BEFORE THE MAHARASHTRA REAL ESTATE

APPELLATE TRIBUNAL, MUMBAI

MISC. APPLICATION NO. 730/26 (Stay)

M.A. No. 1765/26 (Withdrawal of Amt.)

IN

Appeal No. AT06/00613/2026

IN

Complaint No. CC12501553

Godrej Greenview Housing Pvt. Ltd. ... Appellant

Versus

Mr. Kamal Kishore Prasad Sinha & Anr. ... Respondents

Adv. Ms. Jennifer Michael for appellant.

Mr. Kamal Kishore Prasad Sinha, Respondent no. 1 in person, for all respondents.

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

RESERVED ON : 23rd October 2026

PRONOUNCED ON : 30th October 2026

(THROUGH VIDEO CONFERENCING)

ORDER

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

1. The appellant/Promoter has filed the captioned appeal challenging the common order dated 17.02.2026 passed by the learned Member-I, Maharashtra Real Estate Regulatory Authority (for short "the Authority") in complaint no. CC12501553 filed by the respondents herein/allottees. The respondents/allottees in the impugned order appeared at sr. no. 8 as complainants. By the said impugned order, the complaint

was partly allowed. The operative part of the impugned order is reproduced below:

"a. *The present complaints are partly allowed.*

b. *The claim of compensation sought by the said complainants stands rejected in view of the observations made in the aforesaid para no. 42.*

c. *The respondent promoter is directed to pay interest for the delayed possession to the complainants from various dates as mentioned in* ***the column (D) of the aforesaid table at para no. 40 (period as applicable)*** *for every month, till the date of offer of possession of the said flats to these complainants along with OC dated 18-06-2025, on the actual amount paid by the said complainants towards the consideration of the said flat at the rate of Marginal Cost Lending Rate (MCLR) of SBI plus 2% as prescribed under the provisions of section 18 of the RERA and the Rules made thereunder.*

d. *Needless to state here that the actual amount as provided under section 18 of the RERA means the amount paid by the complainants towards the consideration of the said flats only, excluding the stamp duty, registration charges and taxes etc. paid to the government.*

e. *Both parties in Complaint at Sr. No. 7 are directed to complete the process of possession (if not done so far), immediately. It is further directed that the interest amount payable by the respondent shall be adjusted against the outstanding dues, if any, payable by the said complainant."*

2. Thus, the Authority granted the relief of interest on account of delay on possession, which is essentially the money decree.

3. The appellant being promoter, who has filed the captioned appeal, is required to meet the mandatory requirement of proviso to Sub-Section (5) of Section 43 of RERA Act, 2016. Accordingly, the appellant promoter has deposited the amount of Rs.20,02,374/- towards the said compliance. Admittedly, the allottees have no objections to the sufficiency of pre-deposit amount, which has been deposited by the appellant promoter in the Registry of this Tribunal.

4. The appellant promoter has filed the miscellaneous application no. 730 of 2026 seeking stay to the operation, effect, implementation and execution of the impugned order, pending hearing and final disposal of the appeal.

5. We have given careful consideration to the averments made in the application, reply filed by the respondents/allottees. We have also given due consideration to the arguments advanced by the learned Advocates for the parties.

6. It is pertinent that the impugned order is money decree and the appellant has deposited the entire amount as ordered by the Authority in the impugned order towards full compliance of proviso to Sub-Section (5) of Section 43 of RERA Act, 2016. Therefore, we are of the view that the appellant promoter is required to be protected from the recovery of the said amount in any non-compliance proceedings initiated by the allottees. We are of the considered view that the interests of the allottees have been fully secured by appellant depositing the decretal amount and therefore the said application deserves to be allowed.

7. The respondents/allottees have filed the miscellaneous application no. 1765/2026 seeking withdrawal of the amount deposited by the appellant promoter subject to undertaking that allottees will bring back money to this Tribunal with interest in the event the appellant promoter succeeds in the appeal.

