, 259 of 2022 and 261 of 2022.

Mr. Anjani Kumar Singh i/b Ms. Asmita S. Jaiswal, for the Respondent(s) in SA No.251 of 2022, SA Nos.253 of 2022 to SA 261 of 2022 and connected Civil/Interim Application(s).

CORAM: MADHAV J. JAMDAR, J.
RESERVED ON: 29 JANUARY 2026
PRONOUNCED ON: 08 JUNE 2026

JUDGMENT :

1. Heard Mr. Atul Damle, learned Senior Counsel, Mr. Ashish Kamat, learned Senior Counsel, Mr. Rajiv Chavan, learned Senior Counsel, Mr.

Sanket Mone, learned Counsel, Mr. Rubin Vakil, learned Counsel and Mr. Ditendra Mishra, learned Counsel, appearing for the Appellants and Mr. Anjani Kumar Singh, learned Counsel appearing for the Respondents.

2. The challenge in this group of 10 Second Appeals is to the Order dated 1st November 2018 passed by the learned President, Maharashtra Revenue Tribunal, Mumbai and Incharge, Maharashtra Real Estate Appellate Tribunal, Mumbai ("**Designated Appellate Tribunal**") in respective individual Appeals filed by the respective Respondents/Allottees. The challenge before the learned Designated Appellate Tribunal was to the Orders dated 2nd April 2018 passed by the Competent Authority in all these Appeals except one Appeal where the challenge was to the Order dated 21st May 2018 passed by the Competent Authority. The details of the same are set out hereinbelow.

Sr. no.	Second Appeal no.	Name of the Respondent	Order passed by the Authority	Complainant No.	Appeal No. before there Appellate Tribunal
1	251/2022	Bharat Shah	21/05/2018	CC006000000023853	AT006000000010474
2	253/2022	Nitin Korgaonkar	02/04/2018	CC006000000001623	AT006000000000317
3	254/2022	Pravair Karmokar	02/04/2018	CC006000000023486	AT006000000000289
4	255/2022	Garfield Deepak Dsouza	02/04/2018	CC006000000012039	AT006000000000297

5	256/2022	Sathish Kumar and Ors	02/04/2018	CC006000000001257	AT006000000000280
6	257/2022	Satish Maruti Shirsekar	02/04/2018	CC006000000012440	AT006000000000281
7	258/2022	Sudhir Ray	02/04/2018	CC006000000012486	AT006000000010556
8	259/2022	Prachi Chindarkar	02/04/2018	CC006000000012460	AT006000000000287
9	260/2022	Samira Sultana Halim Mohammed	02/04/2018	CC006000000012589	AT006000000000279
10	261/2022	Parag Chandrakant Sawant and Anr	02/04/2018	CC006000000012466	AT006000000000301

3. The relief sought in various complaints before the Competent Authority by various Complainants i.e. Allottees is *inter alia* seeking direction to pay interest for delayed possession. The Competent Authority has held that the time period which can be attributed to the Appellants for delay in handing over possession can neither be ascertained nor the date of handing over possession can be determined at that stage. The Competent Authority *inter alia* passed following directions:-

> "*4. In view of the above, the Respondent is hereby again directed to make serious efforts to expedite the process of obtaining the required sanctions/approvals for recommencing the project work at the earliest and to complete the construction work of the said project in a time-bound manner. Respondent shall also not unilaterally execute any cancellations in the said project, with respect*

to the Complainants in the present complaint.

5. Consequently, the matters are disposed of."

4. The respective Complainants/Allottees challenged the Order of the Competent Authority by filing respective Appeals before the Real Estate Appellate Tribunal. The learned Designated Appellate Tribunal *inter alia* passed following operative Order :

"*2. The Promoter / Respondent to pay interest to the Allottees @ 10.05% p.a. effective from 1st February 2014 till handing over actual possession.*

3. The Promoter/ Respondent to complete Building B1 and B2 in the registered project within 18 months from Order. Failure, to follow action and consequences in terms of Section 7 of RERA."

5. At this stage, it is required to be noted that the impugned Orders are challenged by the original Respondent i.e. Promoter by filing these Second Appeals and not by the original Complainants/ Allottees. Thus, original Complainants/Allottees have accepted the Order of the learned Designated Appellate Tribunal. This is specifically mentioned since as per Agreement executed between the parties, the date of handing over possession is 2008 to 2010, however learned Designated Appellate Tribunal extended the said date till 1st February 2014.

6. This Court, by Order dated 12th December 2024 framed following substantial questions of law and an additional substantial question of

law was framed by Order dated 7th April 2025. The same are as under:-

SUBSTANTIAL QUESTIONS OF LAW FRAMED BY ORDER DATED 12TH DECEMBER 2024 :

1. When the Agreement for Sale between the Promoter and the Allottee makes provision for force majeure events, which have the effect of postponing the agreed date of possession, can authorities under RERA fix / provide for a date of possession while adjudicating claims under Section 18 of RERA?

2. Whether the authorities under RERA have the power to determine or rewrite or revise the date of handover of possession, in exercise of power under Section 18 of RERA?

3. Whether, in exercise of power to designate an authority as the Appellate Tribunal under the first proviso to Section 43(4) of RERA, it is necessary for the State Government to give due regard to the provisions of Section 43(3) of RERA and ensure that the composition of such alternate authority is in accordance therewith?

4. Whether in exercise of power under the first proviso to Section 43(4) of RERA, the State Government (as the delegatee of such power) can designate an authority to function as the Appellate Tribunal in a manner contrary to or ultra vires Section 43(3) of RERA?

5. Whether a single member bench of the Hon'ble Maharashtra Revenue Tribunal, exercising power under the first proviso to Section 43(4) of RERA has jurisdiction to adjudicate appeals under Section 44 of RERA?

6. Whether, in light of the second proviso to Section 43(4) of RERA, the Hon'ble Maharashtra Revenue Tribunal has jurisdiction to adjudicate appeals under Section 44 of RERA, after the constitution / establishment of the Maharashtra Real Estate Appellate Tribunal under Section

43 of RERA?

7. Whether the impugned Judgment and Order is perverse and unreasoned?

ADDITIONAL SUBSTANTIAL QUESTION OF LAW FRAMED BY ORDER DATED 7TH APRIL 2025 :

1. When agreement in the form of a booking form, gets frustrated on account of force majeure as well as due to making its performance impossible, whether such an agreement can be considered while exercising power under section 18 of RERA?

Thus, total 8 substantial questions of law were framed by this Court.

7. The substantial questions of law Nos. 1, 2 and 7 framed by Order dated 12th December 2024 and the substantial question of law framed by Order dated 7th April 2025 are *inter alia* depending on the analysis of factual aspects. The substantial questions of law Nos. 3, 4 and 5 framed by this Court by order dated 12th December 2024 are concerning designation of the Maharashtra Revenue Tribunal by exercise of power under Section 43(4) of RERA contrary to the mandate of Section 43(3) of RERA and substantial question of law No.6 is concerning jurisdiction of Maharashtra Revenue Tribunal to adjudicate Appeal under Section 44 of the RERA after the constitution/establishment of the Maharashtra Real Estate Appellate Tribunal under Section 43 of the RERA. Therefore, this Court will take up for consideration substantial question of law

No.6 first and thereafter substantial questions of law namely 3, 4 and 5 as both these set of questions of law are relating to the jurisdiction of the learned Maharashtra Revenue Tribunal to act as the learned Appellate Tribunal under RERA. Other substantial questions of law will be considered thereafter.

8. Before setting out and consideration of the rival submissions, it is required to be noted that all the parties have filed written submissions on 19th September 2025 and therefore these group of Second Appeals were adjourned to 6th October 2025 for passing orders. However, on 6th October 2025 as the assignment was very heavy, passing of Judgment in these group of Second Appeals was reserved. While preparing draft Judgment this Court noticed certain relevant provision as more particularly set out in Order dated 5th January 2026 which was not pointed out to this Court by both the parties and therefore, for hearing the parties on the said issue the matter was again listed from time to time. Ultimately, the hearing was completed on 29th January 2026 and the Judgment was reserved.

FACTUAL ASPECTS:

9. The project 'Runwal Infinity' ('Runwal Sanctuary') situated at Nahur, Mulund, Mumbai was launched in the year 2005-2006. The

booking of various flats was done by the Respondents i.e. flat purchasers on different dates between 2005-2007. As far as the Respondents in eight Second Appeals, their registered agreements were executed between 2006-2007. As far as the Respondents in Second Appeal No.253 of 2022 and Second Appeal No.257 of 2022, their agreements are not registered and only allotment letters are issued to them. However, they have paid flat cost of about 39.5% and 40.6% respectively.

10. At this stage it is necessary to set out the relevant details as set out in the chart submitted by the Appellants:-

Sr. no.	Second Appeal No.	Flat No.	Tower	Date of Agreement	Possession date	Cost of Flat (in Rs.)	Amount Paid (in Rs.)	% Paid
1	251/2022	901/ 902	B2	13.02.2007	31.12.2009	60,75,000	30,37,500	50
2	253/2022	1101	C	Allotment Letter 21.09.2007	31.12.2009	57,61,050	22,50,000	39.1
3	254/2022	2004	B2	08.03.2007	31.12.2009	45,77,000	16,51,950	36.1
4	255/2022	103	B2	08.10.2007	31.12.2009	57,03,375	6,04,338	10.6
5	256/2022	601	B1	19.04.2006	31.12.2008	39,55,000	23,73,000	60
6	257/2022	703	C	13.12.2006	31.12.2008	39,30,250	15,96,000	40.6
7	258/2022	1103	B2	27.03.2006	31.12.2009	36,32,000	20,66,000	56.9
8	259/2022	803	B1	03.02.2007	31.12.2008	36,32,000	36,32,000	100
9	260/2022	1203	B2	31.12.2007	31.12.2010	49,94,000	28,25,000	56.6
10	261/2022	1403	B2	07.03.2007	03.12.2009	51,07,500	21,07,500	41.3

Thus, one of the Respondent i.e. the Allottee has paid 100% of the consideration and some of them have paid between 50% to 60% of

the consideration. In any case, most of the Respondents i.e. the Allottees have paid substantial consideration towards the purchase of flats to the Appellant- Promoter about more than 15 years back. The Agreements are of the year 2006-2007 and the date of handing over possession is of 2008-2010 and till the year 2026 the possession of the respective flats has not been handed over to the respective Allottees. As far as the Tower C is concerned, the same has been partly constructed earlier and thereafter it has been demolished and now it has again being constructed.

11. The substantial question of law No. 6 framed by Order dated 12th December 2024 is treated as **First Substantial Question of Law** as the same is concerning jurisdiction of the Maharashtra Revenue Tribunal as Designated Appellate Tribunal to deal with appeals filed under the Real Estate Regulation and Development Act, 2016 (hereinafter referred to as "**the RERA**") in view of the notification dated 8th May 2018. Thus, the First substantial question of law is reproduced herein below for ready reference:

> FIRST SUBSTANTIAL QUESTION OF LAW :
> **Whether, in light of the second proviso to Section 43(4) of RERA, the Maharashtra Revenue Tribunal has jurisdiction to adjudicate appeals under Section 44 of RERA, after the constitution / establishment of the Maharashtra Real Estate Appellate Tribunal under Section 43 of RERA ?**

SUBMISSIONS OF THE APPELLANTS CONCERNING FIRST SUBSTANTIAL QUESTION OF LAW:-

12. Learned Counsel of the Appellants raised the following contentions:

11.1. Learned Counsel pointed out Section 43 of the RERA. Learned Counsel submitted that sub-Section (1) of Section 43 provides that by Notification the appropriate government shall establish an Appellate Tribunal to be known as the Maharashtra Real Estate Appellate Tribunal. First proviso to sub-Section 4 of Section 43 specifies that until the establishment of an Appellate Tribunal under said Section, appropriate government shall designate by order, any Appellate Tribunal functioning under any law for the time being in force to be the Appellate Tribunal to hear Appeals under the RERA. Second proviso to sub-Section 4 of Section 43 provides that after the Appellate Tribunal under the said section is established, all matters pending with the Appellate Tribunal designated to hear Appeals shall stand transferred to the Appellate Tribunal so established and shall be heard from the stage such Appeal is transferred.

11.2. Learned Counsel pointed out the following factual aspects:

Sr. No.	Date	Facts/events
1.	January 2018	The State Government issued a Notification

		designating the Hon'ble Maharashtra Revenue Tribunal under Section 43 of RERA, in exercise of power under the first proviso to Section 43(4) of RERA.
2.	02.04.2018 ---------- 21.05.2018	Order passed by the Hon'ble Maharashtra Real Estate Regulatory Authority which is subject matter of the present Second Appeals.
3.	May 2018	The Respondent filed respective Appeals.
4.	08.05.2018	The State Government notified the constitution of the Hon'ble Maharashtra Real Estate Appellate Tribunal under Section 43(1) of RERA. [Note- By virtue of the second proviso to Section 43(4) of RERA, all appeals before the Maharashtra Revenue Tribunal stood transferred to the Maharashtra Real Estate Appellate Tribunal.]
5.	31.10.2018	The Maharashtra Revenue Tribunal consisting of Single Judge/Member heard the arguments in the said Appeal.
6.	01.11.2018	The impugned Order passed by the Hon'ble Maharashtra Revenue Tribunal.

11.3. It is submitted that as the State Government notified the constitution of the Maharashtra Real Estate Appellate Tribunal under Section 43(1) of the RERA by the Notification dated 8th May 2018, by virtue of second proviso to Section 43(4) of the RERA, all Appeals before the Maharashtra Revenue Tribunal stood transferred to the Maharashtra Real Estate Appellate Tribunal.

11.4. It is thus submitted that when the Maharashtra Revenue Tribunal heard the arguments on 31st October 2018 and passed the impugned order on 1st November 2018, the Maharashtra Revenue Tribunal had no

jurisdiction, as by the Notification dated 8th May 2018 issued under Section 43(1) of the RERA, and by virtue of second proviso to Section 43(4) of the RERA, all Appeals before the Maharashtra Revenue Tribunal stood transferred to the Maharashtra Real Estate Appellate Tribunal.

11.5. Reliance is placed on the following decisions of the Supreme Court:

(i) *Allahabad Bank v. Canara Bank*[1] (Paragraphs 13, 21, 24 and 25)

(ii) *Hara Parbati Cold Storage Pvt. Ltd. v. Uco Bank* [2]

(iii) *Sushil Kumar Mehta v. Gobind Ram Bohra*[3] (Paragraph Nos.5, 9 and 26)

(iv) *B. Premanand v. Mohan Koikal* [4] (paragraph Nos.15 and 16)

(v) *Basawaraj v. Special Land Acquisition Officer*[5] (paragraph No.12)

(vi) *Commissioner of Agricultural Income Tax, West Bengal v. Sri Keshab Chandra Mandal* [6] (paragraph No.27).

(vii) *Britnell v. Secretary for Social Security* [7]

1 (2000) 4 SCC 406
2 (2000) 9 SCC 716
3 (1990) 1 SCC 193
4 (2011) 4 SCC 266
5 (2013) 14 SCC 81
6 (1950) SCC 205
7 (1991) 2 All ER 726

11.6. Reliance is also placed on the decision of High Court of Jharkhand at Ranchi in the matter between ***Arjun Kumar Singh v. Union of India*** [8] and more particularly on paragraph No.4 of the same.

11.7. Reliance is also placed on the decision of National Company Law Tribunal in the case of ***Devang Hemant Vyas v. 3A Capital (P) Ltd.***[9] and more particularly on paragraph Nos.54 and 55 of the same.

11.8. It is submitted that on and from 8th May 2018 the Maharashtra Revenue Tribunal had become *functus officio*, insofar as all Appeals filed under Section 44 of the RERA on account of plain language of Section 43(4) of the RERA and submitted that upon constitution of the Maharashtra Real Estate Appellate Tribunal on 8th May 2018 all such Appeals were transferred to it by operation of Section 43(4) of the RERA from the Maharashtra Revenue Tribunal.

11.9. It is submitted that the designation of any Tribunal as the Appellate Tribunal under the RERA under the provisions of the first proviso to Section 43(4) was merely a temporary provision and cannot be held to confer jurisdiction beyond the limited time for which such jurisdiction was conferred on the Maharashtra Revenue Tribunal. It is submitted that on and from 8th May 2018, the Maharashtra Revenue

8 MANU/JH/686/2014

9 Company Appeal (AT) No.115 of 2022 dated 16/05/2024

Tribunal has no jurisdiction to adjudicate any Appeal under Section 44 of the RERA. It is submitted that proviso to sub-Section 43(4) are in the nature of transitional provisions and required to be so interpreted so as to facilitate change from one statutory regime to another and the operation of such provision is expected to be temporary. Such transitional provisions become spent on all the past circumstances which it is designed to deal with have been dealt with. It is further submitted that the transitional provision is not authorized to widen the ambit of substantive legislation.

11.10. It is a well settled canon of statutory interpretation that any alleged hardship or inconvenience that may arise out of the interpretation of a statutory provision cannot alter meaning of the statute inferred by the legislature if such meaning is clear on the face of the provision. It is submitted that the language of the proviso to Section 43(4) of the RERA is plain and unambiguous. Accordingly, no contention about any alleged hardship to the Respondents/Allotteees can be determinative of its interpretation.

11.11. It is further submitted that a litigant cannot contend that he / she was remediless since the constitutional jurisdiction of this Hon'ble Court under Article 226 of the Constitution of India was always available in the event of any circumstance where immediate remedy / relief was not available to such litigant.

11.12. In any event, the Respondents will suffer no hardship or inconvenience if this dispute / case is remanded back to the Maharashtra Real Estate Appellate Tribunal, duly constituted as per Section 43 of the RERA and deciding the Appellant's appeal afresh by Maharashtra Real Estate Appellate Tribunal and delivering a reasoned order.

11.13. It is well settled that the issue of lack of subject matter jurisdiction can be raised at any point of time. It is submitted that an order passed by any Tribunal lacking inherent jurisdiction would be nullity. The principles of estoppel, waiver and acquiescence or even *res judicata* which are procedural in nature would have no application in a case where an order has been passed by the Tribunal/Court which has no authority in that behalf. Any order passed by the Court without jurisdiction would be *coram non-judice* being a nullity and therefore, the same ordinarily should not be given effect. To substantiate said contention, reliance is placed on the following decisions of the Supreme Court :

(i) ***Sushil Kumar Mehta*** (supra) (paragraph No. 26)

(ii) ***Hasham Abbas Sayyad v. Usman Abbas Sayyad***[10] (Paragraphs 22-24);

(iii) ***Harshad Chiman Lal Modi v. DLF Universal Ltd.***[11] (Paragraphs 29 to 37)

10 (2005) 2 SCC 355
11 (2005) 7 SCC 791

11.14. It is submitted that in any event, the Impugned Order was passed by the Maharashtra Revenue Tribunal without jurisdiction, contrary to the provisions of Section 43 of the RERA, and thus the Impugned Order is void and liable to be quashed and set aside.

11.15 Learned Counsel submitted that the statutory provision of Section 43 of RERA is unambiguous and the plain words will have to be given effect to irrespective of the consequences. The reliance is placed on decision of the Supreme Court in the case of ***Nelson Motis v. Union of India***[12].

11.16 It is well settled that hardship or inconvenience that may arise out of the interpretation of a statutory provision cannot alter the meaning of the language employed by the legislature, if the meaning is clear from the provisions.

11.17 Rule 8 of the Maharashtra Real Estate Appellate Tribunal (Members, Officers And Employees) (Appointment And Service Conditions), Rules 2017 provides that every person appointed as the Chairperson or Member of the Maharashtra Real Estate Appellate Tribunal shall, before entering upon office, make him subscribe an oath of office and secrecy in the forms prescribed thereunder before the

12 (1992) 4 SCC 711

persons designated thereunder. The said Rules have been promulgated in exercise of powers under Section 84(1), 84(2)(v) to 84(2)(z) and 84(2)(zf) of RERA.

11.18 Both section 43 and Rule 8 operate in different spheres. Section 43 deals with the establishment of the Tribunal which is a one-time event; as against this, Rule 8 would come into play each time that a new Member/Chairperson is to be appointed. Rule 8 relates to the administrative procedure of persons appointed in terms of section 84 taking oath. As against this, section 43 relates to an antecedent event of the Tribunal getting established. There is no overlap, for Rule 8 to have any bearing qua the event under section 43. This Rule has no nexus to the establishment of the Appellate Tribunal under Section 43(1) and the transfer of cases pending before the Maharashtra Revenue Tribunal [designated under the first proviso to Section 43(4)] to the Appellate Tribunal so established. The definition of the term 'Appellate Tribunal' in Rule 2(1)(b) of the said Rules in fact refers to the Maharashtra Real Estate Appellate Tribunal established under Section 43(1) of RERA by the State Government.

11.19 It is well settled that subordinate legislation can always be only in aid of the current statute and cannot override the parent statute and no subordinate legislation can be interpreted in the manner which renders

any part of the parent statute *otiose* or nugatory. Reliance is placed on the Judgment of the Supreme Court in the decision of ***Sansera Engineering Ltd. v. Deputy Commissioner***[13] and more particularly on Paragraphs 10 and 11 of the same.

11.20 Notification dated 8th May 2018 is a notification establishing the Maharashtra Real Estate Appellate Tribunal under Section 43(1) of RERA, since the establishment of a Tribunal must precede appointment of the Chairperson/Members of such Tribunal. There can be no appointment of the Chairperson/Members before the establishment of the Appellate Tribunal.

11.21 It is submitted that Section 43(1) of the RERA contemplates establishment of the Appellate Tribunal, whereas Section 46 of the RERA relates to appointment of Chairperson/Members. Appointment under Section 46 can only follow establishment under Section 43(1). Therefore, Section 46 power can be exercised only upon establishment, as appointment presupposes establishment under Section 43(1). Thus, the contention of the Respondent that the said Notification dated 8th May 2018 is not a notification under Section 43(1) is misconceived and untenable.

13 2022 SCC Online SC 1635

11.22 The Maharashtra Real Estate Appellate Tribunal has itself accepted that the Tribunal stood established under the said Notification dated 8th May 2018, which is evident from its website.

11.23 The Notification dated 24th October 2019 supersedes the said Notification dated 28th December 2017, whereby the Maharashtra Revenue Tribunal was designated the Appellate Tribunal until the Maharashtra Real Estate Appellate Tribunal was set up, and not the said Notification dated 8th May 2018 whereby the Maharashtra Real Estate Appellate Tribunal was established.

11.24 It is submitted that if the said Notification dated 24th October 2019 is treated as the notification of establishment of the Maharashtra Real Estate Appellate Tribunal, it will lead to absurd results since, for the period between 24th December 2018 and 24th October 2019, there would be two Appellate Tribunals, one designated under first proviso to Section 43(4) of RERA (Maharashtra Revenue Tribunal) and the other functioning under Section 43(1) of RERA. Thus, the said Notification dated 24th October 2019 cannot be treated as the Notification under Section 43(1).

11.25 A combined reading of the said Notifications demonstrates the distinction made by the statute between establishment (under Section 43), appointment (under Section 46) and its functioning.

11.26 It is submitted that a plain reading of Section 43(1) and 43(4) and the provisos appended to Section 43(4) make it clear that upon the establishment of the Appellate Tribunal by the only method prescribed under Section 43(1), i.e., by Notification on 8th May 2018, the Appellate Tribunal stood established and all appeals stood transferred from the Maharashtra Revenue Tribunal to Maharashtra Real Estate Appellate Tribunal.

SUBMISSIONS OF THE RESPONDENTS CONCERNING FIRST SUBSTANTIAL QUESTION OF LAW:

13. On the other hand, Mr. Anjani Kumar Singh, learned Counsel appearing for the Respondents in all the Second Appeals raised the following contentions:

12.1 It is submitted that a reply given by letter dated 27th May 2025 to one of the flat purchasers by the Housing Department of Maharashtra Government along with Government Gazette dated 24th October 2019 specifically makes clear that the Government of Maharashtra established Maharashtra Real Estate Appellate Tribunal for the State of Maharashtra and the said Tribunal started functioning w.e.f. 24th

December 2018. Learned Counsel submitted that even the factual position as set out by the Appellants in their contentions shows that the State Government notified the Constitution of the Maharashtra Real Estate Appellate Tribunal under Section 43(1) of the RERA by Notification dated 8th May 2018 and the oath ceremony of the Chairperson and members of the Appellate Tribunal took place on 24th December 2018. Thus, it is submitted that the Appellate Tribunal started functioning only w.e.f. 24th December 2018.

12.2. It is submitted that establishment as contemplated under Section 43 of the RERA includes functional status of the establishment. Reliance is placed on the definition of "establishment" as defined under Black's Law Dictionary. In that behalf it is stated on Page 53 of the written submissions in Paragraph No.4 as under:-

> "*4) The definition of "Establishment" is defined under Black's Law Dictionary as under: n.1: the act of establishing, the state or condition of being established. 2: an institution or place of business. 3: a group of people who are in power or who control or exercise, great influence or something. The meaning of the word "establishment" clearly shows that an established institution, where a group of the people who are in power and who control or exercise great influence, which clearly gives a meaning that the place of institution, which has to be a "functional" institution. Therefore, mere constitution / appointment of (permanent) appellate Tribunal as per order/ notification dated 8th May 2018 does not makes it "functional" rather, the permanent appellate tribunal only*

> *became "functional" from 24th December 2018, and after being "functional", only the automatic transfer was supposed to be valid and applicable as per the second proviso of section 43(4). It is submitted that the mandates of second proviso of section 43(4) never accrued untill 24th December 2018. The contentions of the appellant are wholly misconceived, illegal and misleading and not maintainable.* "

12.3 Reliance is placed on the decision of the Chhattisgarh High Court in the case of ***Gold Bricks Infrastructures Pvt. Ltd. v. Sumeet Agrawal***[14] and more particularly on paragraph No.24 of the same where importance of the functionality of the Tribunal was emphasized by the Chhattisgarh High Court.

12.4 Learned Counsel submitted that the reliance placed by the Appellant on the mere date of constitution is misplaced. It is submitted that procedural time-frames for public bodies are directory in nature unless specific consequences are prescribed. To substantiate said contention, reliance is placed on the decision of the Supreme Court in the case of ***Mohan Singh v. IAAI***[15].

12.5 It is submitted that the second proviso to Section 43(4) of RERA envisages automatic transfer of cases only upon the functional establishment of the Appellate Tribunal. As demonstrated through the Government Gazette dated 25 October 2019, the tribunal became

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functional only on 24 December 2018. Hence, the order of 1st November 2018 passed by the MRT was valid, subsisting, and within jurisdiction.

12.6 Section 43 of the RERA provides for the constitution of the Real Estate Appellate Tribunal. Sub-section (4) thereof contains two provisos, which are of seminal importance to the present issue. The first proviso empowers the State Government to designate, until the establishment of the permanent Appellate Tribunal, any other judicial authority or tribunal to discharge the functions of the Appellate Tribunal under the Act. The second proviso to Section 43(4) categorically stipulates that only "after the Appellate Tribunal under this section is established", all matters pending with the designated Appellate Tribunal shall stand transferred to the permanent Appellate Tribunal so established, and shall be heard from the stage at which they stood transferred.

12.7 It is therefore manifest from the plain language of the statute that the triggering point for "automatic transfer" of matters is the "establishment" of the permanent Appellate Tribunal. The establishment of permanent appellate tribunal inherently contains a "functional" permanent appellate tribunal and not merely the issuance of a notification dated 8th May 2018 appointing its Chairperson or Members

in abstraction from their assumption of office in accordance with law. The assumption of the Office of the Chairman and members only takes place in accordance with law on or after the "Oath of the office and Secrecy" as per rule 8 of the Maharashtra Real Estate Appellate Tribunal (Members, Officers and Employees) (Appointment and Service Conditions) Rules, 2017. But, the appellants erroneously argued that the notification dated 8th May 2018 had established the permanent Appellate Tribunal and therefore, all the matters pending before the Maharashtra Revenue Tribunal (designated Maharashtra, Real Estate Appellate Tribunal) ought to have been transferred on 8th May 2018 to the (Notified) Permanent Appellate Tribunal.

12.8 Rule 8 of the 2017 Rules mandates, in unequivocal terms, that every person appointed as the Chairperson or as a Member of the Appellate Tribunal shall, before entering upon his or her office, make and subscribe an "Oath" of Office and Secrecy in Form I and Form II appended to the said Rules. The requirement of taking the oath is not a mere procedural formality. It is a substantive statutory condition precedent for assuming office and for the Tribunal to become legally functional. Until such "oath" is taken, the permanent Appellate Tribunal, though constituted on paper, cannot be said to be

"established" or "functional" within the meaning of the second proviso to Section 43(4) of the RERA.

12.9 The factual chronology, which is not in dispute and stands conclusively established from official records, is as follows:

(a) By Government Notification dated 28.12.2017, the Maharashtra Revenue Tribunal ("MRT") was designated to function as the Maharashtra Real Estate Appellate Tribunal in exercise of powers under the first proviso to Section 43(4) of the RERA (**Designated Appellate Tribunal**).

(b) The permanent Maharashtra Real Estate Appellate Tribunal, comprising the Hon'ble Chairperson and Members, was notified on 8th May 2018.

(c) However, the Oath of Office and Secrecy strictly in accordance with Rule 8 of the 2017 Rules, took place on 24.12.2018 admittedly as per the annual report relied upon by the appellants. Accordingly, the Chairman and members have entered in their office or assumed their office and became functional on 24th December 2018.

(d) The Government of Maharashtra, Housing Department, by Gazette Notification dated 24.10.2019, expressly declared and confirmed that "the said Tribunal has been functional with effect from 24th December 2018".

(e) The impugned orders under challenge in the present Second Appeals were passed on 01.11.2018, i.e., prior to 24.12.2018.

12.10 In view of the aforesaid statutory provisions and admitted facts, it is submitted that:

(a) As on 01.11.2018, the permanent Maharashtra Real Estate Appellate Tribunal had not become functional, since the Chairperson and Members had not yet taken the mandatory Oath of Office and Secrecy under Rule 8 of the 2017 Rules. Consequently, the condition precedent for the applicability of the second proviso to Section 43(4) that the Appellate Tribunal "is established" was not satisfied as on the said date.

(b) The jurisdiction to hear and decide appeals under the RERA, therefore, continued to vest validly and lawfully in the Maharashtra Revenue Tribunal, which was functioning as the

designated Appellate Tribunal under the Notification dated 28.12.2017.

(c) The argument of the Appellant regarding "automatic transfer" of matters is legally unsustainable, as such transfer could operate only on and from 24.12.2018, and not prior thereto.

(d) It is thus inexorably follows that the impugned orders dated 01.11.2018 were passed by a forum possessing complete jurisdiction, authority, and competence in law, and are therefore valid, binding, and immune from challenge.

12.11 In light of the foregoing, the substantial question of law raised by the Appellants (Question No. 6) is completely illusory and does not, in fact, arise for consideration. The said question proceeds on an erroneous assumption that the permanent Appellate Tribunal was established and functional prior to 01.11.2018, which assumption is demonstrably contrary to the statutory Rules and official Government Notifications. The said question of law, therefore, deserves to be answered against the Appellants and in favour of the Respondents, holding that the Maharashtra Revenue Tribunal validly exercised appellate jurisdiction on the date of the impugned orders.

12.12 During the course of oral submissions on 19th January 2026, the Appellant vehemently relied upon a document namely Government Order No. STASNA 2017/P.No.125 DU V PU.-2 dated 8th May 2018, and erroneously sought to project the said document as a "notification" issued under Section 43(1) of RERA. Prior thereto the aforesaid Govt. Order dated 8th May 2018, by Gazette Notification No. Rera. 2017/C.R.116/DVP dated 28 December 2017, the State of Maharashtra had designated the Maharashtra Revenue Tribunal to function as the Maharashtra Real Estate Appellate Tribunal under the first proviso to Section 43(4) of the RERA. After the aforesaid Govt. Order dated 8th May 2018, the Government of Maharashtra issued Notification No. Misc.2019/C.R.129/(Part-1)/RR-2 dated 24 October 2019 under Section 43(1) of the Act, in supersession of the earlier notification no. Rera.2017/C.R.116/DVP dated 28th December 2017 (Annexure-2), formally establishing the Maharashtra Real Estate Appellate Tribunal and notifying its functionality with retrospective effect from 24th December 2018. Thus, the alleged Government Order dated 8th May 2018 is not a statutory notification under Section 43(1) of the Act.

REASONING REGARDING FIRST SUBSTANTIAL QUESTION OF LAW :-

14. Before consideration of the first substantial question of law, it is necessary to set out the relevant legal provisions:

i. The RERA received the assent of the President of India on 25th March 2016 and published in the Gazette of India dated 26-3-2016. By Notification dated 26th April 2016 issued in exercise of the powers conferred by Sub-Section (3) of Section 1 of RERA the Central Government appointed the 1st day of May 2016 as the date on which Sections 2, 20 to 39, 41 to 58, 71 to 78 and 81 to 92 came into force. By Notification dated 19th April 2017 issued in exercise of the powers conferred by Sub-Section (3) of Section 1 of RERA the Central Government appointed the 1st day of May 2017 as the date on which Sections 3 to 19, 40, 59 to 70, 79 and 80 came into force.

ii. Sections 20, 21 and 22 of RERA are concerning establishment and incorporation of Real Estate Regulatory Authority, composition of Authority, qualifications of Chairperson and Members of Authority and manner of their appointment. The said sections 20, 21 and 22 are reproduced herein below for ready reference:

> ***20. Establishment and incorporation of Real Estate Regulatory Authority***
> *(1)* ***The appropriate Government shall, within a period of one year from the date of coming into force of this Act, by notification, establish an Authority to be known as the Real Estate Regulatory Authority to exercise the powers conferred on it and to perform the functions assigned to it under this Act:***
>
> ***Provided*** *that the appropriate Government of two or more States or Union territories may, if it deems fit, establish one single Authority:*

Provided further *that the appropriate Government may, if it deems fit, establish more than one Authority in a State or Union territory, as the case may be:*

Provided also *that* ***until the establishment of a Regulatory Authority under this section, the appropriate Government shall, by order, designate any Regulatory Authority or any officer preferably the Secretary of the department dealing with Housing, as the Regulatory Authority for the purposes under this Act:***

Provided also that after the establishment of the Regulatory Authority, all applications, complaints or cases pending with the Regulatory Authority designated, shall stand transferred to the Regulatory Authority so established and shall be heard from the stage such applications, complaints or cases are transferred*.*

(2) The Authority shall be a body corporate by the name aforesaid having perpetual succession and a common seal, with the power, subject to the provisions of this Act, to acquire, hold and dispose of property, both movable and immovable, and to contract, and shall, by the said name, sue or be sued.

21. Composition of Authority.—The Authority shall consist of a Chairperson and not less than two whole time Members to be appointed by the appropriate Government.

22. Qualifications of Chairperson and Members of Authority.—The Chairperson and other Members of the Authority shall be appointed by the appropriate Government on the recommendations of a Selection Committee consisting of the Chief Justice of the High Court or his nominee, the Secretary of the Department dealing with Housing and the Law Secretary, in such manner as may be prescribed*, from amongst persons having adequate knowledge of and professional experience of at-least twenty years in case of the Chairperson and fifteen years in the case of the Members in urban development, housing, real estate*

development, infrastructure, economics, technical experts from relevant fields, planning, law, commerce, accountancy, industry, management, social service, public affairs or administration:

Provided *that a person who is, or has been, in the service of the State Government shall not be appointed as a Chairperson unless such person has held the post of Additional Secretary to the Central Government or any equivalent post in the Central Government or State Government:*

Provided further *that a person who is, or has been, in the service of the State Government shall not be appointed as a member unless such person has held the post of Secretary to the State Government or any equivalent post in the State Government or Central Government.*

(Emphasis added)

iii. Sections 43, 45 and 46 of RERA are concerning establishment and incorporation of Real Estate Appellate Tribunal, composition of Real Estate Appellate Tribunal and qualifications of Chairperson and Members of Real Estate Appellate Tribunal and manner of their appointment. The said sections 43, 45 and 46 are reproduced herein below for ready reference:

*"**43. Establishment of Real Estate Appellate Tribunal.** —(1) **The appropriate Government shall, within a period of one year from the date of coming into force of this Act, by notification, establish an Appellate Tribunal to be known as the —(name of the State/Union territory) Real Estate Appellate Tribunal.***
(2) The appropriate Government may, if it deems necessary, establish one or more benches of the Appellate Tribunal, for various jurisdictions, in the State or Union territory, as the case may be.

*(3) **Every bench of the Appellate Tribunal shall consist of at least one Judicial Member and one Administrative or Technical Member.***
(4) The appropriate Government of two or more States or Union territories may, if it deems fit, establish one single Appellate Tribunal:

*Provided that, **until the establishment of an Appellate Tribunal under this section, the appropriate Government shall designate, by order, any Appellate Tribunal functioning under any law for the time being in force, to be the Appellate Tribunal to hear appeals under the Act:***

Provided further that after the Appellate Tribunal under this section is established, all matters pending with the Appellate Tribunal designated to hear appeals, shall stand transferred to the Appellate Tribunal so established and shall be heard from the stage such appeal is transferred.

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

Provided that where a promoter files an appeal with the Appellate Tribunal, it shall not be entertained, without the promoter first having deposited with the Appellate Tribunal atleast thirty per cent. of the penalty, or such higher percentage as may be determined by the Appellate Tribunal, or the total amount to be paid to the allottee including interest and compensation imposed on him, if any, or with both, as the case may be, before the said appeal is heard.
Explanation.—For the purpose of this sub-section "person" shall include the association of allottees or any voluntary consumer association registered under any law for the time being in force.

45. Composition of Appellate Tribunal.—The Appellate Tribunal shall consist of a Chairperson and not less than two whole time Members of which one shall be a

Judicial member and other shall be a Technical or Administrative Member, to be appointed by the appropriate Government.

Explanation.—For the purposes of this Chapter,—

(i) "Judicial Member" means a Member of the Appellate Tribunal appointed as such under clause (b) of sub-section (1) of section 46;

(ii) "Technical or Administrative Member" means a Member of the Appellate Tribunal appointed as such under clause (c) of sub-section (1) of section 46.

46. Qualifications for appointment of Chairperson and Members.—(1) A person shall not be qualified for appointment as the Chairperson or a Member of the Appellate Tribunal unless he,—

(a) in the case of Chairperson, is or has been a Judge of a High Court; and

(b) in the case of a Judicial Member he has held a judicial office in the territory of India for at least fifteen years or has been a member of the Indian Legal Service and has held the post of Additional Secretary of that service or any equivalent post, or has been an advocate for at least twenty years with experience in dealing with real estate matters; and

(c) in the case of a Technical or Administrative Member, he is a person who is well-versed in the field of urban development, housing, real estate development, infrastructure, economics, planning, law, commerce, accountancy, industry, management, public affairs or administration and possesses experience of at least twenty years in the field or who has held the post in the Central Government or a State Government equivalent to the post of Additional Secretary to the Government of India or an equivalent post in the Central Government or an equivalent post in the State Government.

(2) The Chairperson of the Appellate Tribunal shall be appointed by the appropriate Government in consultation with the Chief Justice of High Court or his nominee.

> *(3) The Judicial Members and Technical or Administrative Members of the Appellate Tribunal shall be appointed by the appropriate Government on the recommendations of a Selection Committee consisting of the Chief Justice of the High Court or his nominee, the Secretary of the Department handling Housing and the Law Secretary and in such manner as may be prescribed."*
>
> (Emphasis added)

iv. Rules 3, 4, 5 and 9 of the Maharashtra Real Estate Regulatory Authority, Chairperson, Members Officers and Other Employees (Appointment and Service Conditions) Rules, 2017 ("**Real Estate Authority Rules, 2017**") are also relevant and are reproduced herein below:

> *"3. Real Estate Regulatory Authority.*
> *The Government may by notification in the Official Gazette establish an Authority under sub-section (1) of section 20 of the Act for such area as may be specified in the notification.*
>
> *4. Selection of Chairperson and other Members of Authority.*
> *(1) The State Government shall make a reference to the Selection Committee for appointment of the Chairperson and Members of the Authority or when any vacancy in the office of the Chairperson or Member arises or likely to arise in the Authority.*
>
> *(2) The Selection Committee may, for the purpose of selection of the Chairperson or Member of the Authority, follow such procedure as it may as deem fit.*
>
> *(3) The Selection Committee shall make a recommendation to the State Government for the consideration in the form of a panel of not more than three persons, in order of preference, separately to fill the vacancy or vacancies referred to by the State Government.*

(4) The Selection Committee shall make its recommendations to the State Government, within, a period not exceeding sixty days from the date of reference made under sub-rule (1).

(5) The Selection Committee shall normally hold its meeting at Mumbai or at such places in the State, as may be decided by the Chairperson.

(6) The Notice/Agenda, as the case may be, for the meeting of the Selection Committee shall be issued by the Convener after fixing the date and venue for such meeting in consultation with the Chairperson of the Selection Committee.

(7) The Secretary-in-Charge of the Housing Department shall be the convener of the Selection Committee."

5. Appointment of Chairperson and Members.
The State Government shall consider the recommendations of the Selection Committee for the appointment of the Chairperson and Members or to fill the vacancy in order of preference as recommended by the Selection Committee. If the State Government appoints person not according to the order of preference, the Government shall record the reasons in writing therefor.

9. Oath of office and secrecy.
(1) ***Every person appointed as the Chairperson of the Authority shall, before entering his office, make and subscribe an Oath of Office and Secrecy, in Form I and Form II, respectively, appended to these Rules, before the Minister-in-Charge of the Housing Department of the Government.***

(2) ***Every person appointed as a Member of the Authority shall, before entering his office, make and subscribe an Oath of Office and Secrecy, in Form I and Form II, respectively, appended to these Rules, before the Chairperson of the Authority."***

(Emphasis added)

v. Rules 3, 4, 5 and 8 of the Maharashtra Real Estate Appellate Tribunal (Members Officers and Employees) (Appointment and Service Conditions) Rules, 2017 ("**Real Estate Appellate Tribunal Rules**") are relevant, which are reproduced herein below:

> *"3. Maharashtra Real Estate Appellate Tribunal*
> *The Government may by notification in the Official Gazettee stablish Appellate Tribunal for such area as may be specified in the notification.*
>
> *4. Procedure of Selection Committee*
> *(1) The State Government shall make a reference to the Selection Committee for appointment of Members of the Appellate Tribunal or when any vacancy arises or is likely to arise in the Appellate Tribunal.*
>
> *(2) The Selection Committee may, for the purpose of selection of the Members of Appellate Tribunal, follow such procedure as it may deem fit.*
>
> *(3) The Selection Committee shall make a recommendation to the State Government for consideration in the form of a panel of not more than three persons in order of preference separately to fill the vacancy or vacancies referred to by the State Government.*
>
> *(4) The Selection Committee shall make its recommendations to the State Government, within a period not exceeding sixty days from the date of reference made under sub-rule (1).*
>
> *(5) The Selection Committee shall normally hold its meetings at Mumbai or at such places in the State, as may be decided by the Chairperson.*
>
> *(6) The Notice or Agenda, as the case may be, for the meeting of the Selection Committee shall be issued by the convenor after fixing the date and venue for such meeting in consultation with the Chairperson.*

(7) The Secretary- in- charge of the Housing Department shall be the convener of the Selection Committee.

5. Appointment of Member

The State Government shall consider the recommendation of the Selection Committee for the appointment of Member or fill the vacancy in order of preference as recommended by the Selection Committee. If the State Government appoints person not according to the order of preference, the Government shall record the reasons in writing therefor.

8. Oath of office and secrecy

*(1)**Every person appointed as the Chairperson of the Appellate Tribunal shall, before entering upon his office, make and subscribe an Oath of Office and Secrecy, in Form I and Form II, respectively, appended to these Rules.***

*(2) **Every person appointed as a Member shall, before entering upon his office, make and subscribe an Oath of Office and Secrecy, in Form I and Form II, respectively, appended to these Rules.**"*

15. Before considering the scheme of RERA as per the above provisions which are relevant for the purpose of deciding the First Substantial Question of Law, it is necessary to set out the statement of Objects and Reasons of RERA.

Statement of Objects and Reasons:

*"(1) **The real estate sector plays a catalytic role in fulfilling the need and demand for housing and infrastructure in the country. While this sector has grown significantly in recent years, it has been largely unregulated, with absence of professionalism and standardisation and lack of adequate consumer protection. Though the Consumer Protection Act, 1986***

is available as a forum to the buyers in the real estate market, the recourse is only curative and is not adequate to address all the concerns of buyers and promoters in that sector. The lack of standardisation, has been a constraint to the healthy and orderly growth of industry. Therefore, the need for regulating the sector has been emphasised in various forums.

(2) In view of the above, it becomes necessary to have a Central legislation, namely, the Real Estate (Regulation and Development) Bill, 2013, in the interests of the effective consumer protection, uniformity and standardisation of business practices and transactions in the real estate sector. The proposed Bill provides for the establishment of the Real Estate Regulatory Authority (the Authority) for regulation and promotion of real estate sector and to ensure sale of plot, apartment or building, as the case may be, in an efficient and transparent manner and to protect the interest of consumers in real estate sector and establish the Real Estate Appellate Tribunal to hear appeals from the decisions, directions or orders of the Authority."

(3) The proposed Bill will ensure greater accountability towards consumers, and significantly reduce frauds and delays as also the current high transaction costs. It attempts to balance the interests of consumers and promoters by imposing certain responsibilities on both. It seeks to establish symmetry of information between the promoter and purchaser, transparency of contractual conditions, set minimum standards of accountability and a fasttrack dispute resolution mechanism. The proposed Bill will induct professionalism and standardisation in the sector, thus paving the way for accelerated growth and investments in the long run.

4. The Real Estate (Regulation and Development) Bill, 2013, inter alia, provides for the following, namely:—

(a) to impose an obligation upon the promoter not to

book, sell or offer for sale, or invite persons to purchase any plot, apartment or building, as the case may be, in any real estate project without registering the real estate project with the Authority;

(b) to make the registration of real estate project compulsory in case where the area of land proposed to be developed exceed five hundred square meters or number of apartments proposed to be developed exceed eight;

(c) to impose an obligation upon the real estate agent not to facilitate sale or purchase of any plot, apartment or building, as the case may be, without registering himself with the Authority;

(d) to impose liability upon the promoter to pay such compensation to the allottees, in the manner as provided under the proposed legislation, in case if he fails to discharge any obligations imposed on him under the proposed legislation;

(e) to establish an Authority to be known as the Real Estate Regulatory Authority by the appropriate Government, to exercise the powers conferred on it and to perform the functions assigned to it under the proposed legislation;

(f) the functions of the Authority shall, inter alia, include-

(i) to register and regulate real estate projects and real estate agents register under this Act;

(ii) to publish and maintain a website of records for public viewing of all real estate projects for which registration has been given, with such details as may be prescribed including information provided in the application for which registration has been granted;

(iii) to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under the proposed legislation;

(g) to establish an Advisory Council by the Central Government to advice and recommend the Central Government on-

(i) matters concerning the implementation of the proposed legislation;

(ii) major questions of policy;

(iii) protection of consumer interest;

(iv) growth and development of the real estate sector,

(h) to establish the Real Estate Appellate Tribunal by the appropriate Government to hear appeals from the direction, decision or order of the Authority or the adjudicating officer;

(i) to appoint an adjudicating officer by the Authority for adjudging compensation under sections 12, 14, 18 and 19 of the proposed legislation;

(j) to make provision for punishment and penalties for contravention of the provisions of the proposed legislation and for non-compliance of orders of Authority or Appellate Tribunal;

(k) to empower the appropriate Government to supersede the Authority on certain circumstances specified in the proposed legislation;

(l) to empower the appropriate Government to issue directions to the Authority and obtain reports and returns from it.

> *5. The Notes on clauses explain in detail the various provisions contained in the Real Estate (Regulation and Development) Bill, 2013.*
>
> *6. The Bill seeks to achieve the above objectives."*

16. Objects and Reasons of RERA were discussed by the Supreme Court in the case of ***Newtech Promoters And Developers Private Limited V. State of Uttar Pradesh And Others***[16], in paragraph Nos.5 to 11 which read as under:

> "***Objects and Reasons of the 2016 Act***
>
> *5. Over the past two decades, with the growth of population and the attraction of the people to shift towards urbanisation, the demand for housing increased manifold. The Government also introduced various housing schemes to cope with the increasing demand but the experience shows that demands of the housing sector could not be meted out by the Government at its own level for various reasons to meet the requirement, the private players entered into the real estate sector in meeting out the rising demand of housing. Though availability of loans, both from public and private banks, become easier, still the high rate of interest and the EMI has posed additional financial burden on the people.*
>
> *6. At the given time, the real estate and housing sector was largely unregulated and the consequence was that consumers were unable to procure complete information for enforced accountability towards builders and developers in the absence of an effective mechanism in place. Though the Consumer Protection Act, 1986 was available to cater the demand of homebuyers in the real estate sector but the experience shows that this mechanism was inadequate to address the needs of the homebuyers and promoters*

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in the real estate sector.

7. At this juncture, the need for Real Estate (Regulation) Bill was badly felt for establishing an oversight mechanism to enforce accountability to the real estate sector and providing an adjudicating machinery for speedy dispute redressal mechanism and safeguarding the investments made by the homebuyers through legislation to the extent permissible under the law.

8. The Statement of Objects and Reasons of the Act indicates that the primal position of the Regulatory Authority is to regulate the real estate sector having jurisdiction to ensure compliance with the obligation cast upon the promoters. *The opening Statement of Objects and Reasons which has a material bearing on the subject reads as follows:*

"The real estate sector plays a catalytic role in fulfilling the need and demand for housing and infrastructure in the country. While this sector has grown significantly in recent years, it has been largely unregulated, with absence of professionalism and standardisation and lack of adequate consumer protection. Though the Consumer Protection Act, 1986 is available as a forum to the buyers in the real estate market, the recourse is only curative and is not adequate to address all the concerns of buyers and promoters in that sector. The lack of standardisation, has been a constraint to the healthy and orderly growth of industry. Therefore, the need for regulating the sector has been emphasised in various forums.

2. In view of the above, it becomes necessary to have a Central legislation, namely, the Real Estate (Regulation and Development) Bill, 2013, in the interests of the effective consumer protection, uniformity and standardisation of business practices and transactions in the real estate sector. The proposed Bill provides for the establishment of the Real Estate Regulatory Authority (the Authority) for

regulation and promotion of real estate sector and to ensure sale of plot, apartment or building, as the case may be, in an efficient and transparent manner and to protect the interest of consumers in real estate sector and establish the Real Estate Appellate Tribunal to hear appeals from the decisions, directions or orders of the Authority."

9. It was introduced with an object to ensure greater accountability towards consumers, to significantly reduce frauds and delays and also the current high transaction costs, and to balance the interests of consumers and promoters by imposing certain responsibilities on both, and to bring transparency of the contractual conditions, set minimum standards of accountability and a fast-track dispute resolution mechanism. *It also proposes to induct professionalism and standardisation in the sector, thus paving the way for accelerated growth and investments in the long run.*

10. Some of the relevant Objects and Reasons are extracted as under:

*"**4. (d) to impose liability upon the promoter to pay such compensation to the allottees, in the manner as provided under the proposed legislation, in case if he fails to discharge any obligations imposed on him under the proposed legislation;***

***

(f) the functions of the Authority shall, inter alia, include—

(i) to render advice to the appropriate Government in matters relating to the development of real estate sector;

(ii) to publish and maintain a website of records of all real estate projects for which registration has been given, with such details as may be prescribed;

(iii) ***to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under the proposed legislation;***

* * *

(i) *to appoint an adjudicating officer by the Authority for adjudging compensation under Sections 12, 14 and 16 of the proposed legislation;*

11. The Bill provides for establishment of the Authority for regulation and promotion of real estate sector, to ensure sale of plot, apartment or building or sale of real estate project in an efficient and transparent manner and to protect the interest of consumers in the real estate sector and provide the adjudicating mechanism for speedy dispute redressal mechanism by establishing the Regulatory Authority and the adjudicating officer and in hierarchy, the Appellate Tribunal for early and prompt disposal of the complaint being instituted primarily by the home-buyers for whom this Act has been enacted by Parliament in 2016."

(Emphasis added)

17. Thus, the following *inter alia* are the important objects and purposes of RERA:-

i. The real estate and housing sector was largely unregulated and the consequence was that consumers were unable to procure complete information for enforced accountability towards builders and developers in the absence of an effective mechanism in place.

ii. The Consumer Protection Act, 1986 was available to cater the demand of homebuyers in the real estate sector

but the experience shows that this mechanism was inadequate to address the needs of the homebuyers and promoters in the real estate sector.

iii. The need for Real Estate (Regulation) Bill was badly felt for establishing an oversight mechanism to enforce accountability to the real estate sector and providing an adjudicating machinery for speedy dispute redressal mechanism and safeguarding the investments made by the homebuyers through legislation to the extent permissible under the law.

iv. The Statement of Objects and Reasons of RERA indicates that the primal position of the Regulatory Authority is to regulate the real estate sector having jurisdiction to ensure compliance with the obligation cast upon the promoters, the allottees and the real estate agents.

v. The proposed Bill provides for the establishment of the Real Estate Regulatory Authority for regulation and promotion of real estate sector and to ensure sale of plot, apartment or building, as the case may be, in an efficient and transparent manner and to protect the interest of consumers in real estate sector and establish the Real Estate

Appellate Tribunal to hear appeals from the decisions, directions or orders of the Authority.

vi. It was introduced with an object to ensure greater accountability towards consumers, to significantly reduce frauds and delays and also the current high transaction costs, and to balance the interests of consumers and promoters by imposing certain responsibilities on both, and to bring transparency of the contractual conditions, set minimum standards of accountability and a fast-track dispute resolution mechanism.

vii. to impose liability upon the promoter to pay such compensation to the allottees, in the manner as provided under the proposed legislation, in case if he fails to discharge any obligations imposed on him under the proposed legislation;

18. The perusal of Sections 20, 21, 22, 43, 45 and 46 of RERA as also the relevant Rules as set out herein above reflect the following scheme of RERA in the context of the First Substantial Question of Law.:-

i. The appropriate Government shall within a period of one year from the date of coming into force of RERA, by Notification establish an Authority to be

known as **Real Estate Regulatory Authority**. The appropriate Government, until the establishment of a Regulatory Authority under section 20, shall, by order, designate any Regulatory Authority or any officer preferably the Secretary of the department dealing with Housing, as the Regulatory Authority for the purposes under RERA [Section 20].

ii. The Authority shall consist of a Chairperson and not less than two whole time Members to be appointed by the appropriate Government [Section 21].

iii. The Chairperson and other Members of the Authority shall be appointed by the appropriate Government on the recommendations of a Selection Committee consisting of the Chief Justice of the High Court or his nominee, the Secretary of the Department dealing with Housing and the Law Secretary [Section 22].

iv. The Chairperson and other Members of the Authority shall be appointed from amongst persons

having adequate knowledge of and professional experience of at-least twenty years in case of the Chairperson and fifteen years in the case of the Members in urban development, housing, real estate development, infrastructure, economics, technical experts from relevant fields, planning, law, commerce, accountancy, industry, management, social service, public affairs or administration [Section 22].

v. Every person appointed as the Chairperson of the Authority and Member of the Authority shall, before entering their offices, make and subscribe an Oath of Office and Secrecy in prescribed format [Rule 9 of the Real Estate Authority Rules, 2017].

vi. The appropriate Government shall within a period of one year from the date of coming into force of RERA, by Notification establish an **Appellate Tribunal** for the concerned State/Union Territory. The appropriate Government may if necessary, shall establish one or more Benches of the Appellate Tribunal for various jurisdictions in the State or Union Territory as the case may be [Section 43(1) and (2)].

vii. The Appellate Tribunal shall consist of a chairperson and not less than two whole time members of which one shall be a judicial member and other shall be a Technical or Administrative Member. [Section 45].

viii. A person shall not be qualified for appointment as the Chairperson unless he is or has been a Judge of a High Court. The Chairperson of the Appellate Tribunal shall be appointed by the appropriate Government in consultation with the Chief Justice of High Court or his nominee. [Section 46(1) (a) and (2)].

ix. A person shall not be qualified for appointment as a Judicial Member unless he has held a judicial office in the territory of India for at least fifteen years or has been a member of the Indian Legal Service and has held the post of Additional Secretary of that service or any equivalent post, or has been an advocate for at least twenty years with experience in dealing with real estate matters [Section 46].

x. A person shall not be qualified for appointment as a Technical or Administrative Member unless he is a person who is well-versed in the field of urban development, housing, real estate development, infrastructure, economics, planning, law, commerce, accountancy, industry, management, public affairs or administration and possesses experience of at least twenty years in the field or who has held the post in the Central Government or a State Government equivalent to the post of Additional Secretary to the Government of India or an equivalent post in the Central Government or an equivalent post in the State Government [Section 46].

xi. The Judicial Members and Technical or Administrative Members of the Appellate Tribunal shall be appointed by the appropriate Government on the recommendations of a Selection Committee consisting of the Chief Justice of the High Court or his nominee, the Secretary of the Department handling Housing and the Law Secretary and in such manner as may be prescribed. [Section 46].

xii. The Chairperson and the members of the Appellate Tribunal shall before entering upon the office, make and subscribe an oath of office and secrecy. [Rule 8 of the Real Estate Appellate Tribunal Rules 2017].

xiii. Until the establishment of an Appellate Tribunal under Section 43(1), the appropriate Government shall designate by Order, any Appellate Tribunal functioning under any law for the time being in force to be the Appellate Tribunal to hear Appeals under the RERA. [First proviso to sub-Section (4) of Section 43].

xiv. After the Appellate Tribunal under Section 43 is established, all matters pending before the Appellate Tribunal designated to hear the Appeals shall stand transferred to the Appellate Tribunal so established and shall be heard from the Stage such Appeal is transferred. [Second proviso to sub-Section (4) of Section 43].

19. Sub-Section 1 of Section 20 0f RERA specifically provides that within a period of one year from the date of coming into force of RERA,

by Notification, establish an Authority to be known as the Real Estate Regulatory Authority. Third Proviso to sub-section (1) of Section 20 provides that until the establishment of the Real Estate Regulatory Authority, the appropriate Government, shall, by order, designate any Regulatory Authority or any officer preferably the Secretary of the department dealing with Housing, as the Regulatory Authority for the purposes under RERA. The fourth proviso to Sub-Section 1 of Section 20 provides that after the establishment of the Regulatory Authority, all applications, complaints or cases pending with the Regulatory Authority designated, shall stand transferred to the Regulatory Authority so established and shall be heard from the stage such applications, complaints or cases are transferred.

20. Sub-section (1) of Section 43 of RERA specifically provides that the appropriate Government shall within a period of one year from the date of coming into force of RERA, by Notification establish an Appellate Tribunal for the concerned State/Union Territory. Even, until establishment of the Appellate Tribunal as contemplated under Sub-Section 1 of Section 43, the appropriate Government has been empowered by first Proviso to Sub-Section 4 of Section 43 to designate by Order any Appellate Tribunal functioning under any law for the time being in force to be the Appellate Tribunal to hear Appeals under RERA.

The second proviso to Sub-Section 4 of Section 43 provides that after the Appellate Tribunal as contemplated under Sub-Section 1 of Section 43 is established, all matters pending with the Appellate Tribunal, designated to hear Appeals as designated by exercising power under first proviso to Sub-Section (4) of Section 43 shall stand transferred to the Appellate Tribunal established as contemplated under Sub-Section 1 of Section 43 and shall be heard from such a stage when the Appeal is transferred. Thus, the second proviso to Sub-Section 4 of Section 43 makes it very clear that establishment of the Appellate Tribunal by Notification contemplated by Sub-Section 1 of Section 43 read with second proviso to Sub-Section 4 of Section 43 is an Appellate Tribunal established which is ready to hear the Appeals pending before the Appellate Tribunal designated by the State Government by exercising power under First Proviso to sub-section (4) of Section 43 of RERA.

21. For appreciating the Scheme of RERA, relevant for the purpose of deciding the First Substantial Question of Law, it is necessary to consider the same in the light of objects and reasons for enacting RERA. The objects and reasons for enacting RERA makes it very clear that the same was enacted in peculiar circumstances. The real estate and housing sector was largely unregulated and the consequence was that consumers were unable to procure complete information for enforced

accountability towards builders and developers in the absence of an effective mechanism in place. The Consumer Protection Act, 1986 was available to cater the demand of homebuyers in the real estate sector but the said mechanism was inadequate to address the needs of the homebuyers and promoters in the real estate sector. The need for RERA was badly felt for establishing an oversight mechanism to enforce accountability in the real estate sector and providing an adjudicating machinery for speedy dispute redressal mechanism and safeguarding the investments made by the homebuyers through legislation to the extent permissible under the law. The Statement of Objects and Reasons of RERA indicates that the primal position of the Regulatory Authority is to regulate the real estate sector having jurisdiction to ensure compliance with the obligation cast upon the promoters, the allottees and the real estate agents. The RERA provided for the establishment of the Real Estate Regulatory Authority for regulation and promotion of real estate sector and to ensure sale of plot, apartment or building, as the case may be, in an efficient and transparent manner and to protect the interest of consumers in real estate sector and establish the Real Estate Appellate Tribunal to hear appeals from the decisions, directions or orders of the Authority. RERA was enacted with an object to ensure greater accountability towards consumers, to significantly reduce frauds and delays and also the high transaction costs, and to balance the

interests of consumers and promoters by imposing certain responsibilities on both, and to bring transparency of the contractual conditions, set minimum standards of accountability and a fast-track dispute resolution mechanism, to impose liability upon the promoter to pay such compensation to the allottees, in the manner as provided, in case if the promoter fails to discharge any obligations imposed on him.

22. As noted herein above, Section 20 of RERA provides for establishment and incorporation of Real Estate Regulatory Authority and Section 43 provides for establishment of Real Estate Appellate Tribunal. Section 20 and Section 43 of RERA by which *inter alia* respectively it is provided that until the establishment of Real Estate Regulatory Authority and Real Estate Appellate Tribunal interim arrangement is made for immediately establishing alternate Regulatory Authority and alternate Appellate Tribunal to perform functions of Real Estate Regulatory Authority and Real Estate Appellate Tribunal respectively till the formation of Real Estate Regulatory Authority and Real Estate Appellate Tribunal, is required to be appreciated in the context of object and reasons of RERA more particularly that the need for RERA was necessitated for establishing an oversight mechanism to enforce accountability to the real estate sector and providing an adjudicating machinery for speedy dispute redressal mechanism and

safeguarding the investments made by the homebuyers through legislation to the extent permissible under the law. Thus, inter alia it is the purpose of RERA to immediately provide Regulatory Authority to regulate Real Estate Sector and establish Appellate Tribunal to hear Appeals from the decisions, directions or orders of the Regulatory Authority.

23. The importance of the Regulatory Authority can be seen from Section 34 of RERA which is concerning functions of the Regulatory Authority. Said Section 34 reads as under:

> "***34. Functions of Authority****.—The functions of the Authority shall include—*
>
> *(a)* ***to register and regulate real estate projects and real estate agents registered under this Act****;*
>
> *(b)* ***to publish and maintain a website of records, for public viewing, of all real estate projects for which registration has been given****, with such details as may be prescribed, including information provided in the application for which registration has been granted;*
>
> *(c) to maintain a database, on its website, for public viewing, and enter the names and photographs of promoters as defaulters including the project details, registration for which has been revoked or have been penalised under this Act, with reasons therefor, for access to the general public;*
>
> *(d) to maintain a database, on its website, for public viewing, and enter the names and photographs of real estate agents who have applied and registered under this Act, with such details as may be prescribed, including those whose registration has been rejected or revoked;*

(e) to fix through regulations for each areas under its jurisdiction the standard fees to be levied on the allottees or the promoter or the real estate agent, as the case may be;

(f) ***to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder****;*

(g) ***to ensure compliance of its regulations or orders or directions made in exercise of its powers under this Act****;*

(h) to perform such other functions as may be entrusted to the Authority by the appropriate Government as may be necessary to carry out the provisions of this Act."

(Emphasis added)

24. Section 34 clearly shows that very important functions have been assigned to the Regulatory Authority. The main function of the Regulatory Authority, in the context of the First Substantial Question of Law, is to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents.

25. The functions and duties of promoter are set out in Section 11 of the RERA which reads as under:

"***11. Functions and duties of promoter****.—(1) The promoter shall, upon receiving his Login Id and password under clause (a) of sub-section (1) or under sub-section (2) of section 5, as the case may be, create his web page on the website of the Authority* ***and enter all details of the proposed project as provided under sub-section (2) of section 4, in all the fields as provided, for public viewing, including—***

(a) details of the registration granted by the Authority;

(b) quarterly up-to-date the list of number and types of apartments or plots, as the case may be, booked;

(c) quarterly up-to-date the list of number of garages booked;

(d) quarterly up-to-date the list of approvals taken and the approvals which are pending subsequent to commencement certificate;

(e) quarterly up-to-date status of the project; and

(f) such other information and documents as may be specified by the regulations made by the Authority.

(2) The advertisement or prospectus issued or published by the promoter shall mention prominently the website address of the Authority, wherein all details of the registered project have been entered and include the registration number obtained from the Authority and such other matters incidental thereto.

*(3) **The promoter, at the time of the booking and issue of allotment letter shall be responsible to make available to the allottee, the following information, namely**:—*

*(a) **sanctioned plans, layout plans, along with specifications, approved by the competent authority, by display at the site or such other place as may be specified by the regulations made by the Authority**;*

*(b) **the stage wise time schedule of completion of the project, including the provisions for civic infrastructure like water, sanitation and electricity**.*

*(4) **The promoter shall**—*

*(a) **be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be**:*

Provided that the responsibility of the promoter, with

respect to the structural defect or any other defect for such period as is referred to in sub-section (3) of section 14, shall continue even after the conveyance deed of all the apartments, plots or buildings, as the case may be, to the allottees are executed.

(b) ***be responsible to obtain the completion certificate or the occupancy certificate, or both****, as applicable, from the relevant competent authority as per local laws or other laws for the time being in force and to make it available to the allottees individually or to the association of allottees, as the case may be;*

(c) ***be responsible to obtain the lease certificate, where the real estate project is developed on a leasehold land****, specifying the period of lease, and certifying that all dues and charges in regard to the leasehold land has been paid, and to make the lease certificate available to the association of allottees;*

(d) be responsible for providing and maintaining the essential services, on reasonable charges, till the taking over of the maintenance of the project by the association of the allottees;

(e) ***enable the formation of an association or society or co-operative society, as the case may be, of the allottees, or a federation of the same, under the laws applicable****:*

Provided that in the absence of local laws, the association of allottees, by whatever name called, shall be formed within a period of three months of the majority of allottees having booked their plot or apartment or building, as the case may be, in the project;

(f) ***execute a registered conveyance deed of the apartment, plot or building, as the case may be, in favour of the allottee along with the undivided proportionate title in the common areas to the association of allottees or competent authority, as the case may be, as provided under section 17 of this Act****;*

(g) pay all outgoings until he transfers the physical

possession of the real estate project to the allottee or the associations of allottees, as the case may be, which he has collected from the allottees, for the payment of outgoings (including land cost, ground rent, municipal or other local taxes, charges for water or electricity, maintenance charges, including mortgage loan and interest on mortgages or other encumbrances and such other liabilities payable to competent authorities, banks and financial institutions, which are related to the project):

Provided that where any promoter fails to pay all or any of the outgoings collected by him from the allottees or any liability, mortgage loan and interest thereon before transferring the real estate project to such allottees, or the association of the allottees, as the case may be, the promoter shall continue to be liable, even after the transfer of the property, to pay such outgoings and penal charges, if any, to the authority or person to whom they are payable and be liable for the cost of any legal proceedings which may be taken therefor by such authority or person;

(h) after he executes an agreement for sale for any apartment, plot or building, as the case may be, not mortgage or create a charge on such apartment, plot or building, as the case may be, and if any such mortgage or charge is made or created then notwithstanding anything contained in any other law for the time being in force, it shall not affect the right and interest of the allottee who has taken or agreed to take such apartment, plot or building, as the case may be;

(5) ***The promoter may cancel the allotment only in terms of the agreement for sale****:*

Provided that the allottee may approach the Authority for relief, if he is aggrieved by such cancellation and such cancellation is not in accordance with the terms of the agreement for sale, unilateral and without any sufficient cause*.*

(6) The promoter shall prepare and maintain all such other details as may be specified, from time to time, by regulations made by the Authority."