8. In the withdrawal application, the allottees have submitted that pursuant to the directions of this Tribunal, the promoter has deposited the required amount of Rs.20,02,374/- in the Registry of this Tribunal. The deposited amount has been lying with the Registry of this Tribunal. Further, if any interest accrued thereupon during the pendency of the matter the allottees are legally entitled to receive the deposited amount along with accrued interest thereupon. The allottees have further contended that they are facing financial hardship on account of ongoing EMIs payment on home loan availed by the allottees and therefore the allottees may be allowed to withdraw the said deposited amount to meet financial obligation towards the bank. With these submissions, the allottees have prayed to allow the application to withdraw the amount deposited by the appellant promoter along with accrued interest thereupon.

9. The promoter opposed the application for withdrawal of the amount by filing reply contending that the said application is wholly misconceived, legally untenable and constitutes and abuse of the process of this Tribunal.

10. The learned Advocate for the promoter submitted that the said application proceeds on an erroneous assumption that the statutory deposit made by the appellant under the proviso to Sub-Section (5) of Section 43 of RERA Act, 2016, creates an

immediate, automatic, and enforceable right in favour of the allottees to seek release or withdrawal thereof during pendency of the appeal. Such an assumption is contrary to the plain language of the statute, the legislative intent underlying the appellate mechanism and the settled principles governing statutory pre-deposits. The legislative intent underlying Section 43(5) of RERA Act, 2016, as consistently recognized in judicial pronouncements, is to preserve the amount in dispute and protect the interests of the parties during the pendency of the Appeal. The said provision neither contemplates nor confers any right upon an allottees to seek withdrawal of the deposited amount during the pendency of the appeal. Any withdrawal of the statutory deposit at this interlocutory stage would defeat the very object and purpose of Section 43(5) of RERA, irreversibly prejudice the appellant's right of appeal, and render the appellate proceedings nugatory in the event the appeal ultimately succeeds.

11. The learned Advocate further submitted that allottees purportedly pleaded financial hardship on account of ongoing EMIs payments on a home loan availed by them, such a bare plea does not constitute a compelling reason warranting release of the statutory deposit. The purported application for withdrawal does not annex any documentary evidence whatsoever in support of the alleged financial hardship such as home loan, sanction letter, repayment schedule, bank statements reflecting EMIs debits, income or salary details etc. There is no material to demonstrate that the allottees are in fact unable to service their EMIs obligations from their regular

income and resources. A bald averment of financial hardship, unsupported by any cogent material, cannot form the basis for the extraordinary relief of release of the statutory deposit during the pendency of the Appeal.

12. The learned Advocate submitted that the obligation to pay EMI's on a home loan is a voluntary contractual obligation undertaken by the allottees with their lending institution and is entirely independent of and unrelated to the statutory deposit made by the appellant under the proviso to Section 43(5) of the RERA Act. The allottees cannot seek to discharge their private contractual obligations towards their bank by appropriating the statutory deposit, which has been made by the appellant as a condition precedent for maintaining the present Appeal. Also, EMIs obligations are routine financial commitments arising from the allottees' own decision to avail a home loan and cannot be equated with exceptional or extraordinary circumstances warranting interference with the statutory framework. The learned Advocate submitted that the allottees have failed to demonstrate that the alleged financial hardship is of such an exceptional or extraordinary nature as to constitute a compelling reason for release of the statutory deposit. The allottees have not placed on record any material to show that they do not possess other means, resources or assets from which they can meet their home loan EMIs obligation, which is commonplace financial commitment undertaken by a vast majority of flat purchasers in real estate projects, and cannot *per se* constitute a ground for release of the statutory deposit.

13. The learned Advocate submitted that claim of the allottees or the entitlement to withdraw the statutory deposit does not disclose any provisions either under the Act, Rules framed thereunder or Regulation governing proceeding before this Tribunal, which authorizes release of the statutory deposit in favour of a successful complainant during pendency of the Appeal. In the absence of any statutory foundation, the relief sought is liable to be rejected. The learned Advocate submitted that the provision of Section 43(5) of RERA Act, mandates a promoter to deposit the prescribed amount as a condition precedent to maintain the appeal and/or challenge the impugned order. Such deposit is not intended to be treated as a payment towards satisfaction of the impugned order, nor does it operate as an admission of any liability under the impugned order. In the application no specific grounds or circumstances warranting the relief sought therein. It is submitted that the exercise of equitable jurisdiction ought to be consistent with the express statutory scheme and should not have the effect rendering the statutory deposit or the appellate remedy nugatory. In absence of any evidence placed on record by the allottees about the extra ordinary circumstances, which would justify the release of the statutory deposit in the interim stage, the prayer for withdrawal without any corresponding justification, may not warrant interference with the statutory protection available to appellant pending adjudication of the appeal.