(Emphasis added)

26. A perusal of Section 11 of RERA clearly shows that very important functions and duties are cast on the promoter. The promoter is responsible for all obligations, responsibilities and functions under the provisions of RERA or Rules and Regulations made thereunder or to allottees as per the agreement for sale or to the association of allottees. The promoter is responsible for obtaining completion certificate or occupancy certificate or both from the relevant competent authority as per law. The promoter is responsible for performing very important functions and duties for completion of real estate project.

27. Section 12 of RERA is concerning obligations of promoter regarding veracity of the advertisements or prospectus. Section 13 provides that a promoter shall not accept a sum more than 10% of the cost of the apartment as an advance payment without first entering into a written agreement for sale with such person and registered the said agreement for sale under any law for the time being in force. Section 14 provides that the proposed project shall be developed and completed by the promoter in accordance with the sanctioned plans, layout plans and specifications as approved by the competent authorities and no addtions or alterations be made with the same without the previous consent of the allottee. As per Section 16, the promoter is under an obligation to

ensure real estate project in respect of title of the land and building as a part of the real estate project and construction of the real estate project. As per Section 17, the promoter is under an obligation to transfer the title in favour of allottee and also to the association of the allottees. Section 18 provides that if the promoter fails to complete or is unable to give possession of an apartment, plot or building in accordance with the terms of the agreement for sale or duly completed by the date specified therein or due to discontinuance of his business as a developer on account of suspension or revocation of the registration under RERA or for any other reason, the promoter shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by promoter in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under RERA. It is further provided that where an allottee does not intend to withdraw from the project, the allottee shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed.

28. Thus, it is clear that the promoter is under an obligation to perform very important functions and duties and the same are very

important for protecting the interest of allottees.

29. In view of the above important functions and duties of the promoter and object and purposes of RERA, it is also relevant to note Paragraph no.12 of the decision of the Supreme Court in ***Newtech*** (supra) which reads as under:-

> "12. *To examine the matter in this perspective,* ***consider what a house means in India. The data shows that about more than 77% of total assets of an average Indian household are held in real estate and it is the single largest investment of an individual in his lifetime. The real estate in India has a peculiar feature. The buyer borrows money to pay for a house and simultaneously plays the role of a financer as building projects collect money upfront and this puts the buyer in a very vulnerable position—the weakest stakeholder with a high financial exposure****. The amendment to the Insolvency and Bankruptcy Code, 2018 recognised the homebuyers as financial creditors and the* ***present enactment is the most important regulatory intervention in favour of the homebuyers and it had an impact and with passage of time, has become a yardstick of laying down minimum standards in the market. Earlier, the real estate sector was completely unregulated and there was no transparency in their business profile and after the present enactment, it is open for the potential homebuyers to check if a project is approved under the Act, 2016 that at least gives a satisfaction to a person who is coming forward in making a lifetime investment.****."*
>
> (Emphasis added)

Thus the Supreme Court in ***Newtech*** (supra) has highlighted peculiar feature of real estate sector in India which is that the buyer borrows money to pay for a house and simultaneously plays the role

of a financer as building projects collect money upfront and this puts the buyer in a very vulnerable position—the weakest stakeholder with a high financial exposure. The object and purpose of RERA, *inter alia*, is to protect the buyer who is in a very vulnerable position as held by the Supreme Court.

30. Section 19 of RERA is regarding rights and duties of allottees. The said Section reads as under:

> "*19. Rights and duties of allottees.—(1)* ***The allottee shall be entitled to obtain the information relating to sanctioned plans, layout plans along with the specifications****, approved by the competent authority and such other information as provided in this Act or the rules and regulations made thereunder or the agreement for sale signed with the promoter.*
>
> *(2)* ***The allottee shall be entitled to know stage-wise time schedule of completion of the project****, including the provisions for water, sanitation, electricity and other amenities and services as agreed to between the promoter and the allottee in accordance with the terms and conditions of the agreement for sale.*
>
> *(3) The allottee shall be entitled to claim the possession of apartment, plot or building, as the case may be, and the association of allottees shall be entitled to claim the possession of the common areas, as per the declaration given by the promoter under sub-clause (C) of clause (l) of sub-section (2) of section 4.*
>
> *(4) The allottee shall be entitled to claim the refund of amount paid along with interest at such rate as may be prescribed and compensation in the manner as provided under this Act, from the promoter, if the promoter fails to comply or is unable to give*

possession of the apartment, plot or building, as the case may be, in accordance with the terms of agreement for sale or due to discontinuance of his business as a developer on account of suspension or revocation of his registration under the provisions of this Act or the rules or regulations made thereunder.

(5) The allottee shall be entitled to have the necessary documents and plans, including that of common areas, after handing over the physical possession of the apartment or plot or building as the case may be, by the promoter.

*(6) **Every allottee, who has entered into an agreement for sale to take an apartment, plot or building as the case may be, under section 13, shall be responsible to make necessary payments in the manner and within the time as specified in the said agreement for sale and shall pay at the proper time and place, the share of the registration charges, municipal taxes, water and electricity charges, maintenance charges, ground rent, and other charges, if any.***

*(7) **The allottee shall be liable to pay interest, at such rate as may be prescribed, for any delay in payment towards any amount or charges to be paid under sub-section (6)**.*

(8) The obligations of the allottee under sub-section (6) and the liability towards interest under sub-section (7) may be reduced when mutually agreed to between the promoter and such allottee.

*(9) **Every allottee of the apartment, plot or building as the case may be, shall participate towards the formation of an association or society or cooperative society of the allottees, or a federation of the same**.*

*(10) **Every allottee shall take physical possession of the apartment, plot or building as the case may be, within a period of two months of the occupancy***

> *certificate issued for the said apartment, plot or building, as the case may be.*
>
> *(11) Every allottee shall participate towards registration of the conveyance deed of the apartment, plot or building, as the case may be, as provided under sub-section (1) of section 17 of this Act.*
>
> (Emphasis added)

31. Thus, very important rights of allottees are given statutory recognition by RERA as also very important duties are also cast on the allottees. Every allottee who has entered into an agreement for sale to take an apartment, plot or building as the case may be, under section 13, shall be responsible to make necessary payments in the manner and within the time as specified in the said agreement for sale and shall pay at the proper time and place, the share of the registration charges, municipal taxes, water and electricity charges, maintenance charges, ground rent, and other charges, if any. The allottee shall be liable to pay interest, at such rate as may be prescribed, for any delay in payment towards any amount or charges to be paid under sub-section (6). Every allottee of the apartment, plot or building as the case may be, shall participate towards the formation of an association or society or cooperative society of the allottees, or a federation of the same. Every allottee shall take physical possession of the apartment, plot or building as the case may be, within a period of two months of the occupancy certificate issued for the said apartment, plot or building, as the case

may be. Every allottee shall participate towards registration of the conveyance deed of the apartment, plot or building, as the case may be, as provided under sub-section (1) of section 17 of this Act. Thus, the allottee is also responsible for performing various important duties as specified in Section 19 of RERA.

32. As noted earlier the Statement of Objects and Reasons of RERA indicates that the primal position of the Regulatory Authority is to regulate the real estate sector having jurisdiction to ensure compliance with the obligation cast upon the promoters, the allottees and the real estate agents. Thus, Sections 20 and 43 of RERA providing for formation and establishment of Real Estate Regulatory Authority and Real Estate Appellate Tribunal and till that time making arrangement for designated Authority and designated Appellate Tribunal as *pro tem* arrangement are required to be considered and interpreted in the light of this object and purpose of RERA.

33. As the First Substantial Question of Law is concerning interpretation of Section 43 of RERA, before further discussion on the said substantial question of law, it is necessary to set out legal position concerning interpretation of statutes.

(i) The Supreme Court in the case of ***R.S. Nayak V. A.R. Antulay***[17] in paragraph 18 has held that:-

17 (1984) 2 SCC 183

> "*18.The 1947 Act was enacted, as its long title shows, to make more effective provision for the prevention of bribery and corruption.* ***Indisputably, therefore, the provisions of the Act must receive such construction at the hands of the court as would advance the object and purpose underlying the Act and at any rate not defeat it. If the words of the statute are clear and unambiguous, it is the plainest duty of the court to give effect to the natural meaning of the words used in the provision. The question of construction arises only in the event of an ambiguity or the plain meaning of the words used in the statute would be self-defeating. The court is entitled to ascertain the intention of the legislature to remove the ambiguity by construing the provision of the statute as a whole keeping in view what was the mischief when the statute was enacted and to remove which the legislature enacted the statute. This rule of construction is so universally accepted that it need not be supported by precedents. Adopting this rule of construction, whenever a question of construction arises upon ambiguity or where two views are possible of a provision, it would be the duty of the court to adopt that construction which would advance the object underlying the Act*** *namely, to make effective provision for the prevention of bribery and corruption and at any rate not defeat it.*"
>
> (Emphasis added)

(ii) The Supreme Court in the case of ***Grasim Industries Ltd. V. Collector of Customs, Bombay***[18] has held in paragraphs 10 and 12 as follows :

> "10. ***No words or expressions used in any statute can be said to be redundant or superfluous. In matters of interpretation one should not concentrate too much on one word and pay too little attention to other words.***

18 (2002) 4 SCC 297

No provision in the statute and no word in any section can be construed in isolation. Every provision and every word must be looked at generally and in the context in which it is used. It is said that every statute is an edict of the legislature. The elementary principle of interpreting any word while considering a statute is to gather the mens or sententia legis of the legislature. Where the words are clear and there is no obscurity, and there is no ambiguity and the intention of the legislature is clearly conveyed, there is no scope for the court to take upon itself the task of amending or alternating (sic altering) the statutory provisions. Wherever the language is clear the intention of the legislature is to be gathered from the language used. While doing so, what has been said in the statute as also what has not been said has to be noted. The construction which requires for its support addition or substitution of words or which results in rejection of words has to be avoided.

"12. *In the background of what has been urged by the assessee it has to be further seen whether* **the principles** *of ejusdem generis have application. The rule is applicable when particular words pertaining to a class, category or genus are followed by general words. In such a case the general words are construed as limited to things of the same kind as those specified. The rule reflects an attempt to reconcile incompatibility between the specific and general words in view of the other rules of interpretation that all words in a statute are given effect if possible, that a statute is to be construed as a whole and that no words in a statute are presumed to be superfluous. The rule applies only when (1) the statute enumerates the specific words, (2) the subjects of enumeration constitute a class or category, (3) that class or category is not exhausted by the enumeration, (4) the general terms follow the enumeration, and (5) there is no indication of a different legislative intent. If the subjects of enumeration belong to a broad-based*

genus, as also to a narrower genus there is no principle that the general words should be confined to the narrower genus. Where the context and the object and mischief of the enactment do not require restricted meaning to be attached to words of general import it becomes the duty of the courts to give those words their plain and ordinary meaning."

(iii) The Supreme Court in the case of ***J.P. Bansal V. State of Rajasthan***[19] has held in paragraph Nos. 11, 14 and 16 as under:-

"*11. It is said that a statute is an edict of the legislature. The elementary principle of interpreting or construing a statute is to gather the mens or sententia legis of the legislature.*

12. Interpretation postulates the search for the true meaning of the words used in the statute as a medium of expression to communicate a particular thought. The task is not easy as the "language" is often misunderstood even in ordinary conversation or correspondence. The tragedy is that although in the matter of correspondence or conversation the person who has spoken the words or used the language can be approached for clarification, the legislature cannot be approached as the legislature, after enacting a law or Act, becomes functus officio so far as that particular Act is concerned and it cannot itself interpret it. No doubt, the legislature retains the power to amend or repeal the law so made and can also declare its meaning, but that can be done only by making another law or statute after undertaking the whole process of law-making.

13. Statute being an edict of the legislature, it is necessary that it is expressed in clear and unambiguous language.

19 (2003) 5 SCC 134

> *14.* ***Where, however, the words were clear, there is no obscurity, there is no ambiguity and the intention of the legislature is clearly conveyed, there is no scope for the court to innovate or take upon itself the task of amending or altering the statutory provisions****.*
>
> *"It endangers continued public confidence in the political impartiality of the judiciary, which is essential to the continuance of the rule of law,* ***if Judges, under the guise of interpretation, provide their own preferred amendments to statutes which experience of their operation has shown to have had consequences that members of the court before whom the matter comes consider to be injurious to the public interest****."*
>
> ***16. Where, therefore, the "language" is clear, the intention of the legislature is to be gathered from the language used. What is to be borne in mind is as to what has been said in the statute as also what has not been said. A construction which requires, for its support, addition or substitution of words or which results in rejection of words, has to be avoided, unless it is covered by the rule of exception, including that of necessity, which is not the case here.*** *.....*

(v) The Supreme Court in the case of **G. Narayanaswami Vs. G. Pannerselvam**[20] has held in paragraph 4 as under **:-**

> "*4. Authorities are certainly not wanting which indicate that Courts should interpret in a broad and generous spirit the document which contains the fundamental law of the land or the basic principles of its Government. Nevertheless, the rule of "plain meaning" or "literal" interpretation, described in Maxwell's Interpretation of Statutes as "the primary rule", could not be altogether abandoned today in interpreting any document. Indeed, we find Lord Evershed, M.R., saying:*

20 (1972) 3 SCC 717

> *"The length and detail of modern legislation, has undoubtedly reinforced the claim of literal construction as the only safe rule". (See Maxwell on "Interpretation of Statutes", 12th Edition, p. 28). It may be that the great mass of modern legislation, a large part of which consists of statutory rules, makes some departure from the literal rule of interpretation more easily justifiable today than it was in the past.* ***But, the object of interpretation and of "construction" (which may be broader than "interpretation") is to discover the intention of the law-makers in every case*** *(See : Crawford on Statutory Construction, 1940 Edn., para 157, pp. 240-42).* ***This object can, obviously, be best achieved by first looking at the language used in the relevant provisions. Other methods of extracting the meaning can be resorted to only if the language used is contradictory, ambiguous, or leads really to absurd results. This is an elementary and basic rule of interpretation as well as of construction processes which, from the point of view of principles applied, coalesce and converge towards the common purpose of both which is to get at the real sense and meaning, so far as it may be reasonably possible to do this, of what is found laid down. The provisions whose meaning is under consideration have, therefore to be examined before applying any method of construction at all****. To these provisions we may now turn."*
>
> (Emphasis added)

(vi) The Supreme Court in ***Vivek Narayan Sharma vs. Union of India***[21] has held as follows in paragraph Nos.133 to 148:

> "***133.*** *We find that for deciding the present issue, it will also be necessary to refer an* ***important principle of interpretation of statutes i.e. of purposive interpretation.***
>
> ***134. "Legislation has an aim, it seeks to obviate some***

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mischief, to supply an inadequacy, to effect a change of policy, to formulate a plan of government. That aim, that policy is not drawn, like nitrogen, out of the air; it is evidenced in the language of the statute, as read in the light of other external manifestations of purpose ["Some Reflections on the Reading of Statutes" [(1947) 47 Columbia LR 527] , Columbia LR at p. 538]." This is how Justice Frankfurter succinctly propounds the principle of purposive interpretation.

135. It is thus necessary to cull out the legislative policy from various factors like the words in the statute, the Preamble to the Act, the Statement of Objects and Reasons, and in a given case, even the attendant circumstances. After the legislative policy is found, then the words used in the statute must be so interpreted such that it advances the purpose of the statute and does not defeat it.

136. *Francis Bennion in his treatise Statutory Interpretation, at p. 810 described purposive construction in an equally eloquent manner as under:*

*"**A purposive construction of an enactment is one which gives effect to the legislative purpose by—***

*(a) **following the literal meaning of the enactment where that meaning is in accordance with the legislative purpose** (in this Code called a purposive-and-literal construction), or*

*(b) **applying a strained meaning where the literal meaning is not in accordance with the legislative purpose** (in the Code called a purposive-and-strained construction)."*

137. A statute must be construed having regard to the legislative intent. It has to be meaningful. A construction which leads to manifest absurdity must not be preferred to a construction which would fulfill the object and purport of the legislative intent.

138. *Aharon Barak, the former President of the Supreme Court of Israel, whose exposition of "doctrine*

of proportionality" has found approval by the Constitution Bench of this Court in Modern Dental College & Research Centre [Modern Dental College & Research Centre v. State of M.P., (2016) 7 SCC 353 : 7 SCEC 1] , to which we will refer to in the forthcoming paragraphs, in his commentary on "Purposive Interpretation in Law", has summarised "the goal of interpretation in law" as under:

"At some point, we need to find an Archimedean foothold, external to the text, from which to answer that question. My answer is this : ***The goal of interpretation in law is to achieve the objective—in other words, the purpose—of law. [D. Brink, "Legal Theory, Legal Interpretation, and Judicial Review", 17 Philosophy & Public Affairs 105, 125 (1988).] The role of a system of interpretation in law is to choose, from among the semantic options for a given text, the meaning that best achieves the purpose of the text. Each legal text—will, contract, statute, and constitution—was chosen to achieve a social objective. Achieving this objective, achieving this purpose, is the goal of interpretation. The system of interpretation is the device and the means. It is a tool through which law achieves self-realisation****. In interpreting a given text, which is, after all, what interpretation in law does, a system of interpretation must guarantee that the purpose of the norm trapped in the—in our terminology, the purpose of the text—will be achieved in the best way. Hence the requirement that* ***the system of interpretation be a rational activity.*** *A coin toss will not do. This is also the rationale—which is at the core of my own views—for the belief that* ***purposive interpretation is the most proper system of interpretation. This system is proper because it guarantees the achievement of the purpose of law.*** *There is social, jurisprudential, hermeneutical, and constitutional support for my claim that* ***the proper criterion for interpretation is the search for law's purpose, and that purposive interpretation best fulfills that criterion.*** *A comparative look at the law supports it, as well. I will discuss each element of that support below."*

139. *The learned Judge emphasised that* ***purposive interpretation is the most proper system of interpretation. He observed that this system is proper because it guarantees the achievement of the purpose of law. The proper criterion for interpretation is the search for law's purpose, and that purposive interpretation best fulfils that criterion.***

140. *The principle of purposive interpretation has also been expounded through a catena of judgments of this Court. A Constitution Bench of this Court in M. Pentiah v. Muddala Veeramallappa [M. Pentiah v. Muddala Veeramallappa, (1961) 2 SCR 295 : AIR 1961 SC 1107] was considering a question, as to whether the term prescribed in Section 34 would apply to a member of a "deemed" committee under the provisions of the Hyderabad District Municipalities Act, 1956. An argument was put forth that, upon a correct interpretation of the provisions of Section 16, the same would be permissible. Rejecting the said argument, K. Subba Rao, J., observed thus : (AIR pp. 1110-11, para 6)*

"6. Before we consider this argument in some detail, it will be convenient at this stage to notice some of the well-established rules of construction which would help us to steer clear of the complications created by the Act. Maxwell on the Interpretation of Statutes, 10th Edn., says at p. 7 thus:

'… if the choice is between two interpretations, the narrower of which would fail to achieve the manifest purpose of the legislation, we should avoid a construction which would reduce the legislation to futility and should rather accept the bolder construction based on the view that Parliament would legislate only for the purpose of bringing about an effective result.'

It is said in Craies on Statute Law, 5th Edn., at p. 82—

'Manifest absurdity or futility, palpable injustice, or absurd inconvenience or anomaly to be avoided.'

Lord Davey in Canada Sugar Refining Co. Ltd. v. R. [Canada Sugar Refining Co. Ltd. v. R., 1898 AC 735 (PC)] provides another useful guide of correct perspective to such a problem in the following words : (AC p. 741)

*'… **Every clause of a statute should be construed with reference to the context and the other clauses of the Act, so as, so far as possible, to make a consistent enactment of the whole statute or series of statutes relating to the subject-matter**.' "*

***141.** A.K. Sarkar, J. in his concurring opinion observed thus : (M. Pentiah case [M. Pentiah v. Muddala Veeramallappa, (1961) 2 SCR 295 : AIR 1961 SC 1107] , AIR p. 1115, para 27)*

"27. There is no doubt that the Act raises some difficulty. It was certainly not intended that the members elected to the Committee under the repealed Act should be given a permanent tenure of office nor that there would be no elections under the new Act. Yet such a result would appear to follow if the language used in the new Act is strictly and literally interpreted. It is however well established that

*'**Where the language of a statute, in its ordinary meaning and grammatical construction, leads to a manifest contradiction of the apparent purpose of the enactment, or to some inconvenience or absurdity, hardship or injustice, presumably not intended, a construction may be put upon it which modifies the meaning of the words, and even the structure of the sentence.... Where the main object and intention of a statute are clear, it must not be reduced to a nullity by the draftsman's unskilfulness or ignorance of the law, except in a case of necessity, or the absolute intractability of the language used. Nevertheless, the courts are very reluctant to substitute words in a statute, or to add words to it, and it has been said that they will only do so where there is a repugnancy to good sense**.' : see Maxwell on Statutes (10th Edn.) p. 229.*

In Seaford Court Estates Ltd. v. Asher [Seaford Court Estates Ltd. v. Asher, (1949) 2 KB 481] , KB at p. 499, Denning, L.J. said:

'… when a defect appears a Judge cannot simply fold his hands and blame the draftsman. He must set to work on the constructive task of finding the intention of Parliament … and then he must supplement the written word so as to give "force and life" to the intention of the legislature. … A Judge should ask himself the question how, if the makers of the Act had themselves come across this ruck in the texture of it, how would they have straightened it out? He must then do as they would have done. A Judge must not alter the material of which [the Act] is woven, but he can and should iron out the creases.' "

(emphasis supplied)

142. *Another Constitution Bench judgment of this Court in High Court of A.P. v. L.V.A. Dixitulu [High Court of A.P. v. L.V.A. Dixitulu, (1979) 2 SCC 34 : 1979 SCC (L&S) 99] reiterated the position in the following words : (SCC p. 53, para 67)*

"67. Where two alternative constructions are possible, the court must choose the one which will be in accord with the other parts of the statute and ensure its smooth, harmonious working, and eschew the other which leads to absurdity, confusion, or friction, contradiction and conflict between its various provisions, or undermines, or tends to defeat or destroy the basic scheme and purpose of the enactment."

143. In Girdhari Lal & Sons v. Balbir Nath Mathur [Girdhari Lal & Sons v. Balbir Nath Mathur, (1986) 2 SCC 237] , O. Chinnappa Reddy, J. explained the position as under : (SCC p. 243, para 9)

"9. So we see that the primary and foremost task of a court in interpreting a statute is to ascertain the intention of the legislature, actual or imputed. Having ascertained the intention, the court must then strive to

so interpret the statute as to promote or advance the object and purpose of the enactment. For this purpose, where necessary the court may even depart from the rule that plain words should be interpreted according to their plain meaning. There need be no meek and mute submission to the plainness of the language. To avoid patent injustice, anomaly or absurdity or to avoid invalidation of a law, the court would be well justified in departing from the so-called golden rule of construction so as to give effect to the object and purpose of the enactment by supplementing the written word if necessary."

144. *After referring to various earlier judgments of other jurisdictions, his Lordship observed thus : (Balbir Nath Mathur case [Girdhari Lal & Sons v. Balbir Nath Mathur, (1986) 2 SCC 237] , SCC p. 246, para 16)*

*"16. **Our own court has generally taken the view that ascertainment of legislative intent is a basic rule of statutory construction and that a rule of construction should be preferred which advances the purpose and object of a legislation and that though a construction, according to plain language, should ordinarily be adopted, such a construction should not be adopted where it leads to anomalies, injustices or absurdities,** vide K.P. Varghese v. ITO [K.P. Varghese v. ITO, (1981) 4 SCC 173 : 1981 SCC (Tax) 293] , State Bank of Travancore v. Mohd. M. Khan [State Bank of Travancore v. Mohd. M. Khan, (1981) 4 SCC 82] , Som Prakash Rekhi v. Union of India [Som Prakash Rekhi v. Union of India, (1981) 1 SCC 449 : 1981 SCC (L&S) 200] , Ravula Subba Rao v. CIT [Ravula Subba Rao v. CIT, AIR 1956 SC 604 : 1956 SCR 577] , Govindlal Chhaganlal Patel v. Agricultural Produce Market Committee [Govindlal Chhaganlal Patel v. Agricultural Produce Market Committee, (1975) 2 SCC 482] and Babaji Kondaji Garad v. Nasik Merchants Coop. Bank Ltd. [Babaji Kondaji Garad v. Nasik Merchants Coop. Bank Ltd., (1984) 2 SCC 50] "*

(emphasis supplied)

145. *M.N. Venkatachaliah, J. speaking for the Constitution Bench of this Court in Tinsukhia Electric Supply Co. Ltd. v. State of Assam [Tinsukhia Electric Supply Co. Ltd. v. State of Assam, (1989) 3 SCC 709] observed thus : (SCC p. 754, paras 118-20)*

"118. The courts strongly lean against any construction which tends to reduce a statute to futility. The provision of a statute must be so construed as to make it effective and operative, on the principle ut res magis valeat quam pereat. It is, no doubt, true that if a statute is absolutely vague and its language wholly intractable and absolutely meaningless, the statute could be declared void for vagueness. This is not in judicial review by testing the law for arbitrariness or unreasonableness under Article 14; ***but what a court of construction, dealing with the language of a statute, does in order to ascertain from, and accord to, the statute the meaning and purpose which the legislature intended for it****. In Manchester Ship Canal Co. v. Manchester Racecourse Co. [Manchester Ship Canal Co. v. Manchester Racecourse Co., (1900) 2 Ch 352 : 16 TLR 429 : 83 LT 274] Farwell, J. said : (pp. 360-61)*

'… Unless the words were so absolutely senseless that I could do nothing at all with them, I should be bound to find some meaning, and not to declare them void for uncertainty.'

119. *In Fawcett Properties Ltd. v. Buckingham County Council [Fawcett Properties Ltd. v. Buckingham County Council, (1960) 3 WLR 831 : (1960) 3 All ER 503 (HL)] Lord Denning approving the dictum of Farwell, J., said : (Ch p. 849)*

'… ***But when a statute has some meaning, even though it is obscure, or several meanings, even though there is little to choose between them, the courts have to say what meaning the statute to bear rather than reject it as a nullity****.'*

120. It is, therefore, ***the court's duty to make what it can of the statute, knowing that the statutes are meant***

to be operative and not inept and the nothing short of impossibility should allow a court to declare a statute unworkable. In Whitney v. IRC [Whitney v. IRC, 1926 AC 37 (HL)] Lord Dunedin said : (AC p. 52)

'… A statute is designed to be workable, and the interpretation thereof by a court should be to secure that object, unless crucial omission or clear direction makes that end unattainable.' "

146. In State of Gujarat v. R.A. Mehta [State of Gujarat v. R.A. Mehta, (2013) 3 SCC 1 : (2013) 2 SCC (Cri) 46 : (2013) 1 SCC (L&S) 490] , this Court held as under : (SCC pp. 47-48, para 98)

"98. The doctrine of purposive construction may be taken recourse to for the purpose of giving full effect to statutory provisions, and the courts must state what meaning the statute should bear, rather than rendering the statute a nullity, as statutes are meant to be operative and not inept. The courts must refrain from declaring a statute to be unworkable. The rules of interpretation require that construction which carries forward the objectives of the statute, protects interest of the parties and keeps the remedy alive, should be preferred looking into the text and context of the statute. Construction given by the court must promote the object of the statute and serve the purpose for which it has been enacted and not efface its very purpose. 'The courts strongly lean against any construction which tends to reduce a statute to futility. The provision of the statute must be so construed as to make it effective and operative.' The court must take a pragmatic view and must keep in mind the purpose for which the statute was enacted as the purpose of law itself provides good guidance to courts as they interpret the true meaning of the Act and thus legislative futility must be ruled out. A statute must be construed in such a manner so as to ensure that the Act itself does not become a dead letter and the obvious intention of the legislature does not stand defeated unless it leads to a case of absolute intractability in use. The court must adopt a construction which suppresses the mischief and

advances the remedy and 'to suppress subtle inventions and evasions for continuance of the mischief, and pro privato commodo, and to add force and life to the cure and remedy, according to the true intent of the makers of the Act, pro bono publico'. The court must give effect to the purpose and object of the Act for the reason that legislature is presumed to have enacted a reasonable statute. (Vide M. Pentiah v. Muddala Veeramallappa [M. Pentiah v. Muddala Veeramallappa, (1961) 2 SCR 295 : AIR 1961 SC 1107] , S.P. Jain v. Krishna Mohan Gupta [S.P. Jain v. Krishna Mohan Gupta, (1987) 1 SCC 191] , RBI v. Peerless General Finance & Investment Co. Ltd. [RBI v. Peerless General Finance & Investment Co. Ltd., (1987) 1 SCC 424] , Tinsukhia Electric Supply Co. Ltd. v. State of Assam [Tinsukhia Electric Supply Co. Ltd. v. State of Assam, (1989) 3 SCC 709] , SCC at p. 754, para 118; UCO Bank v. Rajinder Lal Capoor [UCO Bank v. Rajinder Lal Capoor, (2008) 5 SCC 257 : (2008) 2 SCC (L&S) 263] and Grid Corpn. of Orissa Ltd. v. Eastern Metals & Ferro Alloys [Grid Corpn. of Orissa Ltd. v. Eastern Metals & Ferro Alloys, (2011) 11 SCC 334] .)"

(emphasis supplied)

***147.** The principle of purposive construction has been enunciated in various subsequent judgments of this Court. However, we would not like to burden this judgment with a plethora of citations. Suffice it to say, the law on the issue is very well crystallised.*

148.** It is thus clear that it is a settled principle that the modern approach of interpretation is a pragmatic one, and not pedantic. **An interpretation which advances the purpose of the Act and which ensures its smooth and harmonious working must be chosen and the other which leads to absurdity, or confusion, or friction, or contradiction and conflict between its various provisions, or undermines, or tends to defeat or destroy the basic scheme and purpose of the enactment must be eschewed. The primary and foremost task of the Court in interpreting a statute is to gather the intention of the legislature, actual or

> *imputed. Having ascertained the intention, it is the duty of the Court to strive to so interpret the statute as to promote or advance the object and purpose of the enactment. For this purpose, where necessary, the Court may even depart from the rule that plain words should be interpreted according to their plain meaning. There need be no meek and mute submission to the plainness of the language. To avoid patent injustice, anomaly or absurdity or to avoid invalidation of a law, the court would be justified in departing from the so-called golden rule of construction so as to give effect to the object and purpose of the enactment. Ascertainment of legislative intent is the basic rule of statutory construction."*
>
> (Emphasis added)

34. From the analysis of the above decisions of the Supreme Court concerning interpretation of statutes, the following principles can be culled out:-

i. The provisions of the Act must receive such construction at the hands of the court as would advance the object and purpose underlying the Act and at any rate not to defeat it.

ii. If the words of the statute are clear and unambiguous, it is the plainest duty of the court to give effect to the natural meaning of the words used in the provision. The question of construction arises only in the event of an ambiguity or the plain meaning of the words used in the statute would be self-defeating.

iii. The court is entitled to ascertain the intention of the legislature to remove the ambiguity by construing the provision of the statute as a whole keeping in view what was the mischief when the statute was enacted and to remove which the legislature enacted

the statute.

iv. In matters of interpretation one should not concentrate too much on one word and pay too little attention to other words. No provision in the statute and no word in any section can be construed in isolation. Every provision and every word must be looked at generally and in the context in which it is used.

v. The elementary principle of interpreting any word while considering a statute is to gather the *sententia legis* or *mens* of the legislature. The maxim *sententia legis* or *mens* contemplates that the essence of the law lies in the spirit, and not in its letter, the letters are just a way to express the intentions of the law makers. Where the words are clear and there is no obscurity, and there is no ambiguity and the intention of the legislature is clearly conveyed, there is no scope for the court to take upon itself the task of amending or altering the statutory provisions.

vi. It is necessary to cull out the legislative policy from various factors like the words in the statute, the Preamble to the Act, the Statement of Objects and Reasons, and in a given case, even the attendant circumstances. After the legislative policy is found, then the words used in the statute must be so interpreted such that it advances the purpose of the statute and does not defeat it.

vii. A statute must be construed having regard to the legislative intent. It has to be meaningful. A construction which leads to manifest absurdity must not be preferred to a construction which would fulfill the object and purport of the legislative intent.

viii. Where the language of a statute, in its ordinary meaning

and grammatical construction, leads to a manifest contradiction of the apparent purpose of the enactment, or to some inconvenience or absurdity, hardship or injustice, presumably not intended, a construction may be put upon it which modifies the meaning of the words, and even the structure of the sentence. Where the main object and intention of a statute are clear, it must not be reduced to a nullity by the draftsman's unskilfulness or ignorance of the law, except in a case of necessity, or the absolute intractability of the language used.

ix. The doctrine of purposive construction may be taken recourse to for the purpose of giving full effect to statutory provisions, and the courts must state what meaning the statute should bear, rather than rendering the statute a nullity, as statutes are meant to be operative and not inept. The courts must refrain from declaring a statute to be unworkable. The rules of interpretation require that construction which carries forward the objectives of the statute, protects interest of the parties and keeps the remedy alive, should be preferred looking into the text and context of the statute. Construction given by the court must promote the object of the statute and serve the purpose for which it has been enacted and not efface its very purpose.

x. The courts strongly lean against any construction which tends to reduce a statute to futility. The provision of the statute must be so construed as to make it effective and operative.' The court must take a pragmatic view and must keep in mind the purpose for which the statute was enacted as the purpose of law itself provides good guidance to courts as they interpret the true meaning of the Act and thus legislative futility must be ruled out.

> The court must give effect to the purpose and object of the Act for the reason that legislature is presumed to have enacted a reasonable statute.