14. The learned Advocate submitted that the allowing such withdrawal would irreversibly alter the position of the parties.

Once the deposited amount is appropriated towards satisfaction of any private obligation of the allottees, the amount would cease to remain under the control or supervision of this Tribunal. In the event the appeal succeeds, restoration of the status quo would become practically impossible. The doctrine of restitution requires that the successful party should, as far as possible, be restored to the same position in which it would have stood had the impugned order not been passed. If the deposited amount is released and appropriated towards discharge of any private liability of the applicants, restitution in favour of appellant would become illusory. The appellant then would be compelled to initiate independent recovery proceedings against the allottees without any assurance that the amount could in fact be recovered. The very entitlement of the allottees to receive any amount under the impugned order is the subject matter of challenge in the present appeal. Until the appeal is finally adjudicated, the allottees possess no vested or indefeasible right to appropriate the deposited amount. The provision of Section 43(5) of RERA Act, 2016, is to secure the amount as ordered by the Authority, which can be released to the allottee in the event the appeal filed by the promoter fails, so that the allottees are not required to run from pillar to post to recover such amount.

15. The learned Advocate submitted that in the judgment of Hon'ble Bombay High Court in the case of *Rare Township Private Limited Vs. Mitul Gada* in Second Appeal No. 121 of 2026, does not come to the assistance of the allottees. In the said judgment, the Hon'ble Bombay High Court has enumerated various factors, which may bear upon the exercise of discretion by the Appellate

Tribunal. None of these factors is in favour of the allottees. The impugned order pertains only to interest on delayed possession and not refund of the principal amount.

16. The learned Advocate submitted that it is well settled that interlocutory proceedings are intended to preserve the subject matter of litigation and not to determine finally the rights of parties. The present application, however, seeks precisely the opposite. Instead of preserving the deposited amount, the applicants seek to consume and appropriate it before final adjudication, the entitlement to which is exactly under challenge and pending adjudication before this Tribunal. Such relief ought not to be granted by the Tribunal inasmuch as it would lead to granting final relief at an interim stage. Therefore, balance of convenience favours preservation of the statutory deposit until final disposal of the appeal. The allottees suffer no prejudice whatsoever by the amount continuing to remain invested under the directions of this Tribunal. In fact, if the deposit is retained before the Tribunal and for the sake of arguendo it is submitted that if the appeal fails, the allottees would become entitled to receive the deposited amount together with all accrued interest in accordance with law. On the contrary, if the withdrawal is permitted at this stage and the appellant ultimately succeeds, grave and irreparable prejudice is caused to the appellant which would be substantial and irreversible, the appellant would lose the only effective security preserved under the statutory framework and would be compelled to embark upon further litigation for recovery of the amount. The appellant's challenge in the present appeal goes to the very legality, correctness and

sustainability of the impugned order. The appeal raises substantial questions of fact and law, and unless those questions are finally adjudicated, no part of the relief granted under the impugned order ought to be permitted to be enforced through interlocutory proceedings. With these submissions, the learned Advocate for the promoter prayed to reject the application.

17. We have given due consideration to the averments made in the withdrawal application and submissions advanced by the learned Advocates for the parties.

18. The decretal amount deposited by the promoter in the Registry of this Tribunal towards compliance of proviso to Sub-Section (5) of Section 43 of RERA Act, 2016, is meant to protect interests of the allottees till the proceedings attain finality. Releasing such amount during the interim appeal proceedings destroys the custodial balance maintained by the Tribunal. Discretionary withdrawal in such cases where it is deemed fit is also subjective security, with the question that requires to be considered as to whether the allottee possesses sufficient amounts for bringing back security amounts sought to be withdrawn to this Tribunal in the event the appellant succeeds in the appeal. Non-possession of sufficient means for furnishing solvent security or unconditional bank guarantee of a nationalized bank for the entire amount is question that required consideration to secure the payment in case the allottees were held liable to make the payment. This is absolutely essential to prevent irreparable prejudice and to preserve the efficacy of the challenge proceedings. A deposit made by the promoter does not pass title to the decree holder and is meant to safeguard both the parties,