35. Thus, it is clear that the provisions of RERA are required to be interpreted in the manner the same would advance the object and purpose of RERA. As per the settled legal position, the provisions of the Act must receive such construction at the hands of the court as would advance the object and purpose underlying the Act and at any rate not defeat it. If the words of the statute are clear and unambiguous, it is the plainest duty of the court to give effect to the natural meaning of the words used in the provision. The question of construction arises only in the event of an ambiguity or the plain meaning of the words used in the statute would be self-defeating. The court is entitled to ascertain the intention of the legislature to remove the ambiguity by construing the provision of the statute as a whole keeping in view what was the mischief when the statute was enacted and to remove which the legislature enacted the statute. Adopting this rule of construction, whenever a question of construction arises upon ambiguity or where two views are possible of a provision, it would be the duty of the court to adopt that construction which would advance the object underlying the Act.

36. Thus, what is contemplated under the scheme of RERA is that the

Real Estate Regulatory Authority (under section 20) and the Real Estate Appellate Tribunal (under section 43) shall be appointed by the Appropriate Government within a period of 1 year of coming into the operation of RERA and till that time interim arrangement is to be made by the Appropriate Governement of designated Authority and designated Appellate Tribunal. Thus, what is contemplated is that as soon as the RERA is enacted until the establishment of an Appellate Tribunal as contemplated under sub-section (1) of section 43 i.e. regular Appellate Tribunal, any Appellate Tribunal functioning under any of the law for the time being in force be designated to be the Appellate Tribunal designated to hear the appeals under RERA. The scheme of RERA further contemplates that by following the mandatory provision the Chairperson, Judicial Member and Technical/Administrative Member are required to be appointed. As noted herein above, Rule 8 of Real Estate Appellate Tribunal Rules clearly provides that the Chairperson and members of the Appellate Tribunal shall before entering upon the office, make and subscribe oath of office and secrecy. The second proviso to sub-section (4) of section 43 clearly provides that after establishment of the Appellate Tribunal under sub section (1) of section 43 all matters pending with the designated Appellate Tribunal shall stand transferred to the Real Estate Appellate Tribunal. Thus, it is clear that establishment of an Appellate Tribunal

contemplated under Section 43 (1) of RERA read with Rule 8 of the Real Estate Appellate Tribunal Rules is an Appellate Tribunal ready to hear appeals. This scheme of Section 43 in the context of first substantial question of law is very clear from the language of Sub-Section 1 of Section 43 read with first and second proviso to Sub-Section 4 of Section 43 of the RERA read with Rule 8 of Real Estate Appellate Tribunal Rules.

37. Thus, the establishment of the Appellate Tribunal takes effect after the appointment of the Chairperson and members and they before entering upon the office, make and subscribe an oath of office and secrecy. As submitted by the learned Counsel appearing for the Appellants, it is correct that the establishment of the Appellate Tribunal will take place only once and the appointment of the Chairperson and members and taking oath by them before entering their respective offices will take place when exigency arises. However, the scheme of the RERA clearly shows that unless the Chairperson and Judicial and Technical or Administrative Members are appointed and they enter their office after taking oath, it is the designated Appellate Tribunal which has jurisdiction to hear the appeal under RERA.

38. The clear and unambiguous provisions as made in Section 43 of RERA read with Rule 8 of the Real Estate Appellate Tribunal Rules, *inter*

alia, provides as follows :

(i) The appropriate Government by notification, establish Real Estate Appellate Tribunal.

(ii) Until the establishment of Real Estate Appellate Tribunal, the appropriate Government shall designate, by order, any Appellate Tribunal functioning under any law for the time being in force, to be the Appellate Tribunal to hear appeals under RERA.

(iii) After the Real Estate Appellate Tribunal is established, all matters pending with the Appellate Tribunal designated to hear appeals, shall stand transferred to the Appellate Tribunal so established and shall be heard from the stage such appeal is transferred.

(iv) The Chairperson and members of the Real Estate Appellate Tribunal shall before entering upon the office, make and subscribe an oath of office and secrecy.

39. Thus, what is contemplated by Section 43 is until the establishment of Appellate Tribunal under RERA any other Appellate Tribunal functioning under any other law for the time being in force can

be designated by the Appropriate Government to be the Appellate Tribunal under RERA to hear Appeal under RERA. It is further provided that once the Appellate Tribunal is established under Section 43 of RERA, all matters pending with the Appellate Tribunal functioning under any other law for the time being in force and designated by the Appropriate Government to hear Appeals under RERA, shall stand transferred to the Appellate Tribunal so established and shall be heard from the stage such appeal is transferred. Rule 8 of Real Estate Appellate Tribunal Rules provides that the Chairperson and member of the Appellate Tribunal shall before entering upon the office, make and subscribe an oath of office and secrecy. Thus, the Appellate Tribunal established under Section 43 contemplated is the functioning Appellate Tribunal under RERA as it has to start hearing the pending Appeals from the stage of the hearing completed before the designated Appellate Tribunal. As the Chairperson and member, of the Appellate Tribunal shall before entering upon the office, make and subscribe an oath of office and secrecy, it is very clear that what is contemplated under Section 43 read with Rule 8 of Real Estate Appellate Tribunal Rules is functioning Appellate Tribunal and not merely Appellate Tribunal existing only on paper.

40. In the light of above scheme of RERA, it is necessary to set out relevant aspects:

i. Section 43(1) of RERA provides that the appropriate Government shall, within a period of one year from the date of coming into force of RERA, by notification, establish an Appellate Tribunal. First proviso to sub-section (4) of Section 43 of RERA provides that until the establishment of an Appellate Tribunal under said Section, the appropriate Government shall designate, by order, any Appellate Tribunal functioning under any law for the time being in force, to be the Appellate Tribunal to hear appeals under RERA i.e. Designated Appellate Tribunal.

ii. The Government of Maharashtra issued following notification on 28th December 2017.

> "*No. Rera.2017/C.R.116/DVP-2.—**In exercise of the powers conferred by the first proviso to sub-section (4) of section 43 of Real Estate (Regulation and Development) Act, 2016** (16 of 2016) (hereinafter referred to as "the said Act") **the Government of Maharashtra**, being the appropriate Government in respect of matters relating to the State, hereby **designates the Maharashtra Revenue Tribunal at Brihan Mumbai constituted and functioning under the Maharashtra Land Revenue Code, 1966 (Mah. XLI of 1966) to be the Appellate Tribunal to hear the appeals under the said Act, until the establishment of the Maharashtra Real Estate Appellate Tribunal under section 43 of the said Act**.*"
>
> (Emphasis added)

Thus, the Government of Maharashtra by Notification dated 28th December 2017 designated the Maharashtra Revenue Tribunal at Brihanmumbai constituted and functioning under the Maharashtra

Revenue Code to be the Appellate Tribunal to hear Appeals under RERA until the establishment of Real Estate Appellate Tribunal under Section 43 of the Real Estate Appellate Tribunal.

iii. The Government of Maharashtra by Government Resolution dated 8th May 2018 issued by exercising power under Section 46(2) and (3) appointed a Chairperson, one Judicial Member and another technical or administrative member as provided under Section 45 of RERA. The relevant portion (English Translation) of said Government Resolution dated 8th May 2018 is as under :

> "*The Government, in exercise of the powers conferred upon it under the provisions of Section 46(2) and also (3) of the Real Estate (Regulation and Development) Act, 2016 and as prescribed under Section 45 of the aforesaid Act, hereby appoint the Chairperson and two whole time Members i.e. a Judicial member and a Technical/Administrative Member of the Maharashtra Real Estate Appellate Tribunal as mentioned herein below.*
>
> *1) Smt. Indira Jain (Retired Judge), Chairperson, Maharashtra Real Estate Appellate Tribunal.*
>
> *2) Shri Sumant Kolhe, Judicial Member, Maharashtra Real Estate Appellate Tribunal.*
>
> *3) Shri S. S. Sandhu, Technical/Administrative Member, Maharashtra Real Estate Appellate Tribunal.*
>
> *The provisions of the Maharashtra Real Estate Appellate Tribunal (Officers and Other Employees) (Appointment and Service Conditions) Rules, 2017 dated 20th April, 2017, shall be applicable to the appointments to the aforesaid posts.*"
>
> (Emphasis added)

iv. Although appointment of Chairperson and members of Maharashtra Real Estate Appellate Tribunal was made by Government Resolution dated 8th May 2018, the said chairperson and members took oath after a period of about 6 months and 16 days i.e. on 24th December 2018 and the functioning of the Maharashtra Real Estate Appellate Tribunal started on 24th December 2018.

v. The Government of Maharashtra issued notification dated 24th October 2019 by exercising powers conferred by sub-section 1 of Section 43 of the RERA establishing Maharashtra Real Estate Appellate Tribunal for the State of Maharashtra. The said notification dated 24th October 2019 reads as under :

> *"HOUSING DEPARTMENT*
> *Madam Cama Marg, Hutatma Rajguru Chowk, Mantralaya,*
> *Mumbai 400 032, dated the 24th October 2019*
> *NOTIFICATION*
> *REAL ESTATE (REGULATION AND DEVELOPMENT) ACT, 2016.*
> *No. Misc. 2019/C.R.129/(Part-1)/RR-2.— **In exercise of the powers conferred by sub-section (1) of section 43 of the Real Estate (Regulation and Development) Act, 2016 (Act No.16 of 2016), and in supersession of the Government Notification, Housing Department, No.Rera. 2017/C.R. 116/DVP-2, dated the 28th December 2017, the Government of Maharashtra establishes the Maharashtra Real Estate Appellate Tribunal for the State of Maharashtra consisting of the following, as may be appointed, from time to time.:—***
> ***(i) A Retired High Court Judge,***
> ***(ii) A Judicial Member; and***
> ***(iii) An Administrative/Technical Member.***

The said Tribunal has been functional with effect from the 24th December 2018.
By order and in the name of the Governor of Maharashtra,

R.K. Dhanawade
Deputy Secretary to Government"

(Emphasis added)

41. Thus, the above aspects show that the State of Maharashtra by notification dated 28th December 2017 designated the Maharashtra Revenue Tribunal at Brihanmumbai constituted and functioning under the Maharashtra Revenue Code to be the Appellate Tribunal to hear appeals under RERA until the establishment of Real Estate Appellate Tribunal under Section 43 of the RERA. The Government of Maharashtra appointed the Chairperson and members of the Maharashtra Real Estate Appellate Tribunal by Government Resolution dated 8th May 2018. The said Chairperson and members took oath on 24th December 2018. Thus, the Maharashtra Real Estate Appellate Tribunal started functioning with effect from 24th December 2018.

42. Thus, it is clear that the Appellate Tribunal came into existence only on 24th December 2018 on which date the Chairperson and other members took oath. The establishment of Appellate Tribunal as envisaged under Section 43 will have to be understood in this manner only. Otherwise, the effect is although the Appellate Tribunal has not

actually come into existence, it will have to be assumed that the same is established. If the contention of the Appellants are accepted then the effect will be transfer of Appeals filed under RERA being adjudicated by Maharashtra Revenue Tribunal in its capacity as Maharashtra Real Estate Appellate Tribunal to the non-existing and non-functional Maharashtra Real Estate Appellate Tribunal. It is very clear that the Maharashtra Real Estate Appellate Tribunal stands established and come into existence in accordance with section 43(1) read with Rule 8 of said Rules only after the Chairperson and members are appointed and they enter their office after taking oath.

43. It is submitted by learned Counsel on behalf of the Appellant that by Notification dated 8th May 2018 the Chairman, Judicial Member and Technical Member of RERA Appellate Tribunal were appointed and therefore, the date of establishment of the Appellate Tribunal is 8th May 2018 and till the date of taking oath by the Chairperson and members which took place on 24th December 2018 it has to be assumed that the said post has remained vacant, although the Appellate Tribunal was established on 8th May 2018. It is submitted that unless the Maharashtra Real Estate Appellate Tribunal is established there can not be the notification appointing the Chairperson and the members of the Real Estate Appellate Tribunal. It is submitted that, thus the said Government

Resolution dated 8th May 2018 appointing the Chairperson and members for the said Appellate Tribunal be deemed to be notification establishing the Appellate Tribunal. It is thus submitted that the establishment of the Appellate Tribunal as contemplated under sub-section (1) of section 43 read with second proviso to sub-section (4) of section 43 has taken place on 8th May 2018 and therefore, the Maharashtra Revenue Tribunal has no jurisdiction to deal with the said appeals. Thus, it is submitted that the impugned order dated 1st November 2018 passed by the learned President, Maharashtra Revenue Tribunal and Incharge, Maharashtra Real Estate Appellate Tribunal, Mumbai is without jurisdiction.

44. As already noted herein above, Rule 8 of Real Estate Appellate Tribunal Rules specifically provides that the Chairperson and Member of the Appellate Tribunal shall before entering office make and subscribe an oath of office and secrecy which has taken place on 24th December 2018. Thus, it is clear that till 24th December 2018 there is no Appellate Tribunal established.

45. In support of the above contentions, the Appellants have very heavily relied on the Government Resolution dated 8th May 2018. However, perusal of the said Government Resolution clearly shows that the said Government Resolution has been issued by exercising power

under Section 46(2) and (3) of RERA and by which Chairman and Members as provided under Section 45 of RERA have been appointed.

46. In this behalf it is relevant to note that Section 43 of RERA is concerning establishment of Real Estate Appellate Tribunal, Section 45 is regarding composition of Appellate Tribunal, Section 46 is concerning qualifications for appointment of Chairperson and Members and *inter alia* provides of manner of selection of Chairperson and Members and manner of their appointment, Section 47 is concerning term of office of Chairperson and Members, Section 48 is concerning salary and allowances payable to Chairperson and Members. Thus, it is clear that the scope and ambit of all these Sections is different. By no stretch of imagination, it can be said that issuance of Governement Resolution appointing the Chairperson and Members made by appropriate Government i.e. Government of Maharashtra in this particular case, by exercising power under Section 46(2) and (3) can be considered as notification establishing Appellate Tribunal under Section 43 of the said Act.

47. In this behalf, it is very relevant to note that as set out herein above by Government Resolution dated 8th May 2018 the Government of Maharashtra appointed Chairman and Members of Appellate Tribunal and they took oath before entering the office on 24th December 2018. Pursuance of the same the State Government issued notification dated

24th October 2019 under Section 43(1) of the RERA by which the Government Notification dated 28th December 2017 was superseded and the Maharashtra Real Estate Appellate Tribunal was established for the State of Maharashtra consisting of a retired High Court Judge, a Judicial Member and an Administrative/Technical Member and further specifically mentioning that the Appellate Tribunal has been functional with effect from 24th December 2018. Thus, it is clear that the notification establishing the Appellate Tribunal has been issued by the State Government by exercising powers conferred Sub-Section (1) of Section 43 of RERA on 24th October 2019 specifying that the Maharashtra Real Estate Appellate Tribunal is functioning from 24th December 2018. Thus, it has to be held that the Maharashtra Real Estate Appellate Tribunal was established on 24th December 2018. Thus, when the impugned Orders were passed on 1st November 2018, the learned President, Maharashtra Revenue Tribunal, Mumbai was acting as Designated Maharashtra Real Estate Appellate Tribunal, Mumbai pursuant to notification dated 28th December 2017 issued in exercise of the powers conferred by the first proviso to Sub-Section (4) of Section 43 of RERA. The said notification dated 28th December 2017 has been superseded by Government Notification dated 24th October 2019 w.e.f. 24th December 2018. Thus, it is very clear that the Maharashtra Real Estate Appellate Tribunal was established on 24th

December 2018 and started functioning w.e.f. the said date.

48. It is submitted by learned Counsel of the Appellants that by Notification dated 8th May 2018 the Chairman, Judicial Member and Technical Member of RERA Appellate Tribunal were appointed and as by Notification dated 8th May 2018 the Chairperson and Member were appointed the same has to be treated as Notification issued under Section 43 (1) and not Notification under Section 46(2) and (3) of the said Act. It is submitted on behalf of the Appellant that in Sub-Section (1) of Section 43 and in second proviso to Sub-Section (4) of Section 43, the word used is “establish” and, therefore, the same has to be given same meaning.

49. However, it is required to be noted that the said Government Resolution dated 8th May 2018 has been specifically issued under Section 46(2) and (3) of the RERA. By the said Government Resolution, Chairperson and Members of Maharashtra Real Estate Appellate Tribunal were appointed. The Notification which is required to be issued under Sub-Section (1) of Section 43 establishing Appellate Tribunal cannot be equated with the Government Resolution issued under Section 46(2) and (3) of RERA. Both these Sections i.e. Section 43 and Section 46 operate in different sphere. Section 43 is concerning establishment of Real Estate Appellate Tribunal whereas Section 46 is

concerning qualification for appointment of Chairperson and Members of Real Estate Appellate Tribunal and the manner of their selection. Thus, there is no substance in the contention raised on behalf of the Appellants.

50. One of the contention raised by learned Counsel appearing for the Appellants is that establishment of the Maharashtra Real Estate Appellate Tribunal is an event which will take place only on one occasion and the taking of oath of office and secrecy as contemplated by Rule 8 of Real Estate Appellate Tribunal Rules, will take place as and when new appointments are made. Thus, it is submitted that taking of oath of office and secrecy, before entering upon the office by Chairperson and members on 24th December 2018 is totally irrelevant and the establishment of the Maharashtra Real Estate Appellate Tribunal has taken place on 8th May 2018. The scope and ambit of Goverment Resolution dated 8th May 2018 issued by exercising powers under Section 46(2) and (3) of RERA and also of notification dated 24th October 2018 issued by exercising powers under Sub-section (1) of Section 43 of RERA has been discussed herein above in detail. It is correct that establishment of the Maharashtra Real Estate Appellate Tribunal is an event which will take place only on one occasion and the taking of oath of office and secrecy as contemplated by Rule 8 of Real Estate Appellate Tribunal Rules, will take place as and when new

appointments are made. However, as already discussed herein above in detail and more particularly in view of notification dated 24th October 2019, by giving elaborate reasons it has been held that the establishment of the Maharashtra Real Estate Appellate Tribunal took place on 24th December 2018 and not on 8th May 2018 as contended by the Appellants. While discussing the said point, apart from other aspects the scheme of the act has also been taken into consideration. As the Government Resolution dated 8th May 2018 has been issued by exercising powers under Sections 46(2) and (3) of RERA, the said Government Resolution by no stretch of imagination can be held to be notification issued under Sub-section (1) of Section 43 of RERA of establishing Maharashtra Real Estate Appellate Tribunal.

51. Learned Counsel of the Appellants relied on the decision of the Supreme Court in ***Allahabad Bank*** (supra) and submitted that as soon as notification appointing Maharashtra Real Estate Appellate Tribunal has been issued the designated Appellate Tribunal i.e. Maharashtra Revenue Tribunal ceases to have jurisdiction. Learned Senior Counsel therefore, submits that as soon as the above referred notification dated 08th May 2018 was issued, in terms of the law laid down in ***Allahabad Bank*** (supra), the Maharashtra Revenue Tribunal will have no jurisdiction and all the appeals shall stand transferred to Maharashtra Real Estate Appellate Tribunal.

52. To appreciate this contention it is required to be noted that, in ***Allahabad Bank*** (supra) the Supreme Court was considering Sections 17 and 18 of the *Recovery of Debts and Bankruptcy Act, 1993* ("**RDB Act**").

53. It is relevant to note Paragraph Nos.20 to 25 of the decision in ***Allahabad Bank*** (supra), which reads as under :-

> "*20. We shall refer to Sections 17 and 18 in Chapter III of the RDB Act, which deal with adjudication of the debt*
>
> > *"17. Jurisdiction, powers and authority of Tribunals (1)* ***A Tribunal shall exercise, on and from the appointed day, the jurisdiction, powers and authority to entertain and decide applications from the banks and financial b institutions for recovery of debts due to such banks and financial institutions****.*
> >
> > *(2)* ***An Appellate Tribunal shall exercise, on and from the appointed day, the jurisdiction, powers and authority to entertain appeals against any order made, or deemed to have been made, by a Tribunal under this Act.***
> >
> > *18.* ***Bar of jurisdiction. On and from the appointed day, no court or other authority shall have, or be entitled to exercise, any jurisdiction, powers or authority (except the Supreme Court, and a High Court exercising jurisdiction under Article 226 and 227 of the Constitution) in relation to the matters specified in Section 17.****"*
> >
> > ***It is clear from Section 17 of the Act that the Tribunal is to decide the applications of the banks and financial institutions for recovery of debts due to them.*** *We have already referred to the definition of "debt" in Section 2(g) as amended by Ordinance 1 of 2000. It includes "claims" by banks and financial institutions and includes the liability incurred and also liability under a decree or otherwise.* ***In this***

context Section 31 of the Act is also relevant. That section deals with transfer of pending suits or proceedings to the Tribunal. In our view, the word "proceedings" in Section 31 includes "execution proceedings" pending before a civil court before the commencement of the Act. The suits and proceedings so pending on the date of the Act stand transferred to the Tribunal and have to be disposed of "in the same manner" as applications under Section 19.

21. In our opinion, the jurisdiction of the Tribunal in regard to adjudication is exclusive. The RDB Act requires the Tribunal alone to decide applications for recovery of debts due to banks or financial institutions. Once the Tribunal passes an order that the debt is due, the Tribunal has to issue a certificate under Section 19(22) [formerly under Section 19(7)] to the Recovery Officer for recovery of the debt specified in the certificate. The question arises as to the meaning of the word "recovery" in Section 17 of the Act. It appears to us that basically the Tribunal is to adjudicate the liability g of the defendant and then it has to issue a certificate under Section 19(22). Under Section 18, the jurisdiction of any other court or authority which would otherwise have had jurisdiction but for the provisions of the Act, is ousted and the power to adjudicate upon the liability is exclusively vested in the Tribunal. (This exclusion does not however apply to the jurisdiction of the Supreme Court or of a High Court exercising power under Articles 226 or h 227 of the Constitution.) This is the effect of Sections 17 and 18 of the Act .
22. We hold that the provisions of Sections 17 and 18 of the RDB Act are exclusive so far as the question of adjudication of the liability of the a defendant to the appellant Bank is concerned.

(ii) Execution of certificate by Recovery Officer: is his jurisdiction exclusive

23. Even in regard to "execution", the jurisdiction of the Recovery Officer is exclusive. Now a procedure has been laid down in the Act for recovery of the debt as per the certificate issued by the Tribunal and this

procedure is contained in Chapter V of the Act and is covered by Sections 25 bto 30. ***It is not the intendment of the Act that while the basic liability of the defendant is to be decided by the Tribunal under Section 17, the banks/financial institutions should go to the civil court or the Company Court or some other authority outside the Act for the actual realisation of the amount. The certificate granted under Section 19(22) has, in our opinion, to be executed only by the Recovery Officer. No dual jurisdictions at different stages are contemplated. Further, Section 34 of the Act gives overriding effect to the provisions of the RDB Act.*** *That section reads as follows:*

"34. (1) ***Act to have overriding effect (1) Save as provided under sub-section (2), the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.***

(2) The provisions of this Act or the rules made thereunder shall be in addition to, and not in derogation of, the Industrial Finance Corporation Act, 1948 (15 of 1948), the State Financial Corporations Act, 1951 (63 of 1951), the Unit Trust of India Act, 1963 (52 of 1963), the Industrial Reconstruction Bank of India Act, 1984 (62 of 1984) and the Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986)."

The provisions of Section 34(1) clearly state that the RDB Act overrides other laws to the extent of "inconsistency". In our opinion, the prescription of an exclusive Tribunal both for adjudication and execution is a procedure clearly inconsistent with realisation of these debts in any other manner.

24. There is one more reason as to why it must be held that the jurisdiction of the Recovery Officer is exclusive. The Tiwari Committee which recommended the constitution of a Special Tribunal in 1981 for recovery of debts due to banks and financial institutions stated in its report that the

> *exclusive jurisdiction of the Tribunal must relate not only in regard to the adjudication of the liability but also in regard to the execution proceedings. It stated in Annexure XI of its report that all "execution proceedings" must be taken up only by the Special Tribunal under the Act. In our opinion, in view of the special procedure for recovery prescribed in Chapter V of the Act, and Section 34, execution of the certificate is also within the exclusive jurisdiction of the Recovery Officer.*
>
> *25.* ***Thus, the adjudication of liability and the recovery of the amount by execution of the certificate are respectively within the exclusive jurisdiction h of the Tribunal and the Recovery Officer and no other court or authority much less the civil court or the Company Court can go into the said questions relating to the liability and the recovery except as provided in the Act. Point 1 is decided accordingly.*** *"*
>
> (Emphasis added)

54. Perusal of Sections 17 and 18 of RDB Act and also above discussion in the case of ***Allahabad Bank*** (supra) shows that the point involved in the said case is concerning exclusive jurisdiction of Debts Tribunals in view of specific provision of Sections 17, 18 and as also Section 34 of RDB Act and not the question which is before this Court. It is significant to note that Sub-Section (1) of Section 17 of the RDB Act which is concerning jurisdiction, powers and authority of Tribunals provides that a Tribunal shall exercise on and from the appointed date, the jurisdiction, powers and authority to entertain and decide applications from the bank and financial institutions for recovery of debts due to such banks and financial institutions. Sub-Section (2) of Section 17 of the RDB Act which is concerning jurisdiction, powers and

authority of Appellate Tribunal provides that an Appellate Tribunal shall exercise, on and from the appointed date, the jurisdiction, powers and authority to entertain appeals against any order made or deemed to have been made by a Tribunal under the RDB Act. Thus, it is significant to note that Section 17 of the RDB Act provides that "**from the appointed day**" the Tribunal and Appellate Tribunal will have jurisdiction. This is not the point involved in this matter. Before this Court the question involved is what is scope and ambit of the term "establish" as used in Section 43 of the RERA. The said point arising before this Court has been discussed extensively herein above. Thus, the judgment of the ***Allahabad Bank*** (supra) will have no application in this particular case.

55. The Appellants have also relied on the decision in the case of ***Hara Parbati Cold Storage Pvt. Ltd*** (supra). However, the said decision is on the basis of decision in the case of ***Allahabad Bank*** (supra), which has been extensively discussed herein above.

56. Reliance is also placed by learned Counsel appearing for the Appellants on the decision of learned National Company Law Appellate Tribunal, Principal Bench, New Delhi and more particularly on Paragraph Nos.54 and 55 of the same, which reads as under:

> "*54. The next arguments of the Appellant is that Section 434 of the Act was made operative from 01.06.2016 by notification no. S.O. 1936(E) which provides that in exercise of the powers conferred by clause (a) of sub-section (1) of*

Section 434 of the Act, 2013 (18 of 2013), 'the Central Government hereby appoints the 1st day of June, 2016, on which all matters or proceedings or cases pending before the CLB shall stand transferred to the NCLT and it shall dispose of such matters or proceedings or cases in accordance with the provisions of the Act, 2013 or the Companies Act, 1956'."

55. Since, the CLB was not having the jurisdiction or power to issue contempt notice on the alleged disobedience of its order, therefore, 3A Capital rightly did not file any application before the CLB which was thus not pending as on 01.06.2016 when Section 434 of the Act was made operative. Even otherwise, Section 434(1)(a) of the Act categorically provides that all matters, proceedings or cases pending before the CLB, immediately before such date shall stand transferred to the Tribunal and the Tribunal shall dispose of such matters, proceedings or cases in accordance with the provisions of this Act. It means that the proceedings, cases or matters which were pending as on 01.06.2016 before the CLB shall automatically be transferred to the Tribunal but if the proceedings are not pending on that date then it cannot be transferred automatically to the Tribunal."

The above Paragraphs clearly shows that the said Judgment is in the context of Section 434 of the Companies Act, 2013. In that case, the Central Government has appointed the 1st day of June 2016, on which date all matters or proceedings or cases pending before the Company Law Board (CLB) shall stand transferred to the NCLT. Thus, in that case a specific date has been appointed by the Central Government for the purpose of transfer of the cases from CLB to NCLT. However, in the present case, as discussed herein above extensively the issue is completely different and, therefore, the said Judgment will have no application to the facts of the present case.

57. Learned Counsel of the Appellants also relied on the judgment of

the Supreme Court in the case of ***Sushil Kumar Mehta*** (supra). The relevant Paragraph is Paragraph No.26, which reads as under :-

> "*26. Thus it is settled law that normally a decree passed by a court of competent jurisdiction, after adjudication on merits of the rights of the parties, operates as res judicata in a subsequent suit or proceedings and binds the parties or the persons claiming right, title or interest from the parties. Its validity should be assailed only in an appeal or revision as the case may be. In subsequent proceedings its validity cannot be questioned.* ***A decree passed by a court without jurisdiction over the subject matter or on other grounds which goes to the root of its exercise or jurisdiction, lacks inherent jurisdiction. It is a coram non judice. A decree passed by such a court is a nullity and is non est. Its invalidity can be set up whenever it is sought to be enforced or is acted upon as a foundation for a right, even at the stage of execution or in collateral proceedings. The defect of jurisdiction strikes at the authority of the court to pass a decree which cannot be cured by consent or waiver of the party.*** *If the court has jurisdiction but there is defect in its exercise which does not go to the root of its authority, such a defect like pecuniary or territorial could be waived by the party. They could be corrected by way of appropriate plea at its inception or in appellate or revisional forums, provided law permits. The doctrine of res judicata under Section 11 CPC is founded on public policy. An issue of fact or law or mixed question of fact and law, which are in issue in an earlier suit or might and ought to be raised between the same parties or persons claiming under them and was adjudicated or allowed uncontested becomes final and binds the parties or persons claiming under them.* ***Thus the decision of a competent court over the matter in issue may operate as res judicata in subsequent suit or proceedings or in other proceedings between the same parties and those claiming under them. But***

> ***the question relating to the interpretation of a statute touching the jurisdiction of a court unrelated to questions of fact or law or mixed questions does not operate as res judicata even between the parties or persons claiming under them.*** *The reason is obvious; a pure question of law unrelated to facts which are the basis or foundation of a right, cannot be deemed to be a matter in issue.* ***The principle of res judicata is a facet of procedure but not of substantive law. The decision on an issue of law founded on fact in issue would operate as res judicata. But when the law has since the earlier decision been altered by a com-petent authority or when the earlier decision declares a transaction to be valid despite prohibition by law it does not operate as res judicata. Thus a question of jurisdiction of a court or of a procedure or a pure question of law unrelated to the right of the parties founded purely on question of fact in the previous suit, is not res judicata in the subsequent suit. A question relating to jurisdiction of a court or interpretation of provisions of a statute cannot be deemed to have been finally determined by an erroneous decision of a court. Therefore, the doctrine of res judicata does not apply to a case of decree of nullity. If the court inherently lacks jurisdiction consent cannot confer jurisdiction.*** *Where certain statutory rights in a welfare legislation are created, the doctrine of waiver also does not apply to a case of decree where the court inherently lacks juris-diction.*"
>
> (Emphasis added)

58. The Supreme Court in the case of ***Sushil Kumar Mehta*** (supra) was considering the issue of *res judicata* particularly in case of a decision which has been passed in a proceeding without jurisdiction and therefore, the same is a nullity. As held herein above by giving elaborate reasons it has been held by this Court that the designated Appellate Tribunal i.e. Maharashtra Revenue Tribunal has jurisdiction to deal with

the Appeal under RERA upto 23rd December 2018 and, therefore, the impugned Order dated 1st November 2018 passed by the learned President, Maharashtra Revenue Tribunal, Mumbai and Incharge, Maharashtra Real Estate Appellate Tribunal, Mumbai is within jurisdiction. Therefore, the said decision in the case of ***Sushil Kumar Mehta*** (supra) is not applicable.

59. Learned Counsel of the Appellants have also relied on the decision of ***Hasham Abbass Sayyad*** (supra) and ***Harshad Chiman Lal Modi*** (supra) to support the contention regarding issue of jurisdiction. However, by elaborately considering the scheme of RERA, the objects and reasons for enacting RERA and by interpreting Section 43 of RERA read with Rule 8 of Real Estate Appellate Tribunal Rules it has already been held herein above that the designated Appellate Tribunal i.e. Maharashtra Revenue Tribunal and Incharge, Maharashtra Real Estate Appellate Tribunal has jurisdiction to decide the said issue. Therefore, these decisions have no application to this case.

60. Learned Counsel of the Appellants has relied on the decision of the Supreme Court in the case of ***Baswaraj*** (supra) as also ***Commissioner of Agricultural Income Tax*** (supra) and submitted that a statutory provision may cause hardship or inconvenience to a particular party but the Court has no choice but to enforce it giving full effect to the same. Learned Counsel submitted that as in view of clear and

unambiguous provision of Section 43 of the RERA and in view of notification dated 8th May 2018, all appeals which are pending before the Maharashtra Revenue Tribunal shall stand transferred to Maharashtra RERA Appellate Tribunal. Learned Counsel more particularly relied on Paragraph No.12 of ***Baswaraj*** (supra), which reads as under :-

> "*12. It is a settled legal proposition that law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes. The court has no power to extend the period off limitation on equitable grounds.* ***"A result flowing from a statutory provision is never an evil. A court has no power to ignore that provision to relieve what It considers a distress resulting from its operation." The statutory provision may cause hardship or inconvenience to a particular party but the court has no choice but to enforce it giving full effect to the same. The legal maxim dura lex sed lex which means "the law is hard but it is the law", stands attracted in such a situation. It has consistently been held that, "inconvenience is not" a decisive factor to be considered while interpreting a statute.***"
>
> (Emphasis added)

61. The above legal position is well settled. There is no manner of doubt that once Maharashtra RERA Appellate Tribunal is established all appeals which are pending before designated Appellate Tribunal i.e. Maharashtra Revenue Tribunal shall stand transferred to Maharashtra RERA Appellate Tribunal. Therefore, the issue which is involved in this Second Appeals is the scope of the term "established" as in Section 43 of RERA, which has been discussed in earlier part of the judgment

extensively. As held herein above the Maharashtra RERA Appellate Tribunal has established from the date on which the same has become functional i.e. with effect from 24th December 2018 and the same is very clear from the Notification dated 24th October 2019 issued by the State of Maharashtra under Sub-Section (1) of Section 43 of the RERA. Therefore, the impugned decision of learned President, Maharashtra Revenue Tribunal, Mumbai and Incharge, Real Estate Appellate Tribunal, Mumbai dated 1st November 2018 is within jurisdiction. It is very clear that all appeals which were pending before the designated Appellate Tribunal i.e. Maharashtra Revenue Tribunal and Incharge, Real Estate Appellate Tribunal, Mumbai shall stand transferred on 24th December 2018 immediately to Real Estate Appellate Tribunal, Mumbai.

62. Mr. Kamat, learned Senior Counsel relied on judgment of High Court of Jharkhand at Ranchi in the matter of ***Arjun Kumar Singh*** (supra). Paragraph No.4 of the said judgment, reads as under :-

> "*4. Learned counsel appearing for the appellant has submitted that the* ***petitioner was, working as Signal Man/Sipoyee in the Indian Army and Major General, Ground Officer Commanding (GOC), 23rd Infantry Division, passed an order of discharge of this petitioner and therefore, the petition was preferred initially, before the Hon'ble Patna High Court and thereafter. before this High Court under Article 226 of the Constitution of India, thereafter, Armed Forces Tribunal came into force vide Notification dated 18.11.2009/ The Armed Forces Tribunal at Kolkata came into force and the said Tribunal is working since 23.11.2009 and therefore, by virtue of Section 34 of the Armed Forces Tribunal***

> *Act, 2007 (hereinafter referred to as the Act, 2007 for the sake of brevity), the writ petition bearing W.P. (S) No. 1769 of 2004 stood transferred to the said Armed Forces Tribunal, automatically, by virtue of Sub-section (1) of Section 34 of the Act. 2007 and hence, the judgment and order passed by the learned Single Judge deserves to be quashed and set aside because there was want of jurisdiction on the part of this Court and this appellant (original petitioner) is ready and willing to go before the Armed Forces Tribunal at Kolkata and shall cooperate in hearing before the said Tribunal and shall not ask for unnecessary adjournments and shall also cooperate in earlier disposal of this petition on merit.*"
>
> (Emphasis added)

63. It is significant to note that in the said decision of ***Arjun Kumar Singh*** (supra) the Armed Forces Tribunal came into force vide notification dated 18th November 2009 and the said tribunal started working since 23rd November 2009 and therefore it has been held that the Writ Petition pending before the High Court Jharkhand stood transferred to the said Armed Forces Tribunal automatically by virtue of Section 34 of Armed Forces Tribunal Act, 2007. Thus, in fact the said decision supports the contention of the Respondent that what is contemplated by "establishment" of the tribunal is establishment of functional tribunal. In any case, the said aspect in the context of the provisions of RERA have been extensively discussed earlier. Thus, the said decision is not relevant.

64. Learned Counsel of the Appellants also relied on judgment of Supreme Court in the case of ***B. Premanand*** (supra) and more

particularly on Paragraph Nos.15 and 16 of the same which reads as under :-

> "*15. As observed by this Court in CIT (Ag) v. Keshab Chandra Mandalto: a AIR-p. 270, para 20)*
>
> > *"20.... **Hardship or inconvenience cannot alter the meaning of the language employed by the legislature if such meaning is clear on the face of the statute...."***
> >
> > *(emphasis supplied)*
>
> *16. **Where the words are unequivocal, there is no scope for importing any rule of interpretation (vide Pandian Chemicals Ltd. v. CIP). It is only where b the provisions of a statute are ambiguous that the court can depart from a literal or strict construction (vide Nasiruddin v. Sita Ram Agarwal 2), Where the words of a statute are plain and unambiguous effect must be given to them** (vide Bhaiji v. SDO).*"
>
> (Emphasis added)

65. It is also relevant to note Paragraph No.17 of the said decision of ***B. Premanand*** (supra), which reads as under :-

> "*17. No doubt in some exceptional cases departure can be made from the literal rule of the interpretation, e.g. by adopting a purposive construction, Heydon mischief rule, etc. but that should only be done in very exceptional cases. Ordinarily, it is not proper for the court to depart from the literal rule as that would really be amending the law in the garb of interpretation, which is not permissible (vide J.P. Bansal v. State of Rajasthan's and State of Jharkhand v. Govind Singh16). It is for the legislature to amend the law and not the court (vide State of Jharkhand v. Govind Singh).*"

66. This aspect has been elaborately discussed herein above. In any case, establishment of Maharashtra RERA Appellate Tribunal on paper

cannot be considered as "establishment" unless the Chairman and the Members take oath as they enter their respective Offices only after taking oath.

67. Learned Counsel of the Appellants also relied on the decision of House of Lords in the case of ***Britnell*** (supra) and more particularly on the following paragraph :-

> "*The purpose of a transitional provision being to facilitate the change from one statutory regime to another, it could not properly be regarded as authorising innovation by widening the ambit of the substantive legislation.*
>
> *As Staughton LJ observed in the Court of Appeal, it is not possible to give a definitive description of what constitutes a transitional provision. In Thornton on Legislative Drafting (3rd edn, 1987) p 319 it is said:*
>
> *The function of a transitional provision is to make special provision for the application of legislation to the circumstances which exist at the time when that legislation comes into force.'*
>
> *One feature of a transitional provision is that its operation is expected to be temporary, in that it becomes spent when all the past circumstances with which it is designed to deal have been dealt with, while the primary legislation continues to deal indefinitely with the new circumstances which arise after its passage.*"
>
> (Emphasis added)

68. It is correct that the purpose of a transitional provision being to facilitate the change from one statutory regime to another could not properly be regarded as authorizing innovation by widening the ambit

of the substantive legislation. However, in this particular case, the Government Resolution dated 8th May 2018 by which Chairperson and Members of the Appellate Tribunal were appointed cannot be held to be the Notification issued under Sub-Section (1) of Section 43 of RERA. As discussed extensively herein above that the Notification dated 24th October 2019 has been issued under Sub-Section (1) of Section 43 of RERA by which the Maharashtra Real Estate Appellate Tribunal has been established w.e.f. 24th December 2018. Thus, there is no question of establishment of the Maharashtra Real Estate Appellate Tribunal on 8th May 2018. It is further significant to note that by the said notification, notification dated 28th December 2017 by which Maharashtra Revenue Tribunal at Bruhanmumbai Constituted and functioning under the Maharashtra Revenue Code, 1966 was designated to be the Appellate Tribunal under RERA is superseded and it is specifically recorded that the tribunal started functioning with effect from 24th December 2018. Thus, the said decision in ***Britnell*** (supra) has no application.

69. Learned Counsel of the Appellants have relied on the decision of the Supreme Court in the case of ***Nelson Motis*** (supra) and more particularly on paragraph no.8 of the same. In the said case it has been held that if the words of a statute are clear and free from any vagueness and are, therefore, reasonably susceptible to only one

meaning, it must be construed by giving effect to that meaning, irrespective of consequences. When the language is plain and unambiguous and admits of only one meaning, no question of construction of a statute arises, for the act speaks for itself. This aspect has already been discussed in earlier part of the judgment. It is settled legal position that the provisions of the Act must receive such construction at the hands of the court as would advance the object and purpose underlying the Act and at any rate not to defeat it. If the words of the statute are clear and unambiguous, it is the plainest duty of the court to give effect to the natural meaning of the words used in the provision. The question of construction arises only in the event of an ambiguity or the plain meaning of the words used in the statute would be self-defeating. As Section 43 clearly contemplates that the Appropirate Government shall appoint Maharashtra Real Estate Appellate Tribunal and until that time any Appellate Tribunal functioning under any law to be designated as Appellate Tribunal to hear and dispose of appeals filed under RERA and accordingly, Maharashtra Revenue Tribunal has been designated as Appellate Tribunal. This aspect has already been elaborately discussed earlier. In any case, Maharashtra Real Estate Appellate Tribunal was established by notification dated 24th October 2019 with effect form 24th December 2018 and therefore there is no substance in the contention

raised by the Appellants.

70. Learned Counsel of the Appellants has also relied on the decision of the Supreme Court in the case of ***Sansera Engineering*** (supra) and submitted that the subordinate legislation cannot override the parent statute. Subordinate legislation can always be in aid of the parent statute. At the cost of repetition, it is observed that subordinate legislation cannot override the parent statute. Subordinate legislation which is in aid of the parent statute has to be read in harmony with the parent statute. Subordinate legislation cannot be interpreted in such a manner that parent statute may become otiose or nugatory. This submission is made in view of Rule 8 of the Real Estate Appellate Tribunal Rules and on the assumption that the Maharashtra Real Estate Appellate Tribunal was established by Government Resolution dated 8th May 2018. The observations of the Supreme Court in ***Sansera Engineering*** (supra) are not at all applicable to the present case. The scope of Rule 8 of Real Estate Appellate Tribunal Rules is totally different which provides that every person appointed as the Chairperson of the Appellate Tribunal shall before entering upon his office shall make and subscribe an oath of Office and Secrecy in prescribed format. As discussed extensively herein above that the Notification dated 24th October 2019 has been issued under Sub-Section (1) of Section 43 of RERA by which the Maharashtra Real

Estate Appellate Tribunal has been established w.e.f. 24th December 2018. Thus, there is no question of establishment of the Maharashtra Real Estate Appellate Tribunal on 8th May 2018. Thus the said contentions raised are without any basis.

71. Thus, for the above reasons there is no substance in the First Substantial Question of Law.

72. The Substantial Questions of Law Nos.3, 4 and 5 as framed by Order dated 12th December 2024 will be considered hereinafter. The said substantial questions of law are treated as 2nd, 3rd and 4th substantial questions of law. They are reproduced herein below for ready reference:

> SECOND SUBSTANTIAL QUESTION OF LAW:
>
> Whether, in exercise of power to designate an authority as the Appellate Tribunal under the first proviso to Section 43(4) of RERA, it is necessary for the State Government to give due regard to the provisions of Section 43(3) of RERA and ensure that the composition of such alternate authority is in accordance therewith?
>
> THIRD SUBSTANTIAL QUESTION OF LAW:
>
> Whether in exercise of power under the first proviso to Section 43(4) of RERA, the State Government (as the delegatee of such power) can designate an authority to function as the Appellate Tribunal in a manner contrary to or ultra vires Section 43(3) of RERA?
>
> FOURTH SUBSTANTIAL QUESTION OF LAW:
>
> Whether a single member bench of the Hon'ble Maharashtra Revenue Tribunal, exercising power under the first proviso to Section 43(4) of RERA has jurisdiction to adjudicate appeals under Section 44 of RERA?

73. The said substantial questions of law are concerning composition of designated Appellate Tribunal i.e. Maharashtra Revenue Tribunal, constituted by exercising power conferred by first proviso to sub-section (4) of section 43 and are raised particularly in view of the provision of Section 43(3) of RERA, which specifies that every bench of the Appellate Tribunal shall consist of at least one Judicial Member and one Administrative or Technical Member. In view of the said contentions, the above substantial questions of law were framed.

74. As the impugned Order is passed by the President of the Maharashtra Revenue Tribunal acting as Incharge Chairman of the Maharashtra Real Estate Appellate Tribunal, it is contended on behalf of the Appellants that single Member being the President of the Tribunal who was a Judicial Member has no jurisdiction to pass the impugned Order. In view of the said contentions the above substantial questions of law were framed.

75. As these substantial questions of law are interconnected they are decided together.

SUBMISSIONS OF THE APPELLANTS CONCERNING SECOND, THIRD AND FOURTH SUBSTANTIAL QUESTIONS OF LAW:

76. Learned Counsels for the Appellants *inter alia* raised the following contentions:

i. The first proviso to Section 43(4) of RERA provides that until the establishment of the Appellate Tribunal under Section 43(1) of RERA, the appropriate government shall designate, by order, any Appellate Tribunal functioning under any law for the time being in force to be the Appellate Tribunal to hear appeals under RERA. The second proviso to Section 43(4) of RERA provides that after the Appellate Tribunal under said Section is established, all matters pending with the Appellate Tribunal designated to hear appeals, shall stand transferred to the Appellate Tribunal so established and shall be heard from the stage such appeal is transferred. Section 43(3) of RERA provides that every bench of the Appellate Tribunal shall consist of at least one judicial member and one administrative or technical member. Upon the enforcement of RERA, in January 2018, the State Government designated the Hon'ble Maharashtra Revenue Tribunal as the Appellate Tribunal under the first proviso to Section 43(4) of RERA to act as the Appellate Tribunal, pending the establishment of the Appellate Tribunal under Section 43(1) of RERA. It is a matter of record that the Maharashtra Revenue Tribunal hearing appeals under RERA was comprised of a Single Member, being the President of the Tribunal, who was a Judicial Member.

ii. It is submitted that under Section 43(3) of the RERA, it is mandated that every Bench of the Appellate Tribunal shall consists of at

least one Judicial Member and one Administrative or Technical Member. This Hon'ble Court has, in its judgments in ***Man Global Ltd vs. Bharat Prakash Joukani***,[22] (Paragraph 6) and ***Larsen and Toubro Ltd vs. Rekha Sinha***[23], (Paragraph 6) has held that a single Member of the Appellate Tribunal does not have jurisdiction to dispose of any appeal or application, in view of the plain language of Section 43(3) of RERA. In fact, in the judgment in ***Larsen and Toubro Ltd.*** (supra), this Court expressly held that even the provision of Section 55 of RERA cannot validate any proceeding by a single Member of the Appellate Tribunal as the same would be contrary to Section 43(3) of RERA. It is further submitted that the aforesaid principles of law will apply with equal force to any Tribunal designated to act as the Appellate Tribunal under the first proviso to Section 43(4) of RERA. In view thereof, it is submitted that the Hon'ble Maharashtra Revenue Tribunal acting through the Hon'ble President sitting singly, and hearing and deciding appeals filed under Section 44 of the RERA, did not have jurisdiction to adjudicate upon such appeals.

iii. It is further submitted that, under the first proviso to Section 43(4) of RERA, the Parliament has delegated to the State Government the power to designate any Appellate Tribunal functioning under any law to be the Appellate Tribunal to hear appeals under RERA. However,

22 2019 SCC OnLine Bom 2466
23 2019 SCC OnLine Bom 13273

while exercising such delegated power, the State Government cannot act contrary to or ignore the express provisions of RERA (under which such delegation takes place), in respect of the composition of the Appellate Tribunal. It is well settled that a delegatee of power cannot act contrary to the provisions of the statute and must act within the four corners of the delegation. In this regard attention of this Hon'ble Court is invited to the paragraphs 76-77 of the judgment of the Hon'ble Supreme Court in ***DDA v. Joint Action Committee, Allottee of SFS Flats***[24].

iv. It is submitted that the Hon'ble Supreme Court, in ***Dr. Mahabal Ram v. Indian Council of Agricultural Research & Ors.***[25], while considering the validity of Section 5(6) of the Administrative Tribunals Act, 1985 has held in para 6 that while allocating work under sub-section (6), the Chairman should keep in mind the nature of the litigation, and where questions of law and interpretation of constitutional provisions are involved, they should not be assigned to a single member.

SUBMISSIONS OF THE RESPONDENTS CONCERNING SECOND, THIRD AND FOURTH SUBSTANTIAL QUESTIONS OF LAW:

77. Learned Counsels for the Respondents *inter alia* raised the

24 (2008) 2 SCC 672
25 (1994) 2 SCC 401

following contentions:

i. The section 43(3) contemplates the constitution of "bench" but not the constitution of the "tribunal". The first proviso to section 43 (4) is the proviso for the purpose of making a protem arrangement of functioning (designate) appellate tribunal (not a Bench) until the establishment of (permanent) appellant tribunal under section 43 (1). Which clearly differentiate that any Appellate Tribunal functioning under any law for the time being inforce can hear the appeals under the RERA after such designation under first proviso of the section 43(4).

ii. The contentions advanced by the appellant that the bench of the designated appellate tribunal as per the first proviso of section 43 (4) of RERA is required to be in consonance with section 43 (3) of RERA is not valid and correct argument. Because, the first proviso of section 43(4) does not provide for the constitution of "bench" rather it is an alternative arrangement of functional designated appellate tribunal for the purpose of hearing of the appeals till the establishment of the (permanent) appellate tribunal.

iii. The first proviso of section 43 (4) clearly mandates … "shall designate, by order, any appellate tribunal functioning under any law for the time being inforce, …" and give liberty to Government to designate "any Appellate Tribunal" "functioning under any law" for the time being inforce. The designated tribunal, MRT was a functioning

tribunal under the Maharashtra Land Revenue Code at the time of designation under RERA. It may be noted that the said MRT was functioning validly as per it's own establishment under Maharashtra Land Revenue Code “with single member bench” presided over by a retired High court judge of Bombay high court. It is reiterated that the first proviso of sec. 43 (4) has given an alternative to sec. 43 (1) which is about the establishment of the “appellate tribunal” therefore the same does not have any relation to the constitution of “bench” and its members as per sec. 43 (3) of the RERA.

iv. It is submitted that the arguments of quorum non-judice and subject matter jurisdiction shall only prevail when the said, “any” Appellate Tribunal functioning under “any” law has not been constituted as per the said (any) law, under which the said Tribunal has been constituted and functioning. Hence, contentions advanced on behalf of appellant about application of section 43(3) to the 43(4) first proviso is not maintainable in the present factual matrix of the case. It is not the case of the appellant that the MRT, the designated appellate tribunal was itself incapacitated because of its erroneous constitution of the bench under the Maharashtra Land Revenue Code.

v. It is the settled position of the law that the proviso cannot always be furthering the object of the section instead it's arrangement may be completely alien to the provision of the said section, where the proviso

has been appended. A proviso is added to the principal clause with objective of taking out the scope of that principal clause what is included in it and what the legislature desires should be excluded further. A proviso to a section is intended to take out a part of the main section for special treatment. The proviso may entirely change the very concept of the intendment of the enactment by insisting in the certain mandatory conditions to be fulfilled in order to make enactment workable. It is therefore submitted that the first proviso of section 43(4) is supplement to section 43(1) for the purpose of giving an alternate arrangement for the (Permanent) Appellate Tribunal, functioning under any law for the intermittent period till the time (Permanent) Appellate Tribunal is not established under the RERA. Reliance is placed in support of this contention on ***S. Sundaram Pillai v. V.R. Pattabhiram***[26], the para no.27, 30 sub para f, h and j, para no.32, 33, 37, 39, 42, 43 sub para 2 are relied upon.

REASONING CONCERNING SECOND, THIRD AND FOURTH SUBSTANTIAL QUESTIONS OF LAW :-

78. While considering the first substantial question of law, this Court has extensively considered the scheme of Section 43 of RERA. This - Court has also discussed in detail the important objects and purposes of RERA and the discussion of ***M/s Newtech Promoters*** (supra) of the Supreme Court concerning objects and purposes of RERA. The legal

26 (1985) 1 SSC 591

position concerning interpretation of statutes is also discussed in detail.

79. It is settled legal position that the provisions of the Act must receive such construction at the hands of the court as would advance the object and purpose underlying the Act and at any rate not to defeat it. If the words of the statute are clear and unambiguous, it is the plainest duty of the court to give effect to the natural meaning of the words used in the provision. The question of construction arises only in the event of an ambiguity or the plain meaning of the words used in the statute would be self-defeating. The court is entitled to ascertain the intention of the legislature to remove the ambiguity by construing the provision of the statute as a whole keeping in view what was the mischief when the statute was enacted and to remove which the legislature enacted the statute. In matters of interpretation one should not concentrate too much on one word and pay too little attention to other words. No provision in the statute and no word in any section can be construed in isolation. Every provision and every word must be looked at generally and in the context in which it is used. The elementary principle of interpreting any word while considering a statute is to gather the *sententia legis* or *mens* of the legislature. The maxim *sententia legis* or *mens* contemplates that the essence of the law lies in the spirit, and not in its letter, the letters are just a way to express the intentions of the law makers. Where the words are clear and there is

no obscurity, and there is no ambiguity and the intention of the legislature is clearly conveyed, there is no scope for the court to take upon itself the task of amending or altering the statutory provisions. It is necessary to cull out the legislative policy from various factors like the words in the statute, the Preamble to the Act, the Statement of Objects and Reasons, and in a given case, even the attendant circumstances. After the legislative policy is found, then the words used in the statute must be so interpreted such that it advances the purpose of the statute and does not defeat it. A statute must be construed having regard to the legislative intent. It has to be meaningful. A construction which leads to manifest absurdity must not be preferred to a construction which would fulfill the object and purport of the legislative intent.

80. Before applying the above principles of the interpretation of statutes to Section 43 of RERA, it is necessary to set out hereinbelow the relevant portion of Section 43 of RERA in the context of these substantial questions of law :

> *"**43. Establishment of Real Estate Appellate Tribunal.** —(1) **The appropriate Government shall, within a period of one year from the date of coming into force of this Act, by notification, establish an Appellate Tribunal to be known as the —(name of the State/Union territory) Real Estate Appellate Tribunal.***
> *(2) ...*
> *(3) **Every bench of the Appellate Tribunal shall consist of at least one Judicial Member and one Administrative or Technical Member.***
> *(4) ...*

Provided that, ***until the establishment of an Appellate Tribunal under this section, the appropriate Government shall designate, by order, any Appellate Tribunal functioning under any law for the time being in force, to be the Appellate Tribunal to hear appeals under the Act****:*

Provided further that after the Appellate Tribunal under this section is established, all matters pending with the Appellate Tribunal designated to hear appeals, shall stand transferred to the Appellate Tribunal so established and shall be heard from the stage such appeal is transferred.
(5) …..

81. The scheme of Section 43 in the context of the substantial questions of law under consideration is as follows :

(i) The appropriate Government by notification, establish Real Estate Appellate Tribunal.

(ii) Until the establishment of Real Estate Appellate Tribunal, the appropriate Government shall designate, by order, any Appellate Tribunal functioning under any law for the time being in force, to be the Appellate Tribunal to hear appeals under RERA.

(iii) After the Real Estate Appellate Tribunal is established, all matters pending with the Appellate Tribunal designated to hear appeals, shall stand transferred to the Appellate Tribunal so established and shall be heard from the stage such appeal is transferred.

82. In view of above settled legal position concerning interpretation of statutes, it is necessary to consider Section 43 of RERA and more particularly the first proviso to Sub-Section (4) of Section 43 which provides that until the establishment of an Appellate Tribunal under Sub-Section (1) of Section 43, the appropriate Government shall designate, by order, any Appellate Tribunal functioning under any law for the time being in force, to be the Appellate Tribunal to hear appeals under the RERA. This proviso is very specific. The words used are clear and unambiguous. What the first proviso to Sub-Section (4) of Section 43 provides is that until the establishment of an Appellate Tribunal under Sub-Section (1) of Section 43 the appropriate Government shall designate by order any Appellate Tribunal functioning under any law for the time being in force, to be the Appellate Tribunal to hear appeals under RERA.

83. Learned Counsel of the Respondent is right in contending that the section 43(3) contemplates the constitution of "bench" but not the constitution of the "tribunal". The first proviso to section 43 (4) is the proviso for the purpose of making a protem arrangement of functioning (designate) appellate tribunal (not a Bench) until the establishment of (permanent) appellant tribunal under section 43 (1). Which clearly differentiate that any Appellate Tribunal functioning under any law for the time being inforce can hear the appeals under the RERA after such

designation under first proviso of the section 43(4).

84. It is undisputed that the Government of Maharashtra, by exercising powers conferred by the first proviso to Sub-Section (4) of Section 43 of RERA being the appropriate Government designated the Maharashtra Revenue Tribunal at Brihanmumbai constituted and functioning under the Maharashtra Land Revenue Code, 1966, to be the Appellate Tribunal to hear the appeals under RERA, until the establishment of the Maharashtra Real Estate Appellate Tribunal under Sub-Section (1) of Section 43 of RERA. Thus, the said notification dated 28th December 2017 has been appropriately issued by exercising powers conferred by the first proviso to Sub-Section (4) of Section 43 of RERA.

85. By no stretch of imagination, the constitution of Real Estate Appellate Tribunal i.e. permanent Appellate Tribunal can be equated with the designated Appellate Tribunal i.e. temporary Appellate Tribunal, which is the Appellate Tribunal functioning under any law for the time being inforce to be designated as the Appellate Tribunal to hear appeals under RERA as pro-tem arrangement.

86. The contention raised that the first proviso to Sub-Section (4) of Section 43 is not an independent provision but the same is a part of the scheme contemplated under Section 43 concerning establishment of the Real Estate Appellate Tribunal and, therefore, every bench of the

Appellate Tribunal shall consist of at least one Judicial Member and one Administrative or Technical Member.

87. Before considering said submission, it is required to be noted that the first proviso to Sub-Section (4) of Section 43 is the proviso for the purpose of making a *pro tem* arrangement, by which Appellate Tribunal functioning under any law for the time being in force is to be designated as the Appellate Tribunal to hear appeals under RERA till formation of regular Real Estate Appellate Tribunal under Sub-Section (1) of Section 43. Thus, perusal of Sub-Section (1) of Section 43 read with Sub-Section (3) of Section 43 and the said first proviso to Sub-Section (4) of Section 43 clearly shows that different provisions are made for formation and establishment of regular Real Estate Appellate Tribunal and pro-tem arrangement of temporary designated Appellate Tribunal i.e. any Appellate Tribunal functioning under any law for the time being inforce to be designated by the appropriate Government until establishment of regular Real Estate Appellate Tribunal. The said provisions are very clear and unambiguous.

88. The requirement of the first proviso to Sub-Section (4) of Section 43 for the purpose of designating an Appellate Tribunal which is functioning under any law for the time being inforce to be the Appellate Tribunal to hear appeals under RERA is that the said Appellate Tribunal is a Appellate Tribunal under any law for the time being inforce and

such Appellate Tribunal should be functioning under such other law. Thus, the requirements of composition of the Real Estate Appellate Tribunal as contemplated under Sub-Sections (1) and (3) of Section 43 read with Section 45 specifying composition of Appellate Tribunal and Section 46 specifying qualification and the manner in which the Chairperson and Members to be selected will not apply to pro-tem arrangement as contemplated under the first proviso to Sub-Section (4) of Section 43 of RERA. There is no dispute that the designated Tribunal i.e. Maharashtra Revenue Tribunal is functioning Tribunal under the Maharashtra Land Revenue Code and the said Tribunal was functioning validly as per its own establishment under the Maharashtra Land Revenue Code.

89. As the contentions have been raised by both the sides regarding scope of a proviso, it is necessary to set out the Judgment of the Supreme Court in ***S. Sundaram Pillai*** (supra). In the said decision, by analysing various decisions the Supreme Court has set out the different purposes of proviso. The relevant Paragraph is Paragraph No.43 of the said decision, which reads as under:

> "***43.*** *We need not multiply authorities after authorities on this point because the legal position seems to be clearly and manifestly well established.* ***To sum up, a proviso may serve four different purposes:***
>
> *(1)* ***qualifying or excepting certain provisions from the main enactment:***

> *(2) **it may entirely change the very concept of the intendment of the enactment by insisting on certain mandatory conditions to be fulfilled in order to make the enactment workable:***
>
> *(3) it may be so embedded in the Act itself as to become an integral part of the enactment and thus acquire the tenor and colour of the substantive enactment itself; and*
>
> *(4) it may be used merely to act as an optional addenda to the enactment with the sole object of explaining the real intendment of the statutory provision.*"
>
> (Emphasis added)

90. Thus, there is substance in the contention raised by the learned Counsel appearing for the Respondents that the first proviso of section 43(4) is supplement to section 43(1) for the purpose of giving an alternate arrangement for the (Permanent) Appellate Tribunal, functioning under any law for the intermittent period till the time (Permanent) Appellate Tribunal is not established under the RERA.

91. In fact, in this particular case, first proviso to Sub-Section (4) of Section 43 is a specific different arrangement i.e. pro-tem arrangement till the formation and establishment of the Real Estate Appellate Tribunal as contemplated under Sub-Section (1) of Section 43. The said first proviso clearly shows that the same is a pro-tem arrangement for hearing appeals under RERA immediately after enactment of RERA, till formation and establishment of regular Real Estate Appellate Tribunal as contemplated under Section 43(1) of RERA.

92. As already noted herein above, the RERA was *inter alia* enacted

as the Real Estate and Housing Sector was largely unregulated and the consequence was that consumers were unable to procure complete information for enforced accountability towards builders and developers in the absence of an effective mechanism in place. It is also noted in the objects and reasons of RERA that though, the Consumer Protection Act, 1986 was available to cater the demand of homebuyers in the real estate sector but the experience shows that such mechanism was inadequate to address the needs of the home buyers and promoters in the real estate sector. The need for RERA was badly felt for establishing an oversight mechanism to enforce accountability in the real estate sector and providing an adjudicating machinery for speedy dispute redressal mechanism and safeguarding the investments made by the homebuyers through legislation to the extent permissible under the law. The Statement of Objects and Reasons of RERA indicates that the primal position of the Regulatory Authority is to regulate the real estate sector having jurisdiction to ensure compliance with the obligation cast upon the promoters, the allottees and the real estate agents. The RERA provided for the establishment of the Real Estate Regulatory Authority for regulation and promotion of real estate sector and to ensure sale of plot, apartment or building, as the case may be, in an efficient and transparent manner and to protect the interest of consumers in real estate sector and establish the Real Estate Appellate Tribunal to hear

appeals from the decisions, directions or orders of the Authority. RERA was enacted with an object to ensure greater accountability towards consumers, to significantly reduce frauds and delays and also the high transaction costs, and to balance the interests of consumers and promoters by imposing certain responsibilities on both, and to bring transparency of the contractual conditions, set minimum standards of accountability and a fast-track dispute resolution mechanism, to impose liability upon the promoter to pay such compensation to the allottees, in the manner as provided, in case if the promoter fails to discharge any obligations imposed on him.

93. The said first proviso to Sub-Section (4) of Section 43 is required to be interpreted, having regard to the legislative intent of RERA. It is settled legal position that the a construction which leads to manifest absurdity must not be preferred to and construction which will fulfill the object and purpose of the legislative intent. The legislative intent for enacting RERA is very clear that immediately after enactment of RERA and after Section 43 has come into effect what is contemplated is that the appropriate Government designates any Appellate Tribunal functioning under any law for the time being inforce to be an Appellate Tribunal to hear appeals under RERA. Thus, what is contemplated is immediately making available as protem arrangement an appellate forum to the allottee or even to the promoter to enforce accountability

and for providing an adjudicating machinery for speedy dispute redressal mechanism till formation and establishment of regular Real Estate Appellate Tribunal. Thus, the arrangement contemplated under said first proviso is a protem arrangement by which the State Government is empowered to designate any Appellate Tribunal functioning under any law for the time being inforce to be the Appellate Tribunal to hear appeals under RERA. Thus, it is clear that such designated Appellate Tribunal is therefore to function only till formation and establishment of Real Estate Appellate Tribunal and is a functioning Appellate Tribunal under any other law for the time being in force. Thus, the legislative intent is to immediately make available functioning Appellate Tribunal to all the stakeholders of Real Estate Sector.

94. It is also required to be noted that the composition of Real Estate Appellate Tribunal as per Sections 45 and 46 of RERA inter alia includes Chairperson who is or has been a Judge of a High Court. The State Government by exercising powers conferred by the first proviso to Sub-Section (4) of Section 43 of RERA designated the Maharashtra Revenue Tribunal at Brihanmumbai constituted and functioning under the Maharashtra Land Revenue Code to be the Appellate Tribunal to hear appeals under RERA until the establishment of Maharashtra Real Estate Appellate Tribunal under Sub-Section (1) of Section 43 of RERA. It

appears that the Government of Maharashtra even while designating any Appellate Tribunal functioning under any law for the time being inforce to be the Appellate Tribunal to hear appeals under RERA took into consideration the aspect that the President of Maharashtra Revenue Tribunal, Mumbai is a retired High Court Judge.

95. The reliance is placed by the Appellants on the Judgment of ***Larsen and Toubro Ltd.*** (supra) and also on the Judgment of ***Man Global Ltd.*** (supra). The issue in both these decisions was whether a sole Member of the Maharashtra Real Estate Appellate Tribunal i.e. regular and permanent Appellate Tribunal constituted by the Appropriate Government by exercising power under sub-section (1) of Section 43 of RERA can decide any appeal or application filed in any appeal. In both these decisions by relying on Section 43(3) of RERA it has been held that a Sole Member of the Maharashtra Real Estate Appellate Tribunal has no jurisdiction to dispose of appeal or any application. As already discussed herein above, Sub-Section (3) of Section 43 of RERA provides that every bench of the Appellate Tribunal shall consist of at least one Judicial Member and one Administrative or Technical Member. However, the said provision is concerning the regular Maharashtra Real Estate Appellate Tribunal as constituted and established under Sub-Section (1) of Section 43 of RERA and nothing to

do with the designated Appellate Tribunal to be designated by the Appropriate Government by exercising power under first proviso to sub-section (4) of Section 43. i.e. Maharashtra Revenue Tribunal designated to act as Real Estate Appellate Tribunal till formation of permanent Real Estate Appellate Tribunal. Thus, reliance on these decisions is totally misconceived.

96. The contention raised by relying on the decision of the Supreme Court in ***DDA v. Joint Action Committee*** (supra) that a delegattee of power cannot act contrary to the provisions of statutes and must act within the four corners of the delegation is totally misconceived. The Section 43 empowers appropriate Government to establish regular and permanent Real Estate Appellate Tribunal as also to designate any Appellate Tribunal functioning as such under any law for the time being in force as protem arrangement till establishing regular and permanent Real Estate Appellate Tribunal. The appropriate Government is defined in Section 2(g), as follows:

> "***2. Definitions***.—*In this Act, unless the context otherwise requires,—*
>
> *…*
>
> *...*
>
> *(g) "**appropriate Government" means in respect of matters relating to,—***
>
> *(i) the Union territory without Legislature, the Central Government;*

(ii) the Union territory of [Puducherry and Union territory of Jammu and Kashmir], the Union territory Government;

(iii) the Union territory of Delhi, the Central Ministry of Urban Development;

(iv) ***the State, the State Government***."