while the appeal is pending adjudication. This is essential to balance the equities. The real effect of deposit of money in the Tribunal, as is done in the present case, is to put the money beyond the reach of the parties pending the disposal of the Appeal. It is pertinent that allottees have put in possession of subject flat on 19.03.2026. Therefore, the ground of payment of EMIs to the bank for the home loan availed by the allottees would not be relevant factors for considering such release of deposited amount to the allottees. Payment of EMIs in normal course is the responsibility of the allottees. It is not the case where allottees are paying rent at one hand and also paying EMIs due to delay in possession, which warrants extraordinary financial difficulties faced by the allottees to be considered for the release of such deposited pre-decretal amount. However, in the present case the allottees are already in possession.

19. As held by the Hon'ble Supreme Court in the case of *M/s. Newtech Promoters and Developers Pvt. Ltd. Vs. State of UP & Ors.* [(2021) 18 SCC 1], where the Hon'ble Supreme Court have considered the relevant provision of pre-deposit and the rationale of the provision of 43(5) in the RERA Act, 2016. In paragraph 127, the Hon'ble Supreme Court in the said judgment has held as under:

> "*127. It may further be noticed that under the present real estate sector which is now being regulated under the provisions of the Act 2016, the complaint for refund of the amount of payment which the allottee/consumer has deposited with the promoter and at a later stage , when the promoter is unable*

to hand over possession in breach of the conditions of the agreement between the parties, are being instituted at the instance at the instance of the consumer/allottee demanding for refund of the amount deposited by them and them and after the scrutiny of facts being made based on the contemporaneous documentary evidence on record made available by the respective parties, ***the legislature in its wisdom has intended to ensure that the money which has been computed by the authority at least must be safeguarded if the promoter intends to prefer an appeal before the tribunal and in case. the appeal fails at a later stage, it becomes difficult for the consumer/allottee to get the amount recovered which has been determined by the authority and to avoid the consumer/allottee to go from pillar to post for recovery of the amount that has been determined by the authority in fact belongs to the allottee at a later stage could be saved from all the miseries which come forward against him"***

[emphasis supplied]

20. The primary objective of the said provision is to safeguard the interests of the allottee where the promoter challenges the impugned order and, in case the promoter's challenge ultimately fails, the allottee is saved from the miseries of going pillar to

post to recover the amount. It is therefore expected that said deposit amount is required to be returned to the allottee in the event the appellant does not succeed in the appeal.

21. We are of the view that since the allottees are already have been put in possession of the flat, therefore, the hardship on account of EMIs is immaterial and not a valid ground leading to extraordinary or exceptional situation warranting this Tribunal exercise discretionary powers to release the deposited decretal amounts under 43(5) of RERA to allottees. It is not the case of the allottees that they are not in possession and therefore allottees have to bear the burden that both EMIs as well as rent.

22. Further, the interests of the allottees are fully secured by appellant depositing the decretal amount in the Registry of this Tribunal, which also attracts further interest till the appeal is disposed of. Therefore, we do not find any prejudice caused to the allottees. As discussed earlier, the objective of the Provision of Section 43(5) of RERA Act, 2016, is only to secure the interests of the allottees so that the allottees are not required to run from pillar to post in the event appeal filed by appellant promoter fails. In our view, allottees have not demonstrated compelling reasons, which would warrant exercise of our discretion to release the deposited amount to the allottees as an exceptional case. In view of this, we are of the considered view that the said application for withdrawal does not have merit and deserves to be rejected.

23. In view of the above discussion, we pass the following order.

ORDER

a) The miscellaneous application no. 730 of 2026 (Stay) is allowed, and the operation, execution, and implementation of the impugned order is stayed, pending hearing and final disposal of the appeal.

b) The miscellaneous application no. 1765 of 2026 (withdrawal of the amount) is rejected.

c) The miscellaneous application no. 730 of 2026 (stay) is accordingly disposed of.

d) Parties shall bear their own costs.

e) Copy of this order be communicated to the Authority and the respective parties, as per Section 44(4) of the Real Estate (Regulation and Development) Act, 2016.

(SHRIKANT M. DESHPANDE) **(S.S. SHINDE, J.)**

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