(Emphasis Supplied)

97. Thus, in the context of the present case the Government of Maharashtra is the appropriate Government which has been empowered to establish Maharashtra Real Estate Appellate Tribunal and till establishment of the same as a protem arrangement designating any Appellate Tribunal functioning under any law for the time being inforce to be the Appellate Tribunal to hear appeals under RERA. As already discussed herein above the Government of Maharashtra by exercise of power under first proviso of Sub-Section (4) of Section 43 has designated Maharashtra Revenue Tribunal constituted under the Maharashtra Land Revenue Code, 1966 and functioning as such, to be the Appellate Tribunal to hear appeals under RERA till formation of Maharashtra Real Estate Appellate Tribunal. Thus, there is no substance in the contention raised by the learned Counsels appearing for the Appellants that the Government of Maharashtra has acted contrary to the provisions of statutes.

98. The reliance of Appellants on ***Dr. Mahabal Ram*** (supra) is totally misconceived as the question involved in the said case was whether a

single member of the Central Administrative Tribunal set up under the Administrative Tribunals Act, 1985, has jurisdiction to dispose of matters coming before the Tribunal under the said act. Thus, the said question is totally different and therefore, it is not relevant to the present case. In any case, as discussed herein above in the present case the issue is concerning Designated Appellate Tribunal i.e. temporary Appellate Tribunal constituted under the first proviso to Sub- Section (4) of Section 43, which provides that until the establishment of an Appellate Tribunal under Section 43(1), the appropriate Government shall designate, by order, any Appellate Tribunal functioning under any law for the time being in force, to be the Appellate Tribunal to hear appeals under RERA. Thus the said judgment is not applicable.

99. Thus, for the above reasons there is no substance in the Second, Third and Fourth Substantial Questions of Law.

100. Hereinafter the substantial questions of law Nos.1 and 2 as framed by Order dated 12th December 2024 will be considered. The said substantial questions of law are renumbered as substantial questions of law nos. 5 and 6. The said substantial questions of law are as follows:

> **FIFTH SUBSTANTIAL QUESTION OF LAW:**
>
> **When the Agreement for Sale between the Promoter and the Allottee makes provision for force majeure events, which have the effect of postponing the agreed date of**

possession, can authorities under RERA fix / provide for a date of possession while adjudicating claims under Section 18 of RERA?

SIXTH SUBSTANTIAL QUESTION OF LAW:

Whether the authorities under RERA have the power to determine or rewrite or revise the date of handover of possession, in exercise of power under Section 18 of RERA?

101. The impugned order of the learned Appellate Tribunal directs the Appellants to pay interest to the allottees at the rate of 10.05% effective from 1st February 2014 till handing over actual possession. As there is a force majeure clause in the agreement executed between the promoter and the allottees, it is the contention of the Appellants that as a result of the force majeure clause, effectively the agreed date of possession has been postponed and as by the impugned order the agreed dated of possession has been fixed by the learned Appellate Tribunal while adjudicating the claim under Section 18 of RERA, in effect the agreement or contract has been re-written by the learned Maharashtra Revenue Tribunal i.e. the designated Appellate Tribunal.

102. In view of the said contentions raised, this Court has framed the above substantial questions of law.

SUBMISSIONS OF THE APPELLANTS CONCERNING THE FIFTH AND SIXTH SUBSTANTIAL OF LAW:

103. The learned Counsel appearing for the Appellants have

raised the following contentions:

i. Reliance is placed on Section 18 of RERA and it is submitted that a bare reading of Section 18(1) demonstrates that the terms of the Agreement for Sale, inter alia, in respect of the date for handover of possession would be required to be taken into consideration while adjudicating any liability under Section 18(1) of RERA. The terms of the Agreement for Sale would axiomatically include any attendant provisions which stipulate an extension/exclusion of time for compliance of obligations thereunder. It is submitted that any adjudication under Section 18(1) dehors the terms of the Agreement for Sale or by ignoring the terms thereof or contrary thereto would be perverse and unsustainable in law. The failure or inability to give possession of a unit in accordance with the terms of the Agreement for Sale or duly completed by the date specified in the agreement for sale is the sine qua non for any liability to fasten on the Promoter.

ii. In the present case, the date specified in the Agreement for Sale executed by the Appellant and the Respondent (Clause 14@ Pg. 20 of the Compilation of Lower Court Proceedings) is 31st December 2009, subject to

reasonable extension of time in the event of happening of any of the contingencies specified in the same clause. Thus, while adjudicating liability under Section 18(1), the Maharashtra Real Estate Appellate Tribunal was required to consider the said Clause 14 and its effect. However, as is evident from the impugned Order, the Appellate Tribunal has failed to consider the same. Thus, the impugned Order is contrary to the very foundational premise of Section 18(1) of RERA.

iii. It is submitted that this Court in its judgment in ***Sanvo Resorts Private Limited & Ors. vs. Shital Nilesh Deshmukh***[27] and more particularly paragraph No.18 and 19 has *inter alia*, held that the promoter is entitled to justify delay in completion of construction on the basis of the terms of the agreement for sale, while defending claims under Section 18(1) of RERA.

iv. It is submitted that in case the promoter fails to complete the project despite genuine efforts, the concerned authorities would look into genuine cases and mould reliefs while determining liability under Section 18 of RERA. Thus, the element of adjudication is inherent under Section 18 of RERA. To substantiate the said contention, reliance is

27 Second Appeal No.512 of 2022

placed on the decision of this Court in the case of ***Nilkamal Realtors Suburban Pvt. Ltd. & Anr. vs. Union of India & Ors.***[28] and more particularly on paragraph No.137 of the same.

v. It is submitted that as per the settled legal position, the Court must enforce contracts between the parties as entered into by such parties and cannot rewrite the contracts. It is a Court's duty to give effect to the terms of the bargain struck between the parties.

vi. It is submitted that the terms of the Agreement for Sale executed by the allottee and the promoter are binding on the parties and ought to be enforced by Courts/authorities. The Respondent is relying upon the same Agreement for Sale wherein the Clauses for extension of timelines has been mutually inserted for alleging delay in possession. It is not in dispute that the Respondent has acted in furtherance of the Agreement for Sale. It is not even in dispute that the Respondent has ever challenged or terminated the Clause 14 of the Agreement for Sale. That being the case, the Respondent is bound by the Clauses on extension in the possession date mutually agreed to be inserted in the Agreement for Sale. The Agreement for Sale

28 2017 SCC OnLine Bom 9302

has to be given effect and interpreted as was entered into between the parties and in entirety. Neither party can pick and choose what clause of the Agreement for Sale is binding upon him and what is not. Further, it is settled law that Courts must also enforce Agreements as envisaged between the Parties, and cannot come up with different bargains for either party than what the parties themselves have contracted to in writing.

vii. To substantitate the above contentions, reliance is placed on the following decisions of the Supreme Court:

1. Venkataraman Krishnamurthy v. Lodha Crow Buildmart Pvt. Ltd.[29]

2. Central Bank of India v. Hartford Fire Insurance Co. Ltd.[30]

3. Hongkong and Shanghai Banking Corporation Ltd. v. Awaz[31]

4. Neelkamal Realtors Suburban Pvt. Ltd. vs. Union of India[32]

5. Bharathi Knitting Company v. DHL Worldwide Express Courier Division of Airfreight Ltd.[33]

viii. It is submitted that while enforcing provisions of RERA and determining liability thereunder, the authorities under

29 2024 INSC 132
30 AIR 1965 SC 1288
31 2024 INSC 1044
32 2017 SCC OnLine Bom 9302
33 (1996) 4 SCC 704

RERA ought not to curtail the freedom of contract between the parties and contracts which have been entered into freely and voluntarily shall be enforced. In this regard, reliance is placed on the judgment of the Supreme Court in the case of ***Zoroastrian Co-operative Housing Society Ltd v. District Registrar, Co-operative Society (Urban)***[34] and more particularly paragraphs nos. 27 to 30 of the same.

ix. The term "on demand" in the context of the right of an Allottee to refund of amounts paid is found in the main enacting portion of Section 18(1) of RERA and the said term does not find place in the proviso to Section 18(1) of RERA. Accordingly, the Allottee's right under the proviso to Section 18(1) cannot be treated as unqualified. The absence of the words "on demand must be given due consideration in the course of interpretation.

x. It is well settled that the function of a proviso is generally to create an exception to what is stated in the main enactment and further that, while interpreting a proviso, care must be taken that it is used to remove/carve out special cases from the general enactment and provide for them separately. In this regard, reliance is placed on the judgment of the Supreme Court in ***Shah Bhojraj Kovarji Oil***

34 2005) 5 SCC 632

Mills and Ginning Factory v. Subhashchandra Yograj Sinha[35] and in particular, paragraphs 9 and 10 thereof and also the judgment of the Hon'ble Supreme Court in ***Sundaram Pillai*** (supra) and more particularly paragraphs nos. 32 and 33 of the same.

xi. The Supreme Court in ***Newtech*** (supra) was considering the import of the principal enactment in Section 18(1), which relates to the Allottee's right of refund of money and not the proviso to Section 18(1), which relates to the right of an allottee to continue in the project and seek interest. Paragraph 24 of the said judgment clearly refers to unforeseen events or stay orders of Court / Tribunal, as being factors which are to be disregarded while considering a claim for refund under Section 18(1). This is because when a party has already made up its mind to seek an exit from the Project, such party cannot be compelled to stay put in the Project, thereby making his right to refund an unconditional/unqualified right. In the present case, the delays have been occasioned on account of foreseen events, which have been set out in the Agreement for Sale executed between the Allottee and the Promoter and which ought to be taken into account while determining any

35 AIR 1961 SC 1596

liability under the proviso to Section 18(1) of RERA. It may also be noted that none of the Respondents in any of the Appeals are desirous of a refund. They were admittedly already offered refunds with interest vide letters addressed by the Appellant much before they even filed any case under RERA.

xii. It is is well settled that a judgment is an authority for what is decided by and not anything further. It is also well settled that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision. Attention of this Hon'ble Court is invited to the judgment of the Hon'ble Supreme Court in the case of ***Bhavnagar University vs. Palitana Sugar Mill (P) Ltd.***[36], and in particular, paragraph 59 thereof. It is also well settled that the judgments of the Court ought not to be read as provisions of a statute and that the observations therein must be read in the context in which they appear. The reliance is placed on the decision of the Supreme Court in the case of ***Haryana Financial Corporation vs. Jagdamba Oil Mills*** [37] (paragraph 19).

xiii. It ought to be noted that what was being decided by

36 (2003) 2 SCC 111
37 (2002) 3 SCC 496

the Hon'ble Supreme Court of India in ***Imperia Structures Limited v/s Anil Patni*** [38], more particularly Paragraphs 32 and 34 therein and in ***Newtech*** (supra) was not whether or not the right of an allottee under Section 18 was unconditional or not. In fact, none of the five questions framed in ***Newtech*** (supra) deal with the aforesaid issue. It is held by the Hon'ble Supreme Court in the case of ***Arun Kumar Aggarwal v. State of M.P.*** [39], Para 34 therein, that a mere obiter of a Court does not have precedential value.

xiv. It has also been held by the Division bench of this Court in the case of ***Neelkamal*** (supra) that: (i) That the authority in genuine cases after considering the mitigating events encountered by the promoter has the power to mould reliefs; and (ii) That the advent of RERA does not rewrite or displace contractual understandings as regards possession entered into by parties prior to the promulgation of RERA. Therefore, even the Division Bench of this Court has laid emphasis on adjudication based on consideration of mitigating events that come under contractual clauses of Agreements entered into between the parties.

xv. It is important to note that Clause 2.3 of the model form

38 (2020) 10 SCC 78
39 (2014) 13 SCC 707

of agreement for sale, notified under the MahaRERA Rules, 2017 itself provides that possession dates can be subject to extension based on clauses providing extension in an agreement for sale, thereby confirming that even the RERA envisages situations where the developer can be allowed extension on account of reasons outside it's control. In the aforesaid circumstances, it is submitted that firstly, authorities under RERA do not have the power to fix or provide for a fresh date of possession / revise or rewrite the date of possession under Section 18 of RERA. However, the authorities under RERA are bound, by law, to adjudicate and determine the date of possession in the context of exclusion / extensions envisaged in the Contract as well as those arising out of force majeure events, contractual or legal, especially those well within the allottee's knowledge, while adjudicating liability under Section 18 of RERA.

SUBMISSIONS OF THE RESPONDENTS CONCERNING THE FIFTH AND SIXTH SUBSTANTIAL OF LAW:

104. The learned Counsel appearing for the Respondents submitted as follows:

i. The ***Neelkamal*** (supra) clearly acknowledges the extension of time to be given to the promoter. Therefore, if

the promoter can seek extension of time for the completion of project, which includes the date of possession and the authorities grants such extension then there cannot be any hindrance to the authorities either to fix the date of completion of project including handing over of the possession to the allottees. It is also settled that the delay and/or extension cannot be for indefinite period. In such case the MahaREAT under Section 53 of RERA is competent to grant/fix the date of completion of the project which includes the date of possession. The Supreme Court has decided that there has to be a reasonable time frame for handing over of the possession. The possession should be given in three years, irrespective of the fact that whatever the agreement says. Therefore, the question of law calling upon and referring to the agreement saying that force majeure clause can keep extending the time limit for the purpose of giving possession for unlimited period is not maintainable at all.

ii. It is the settled position of law that RERA is retroactive act and it is applicable to the ongoing projects where the Occupation Certificate has not been granted, the RERA shall be applicable and the act requires the registration of

project. Accordingly, the subject project has been registered also. After registration of the project, the promoter can only be absolved from the criminal liability on the extension of the date of possession, but the same cannot absolve the promoter from civil liability, which includes unconditional and unqualified interest on delayed possession.

iii. It is submitted that adjudication of claim under section 18, either for the compensation or interest on delayed possession has to be from the date of the agreement actually entered into between the promoter and the flat purchaser and default is to be considered from the agreed date of possession The RERA being retroactive act when applies to the ongoing project, where the possession has not been given, in such case, once the project is registered, the possession date/ date of completion of the project is to be given by the promoter. In that case, if any default occurs on the part of the promoter, the authorities while adjudicating the claim under section 18 has to refer to the date of possession. The section 6 of RERA grants extension of registration of the project thereby the possession date also gets extended. The section 6 of the RERA does not give automatic extension of the project completion rather there

is hearing to take place for the extension of project including the date/time line for giving possession. Therefore, there is no hindrance in fixing the date of possession by the Authorities while adjudicating the claim under section 18 of RERA.

iv. It is further submitted that, in the matter of ***Pioneer urban land and infrastructure Ltd v. union of India*** [40], the Supreme Court has stated that the allottee of the flats are financial creditors and the money advanced by the allottee to real estate promoter is to be considered as a financial debt. The para 23 of the aforesaid judgment clearly observes that RERA being retroactive act, the registration of the project is only granted by the authority when it is satisfied that the promoter is a bona fide promoter who is likely to perform his part of the bargain satisfactory. Registration of project ensures only for a certain period and can only be extended due to force majeure or events for a maximum period of one year by the authority on being satisfied that such events have in fact taken place, which clearly shows that the authority can extend the period of the project that includes possession. In the present case, after ascertainment of the fact of the Force Majeure clause

40 (2019) 8 SCC 416

claimed by the promoter the MahaREAT was kind enough to extend the date of completion of project which includes the date possession after considering their force majeure claims. Therefore, interest on delayed possession was awarded from 1 February 2014 and accordingly the learned MahaREAT ordered the timeline for the completion of the construction only on the inquiry from the learned Counsel, when the learned Counsel informed the percentage of construction completed on that date. In that case it may be fairly concluded that the question of law as framed no. 1 & 2 hereinabove may be fairly deemed as redundant and infructuous.

v. In the matter of ***Neelkamal*** (supra), the para 128 of the aforesaid judgment clearly suggest that the delay in handing over the possession would be counted from the date, mentioned in the agreement for sale, entered into by the promoter and the flat purchasers. Which further suggest that while adjudicating claim under section 18, the delay while handing over the possession and interest for the same shall be counted from the date of agreed date of possession mentioned in the agreement. Under the provision of RERA, the promoter is given a facility to revise

the date of the completion of project and declare the same. The extension for the completion of project or date of possession, facility is already given to the promoter under RERA. If the promoter has been granted liberty to revise the date of completion of project that does not mean that RERA contemplates to rewrite the contract between the flat purchasers and promoter. The RERA gives opportunity to the promoter to extend the date of the completion of project and revise the date of the possession date. Hence, the same may be also exercised validly by the authorities under the law.

vi. In the matter of ***Pioneer Urban Land Infrastructure Limited v. Govinda Raghawan*** [41] the respondents rely upon paragraph nos 6 to 6.8 and paragraph no.7, which clearly shows the importance of the delay in possession of the flat and thereafter it has further discussed in para no.6.1 that a person cannot be made to wait indefinitely for the possession of the flat allotted to him. It has been further recorded in paragraph no.6.3 of the aforesaid judgment that if the promoters are writing, only one-sided agreement, then the same cannot be relied upon and cannot be enforced. Therefore, the agreement cannot be

41 (2019) 5 SCC 725

one-sided, which can be required to be enforced under any law for the time being in force. The para 6.4 and 6.5 of the judgment discusses purposely that how the one-sided agreement has been made in the subject case, and Supreme Court has taken a view that one sided agreement cannot prevail upon. Supreme Court was pleased to further specify about the Constitutional guarantees to all person, promises equality before the law and equal protection of laws. The same principle applies to the equality of bargaining power irrespective of economic strength of the contracting parties. It will also apply to a situation in which weaker party is in a position to obtain goods, services or means legally, upon the terms imposed by the stronger party. So, in the given circumstances, the one-sided agreement or dominating agreement cannot be accepted, cannot be relied upon by the court of law.

vii. The learned MahaREAT in first Appeal no. 52949 of 2021, in the matter of ***Vinay Agrawal v. Amrita Chakraborty*** which has persuasive value has discussed in detail about the multiple issues on the basis of the various judgments of Hon'ble Supreme Court and this Court, which are vital to be mentioned here under. The para 14 of the judgment says

that respondents have absolute right to claim interest as prescribed under section 18 of the act for delaying delivery of possession of the subject flat. The para of 16 the aforesaid judgment states that the extension of registration granted by MahaRERA in the light of para No. 119, 256 of the judgment of this Court in the case of ***Neelkamal*** (supra) clarify and does not contemplate rewriting of contract between the purchaser and the promoter. Para 256 of the judgment further clarify that by giving opportunity to the promoter to prescribe fresh timeline under section 4(2)(1)(c) can not absolve of the liability under agreement for sale. Para 17, further mentions about the delivery date on MahaRERA website, which is revised without consent of the allottee. Therefore, revised project registration/ completion date mentioned on the website cannot be accepted as agreed date of delivery of possession as per Section 18 of the act. It further concludes that, party cannot take advantage of its own wrong. Para 19 of the aforesaid judgment further clarify about the applicability of Act.

viii. The direction was passed by the Hon'ble MahaREAT for completing the construction within the stipulated period, on the basis of the fact that Respondent's (appellant

herein) buildings were ready and constructed upto 80% and 90% in year 2018. Because in the same layout when the booking was taken in the year 2006-2007, plan was to construct 490 flats only but now the plan is to construct 1003 flats in the same layout. Therefore, the entire objective of the appellant is to remove the flat purchasers/respondents from the aforesaid project at any cost by creating the adverse circumstances.

ix. It is respectfully submitted that both questions stand concluded in favour of the Respondents. The settled legal position, as affirmed in ***Imperia Structures Ltd. v. Anil Patni***[42], categorically holds that the promoter cannot indefinitely postpone possession by relying upon force majeure clauses or contractual stipulations. The Supreme Court therein recognised that allottees are entitled to seek relief under Section 18 of the RERA, notwithstanding any contrary clauses in the agreement.

x. In ***Pioneer Urban Land & Infrastructure Ltd. v. Govinda Raghavan***[43], the Apex Court reiterated that flat purchasers cannot be compelled to wait endlessly for possession, and that one-sided clauses enabling promoters

42 (2020) 10 SCC 783
43 (2019) 5 SCC 725

to unilaterally delay handover are unconscionable, opposed to public policy, and unenforceable.

xi. This Court in ***Neelkamal*** (supra), upheld the constitutionality of RERA and clarified in para 128 and para 256 that the revised project timelines declared under Section 4 cannot dilute the promoter's liability under the agreement for sale. These pronouncements, read conjointly, establish beyond cavil that the authorities under RERA possess the jurisdiction and indeed the obligation to fix a reasonable date of possession while adjudicating claims under Section 18, and that the promoter cannot evade civil liability by resorting to contractual clauses or extensions.

REASONING CONCERNING FIFTH AND SIXTH SUBSTANTIAL QUESTIONS OF LAW:

105. For considering Substantial Question of Law Nos.5 and 6, it is necessary to analyse Section 18 of RERA. The said Section is reproduced herein below for ready reference:

> "*18. Return of amount and compensation.—(1) If the promoter fails to complete or is unable to give possession of an apartment, plot or building,—*
>
> *(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or*
>
> *(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration*

under this Act or for any other reason, he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:

Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed.

(2) The promoter shall compensate the allottees in case of any loss caused to him due to defective title of the land, on which the project is being developed or has been developed, in the manner as provided under this Act, and the claim for compensation under this subsection shall not be barred by limitation provided under any law for the time being in force.

(3) If the promoter fails to discharge any other obligations imposed on him under this Act or the rules or regulations made thereunder or in accordance with the terms and conditions of the agreement for sale, he shall be liable to pay such compensation to the allottees, in the manner as provided under this Act."

(Emphasis added)

106. As far as the scheme under Section 18 of RERA is concerned, the same is discussed in paragraph Nos. 19 to 25 of the ***Newtech Promoters*** (supra). The said paragraphs are set out herein below :

"19. *Section 18(1) of the Act spells out the consequences if the promoter fails to complete or is unable to give possession of an apartment, plot or building either in terms of the agreement for sale or to complete the project by the date specified therein or on account of discontinuance of his business as a developer either on account of suspension or*

revocation of the registration under the Act or for any other reason, ***the allottee/homebuyer holds an unqualified right to seek refund of the amount with interest at such rate as may be prescribed in this behalf.***

20. Section 18(2) of the Act mandates that in case, loss is caused to allottee due to defective title of the land, on which the project is being developed or has been developed, the promoter shall compensate the allottee and such claim for compensation under Section 18(2) shall not be barred by limitation provided under any law for the time being in force.

21. Section 18(3) of the Act states that where the promoter fails to discharge any other obligation under the Act or the rules or regulations framed thereunder or in accordance with the terms and conditions of the agreement for sale, the promoter shall be liable to pay "such compensation" to the allottees, in the manner as prescribed under the Act.

22. ***If we take a conjoint reading of sub-sections (1), (2) and (3) of Section 18 of the Act, the different contingencies spelt out therein, (a) the allottee can either seek refund of the amount by withdrawing from the project; (b) such refund could be made together with interest as may be prescribed; (c) in addition, can also claim compensation payable under Sections 18(2) and 18(3) of the Act; (d) the allottee has the liberty, if he does not intend to withdraw from the project, will be required to be paid interest by the promoter for every months' delay in handing over possession at such rates as may be prescribed.***

23. ***Correspondingly, Section 19 of the Act spells out "Rights and duties of allottees". Section 19(3) makes the allottee entitled to claim possession of the apartment, plot or building, as the case may be. Section 19(4) provides that if the promoter fails to comply or being unable to give possession of the apartment, plot or building in terms of the agreement, it makes the allottees entitled to claim the refund***

of amount paid along with interest and compensation in the manner prescribed under the Act.

24. Section 19(4) is almost a mirror provision to Section 18(1) of the Act. Both these provisions recognise right of an allottee two distinct remedies viz. refund of the amount together with interest or interest for delayed handing over of possession and compensation.

25. The unqualified right of the allottee to seek refund referred under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottee, if the promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the court/tribunal, which is in either way not attributable to the allottee/homebuyer, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act with the proviso that if the allottee does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed."

107. Thus the Supreme Court has held that a conjoint reading of sub-sections (1), (2) and (3) of Section 18 of the RERA shows that *inter alia* different contingencies are spelt out therein including following :

i. The allottee can either seek refund of the amount by withdrawing from the project and in that case such a refund could be made together with interest as may be prescribed and in addition, can also claim compensation.

ii. The allottee is at liberty, to continue in the project, if he does not intend to withdraw from the project and in that case the allottee will be required to be paid interest by the promoter for every months' delay in handing over possession at such rates as may be prescribed.

108. In the matter between ***Vinay Shravankumar Agrawal v. Bhushan Kashinath Pawaskar***[44] along with connected Second Appeals this Court has considered the scope of Section 18. The discussion in the said decision is relevant and the same is as under.

109. The object and reasons of the said Act and the peculiar position of allottees as explained by the Supreme Court to the effect that the buyer borrows money to pay for a house and simultaneously plays the role of a financer as building projects collect money upfront and this puts the buyer in a very vulnerable position i.e. the weakest stakeholder with a high financial exposure clearly shows that the legislative intent to use "shall " in Section 18 of the said Act is to make the same mandatory.

110. While interpreting Section 18 of the RERA, in ***Imperia Structures Limited Vs. Anil Patni & Anr.***[45], the Supreme Court has held that Section 18 is unqualified right of allottee to get refund and interest at the prescribed rate, by withdrawing from the project, if the promoter fails

44 Decision dated 24th October 2024 in Second Appeal (Stamp) No.9171 of 2023
45 (2020) 10 SCC 783

to give possession of an apartment as per dates specified in the home buyers agreement and also entitled for compensation. It is further held that in case home buyers does not intend to withdraw from the project then he is entitled to and must be paid interest for every month's delay till the handing over of the possession. It is the absolute right of the allottee either to continue in the project or to withdraw from the project. The relevant discussion in the case of ***Imperia*** (supra) is in paragraph 25, which reads as under:

> "25. ***In terms of Section 18 of the RERA Act, if a promoter fails to complete or is unable to give possession of an apartment duly completed by the date specified in the agreement, the promoter would be liable, on demand, to return the amount received by him in respect of that apartment if the allottee wishes to withdraw from the Project.*** *Such right of an allottee is specifically made "without prejudice to any other remedy available to him".* ***The right so given to the allottee is unqualified*** *and if availed, the money deposited by the allottee has to be refunded with interest at such rate as may be prescribed.* ***The proviso to Section 18(1) contemplates a situation where the allottee does not intend to withdraw from the Project. In that case he is entitled to and must be paid interest for every month of delay till the handing over of the possession. It is up to the allottee to proceed either under Section 18(1) or under proviso to Section 18(1).*** *The case of Himanshu Giri came under the latter category. The RERA Act thus definitely provides a remedy to an allottee who wishes to withdraw from the Project or claim return on his investment.*"
>
> (Emphasis added)

Thus it is specifically held by the Supreme Court that the proviso

to Section 18(1) contemplates the situation where the allottee does not intend to withdraw from the project, however, there is delay in handing over possession of the apartment. In that case, he is entitled to and must be paid interest for every month's delay till handing over the possession and it is the entire discretion of the allottee either to withdraw from the project and seek refund, interest and compensation or to continue with the project and seek interest for every month's delay in handing over possession.

111. The scheme of RERA as well as the object and reasons of the RERA, the scope of the relevant provisions and the decisions in ***Imperia*** (supra) *and* ***Newtech*** (supra) makes it very clear that an allottee has an unqualified right to either withdraw from the project and to seek refund, interest and compensation and if the allottee does not intend to withdraw from the project, in spite of delay, then the allottee has been given unqualified right to get interest per month for delayed possession till receipt of possession. It is clear that the same is an unqualified right of allottee and there is no conditions attached for exercise of said right.

112. In ***Newtech Promoters*** (supra), the said para No.25 in the case of ***Imperia*** (supra) is quoted with approval in paragraph No.78. The relevant discussion is to be found in paragraph Nos.77 to 80 in ***Newtech Promoters*** (supra) which reads as under :

"*77. The further submission made by the learned counsel for the appellants is that* **the return of the amount adversely impacts the promotor** *and such a question can be looked into by the adjudicating officer in the better prospective.* **The submission has no foundation for the reason that the legislative intention and mandate is clear that Section 18(1) is an indefeasible right of the allottee to get a return of the amount on demand if the promotor is unable to hand over possession in terms of the agreement for sale or failed to complete the project by the date specified and the justification which the promoter wants to tender as his defence as to why the withdrawal of the amount under the scheme of the Act may not be justified appears to be insignificant and the Regulatory Authority with summary nature of scrutiny of undisputed facts may determine the refund of the amount which the allottee has deposited, while seeking withdrawal from the project, with interest, that too has been prescribed under the Act, as in the instant case, the State of Uttar Pradesh has prescribed MCLR + 1% leaving no discretion to the Authority and can also claim compensation as per the procedure prescribed under Section 71(3) read with Section 72 of the Act.**

78. This Court while interpreting Section 18 of the Act, in Imperia Structures Ltd. v. Anil Patni [Imperia Structures Ltd. v. Anil Patni, held that Section 18 confers an unqualified right upon an allottee to get refund of the amount deposited with the promoter and interest at the prescribed rate, if the promoter fails to complete or is unable to give possession of an apartment as per the date specified in the home buyer's agreement in para 25 held as under :

> *"25. In terms of Section 18 of the RERA Act, if a promoter fails to complete or is unable to give possession of an apartment duly completed by the date specified in the agreement, the promoter would be liable, on demand, to return the amount received by him in respect of that apartment if the allottee wishes to withdraw from the Project. Such*

right of an allottee is specifically made "without prejudice to any other remedy available to him". The right so given to the allottee is unqualified and if availed, the money deposited by the allottee has to be refunded with interest at such rate as may be prescribed. The proviso to Section 18(1) contemplates a situation where the allottee does not intend to withdraw from the Project. In that case he is entitled to and must be paid interest for every month of delay till the handing over of the possession. It is up to the allottee to proceed either under Section 18(1) or under proviso to Section 18(1). The case of Himanshu Giri came under the latter category. The RERA Act thus definitely provides a remedy to an allottee who wishes to withdraw from the Project or claim return on his investment."

79. To safeguard the interests of the parties, on being decided by the Regulatory Authority/adjudicating officer, it is always subject to appeal before the Tribunal under Section 43(5) provided condition of pre-deposit being complied with can be further challenged in appeal before the High Court under Section 58 of the Act and, thus, the legislature has put reasonable restriction and safeguards at all stages.

80. The further submission made by the learned counsel for the appellants that if the allottee has defaulted the terms of the agreement and still refund is claimed which can be possible, to be determined by the adjudicating officer. The submission appears to be attractive but is not supported with legislative intent for the reason that if the allottee has made a default either in making instalments or made any breach of the agreement, the promoter has a right to cancel the allotment in terms of Section 11(5) of the Act and proviso to sub-section (5) of Section 11 enables the allottee to approach the Regulatory Authority to question the termination or cancellation of the agreement by the promotor and thus, the

interest of the promoter is equally safeguarded."

(Emphasis added)

113. In the light of above discussion about the relevant provisions of RERA as interpreted by the Supreme Court, it is necessary to consider the substantial questions of law.

114. As noted hereinabove, Section 18 of the RERA gives unqualified statutory right to the allottees if there is delay in handing over possession by the promoter and if the allottee does not intend to withdraw from the project, he shall be paid every month's interest for delay in handing over possession as such rate as may be prescribed. Thus, the statutory right has been created in favour of the allottees i.e. flat purchasers.

115. As held in ***Imperia*** (supra) and ***Newtech*** (supra), right given to the allottees by Section 18 is an unqualified right.

116. It is the main submission of learned Counsel appearing for the Appellants that as in Clause No. 14 of the Agreement for Sale executed between the Appellant and the Flat Purchasers in Second Appeal No.260 of 2022, there is clause regarding force majeure, the time for handing over possession stands automatically extended. For considering the said submission, it is necessary to set out said Clause No. 14 of Agreement of Sale, which reads as under :

"*14. On Receipt of full and final amount as payable under this agreement by the Purchasers, the DEVELOPERS shall give possession of the said premises to the Purchaser/s on or before 31-12-2010. If the Developers fails to handover the possession of the said flat to the purchaser on the said date, the Developers shall be liable to pay the interest @ 9% (Nine) p.a. to the purchasers as provided under section 8 of MOF Act, 1963, until the possession of the said flat is handed over to the purchasers. If the DEVELOPERS unable keep the said premises ready for occupation on account of reasons beyond its control and of its agents on aforesaid date or the dates prescribed for the payment, the amounts already received by it in respect of the said premises. It is mutually agreed between the Purchaser & Developers that if the Developer is unable to hand over the possession of said flat on above mentioned stipulated date for the reason beyond the control of developers, then developers is not liable to pay any interest as provided under the MOFA. The Developers herein agree that they shall be liable on demand by the Purchaser to refund to the Purchasers the amounts already received by them in respect of the said premises. Till the said amount is refunded by the Developers to the Purchasers there shall be subject to prior encumbrances if any, be charge on the said premises in question. It is further agreed that upon refund of the said amount as stated hereinabove, the Purchaser shall have no right, title, interest, claim, demand or dispute of any nature whatsoever either against the Developers or against the said preemies in any manner whatsoever and the developers shall be entitled to deal and dispose of the said premises to any person or party as the Developers may desire at their absolute discretion. Provided that the DEVELOPERS shall be entitled to the reasonable extension of time for keeping the said premises ready for occupation on the aforesaid date if the completion of buildings in which the said premises are to be situated is*

delayed on account of : -
a) Non-availability of steel, cement, other buildings material, water or electricity supply
b) War, civil commotion, act of God;
c) Any notice, order, rule, notification of the Government and/or other public or competent authority court or tribunal any Quasi-judicial body or authority.
d) Delay in getting plans occupancy certificate, completion certificate and permissions from B.M.C. & other authorities.
e) Non-payment and/or delay in payment by the Purchaser/s of the balance amount of the agreed purchase price, as payable in installments on the due dated as stated hereinabove to the DEVELOPERS.
f) Force majeure circumstances or conditions or other the control of or unforeseen by the DEVELOPERS including strikes or other agitation by the workers, employees of laborers of the DEVELOPERS or other contractors or suppliers."

(Emphasis added)

117. At this stage only, it is required to be noted that as per Clause No. 14, the date fixed for handing over possession is 31st December 2010, whereas the learned Appellate Tribunal has directed payment of interest to the allottees at the rate of 10.05% per annum effective from 1st February, 2014 till handing over actual possession. In fact, as far as other flat purchasers are concerned the date of handing over possession is 31st December 2008 and 31st December 2009. The said Order has not been challenged by the allottees. Thus, the extension of time granted upto 1st February 2014 is beneficial to the Appellants.

118. It is required to be noted that in this case, as the Respondents have decided to continue with the project, they have got unqualified right to get interest in view of delayed possession. It is required to be noted that the Agreement for Sale in case of Samira Sultan Ali Mohammed is dated 31st December, 2007. The agreed date of handing over possession as per Clause 14 is 31st December, 2010. Admittedly, till 2026, possession of the flat has not been handed over. As noted earlier one of the Respondent i.e. the Allottee has paid 100% of the consideration and some of the Allottees i.e. Respondents have paid between 50% to 60% of the consideration. In any case, most of the Respondents i.e. the Allottees have paid substantial consideration towards the purchase of flats to the Appellant- Promoter about more than 15 years back. The Agreements are of the year 2006-07 and the date of handing over possession is of 2008-10 and till the year 2026 the possession of the respective flats has not been handed over to the respective Allottees. As far as the Tower C is concerned the same has been partly constructed earlier and thereafter it has been demolished and now it has again being constructed.

119. Thus, even after a period of almost twenty years of execution of agreement, and after lapse of about sixteen years from the agreed date of handing over possession, the possession has not been handed over.

120. The Appellants have also relied on Clause 15 of the agreement executed with the flat purchasers, which reads as under :

> "*15. The Developer has already informed to the purchaser/s and the Purchaser hereby acknowledges that the land on which the proposed buildings are being constructed/ developed is the subject matter of the forest issues/disputes. The Developer has already filed a Writ Petition No.1578 of 2006 before the Hon'ble High Court at Bombay challenging the mutation entry inserted by the City Survey Officer in the property card register stating that the said land is the forest land and no development/construction will be allowed unless NOC from the forest department is obtained in respect of the said land. In the said Writ Petition the Hon'ble High Court at Bombay passed an order dated 25th July 2006 and granted injunctions to the developer as prayed in the said Writ Petition. Thereafter, State Govt. of Maharashtra has challenged the said order dated 25th July 2006 passed by Hon'ble High Court at Bombay by filing a Special Leave Petition (SLP) No. 14068 of 2006 in the Hon'ble Supreme Court of India and Hon'ble Supreme Court of India vide its order dated 25th April, 2007 directed that no third party interests to be created on the said land. The said Writ Petition and SLP are still pending before the Hon'ble High Court at Bombay and Hon'ble Supreme Court of Indla respectively for the final hearing.*
>
> *In view of the aforesaid position and pendency of the matter, the Developer hereby expressly inform and clarify to the Purchaser/s that the Developer will not be liable/responsible to handover possession of the said flat on 31.12.2010 as mentioned in clause no. 14 of this Agreement, and due to this unavoidable circumstance, the Developer will be entitled for automatic extension of time for handing the possession of the flat to the purchaser/s until Writ Petition and SLP are finalized by*

the respective Hon'ble Court. The Purchaser/s hereby state, declare, confirm that in case of any delay after 31.12.2010 in handing over possession of the said flat the Purchaser will not demand/ask/ insist for any interest consideration and/or compensation of any nature from the Developer and accordingly the Purchaser/s hereby unconditionally and irrevocably waive all such claim, interest, demand from the Developer or otherwise."

121. In view of the above clause and earlier Clause 14, it is necessary to set out the reasons given by the learned Appellate Tribunal, which are to be found in paragraph Nos. 13 to 18, which read as under :

"*13)* ***In Suit no.962/14 pending before Hon'ble High Court, on February 14, 2018 Runwal were restrained from creating third party interest in respect of an area of 14,343.76 sq.ft. in A-1 Building.*** *On 2nd July, 2018, based on Minutes of Order, same area was directed to be maintained and an undertaking was given by Runwal not to transfer, alienate, deal with, dispose of or encumber such area of 14,306 sq.ft, in A-1 Bldg.*

14) ***Thus, the stay or its impact would not generate any momentum in favour of the Promoter to take shelter and scaffolding to protract the matter of handing over possession. The mitigating circumstances referred by Shri Jagtiani highlighted hereinbefore, were not of such grave quality which has inhibited or stalled complete construction activities of the Promoter. The Government of India clarification in respect of Environmental Clearance indicated in Notification dated 21st August, 2013 Paragraph 2 & 3 thereof reads as under:***

> *"2. And whereas the above said notification was further amended vide notification number S,O. 356(E), dated the 4th May, 1994, Clause (c) of sub-paragraph (III) of paragraph (2) of the said notification provides that -*
>
> > *"the clearance granted shall be valid for a period of five years from commencement of the construction or operation".*
>
> *3. And whereas the intent of the Central government has been and has always been that the validity of the environmental clearance is five years "for" commencement of the construction or operation and not that the environment clearance is only for five years "from" the commencement of construction or operation.*

This also need not be ignored.

15) Thus, the Promoter cannot be further permitted to put a blame to the Environmental Clearance. Even if all the constraints flashed by Promoter are positively considered but the issue that triggers here is there was adequate time for the Promoter to complete the project in given schedule. There should not be a misconception that unilateral terms in Agreement dehors the statutory obligations will prevail. In fact, they are contrary to the statutory Scheme. The Preamble referred to above, Rule 4 indicated above, provides for a revised date of possession for an ongoing project, commensurate with extent of balance development. As indicated hereinbefore, Building B-2 is complete by 80% and Building B-1 by 90%. In the situation, it is beyond comprehension to extend time to the Promoter to meet the dreams of flat purchases by July 2024.

reasonableness on both the sides. The matter needs to be looked There should be with larger picture from a wider perspective to the benefit of both the stakeholders. The Allottees should not be tormented viciously."

16) The dialogue of resolution of controversy by providing escalation, as stated earlier has failed. ***Escalation letters signed by three Allottees*** *(AT006000000000291, AT006000000000290 and AT006000000000281)* ***will not tilt the picture from liability of the Promoter to pay interest for delayed possession.***

(17) ***The Allottees have stated in the light of stage of the construction, the Promoter should be directed to hand over possession within a period of 12 months. However, I propose it should be 18 months. So far as Bldg. C is concerned, the reasonable period could be 30 months.*** *However, considering the facts as pointed by Shri Jagtiani, and giving concession, to strike balance between the parties,* ***I propose to award interest in favour of Allottees after orders in the S.L.P. dated 30th January, 2014. The Promoter shall release interest in favour of the Allottees / Appellants effective from 1st February, 2014. This will be in tune with Scheme of RERA Preamble and Judgement in Neelkamal.***

18) Shri Jagtiani has also referred to the judgement of Hon'ble Supreme Court reported in (2013) 12 Supreme Court Cases 776 in the matter of Hansa V. Gandhi Versus Deep Shankar Roy and Ors. In the said Judgement, Letter of Intent was issued in favour of Appellant / Plaintiff therein and suit for specific performance was filed. The Letter of Intent provided, 'only upon payment of purchase price, the developer and the purchaser were to enter into an Agreement with regard to sale of flats. However, in this context, Hon'ble Supreme Court directed that no specific performance of one flat could be granted,

> *however, allowed of Plaintiff's money with 9% per annum. Then the Letter of Cancellation was written by developer to the purchaser. In the instant case, for few of the Appellants, Allotment Letters are issued. Almost all the stipulations are briefly identified/ except date of handing over possession. That will not change the scenario as it should be in consonance to the prevailing statute Maharashtra Ownership of Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 (MOFA)' which mandates specification of date of possession.* ***Impact of MOFA is not taken away as could be seen in Section 88 of RERA. Thus, non-mention of date of possession in the Allotment Letter will not detrimental to such Allottees.***"
>
> (Emphasis added)

122. Thus, although the date of handing over possession is from 2008-2010, the learned Appellate Tribunal, by taking into consideration several aspects, as set out in the reasons, has specified that payment of interest be granted to the Allottees with effect from 1st February, 2014. It is also required to be noted that as contended by the Respondents, when the agreements were executed with the flat purchasers in the year 2006-2007, the plan was to construct only 490 flats but now the plan is to construct 1003 flats in the same layout. Thus, in fact, the delay has not adversely affected the promoter.

123. Although, it is the contention of the Appellants that the circumstances namely pendency of High Court Petition and the SLP are set out in the agreement and therefore, it is specifically mentioned that there will be delay in handing over possession, it is required to be

noted that the Appellants have accepted 100% consideration from the Respondents in Second Appeal No. 259 of 2022, the Appellants have accepted from about five Allottees i.e. Respondents consideration of about 50%-60% and from about four Allottees i.e. Respondents consideration of 36%-41% has been accepted. All these amounts were paid about 15 years ago and till the year 2026 the possession of respective flats has not been handed over to the flat purchasers. If it is the case of the Appellants that construction could not be made for the reasons which are already set out in flat purchasers' agreement, then the Appellant should not have accepted the huge considerations.

124. As noted herein above, what is granted by the learned Appellate Tribunal is only interest for delayed possession. The factors on which the Appellants have relied and which are considered by the learned Appellate Tribunal in the Impugned Order and granting benefit of extension of about five years and two months/ four years and two months/ three years and two months for respective Allottees for giving interest, are in fact the factors required to be taken into consideration if allottee withdraws from the project and seeks compensation. In all these Second Appeals, the Appellants have continued with the project. As noted hereinabove, even after a delay of more than 18/17/16 years, the allottees could not get possession. The observations of the Supreme Court in ***Newtech*** (Supra) in

paragraph No. 12 to the effect that in India, the data shows that about more than 77% of total assets of an average Indian household are held in real estate and it is the single largest investment of an individual in his lifetime, the real estate in India has a peculiar feature, the buyer borrows money to pay for a house and simultaneously plays the role of a financer as building projects collect money upfront and this puts the buyer in a very vulnerable position— the weakest stakeholder with a high financial exposure, are squarely applicable to the present case. In the present case, the agreements were executed with flat purchasers in the year 2006-2007 wherein the date of handing over possession is 2008-2009-2010 and till 2026, the flat purchasers are not handed over possession even after paying valuable consideration.

125. Apart from the reasons given by the learned Appellate Tribunal, as far as Clauses of the Agreement executed between the Appellants and allottees, the same shows that one sided clauses are incorporated. The Supreme Court in the case of ***Pioneer Urban Land and Infrastructure Limited vs. Govindan Raghavan***[46] has held in paragraph Nos. 6.7, 6.8 and 7 as under :

> "***6.7.*** *In Central Inland Water Transport Corpn. Ltd. v. Brojo Nath Ganguly [Central Inland Water Transport Corpn. Ltd. v. Brojo Nath Ganguly, (1986) 3 SCC 156 : 1986 SCC (L&S) 429] this Court held that: (SCC p. 216, para 89)*

46 (2019) 5 SCC 725

*"**89.** … Our Judges are bound by their oath to "uphold the Constitution and the laws". The Constitution was enacted to secure to all the citizens of this country social and economic justice. Article 14 of the Constitution guarantees to all persons equality before the law and the equal protection of the laws. … **This principle is that the courts will not enforce and will, when called upon to do so, strike down an unfair and unreasonable contract, or an unfair and unreasonable clause in a contract, entered into between parties who are not equal in bargaining power.** It is difficult to give an exhaustive list of all bargains of this type. No court can visualise the different situations which can arise in the affairs of men. One can only attempt to give some illustrations. **For instance, the above principle will apply where the inequality of bargaining power is the result of the great disparity in the economic strength of the contracting parties. It will apply where the inequality is the result of circumstances, whether of the creation of the parties or not. It will apply to situations in which the weaker party is in a position in which he can obtain goods or services or means of livelihood only upon the terms imposed by the stronger party or go without them. It will also apply where a man has no choice, or rather no meaningful choice, but to give his assent to a contract or to sign on the dotted line in a prescribed or standard form or to accept a set of rules as part of the contract, however unfair, unreasonable and unconscionable a clause in that contract or form or rules may be.** This principle, however, will not apply where the bargaining power of the contracting parties is equal or almost equal. This principle may not apply where both parties are businessmen and the contract is a commercial transaction. … These cases can neither be enumerated nor fully illustrated. The court must Judge each case on its own facts and circumstances."*

(emphasis supplied)

6.8. A term of a contract will not be final and binding if it is shown that the flat purchasers had no option but to sign on the dotted line, on a contract framed by the builder. The contractual terms of the agreement dated 8-5-2012 are ex facie one-sided, unfair and unreasonable. The incorporation of such one-sided clauses in an agreement constitutes an unfair trade practice as per Section 2(1)(r) of the Consumer Protection Act, 1986 since it adopts unfair methods or practices for the purpose of selling the flats by the builder.

7. In view of the above discussion, we have no hesitation in holding that the terms of the apartment buyer's agreement dated 8-5-2012 were wholly one-sided and unfair to the respondent flat purchaser. The appellant builder could not seek to bind the respondent with such one-sided contractual terms."

(Emphasis added)

126. As already discussed hereinabove, in the present case, the agreements were executed with flat purchasers in the year 2006-2007 wherein the date of handing over possession is 2008/2009/2010 and till 2026, the flat purchasers were not handed over possession even after paying valuable consideration and in these circumstances the Appellants are relying on the clauses of the agreement to deny the benefit to the Allottees of proviso to Section 18(1) of RERA of receiving interest on the amount paid by the flat purchasers due to delay in handing over possession. Thus, the above observations in the case of ***Pioneer Urban Land and Infrastructure Limited vs. Govindan Raghavan*** (supra) are squarely applicable to the present case.

127. In view of the facts and circumstances of this case, various decisions of the Supreme Court on which the Appellants have relied are not applicable to the present case.

128. The contentions of the Appellants regarding proviso to Section 18(1) of RERA are also misconceived as scheme of RERA including of Section 18 of the same has been considered by the Supreme Court in ***Newtech*** (supra) and it has been specifically held that allottee has unqualified right to get interest if there is delayed possession. The contention that in ***Newtech*** (supra), the Supreme Court was considering the prayer of the home-buyers for refund of the investments made along with interest and therefore the said decision will not apply to the present case as in the present case, the allottees are continuing with the project, is a misconceived contention, as in the ***Newtech*** (supra), the Supreme Court has considered and interpreted the scheme of RERA. Thus, various judgments cited regarding a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision will not apply to the present case.

129. The reliance on the judgment of ***Sanvo Resorts Private Limited*** (Supra) is totally misconceived. In fact, the observations of the said judgment in paragraph Nos. 21 clearly supports the case of the Respondents. The said paragraph No. 21 is as under :

> "*21. In this context, the Supreme Court in the case of Newtech Promoters and Developers Pvt. Ltd.(supra) in paragraphs 22 and 25 has expressly observed that the allottee has an unqualified right to claim interest under Section 18(1) of the RERA Act if the promoter fails to discharge his obligation in accordance with the terms and conditions of the agreement. This unqualified right is not dependent on any contingencies or stipulations and therefore the legislature has consciously provided this right of refund as an unconditional absolute right to the allottee if the promoter fails to give possession within the stipulated time regardless of unforeseen events or stay order of the Court which is in either way not attributable to the allottee.*"
>
> (Emphasis added)

130. The reliance on the judgment of ***Neelkamal*** (supra) of this Court is also misconceived as after considering the scheme of the RERA, the Supreme Court in ***Newtech*** (supra) has held that the right to receive interest for delayed possession as per Section 18 is unqualified right of the allottee.

131. Thus, for the above reasons there is no substance in the Fifth and Sixth Substantial Questions of Law.

132. The additional substantial question of law framed by order dated 7th April, 2025 will be considered hereinafter. The said substantial question of law is numbered as seventh and the same is reproduced hereinbelow :

SEVENTH SUBSTANTIAL QUESTION OF LAW :

When agreement in the form of a booking form, gets

frustrated on account of force majeure as well as due to making its performance impossible, whether such an agreement can be considered while exercising power under section 18 of RERA?

133. This substantial question of law is involved only in Second Appeal No. 253 of 2022 and Second Appeal No. 257 of 2022.

134. The submissions in Second Appeal No. 253 of 2022 were advanced by Mr. Rajeev Chavan, learned Senior Advocate and Second Appeal No. 257 of 2022, the same were advanced by Mr. Ditendra Mishra, learned Advocate appearing for the Appellant. Mr. Anjani Kumar Singh has advanced the submissions on behalf of the Respondents.

135. The above substantial question of law has been framed as it is the contention of the Appellants that on 18th September, 2007, and 17th January, 2006, respectively, allottees in these two Second Appeals booked respective flats in "C" Wing however, due to certain circumstances, the agreement has frustrated as understood in law and the parties are discharged from obligations thereunder.

136. The factual aspects as set out by the Appellants in written submissions regarding Second Appeal No. 253 of 2022 are set out hereinbelow as according to the Appellants, the frustration of contract has taken place due to the said factual aspects.

Sr. No.	Date	Event
1	18.9.2007	The Respondent (Second Appeal No. 253

		of 2022) submitted a booking form for booking Flat No.1101 in 'C' Wing for a total consideration of Rs.57,61,050/-+ applicable taxes and other charges.
2	**21.9.2007 to 1.12.2008**	**The Respondent (Second Appeal No. 253 of 2022) paid Rs. 22,00,000/-.**
3	18.10.2017	The Appellant issued a Declaration on the registration page of the subject project that Tower-C is unstable and is required to be demolished.
4	29.6.2018	MCGM issued a Note Sheet insisting on requirement of two staircases for Tower-C.
5	10.10.2018	Technical Report issued by Mahimtura Consultants Pvt. Ltd, inter alia, stating that structural elements of Tower-C are deficient and it would be practical and time efficient to demolish and rebuilt the structure rather than retrofit the same with additional requirements including staircase.
6	19.2.2019	The Appellant furnished a Declaration that Tower-C is required to be demolished as it is not possible to provide a second staircase as required under DCPR 2034 without affecting the structural stability of Tower-C.
7	3.4.2019	Recommendation of Mahimtura Consultants Pvt. Ltd to demolish the existing building, inter alia, in view of the necessity to provide second staircase under DCPR 2034.
8	**12.8.2019**	**Letter addressed by the Appellant to the Respondent informing him that Tower-C is required to be demolished and calling upon him to accept revised prices (nominal additional cost).**
9	**13.2.2020**	**MCGM granted permission to demolish Tower - C.**

(Emphasis added)

In Second Appeal No. 257 of 2022 the total consideration is Rs.39,30,250/- whereas, the Respondent has paid on 31st December 2006 total amount of Rs.15,12,589/-. Thus, about 40% of the consideration has been accepted by the Appellants, whereas about 39% of the consideration has been accepted by the Appellants in Second Appeal No. 253 of 2022.

SUBMISSIONS OF THE APPELLANTS CONCERNING SEVENTH SUBSTANTIAL QUESTION OF LAW:-

137. Mr. Rajeev Chavan, learned Senior Advocate for the Appellant in Second Appeal No. 253 of 2022 and Mr. Ditendra Mishra, learned Advocate in Second Appeal No. 257 of 2022 appearing for the Appellants, *inter alia* raised the following contentions :

i. It is submitted that the original allotment of Flat No.1101 and Flat No.703 in Tower C is/stood frustrated as understood in law and the parties are discharged from obligations thereunder. There is no flat of the specifications and nature that was sold to the Respondents in Appeal nos. 253 of 2022 and 257 of 2022 in existence due to the above. The claim of the Respondents in the abovesaid appeals is hit by Section 56 of the Indian Contract Act, 1872.

ii. It is pertinent to note that, apart from the Respondents in Appeal No. 253 of 2022 and Appeal No. 257 of 2022, there were 42 similarly placed buyers in Tower - C as well. The Appellant has either returned

the monies of such buyers with interest, or shifted them to another tower in the project on revised terms, and both such options were also given to the aforesaid Respondents in the abovesaid appeals, but to no avail.

iii. As submitted, on account of the Forest Land issue and other issues, the Appellant was unable to continue and complete construction of the subject project. In the meantime, DCPR 2034 was enforced. Consequently, the Appellant was required to be compliant with the provisions thereof in respect of the subject project as the same was incomplete on the date enforcement of DCPR 2034.

iv. As is evident that the note sheet of MCGM, an additional staircase of 2 meters was insisted upon as per DCPR 2034 in respect of Tower C. As is also evident from the documents referred to hereinabove, it was not possible to retrofit at second staircase on Tower-C (which was already constructed upto 12th floor in 2005) without affecting its structural stability. In the meanwhile, since the structure was at a standstill since several years, it had also become dilapidated and a threat to life and property. Consequently, the said Tower-C was required to be demolished.

v. The contention of the Respondent that the aforesaid frustration is self-induced as the Appellant increased the height of the structure which led to the requirement of a second staircase. The aforesaid

contention is false as the original Tower C was proposed to be a 22 storied structure and its height was proposed to be 80.15 meters. DCPR 2034 requires any structure having a height of more than 70 meters to contain 2 staircases. There was no such requirement in DCR 1991. Thus, the requirement of a second staircase was based on the original proposal of 22 floors. In any event, since the building had become dilapidated, and the MCGM had allowed the Appellant to demolish the same, the question of self-induced frustration does not arise.

vi. It is well settled that if the performance of any part of the contract becomes impossible, the contract stands frustrated, and the parties are absolved of any further obligations or performance thereof. In this regard, attention of this Hon'ble Court is invited to the following decisions:-

(i) ***Satyabrata Ghose vs. Mugneeram Bangur and Company***[47], (paragraphs 8 to 18);

(ii) ***Industrial Finance Corporation of India Ltd vs. Cannanore Spinning and Weaving Mills Ltd***[48], (paragraphs 40 to 42);

(iii) ***Loop Telecom and Trading Ltd vs. Union of India***[49], (paragraphs 56 and 57).

47 (1953) 2 SCC 437
48 (2002) 5 SCC 54
49 (2022) 6 SCC 762

vii. It is further submitted that even paragraph 308 of the decision of this Hon'ble Court in Neelkamal Realtors (supra) recognizes the concept of frustration in the context of RERA.

viii. The Respondent Buyer's contentions that their consent is required to demolish the Tower C, or to change plans of the project is squarely contrary to the Clause 1 of the Model Agreement for Sale, as notified under the MahaRERA Rules, 2017, which provide that where a promoter is required to change the plans of a project due to change of law, or directions of the authorities etc., consent of the Buyers is not required.

ix. In the aforesaid circumstances, it is submitted that the contract having stood frustrated, the Appellant is not liable under Section 18 of RERA and on this ground alone, the impugned Order is liable to be set aside.

x. In addition to the above submissions, it is submitted that due to the demolition of said Tower C, majority of the affected allottees have accepted the reasonable price escalation and therefore it is submitted that price escalation of Rs. 2,500/- per sq. ft. will be applied if the Respondents in Second Appeal No. 253 of 2022 and Second Appeal No. 257 of 2022 accept the same.

SUBMISSIONS OF THE RESPONDENTS CONCERNING SEVENTH SUBSTANTIAL QUESTION OF LAW:-

138. Mr. Singh, learned Counsel of the Respondents raised the following contentions:

i. It is submitted that the award was passed on 1st November 2018, thereafter the appellant has filed these all present second appeals. The appeals were admitted on the deposit of 30% of the award amount. And the execution of the impugned order dated 1st November 2018 is stayed.

ii. During the course of hearing, the appellant in the aforesaid appeals have filed an affidavit in second appeal no. 253 of 2022, bringing the subsequent facts on record which cannot be considered in the second appeal because the MahaREAT is the last facts finding court and is the court of records. In the second appeal, no additional facts can be considered by this Hon'ble court as per the settled position of law

iii. However, the appellant has filed an application which was converted as an affidavit by order dated 11th March 2025 passed by this Hon'ble Court, bringing the subsequent facts of 2019, 2020 and 2021 on record before this Hon'ble Court. In reply to the said affidavit filed by the appellant, the respondent has also filed reply affidavit on 20th June 2025 rebutting all the manufactured, concocted and afterthought contentions raised by the appellant before this Hon'ble Court about the building no. C.

iv. The fact remains that building no. C also known as tower no. 2, originally registered under Project registration number P51800012621 as an ongoing project and subsequently after demolition registered as new project under Maharera project registration number P51800032538 on 10 January 2022. Which is valid up to 31 March 2027, it clearly shows that everything has been done subsequent to the award dated 1st November 2018 passed and during the pendency of the present second appeal, but the brazen conduct of the appellant was that, the appellant never filed an application to inform the court or in any proceeding has felt necessary in respect of order of this Hon'ble Court, that appropriate permission ought to have been taken. But, appellant has never deemed it important and now, as an afterthought denying the rights, title and interest of the respondents in the said flats. It is a matter of record, neither in original appeal any such grounds are made, even previously the matter was finally heard and kept for judgement, during the last hearing before reserving for the judgement no such argument was advanced and no such fact was brought on record. Therefore, all these developments, as set forth are afterthought, concocted and not maintainable in the eye of law.

v. It is submitted that, in the said building, flat no. 1101 was allotted to Mr. Korgaonkar and flat number 703 was allotted to Mr

Satish Shirshekhar, the constructions of the flats were completed. Therefore, the specific consent ought to have been taken before the demolition of the said two flats of the respondents but the brazen conduct of appellant was that, appellant never deemed fit to seek any consent also from the flat purchasers. The retrofitting of building no. B1 and B2 were also C for carried out and there was an option also for building no. retrofitting, but the same has not been done purposely and intentionally only to avail more benefit that is from 22nd floor to 46th floor permission was obtained to consume the entire benefits as available in the layout under DCPR of 2034. The appellant with dishonest claim of frustration of contract are trying to justify their dishonest conduct and now trying to deprive the respondents from their dream home.

vi. It is submitted that the said reply affidavit dated 9th May 2025 tendered on 20th June 2025 may be read as if the same is reproduced herein, the para no. 3 to 20 confirms that the afterthought, concocted factual matrix mentioned in the affidavit by the appellant has not been available before the MahaREAT on 1st November 2018. More so, the said created and concocted facts were applied when the relevant second appeals were sub-judice before this hon'ble court and the building no. C has been demolished without seeking permission from this Hon'ble court. The appellant had also failed to adhere to the

terms of section 14 of RERA Act and without permission of the respondents and other flat purchasers had changed the entire plan, specification and design of the said flat and building which is not permissible under section 14 of the RERA.

vii. It is therefore submitted that the contentions advanced on behalf of the appellant for building No. C is manufactured, concocted and afterthought contentions. The same is subsequently designed and cultivated only to argue a case of frustration of contract. However, there is no such case has been made out and neither existed at the time when the award was passed. In view thereof, it is respectfully submitted that the entire case of the frustration of contract and impossibility of contract is not maintainable.

viii. The appellant has heavily relied upon for the frustration of contract. However, on the basis of facts, there is no case made out by the appellant for the frustration of contract or impossibility of contract due to alleged force majeure as framed in the question of Law no. 8, but even though the appellant has heavily relied upon, in support of the case of frustration of contract, ***Satyabrata Ghose*** (supra). The judgment of ***Satyabrata Ghose*** (supra) is completely dealt with, in the judgement of the Supreme Court in the matter of ***Energy Watchdog vs. Central Electricity***[50], regulatory commission and others relied upon by the respondent. The aforesaid judgment has

50 (2017) 14 SCC 80

dealt with the doctrine of frustration, Section 56 of the contract act in detail and the circumstances when it may be applied. The respondent refers to paragraph no. 34 to 42 at page no. 33 to 36 and para no. 47 at page no. 42. If the paragraph number 34 to 42 and 47 is to be read and applied to the present facts of the case, then it can be clearly concluded that in the present factual matrix, the frustration of contract does not apply to the present case. It is submitted that, this entire argument has been raised completely afterthought without mentioning the same in the grounds of appeal. This issue has been raised subsequently filed by way of an affidavit along with certain documents which were not available on the award dated 1st November 2018. Further, the exhibit A to the reply affidavit dated 9th May 2025 filed by the respondents clearly shows that the proposal was made by the architect of the appellant for demolition of the building no. C. The provision of retrofitting was available for the said building no. C. The provision of second staircase was also maintainable and suggested by the Municipal Commissioner and the same was valid as per the order of municipal Commissioner but only to garner more benefit and double profit and consumption of complete layout benefit under DCPR 2034, the architect of the appellant has proposed to demolish the building instead of retrofitting. However, the retrofitting was done in the building no. B1

and B2 in the same layout, it is respectfully submitted that the demolition of building was not an act of *force majeure*. Rather it was a well designed and planned proposal given by the appellant in the given circumstances to avail heavy profit and the municipal corporation had never enforced to demolish the said building no. C. The appellant is taking a fraudulent, concocted and afterthought submission only to avail the doctrine of frustration of contract, as per section 56 of the contract act. As per the judgements relied upon, which clearly says that escalation in price or et cetera cannot be a reason for the frustration of contract. In the present case presuming for a moment, if any escalation of price has taken place for any reason, but the purpose of the contract cannot be declared frustrated, it is submitted that the contentions of frustration of contract does not apply to the present case at all.

ix. The respondents have also relied upon 2021, SC online Bombay 12330 in the matter of Bombay Dying & manufacturing Company Limited versus Ashok Narang and another. The para no. 7 at page no.5, of the aforesaid judgement, the questions of law has been framed. Total 10 questions of law have been framed which is self-explanatory and which have also the bearing on the case of the respondent herein. The para 21 of the aforesaid judgment deals with the fact that no agreement is required and only the allottee can also

be entitled to the claim on the basis of the allotment letter. The para 27 of the aforesaid judgment and page no. 16 clearly states that the provisions of RERA do not rewrite the clause of completion or handing over possession in the agreement for sale. It only enables the promoter to give fresh time line, independent of the time period stipulated in the agreement for sale entered into between him and the flats purchasers, so that he's not visited with the consequences laid down. In other words by giving opportunity to the promoter to prescribe fresh time line under section 4(2) (1) (C). He is not absolved, of the liability under the agreement for sale. The promoter cannot see any concession from the same and the interest on delayed possession under section 18 is to be ordered and be given in favour of the respondents. The para 28 further continues and confirms the civil liability of interest on delay. Para 37 of the judgement clearly states that after due analysis of the various sections and rules about the rights of allottees which is defined under section 2(d) of the act of 2016. Accordingly, it comes to conclusion that none of the provision set out a requirement of formal written agreement for sale in order to enable the allottee to enforce the rights It is submitted that the only holder of the flat Mr. Nitin Korgaonkar shall be eligible and entitled for the relief as made there in. The non- availability of the agreement shall never become an hindrance in the claims to be made on behalf

of the respondent. The para 46 of the aforesaid judgment clearly says that the tribunal is a final fact finding authority and therefore new facts if any brought subsequent to that and that is also without permission and with brazen conduct and by violating the section 14 of the act, the same cannot be accepted because the same was also not available before the tribunal at the relevant period of time while passing the award. In the para 48, the judgement of Fortune infrastructure, pioneer, urban land was discussed that the flat purchaser cannot wait for indefinite period of time for getting their dream home and maximum time period of three years can be reasonable time period for completion of the contract, however, in the present matter because of no fault of the respondent, the respondent has waited for their dream home from 2006-7 till date and the learned tribunal has awarded the interest on delayed possession from 1st February 2014 and around seven years of mitigating circumstances benefit has been given to the appellant, but still is acting in a very greedy manner and since 2014 till today, after about 10 years, the appellant is acting in a dillydallying, manner. It is submitted that on the basis of the facts the award was passed by the learned MahaREAT, the said award is still subsisting and the same is temporarily stayed in such case the subsequent designed conduct of the appellant can not be allowed to avail the law of frustration of

contract. The conduct of the appellant was foreseen, planned and applied intentionally, hence the arguments advanced by the appellant is frivolous.

x. As far as question of law no. 8 is concerned, the appellant has heavily relied upon the subsequent demolition of the building no. C after the award passed dated on 1 November 2018 and during the pendency of second appeal on the basis of impossibility of contract and frustration of contract. The appellant has relied upon various judgements of High Court and Supreme Court, which are mentioned here under. The appellant has relied upon (2002) 5 SCC 54. The appellant has relied upon para no. 40, 42 and 43 of the aforesaid judgment at page no. 21 and 22. However, the para 40 of the said judgment relied upon by the appellant supports the case of the respondent because in the last line, at para 40 at page no. 21, it mentions about situations which would be considered as unforeseen. However, in the present matter the supervening event, if any, have been avoided and overcame, because from the tower of 22 floors, the 48 floors of towers has been permitted to construct, therefore no frustration of contract can be made applicable in the present case. It is submitted that para 40,41,32 actually supports the case of the respondents because the retrofitting was done to building number B1, B2 so it could have also been done for building no. C. Further it is

surprised to note that a supervening event which has allegedly occurred for the building C has not been occurred for building number B1/B2,. Though the age, constructions, and layout of the said building no. B1 & B2 are the same.

xi. Appellant has relied upon judgment in the matter of ***M/s Imperial Structures Limited*** (supra) and another and have relied upon by Appellants of para 33 at page no. 42 (Para 37 of (2020) 10 Supreme Court cases 783). It is submitted that the reference to the para 33 is completely misleading. The aforesaid para 33 talks about the rights available to flat purchasers as per the builders buyers agreement, the cause of action and the date of possession. Though after registration under the RERA extension of time has been given for the possession. The Pioneer judgement, as relied upon by the respondents is a direct and subsequent judgement passed by Hon'ble Bombay High Court.

xii. The appellant has also relied upon the ***Newtech*** (supra), in the aforesaid judgment, the appellant has relied upon para 9, 24, 71,72 for the purpose of contentions that the respondents in the matter of building no. C can only be entitled to the compensation. However, that argument does not survive in view of the judgements as relied upon and discussion made on the frustration of contract. The flats purchasers are entitled to their claim on the basis of allotment letter and agreements. Hence, the contentions advanced on behalf of the

appellant in para number 9,24, 71,72 does not apply. Instead, the said New tech judgement supports in various ways, the case of the respondents, the respondents also rely upon the following paragraphs of the Newtech judgement in support of their case, para 77(in few judgements para 78) talking about unconditional and unqualified right to seek interest for delayed possession. The respondents also rely upon para no. 13.

xiii. The judgment of ***Satyabrata Ghose*** (supra), has been heavily relied upon by the appellant for the purpose of frustration of contract. However, the aforesaid judgment of 1953 is led by judgment of 2017 that is ***Energy Watchdog*** (supra) judgment which has been dealt with by the respondent, the same has completely covered the findings of Satyabrata judgement. Hence this judgement is not required to be dealt with separately.

xiv. In continuation of the same, the appellant has relied upon the judgement of Loop Telecom (supra). The appellant has relied upon para 57 page 51. The said para 57 is an emphasis given to the judgment of ***Satyabrata Ghose*** (supra) as mentioned here in above and while giving the elaboration the court has come to the conclusion that doctrine of frustration does not only limited to the cases of physical possibility rather to the cases of human possibility or legality of the act agreed to be contractually done. it has already been

discussed that none of the aforesaid factual matrix have been applied to the present case. The supervening conditions cannot be picked up and chosen between three building of B1, B2 and building no. C. The building no. C was demolished by the appellant for the benefit of the appellant and for earning more revenue by the appellant. The facts has been manufactured and created to apply and argue the case of the frustration of contract, which is not maintainable.

xv. The appellant has also relied upon ***Amar Singh*** (supra), at para no. 20 page no. 11. Which talks about the contract which becomes impossible or unlawful because of event that the promisor could not prevent. In the present case, there was no such circumstances arose prior to the award dated 1st November 2018 and even otherwise also, whatever the situation arose, it was as per the proposal made by the appellant for demolition of the building no. C for getting the better benefits, and in any case, the situation was not impossible and unlawful because lawful agreement was entered into and in the same layout building no. B1 and B2 continued, retrofitted and completed, so there was no impossibility because if impossibility would have been there in that case, the 22 floors of tower would have not been converted into the 48 floors of Towers in any circumstances. It is submitted that the fact was concocted and created for the better benefit of the appellant and it never attracts the doctrine of the

frustration of contract.

xvi. The declaration dated 19th February 2019 shows that contract was not impossible to perform, which is mentioned in the affidavit of the appellant in para No. 09. It is very clearly undertaken that rights of the flat purchasers shall be protected. Therefore, the said undertaking clearly shows that contract was possible, and it has been made possible to increase the floors around double in the number.

xvii. The appellant has also relied upon the decision in the matter of ***M/s Man Global*** (supra)In the aforesaid judgment. The appellant has relied upon para 18,19, 20,25, which talks about the section 18 of Rera its applicability, it also discusses about the Imperia structures judgment scope of Section 18, finding of the court about the purpose of the act enacted to achieve the objectives. It is submitted that the discussions as set forth in the aforesaid paragraphs applies to the basic principles of the act and its applicability.

xviii. It is respectfully submitted that the plea of frustration of contract advanced by the Appellants is misconceived. The doctrine of frustration under Section 56 of the Indian Contract Act, as clarified in Energy Watchdog v. CERC, (2017) 14 SCC 80, does not apply where performance remains possible and only commercial expediency is altered. The deliberate demolition of Building C to exploit DCPR 2034 benefits was a calculated business choice, not a supervening

impossibility. Further, the Bombay High Court in Bombay Dyeing & Mfg. Co. Ltd. v. Ashok Narang, 2021 SCC OnLine Bom 12330, has reiterated that allottees are entitled to relief even on the basis of allotment letters, and that subsequent unilateral changes by promoters cannot defeat accrued rights. Therefore, Question 8 must be answered in the negative and against the Appellant.

REASONING REGARDING SEVENTH SUBSTANTIAL QUESTION OF LAW :-

139. As the contention is raised by the Appellants regarding frustration of the contract and reliance is placed on Section 56 of the Indian Contract Act, 1872, it is necessary to set out Section 56, which is as follows :

> **56. Agreement to do impossible act.—**An agreement to do an act impossible in itself is void.
>
> **Contract to do an act afterwards becoming impossible or unlawful.—**A contract to do an act which, after the contract is made, becomes impossible, or, by reason of some event which the promisor could not prevent, unlawful, becomes void when the act becomes impossible or unlawful.
>
> **Compensation for loss through non-performance of act known to be impossible or unlawful.—** Where one person has promised to do something which he knew, or, with reasonable diligence, might have known, and which the promisee did not know, to be impossible or unlawful, such promisor must make compensation to such promisee for any loss which such promisee sustains through the non-performance of the promise.

140. Thus, what first part of Section 56 contemplates is that an agreement to do an act impossible in itself is void. It is not even the contention of the Appellants that by the agreement, what is agreed is to do an impossible act. Therefore the said first part of Section 56 is not relevant.

141. Second part of Section 56 contemplates that a contract to do an act which, after the contract is made, becomes impossible, or, by reason of some event which the promiser or could not prevent, unlawful, becomes void when the act becomes impossible or unlawful. It is the contention of the Appellants that as now the said Tower C is demolished, it has become impossible to perform the areement. Thus, it is necessary to consider whether in the facts and circumstances, it becomes impossible for the Appellants to perform the contract.

142. Before considering the above aspect, it is necessary to set out relevant decisions of the Supreme Court interpreting Section 56 of the Contract Act.

143. Mr. Chavan, learned Senior Counsel has very heavily relied on the decision of the Supreme Court in the case of ***Satyabrata Ghose*** (Supra) and more particularly on paragraph Nos. 9 to 11 and 21 of the same, which read as under :

> "*9. The first paragraph of the section lays down the law in the same way as in England. It speaks of*

something which is impossible inherently or by its very nature, and no one can obviously be directed to perform such an act. The second paragraph enunciates the law relating to discharge of contract by reason of supervening impossibility or illegality of the act agreed to be done. The wording of this paragraph is quite general, and though the illustrations attached to it are not at all happy, they cannot derogate from the general words used in the enactment. This much is clear that the word "impossible" has not been used here in the sense of physical or literal impossibility. The performance of an act may not be literally impossible but it may be impracticable and useless from the point of view of the object and purpose which the parties had in view; and if an untoward event or change of circumstances totally upsets the very foundation upon which the parties rested their bargain, it can very well be said that the promissor finds it impossible to do the act which he promised to do.

10. Although various theories have been propounded by the Judges and jurists in England regarding the juridical basis of the doctrine of frustration, yet the essential idea upon which the doctrine is based is that of impossibility of performance of the contract; in fact impossibility and frustration are often used as interchangeable expressions. The changed circumstances, it is said, make the performance of the contract impossible and the parties are absolved from the further performance of it as they did not promise to perform an impossibility. The parties shall be excused, as Lord Loreburn says [F.A. Tamplin Steamship Co. Ltd. v. Anglo-Mexican Petroleum Products Co. Ltd., (1916) 2 AC 397 at p. 403 (HL)] : (AC p. 406)

> *"… if substantially the whole contract becomes impossible of performance, or in*

***other words impracticable, by some cause for which neither was responsible**."*

(emphasis supplied)

*In Joseph Constantine Steamship Line Ltd. v. Imperial Smelting Corpn. Ltd. [Joseph Constantine Steamship Line Ltd. v. Imperial Smelting Corpn. Ltd., 1942 AC 154 (HL)] , Viscount Maugham observed that the "**doctrine of frustration is only a special case of the discharge of contract by an impossibility of performance arising after the contract was made**". Lord Porter agreed with this view and rested the doctrine on the same basis. The question was considered and discussed by a Division Bench of the Nagpur High Court in Kesari Chand v. Governor General in Council [Kesari Chand v. Governor General in Council, ILR 1949 Nag 718] and it was held that **the doctrine of frustration comes into play when a contract becomes impossible of performance, after it is made, on account of circumstances beyond the control of the parties. The doctrine is a special case of impossibility and as such comes under Section 56 of the Contract Act.** We are in entire agreement with this view which is fortified by a recent pronouncement of this Court in Ganga Saran v. Firm Ram Charan Ram Gopal [Ganga Saran v. Firm Ram Charan Ram Gopal, 1951 SCC 1053 at p. 1059 : 1952 SCR 36 at p. 42] , where Fazl Ali, J., in speaking about frustration observed in his judgment as follows : (Ganga Saran case [Ganga Saran v. Firm Ram Charan Ram Gopal, 1951 SCC 1053 at p. 1059 : 1952 SCR 36 at p. 42] , SCC p. 1059, para 17)*

"17. It seems necessary for us to emphasise that so far as the courts in this country are concerned, they must look primarily to the law as embodied in Sections 32 and 56 of the Contract Act, 1872."

*We hold, therefore, that **the doctrine of frustration is really an aspect or part of the law of discharge of contract by reason of supervening impossibility or illegality of the act agreed to be done and hence comes within the purview of Section 56 of the Contract Act.** It would be incorrect to say*

that Section 56 of the Contract Act applies only to cases of physical impossibility and that where this section is not applicable, recourse can be had to the principles of English law on the subject of frustration. ***It must be held also, that to the extent that the Contract Act deals with a particular subject, it is exhaustive upon the same and it is not permissible to import the principles of English law dehors these statutory provisions.*** *The decisions of the English courts possess only a persuasive value and may be helpful in showing how the courts in England have decided cases under circumstances similar to those which have come before our courts.*

11. *It seems necessary, however, to clear up some misconception which is likely to arise because of the complexities of the English law on the subject.* ***The law of frustration in England developed, as is well known, under the guise of reading implied terms into contracts.*** *The court implies a term or exception and treats that as part of the contract. In Taylor v. Caldwell [Taylor v. Caldwell, (1863) 3 B&S 826 : 122 ER 309] , Blackburn, J. first formulated the doctrine in its modern form. The court there was dealing with a case where a music hall in which one of the contracting parties had agreed to give concerts on certain specified days was accidentally burnt by fire. It was held that such a contract must be regarded "as subject to an implied condition that the parties shall be excused, in case, before breach, performance becomes impossible from perishing of the thing without default of the contractor". Again in Robinson v. Davison [Robinson v. Davison, (1871) LR 6 Exch 269] there was a contract between the plaintiff and the defendant's wife (as the agent of her husband) that she should play the piano at a concert to be given by the plaintiff on a specified day. On the day in question she was unable to perform through illness. The contract did not contain any term as to what was to be done in case of her being too ill to perform. In an action against the defendant for breach of contract, it was held that the wife's illness and*

the consequent incapacity excused her and that the contract was in its nature not absolute but conditional upon her being well enough to perform. Bramwell, B. pointed out in course of his judgment that in holding that the illness of the defendant incapacitated her from performing the agreement the court was not really engrafting a new term upon an express contract. It was not that the obligation was absolute in the original agreement and a new condition was subsequently added to it; the whole question was whether the original contract was absolute or conditional and having regard to the terms of the bargain, it must be held to be conditional.

21. *It is well-settled and not disputed before us that* ***if and when there is frustration the dissolution of the contract occurs automatically.*** *It does not depend, as does recission of a contract on the ground of repudiation or breach, or on the choice or election of either party. It depends on the effect of what has actually happened on the possibility of performing the contract [Denny, Mott & Dickson Ltd. v. James B. Fraser & Co. Ltd., 1944 AC 265 at p. 275 (HL)] . What happens generally in such cases and has happened here is that* ***one party claims that the contract has been frustrated while the other party denies it.*** *The issue has got to be decided by the court "ex post facto, on the actual circumstances of the case."*

(Emphasis added)

144. Mr. Singh, learned Counsel appearing for the Appellants relied on the decision of the Supreme Court in the case of ***Energy Watchdog*** (Supra) and more particularly on paragraph Nos. 34 to 42 and 47, which read as under :

"***34. "Force majeure" is governed by the Contract Act, 1872.*** *Insofar as it is relatable to an express or implied clause in a contract, such as the PPAs before us, it is governed by Chapter III dealing with the contingent contracts, and more particularly, Section 32 thereof.*

*In**sofar as a force majeure event occurs dehors the contract, it is dealt with by a rule of positive law under Section 56 of the Contract Act**. Sections 32 and 56 are set out herein:*

> *"**32. Enforcement of contracts contingent on an event happening**.—Contingent contracts to do or not to do anything if an uncertain future event happens, cannot be enforced by law unless and until that event has happened.*
>
> *If the event becomes impossible, such contracts become void.*
>
> ***
>
> ***56. Agreement to do impossible act**.—An agreement to do an act impossible in itself is void.*

***Contract to do act afterwards becoming impossible or unlawful**.—A contract to do an act which, after the contract is made, becomes impossible, or, by reason of some event which the promisor could not prevent, unlawful, becomes void when the act becomes impossible or unlawful.*

***Compensation for loss through non-performance of act known to be impossible or unlawful**.—Where one person has promised to do something which he knew, or, with reasonable diligence, might have known, and which the promisee did not know, to be impossible or unlawful, such promisor must make compensation to such promisee for any loss which such promisee sustains through the non-performance of the promise."*

***35.** Prior to the decision in Taylor v. Caldwell [Taylor v. Caldwell, (1863) 3 B&S 826 : 122 ER 309 : (1861-73) All ER Rep 24] , the law in England was extremely rigid. A contract had to be performed, notwithstanding the fact that it had become impossible of performance, owing to some unforeseen event, after it was made, which was not the fault of either of the parties to the contract. This*

rigidity of the Common law in which the absolute sanctity of contract was upheld was loosened somewhat by the decision in Taylor v. Caldwell [Taylor v. Caldwell, (1863) 3 B&S 826 : 122 ER 309 : (1861-73) All ER Rep 24] in which it was held that if some unforeseen event occurs during the performance of a contract which makes it impossible of performance, in the sense that the fundamental basis of the contract goes, it need not be further performed, as insisting upon such performance would be unjust.

36. *The law in India has been laid down in the seminal decision of Satyabrata Ghose v. Mugneeram Bangur & Co. [Satyabrata Ghose v. Mugneeram Bangur & Co., 1954 SCR 310 : (1953) 2 SCC 437 : AIR 1954 SC 44].* ***The second paragraph of Section 56 has been adverted to, and it was stated that this is exhaustive of the law as it stands in India. What was held was that the word "impossible" has not been used in the section in the sense of physical or literal impossibility. The performance of an act may not be literally impossible but it may be impracticable and useless from the point of view of the object and purpose of the parties. If an untoward event or change of circumstance totally upsets the very foundation upon which the parties entered their agreement, it can be said that the promisor finds it impossible to do the act which he had promised to do. It was further held that where the Court finds that the contract itself either impliedly or expressly contains a term, according to which performance would stand discharged under certain circumstances, the dissolution of the contract would take place under the terms of the contract itself and such cases would be dealt with under Section 32 of the Act. If, however, frustration is to take place dehors the contract, it will be governed by Section 56.***

37. *In Alopi Parshad & Sons Ltd. v. Union of India [Alopi Parshad & Sons Ltd. v. Union of India, (1960) 2 SCR 793 : AIR 1960 SC 588] , this Court, after setting out Section 56 of the Contract Act, held that* ***the Act does not enable a***

party to a contract to ignore the express covenants thereof and to claim payment of consideration, for performance of the contract at rates different from the stipulated rates, on a vague plea of equity. Parties to an executable contract are often faced, in the course of carrying it out, with a turn of events which they did not at all anticipate, for example, a wholly abnormal rise or fall in prices which is an unexpected obstacle to execution. This does not in itself get rid of the bargain they have made. It is only when a consideration of the terms of the contract, in the light of the circumstances existing when it was made, showed that they never agreed to be bound in a fundamentally different situation which had unexpectedly emerged, that the contract ceases to bind. It was further held that the performance of a contract is never discharged merely because it may become onerous to one of the parties.

38. *Similarly, in Naihati Jute Mills Ltd. v. Khyaliram Jagannath [Naihati Jute Mills Ltd. v. Khyaliram Jagannath, (1968) 1 SCR 821 : AIR 1968 SC 522] , this Court went into the English law on frustration in some detail, and then cited the celebrated judgment of Satyabrata Ghose v. Mugneeram Bangur & Co. [Satyabrata Ghose v. Mugneeram Bangur & Co., 1954 SCR 310 : (1953) 2 SCC 437 : AIR 1954 SC 44].* ***Ultimately, this Court concluded that a contract is not frustrated merely because the circumstances in which it was made are altered. The courts have no general power to absolve a party from the performance of its part of the contract merely because its performance has become onerous on account of an unforeseen turn of events.***

39. It has also been held that applying the doctrine of frustration must always be within narrow limits. *In an instructive English judgment, namely, Tsakiroglou & Co. Ltd. v. Noblee Thorl GmbH [Tsakiroglou & Co. Ltd. v. Noblee Thorl GmbH, 1962 AC 93 : (1961) 2 WLR 633 : (1961) 2 All ER 179 (HL)],* ***despite the closure of the Suez Canal, and despite the fact that the customary route for***

shipping the goods was only through the Suez Canal, it was held that the contract of sale of groundnuts in that case was not frustrated, even though it would have to be performed by an alternative mode of performance which was much more expensive, namely, that the ship would now have to go around the Cape of Good Hope, which is three times the distance from Hamburg to Port Sudan. The freight for such journey was also double. Despite this, the House of Lords held that even though the contract had become more onerous to perform, it was not fundamentally altered. Where performance is otherwise possible, it is clear that a mere rise in freight price would not allow one of the parties to say that the contract was discharged by impossibility of performance.

40. *This view of the law has been echoed in Chitty on Contracts, 31st Edn. In Para 14-151 a rise in cost or expense has been stated not to frustrate a contract. Similarly, in Treitel on Frustration and Force Majeure, 3rd Edn., the learned author has opined, at Para 12-034, that the cases provide many illustrations of the principle that* ***a force majeure clause will not normally be construed to apply where the contract provides for an alternative mode of performance. It is clear that a more onerous method of performance by itself would not amount to a frustrating event. The same learned author also states that a mere rise in price rendering the contract more expensive to perform does not constitute frustration.*** *(See Para 15-158.)*

41. *Indeed, in England, in the celebrated Sea Angel case [Edwinton Commercial Corpn. v. Tsavliris Russ (Worldwide Salvage & Towage) Ltd. (The Sea Angel), 2007 EWCA Civ 547 : (2007) 2 Lloyd's Rep 517 (CA)] , the modern approach to frustration is well put, and the same reads as under:*

> *"111. In my judgment,* ***the application of the doctrine of frustration requires a multi-factorial approach. Among the factors which have to be considered are the terms of the contract itself, its matrix or context, the parties' knowledge,***

> ***expectations, assumptions and contemplations, in particular as to risk, as at the time of the contract, at any rate so far as these can be ascribed mutually and objectively, and then the nature of the supervening event, and the parties' reasonable and objectively ascertainable calculations as to the possibilities of future performance in the new circumstances.*** *Since the subject-matter of the doctrine of frustration is contract, and contracts are about the allocation of risk, and since the allocation and assumption of risk is not simply a matter of express or implied provision but may also depend on less easily defined matters such as "the contemplation of the parties", the application of the doctrine can often be a difficult one.* ***In such circumstances, the test of "radically different" is important: it tells us that the doctrine is not to be lightly invoked; that mere incidence of expense or delay or onerousness is not sufficient; and that there has to be as it were a break in identity between the contract as provided for and contemplated and its performance in the new circumstances."***
>
> *(emphasis in original)*

42. *It is clear from the above that* ***the doctrine of frustration cannot apply to these cases as the fundamental basis of the PPAs remains unaltered.*** *Nowhere do the PPAs state that coal is to be procured only from Indonesia at a particular price. In fact, it is clear on a reading of the PPA as a whole that the price payable for the supply of coal is entirely for the person who sets up the power plant to bear. The fact that the fuel supply agreement has to be appended to the PPA is only to indicate that the raw material for the working of the plant is there and is in order.* ***It is clear that an unexpected rise in the price of coal will not absolve the generating companies from performing their part of the contract for the very good***

reason that when they submitted their bids, this was a risk they knowingly took. *We are of the view that the mere fact that the bid may be non-escalable does not mean that the respondents are precluded from raising the plea of frustration, if otherwise it is available in law and can be pleaded by them. But the fact that a non-escalable tariff has been paid for, for example, in the Adani case, is a factor which may be taken into account only to show that the risk of supplying electricity at the tariff indicated was upon the generating company.*

....

47. *We are, therefore, of the view that neither was the fundamental basis of the contract dislodged nor was any frustrating event, except for a rise in the price of coal, excluded by Clause 12.4, pointed out.* ***Alternative modes of performance were available, albeit at a higher price.*** *This does not lead to the contract, as a whole, being frustrated. Consequently, we are of the view that neither Clause 12.3 nor 12.7, referable to Section 32 of the Contract Act, will apply so as to enable the grant of compensatory tariff to the respondents. Dr Singhvi, however, argued that even if Clause 12 is held inapplicable, the law laid down on frustration under Section 56 will apply so as to give the respondents the necessary relief on the ground of force majeure.* ***Having once held that Clause 12.4 applies as a result of which rise in the price of fuel cannot be regarded as a force majeure event contractually, it is difficult to appreciate a submission that in the alternative Section 56 will apply.*** *As has been held in particular, in Satyabrata Ghose case [Satyabrata Ghose v. Mugneeram Bangur & Co., 1954 SCR 310 : (1953) 2 SCC 437 : AIR 1954 SC 44], when a contract contains a force majeure clause which on construction by the Court is held attracted to the facts of the case, Section 56 can have no application. On this short ground, this alternative submission stands disposed of.*"

(Emphasis added)

145. An analysis of Section 56 of Indian Contract Act as also the

above decisions of the Supreme Court in the cases of ***Satyabrata Ghose*** (supra) and ***Energy Watchdog*** (supra) lay down following principles :

i. Something which is impossible inherently or by its very nature, and no one can obviously be directed to perform such an act.

ii. The second paragraph enunciates the law relating to discharge of contract by reason of supervening impossibility or illegality of the act agreed to be done.

iii. This much is clear that the word "impossible" has not been used here in the sense of physical or literal impossibility. The performance of an act may not be literally impossible but it may be impracticable and useless from the point of view of the object and purpose which the parties had in view; and if an untoward event or change of circumstances totally upsets the very foundation upon which the parties rested their bargain, it can very well be said that the promissor finds it impossible to do the act which he promised to do.

iv. Essential idea upon which the doctrine is based is that of impossibility of performance of the contract; in fact impossibility and frustration are often used as

interchangeable expressions. The changed circumstances, it is said, make the performance of the contract impossible and the parties are absolved from the further performance of it as they did not promise to perform an impossibility.

v. The doctrine of frustration comes into play when a contract becomes impossible of performance, after it is made, on account of circumstances beyond the control of the parties. The doctrine is a special case of impossibility and as such comes under Section 56 of the Contract Act.

vi. The Act does not enable a party to a contract to ignore the express covenants thereof and to claim payment of consideration, for performance of the contract at rates different from the stipulated rates, on a vague plea of equity. Parties to an executable contract are often faced, in the course of carrying it out, with a turn of events which they did not at all anticipate, for example, a wholly abnormal rise or fall in prices which is an unexpected obstacle to execution. This does not in itself get rid of the bargain they have made. It is only when a consideration of the terms of the contract, in the light of the circumstances existing when it was made, showed that they never agreed to be bound in a fundamentally different situation which

had unexpectedly emerged, that the contract ceases to bind.

vii. The performance of a contract is never discharged merely because it may become onerous to one of the parties.

viii. Ultimately, the Supreme Court concluded that a contract is not frustrated merely because the circumstances in which it was made are altered. The courts have no general power to absolve a party from the performance of its part of the contract merely because its performance has become onerous on account of an unforeseen turn of events.

ix. The contract had become more onerous to perform, it was not fundamentally altered. Where performance is otherwise possible, it is clear that a mere rise in freight price would not allow one of the parties to say that the contract was discharged by impossibility of performance.

x. A *force majeure* clause will not normally be construed to apply where the contract provides for an alternative mode of performance. It is clear that a more onerous method of performance by itself would not amount to a frustrating event.

xi. The application of the doctrine of frustration requires a multi-factorial approach. Among the factors which have to be considered are the terms of the contract itself, its matrix or context, the parties' knowledge, expectations, assumptions and contemplations, in particular as to risk, as at the time of the contract, at any rate so far as these can be ascribed mutually and objectively, and then the nature of the supervening event, and the parties' reasonable and objectively ascertainable calculations as to the possibilities of future performance in the new circumstances.

xii. The doctrine is not to be lightly invoked; that mere incidence of expense or delay or onerousness is not sufficient; and that there has to be as it were a break in identity between the contract as provided for and contemplated and its performance in the new circumstances.

146. Thus, it is clear that the doctrine of frustration comes into play when a contract becomes impossible of performance, after it is made, on account of circumstances beyond the control of the parties. The doctrine is a special case of impossibility and as such comes under Section 56 of the Contract Act. However, the performance of a

contract is never discharged merely because it may become onerous to one of the parties. It is settled legal position that this doctrine is not to be lightly invoked; that mere incidence of expense or delay or onerousness is not sufficient; and that there has to be as it were a break in identity between the contract as provided for and contemplated and its performance in the new circumstances.

147. Thus, on the touchstone of above principles it is necessary to consider the present case.

148. As noted herein above the Appellants have relied on opinion dated 3rd April 2019 of Mahimtura Consultants Private Limited. The said opinion *inter alia* states that the measures to be employed for retrofitting will require 10 to 12 months and the balance building can only be constructed after retrofitting. It is further stated that the work of retrofitting will have to be undertaken by a specialized contractor and will require prohibitive costs. These reasons *inter alia* set out in said opinion dated 3rd April 2019 clearly shows that case for invocation of Section 56 of the Contract Act is not made out. As per the settled legal position the performance of a contract is never discharged merely because it may become onerous to one of the parties and that this doctrine is not to be lightly invoked; that mere incidence of expense or delay or onerousness is not sufficient; and that there has to be as it were a break in identity

between the contract as provided for and contemplated and its performance in the new circumstances. It is required to be noted that the other two towers namely B1 and B2 in the same layout were constructed after retrofitting. The said towers are also situated in same circumstances. It is surprising and shocking that the Appellants has not invoked the doctrine of frustration with respect to those towers. In fact, there is substance in the contention raised on behalf of the Respondents that the said doctrine of frustration is invoked to garner more benefit and double profit and consumption of complete layout benefit under DCPR, 2034. It is significant to note that earlier only 22 floors were to be constructed and now the permission has been granted to construct 48 floors. Thus, it is very clear that the Appellant has invoked this clause of frustration just to deprive the Respondents in Second Appeal No. 253 of 2022 and Second Appeal No.257 of 2022, their statutory rights and to garner more benefit.

149. It is further significant to note that the Appellants have obtained permission for demolition of tower C and construction of a new tower of 48 floors from Municipal Corporation of Greater Mumbai by giving a declaration dated 19th February 2019, inter alia stating as follows:

> "*9. We further state and declare that the rights of the existing/ current purchasers of Apartments/ flats/ premises in Building No.C will be safeguarded.*"

150. It is shocking to note that the Appellants obtained the permission from MCGM for demolition of Building No. C by playing fraud as false undertaking has been given stating that the Appellants would protect and safeguard the rights of the flat purchasers in Building No.C and after getting approval for construction of 48 floors and after demolishing Building No.C now the Appellants have malafidely invoked doctrine of frustration. Thus, these two Second Appeals namely Second Appeal No. 253 of 2022 and Second Appeal No. 257 of 2022, are required to be dismissed with exemplary costs of Rs.1,00,000/- each to be paid by the Appellants to the respective Respondents.

151. Thus, for the above reasons there is no substance in the Seventh Substantial Question of Law.

152. Hereinafter, the substantial question of law no.7 framed by order dated 24th December 2024 shall be taken up for consideration. The same is now numbered as the Eighth substantial question of law.

EIGHTH SUBSTANTIAL QUESTION OF LAW :

Whether the impugned Judgment and Order is perverse and unreasoned?

153. At the outset it is required to be noted that while making oral submissions although the same were advanced in great detail with respect to all other substantial questions of law, neither of the parties have advanced any submissions with respect to this substantial

question of law. However, in the written arguments certain submissions with respect to this substantial question of law are incorporated.

SUBMISSIONS OF THE APPELLANTS CONCERNING EIGHTH SUBSTANTIAL QUESTION OF LAW:-

154. In the written submissions of the Appellants following contentions are raised:

i. It is submitted that the impugned Order is unreasoned. It is evident from the record that elaborate arguments and submissions were made by the Appellant before the Hon'ble Revenue Tribunal. It is the duty of every quasi -judicial forum to pass a speaking order which entails recording all submissions of the Parties, framing questions for determination and delivering the final decision after dealing with the all the arguments and submissions made before it.

ii. A perusal of the Impugned Order, including paragraphs 13 to 17 thereof shows that the Hon'ble Revenue Tribunal has not dealt with all of the arguments of the Appellant, and further, given no reasons whatsoever in support of its conclusions. This makes the Impugned Order non – speaking.

iii. Every litigant has the right to know why it's submissions and arguments before the Court have been rejected so that it can lay the foundation of challenge to such order. However, from the Impugned

Order, it can be seen that all of the arguments and submissions of the Appellant have not been dealt with by the Revenue Tribunal.

iv. It is well settled that giving of reasons in support of conclusions and findings is an indispensable part of compliance with the principles of natural justice.

v. The Appellants have relied on following decisions of the Supreme Court in support of above contentions:

1. Oryx Fisheries Private Limited vs. Union of India[51]

2. Kranti Associates (P) Ltd. vs. Masood Ahmed Khan[52]

SUBMISSIONS OF THE RESPONDENTS CONCERNING EIGHTH SUBSTANTIAL QUESTION OF LAW:-

155. In the written submissions of the Respondents following contentions are raised:

i. It is respectfully submitted that the impugned oral judgment dated 01/11/2018 passed by the MahaREAT was well reasoned, based on a complete appreciation of facts and law, and requires no interference. The Appellants' failure to deliver possession within the stipulated time, despite repeated assurances, letters, and financial demands between 2005-2008, constitutes a clear breach of statutory duties under RERA. Even after the expiry of the extended 18 months granted under the order, possession has not been handed over, and

51 (2010) 13 SCC 427
52 (2010) 9 SCC 496

the allottees continue to suffer grave hardship.

ii. Under Section 18(1) and its proviso, the Respondents, who chose not to withdraw from the project, are unconditionally entitled to interest for every month of delay until possession is actually delivered. The Hon'ble Supreme Court in ***Imperia Structures Ltd***. (supra) and ***Newtech*** (supra) has affirmed that such right is absolute and not contingent upon contractual clauses or force majeure claims. The Appellants' reliance on environmental litigation or subsequent demolition of Building C is misconceived, as performance remained legally and physically possible, and their conduct in altering sanctioned plans, seeking escalation charges, and demolishing structures to exploit DCPR 2034 benefits demonstrates mala fides rather than impossibility.

iii. In view of the aforesaid settled legal position, statutory mandate, and binding judicial precedents, it is humbly prayed that the question of law No.7 be decided in favour of the respondents holding that the impugned judgment and order is effective, valid, subsisting and binding, and cannot be interfered with and the second appeals filed by the appellant be dismissed forthwith exemplary cost, and the Respondents be granted the reliefs awarded by the MahaREAT, together with continuing interest till actual possession is delivered.

iv. The Respondents have also raised various contentions regarding

other substantial questions of law while dealing with this substantial question of law. The same are not relevant.

REASONING CONCERNING EIGHTH SUBSTANTIAL QUESTION OF LAW:-

156. As already noted herein above, no oral submissions were raised with respect to this substantial question of law. In fact the written submissions of the Appellants except general contentions, do not make any reference to the particulars i.e. the point which is argued and not considered by the learned designated Appellate Tribunal.

157. As already noted herein above, the learned designated Appellate Tribunal has passed the impugned order by giving detailed reasons. In fact, while considering various aspects as set out in paragraph No.13 to 17, which are already set out in earlier part of this judgment, the learned designated Appellate Tribunal has granted interest to the allottees w.e.f. 1st February 2014, although the possession date as per the agreements executed with allottees were of the year 2008-2010.

158. It is correct that Supreme Court in various decisions has held that giving of reasons in support of conclusions and findings is an indispensable part of compliance with the principles of natural justice. However, in this particular case, detailed reasons are given by

the learned designated Appellate Tribunal. Apart from that, no particulars are pointed out to this Court with respect to this aspect.

159. Thus, there is no substance in the contentions raised by the Appellants.

160. Thus, for the above reasons there is no substance in the Eighth Substantial Question of Law.

FINAL ORDER:

161. For the above reasons, there is no substance in any of the Substantial Questions of Law raised by the Appellants.

162. Accordingly, all the Second Appeals are dismissed with costs.

163. Second Appeal No.251 of 2022, Second Appeal No.254 of 2022, Second Appeal No.255 of 2022, Second Appeal No.256 of 2022, Second Appeal No.258 of 2022, Second Appeal No.259 of 2022, Second Appeal No.260 of 2022 and Second Appeal No.261 of 2022 are dismissed with costs of Rs.10,000/- in each of the Second Appeals to be paid to the respective Respondents, within a period of four weeks from today.

164. Second Appeal No. 253 of 2022 and Second Appeal No. 257 of 2022 are dismissed with a cost of Rs.1,00,000/-, to be paid to the respective Respondents, within a period of four weeks from today.

165. In view of the dismissal of the Second Appeals, nothing

survives in the Civil Applications/Interim Applications and the same are also disposed of.

166. After pronouncement of this judgment, Mr. Kamat, learned Senior Advocate seeks stay of this judgment and order and continuation of the interim order dated 4th December 2018 which was operating in these Second Appeals. However, the position on record shows that the Agreement with respective Appellants, i.e., flat purchasers are of the year 2006-2007. After a period of 20 years, possession is not handed over to the flat purchasers. As far as Second Appeal No. 253 of 2022 and Second Appeal No. 257 of 2022 are concerned, this Court, on the basis of undertaking submitted by the Appellants, has recorded that the permission from the MCGM for demolition of Tower C has been obtained by misrepresenting the MCGM and by playing fraud on MCGM by representing that the flat purchasers' interest would be safeguarded and thereafter now belatedly for the first time at the stage of Second Appeal, contention is raised regarding frustration of the contract.

167. Accordingly, no case is made out for grant of stay of this order.

[MADHAV J. JAMDAR, J.]