veta Sawant

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 534 OF 2024

Sachin Bajla ***...Appellant***

: Versus :

1. Honest Shelters Pvt. Ltd. ***...Respondents***

2. Sunil Girdharilal Mittal

Mr. Kunal Mehta *with Mr. Robin Fernandes, Mr. Sukrit Parashar, Ms. Anushka Dubey, Mr. Shiroy Pavri and Mr. Surya Kale i.b. Vesta Legal, for the Appellant.*

Mr. Gaurav Joshi, Senior Advocate *with Mr. Rubin Vakil, Ms. Sonam Mhatre, Ms. Saloni Sulakhe and Mr. Declan Fernandes i/b. Mr. Dhaval Vussonji & Associates, for Respondent No.1.*

CORAM: SANDEEP V. MARNE, J.

JUDGMENT RESD. ON : 26 OCTOBER 2026.

JUDGMENT PRON. ON : 5 NOVEMBER 2026.

JUDGMENT:

1) By this Appeal filed under Section 58 of the Real Estate (Regulation and Development) Act 2016, the Appellant-allottee assails

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the Order dated 8 August 2024 passed by the Maharashtra Real Estate Appellate Tribunal, Mumbai (**REAT**) in Misc. Application No. 345 of 2024 filed in Appeal No. AT006000000245209 of 2024 to the extent it imposes the condition of deposit of amount of Rs. 38.18 crores by it for granting the interim relief of status-quo *qua* the subject flat. The Appellant is aggrieved by non-grant of unconditional stay and by imposition of condition of deposit of amount of Rs.38.18 crores and has accordingly filed the present Appeal challenging the order of the REAT dated 8 August 2024.

2) Briefly stated, facts of the case are that one Shree Ram Urban Infrastructure Limited **(SRUIL)** was earlier the owner of the land admeasuring about 13,376 sq.mt situated at Worli Estate, Lower Parel Division, Mumbai. SRUIL undertook construction of a building named, 'Palais Royale' on the said land. Appellant expressed interest in purchase of a flat in the building in Palais Royale and accordingly Letter of Allotment dated 20 January 2010 was issued by SRUIL in favour of the Appellant for sale of the flat on 46th NW level of the building Palais Royale (**the flat**) for total consideration of Rs.76,36,00,000/-. As per the Allotment Letter, Appellant was required to pay an amount of Rs. 38,18,00,000/- immediately upon issuance of allotment letter for execution and registration of Agreement for Sale and the balance amount was to be paid as per the agreed schedule. Between 23 January 2010 to 14 July 2011, the Appellant paid amount of Rs.5,51,00,000/- to SRUIL in several tranches.

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3) SRUIL had availed certain financial assistance from Indiabulls Housing Finance Ltd. **(Indiabulls)** under multiple loan agreements for development of the Project and had created first charge/mortgage on the property alongwith the receivables in favour of Indiabulls. In 2016-17, this Court directed winding up of SRUIL and Official Liquidator was appointed to take charge of assets of SRUIL. Indiabulls filed proceedings under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 **(SARFAESI Act)** against SRUIL and also filed Company Application in this Court for handing over physical possession of the mortgaged property. Accordingly, Indiabulls took over possession of the mortgaged property and conducted public auction thereof. Respondent No.1 emerged as a successful bidder and purchased and took over charge of the sale property and assumed the role of a promoter of the Project-Palais Royale.

4) On 4 January 2022, Respondent No. 1 issued letter to the Appellant seeking various documents from him, which remained unresponsive. On 12 August 2022**,** the Project received part Occupancy Certificate upto 38 upper floors from MCGM. Respondent No. 1 terminated the Letter of Allotment **(LOA)** of the Appellant by notice dated 6 October 2022 and offered to refund paid consideration of Rs. 5,51,00,000/- by sending the cheque along with the termination letter. On 3 November 2022 Appellant responded to the termination letter and disputed its contents. On 5 December 2022, Respondent No.1 denied all contentions of the Appellant accusing Appellant of failure to adhere to

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the payment timelines. On 5 December 2022, Appellant responded and conveyed his willingness to complete the sale transaction and demanded various documents and information.

5) Appellant filed complaint before the Maharashtra Real Estate Regulatory Authority (**MahaRERA)** in December 2022 *inter-alia* seeking interest on delayed payment or in the alternative refund of the amounts paid with interest, as well as challenging the termination letter. By judgment and order dated 16 April 2024, MahaRERA proceeded to dismiss the complaint of the Appellant holding that LOA was terminated prior to filing of the complaint and that there was no allottee/promoter relationship between the parties.

6) After dismissal of the complaint, Respondent No.1 once again offered refund of paid consideration of Rs.5,51,00,000/- on 25 April 2024 which the Appellant refused to accept. Instead, Appellant filed Appeal before the REAT challenging the order of MahaRERA. Appellant also filed Misc. Application No. 345 of 2024 seeking interim relief. By the impugned order dated 8 August 2024, the REAT granted conditional status quo in favour of the Appellant in respect of the flat, subject to the Appellant depositing an amount of Rs. 38,18,00,000/-, being the first tranche of payment payable by the Appellant. Being aggrieved by the order dated 8 August 2024 of the REAT, the Appellant has filed the Second Appeal.

7) By order dated 6 September 2024, the Appeal came to be admitted on the following substantial questions of law:

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I) As a matter of law, if the Real Estate (Regulation and Development (RERA) REAT is of the view that interim reliefs in an Appeal may be granted subject to an allottee depositing monies towards allotment of a flat, then whether the condition of deposit can exceed the maximum quantum contemplated by Section 13(1) of the RERA Act ?

II) Whether the RERA REAT can pass interim orders subject to compliance with conditions which have the effect of defeating the prohibition stipulated by Section 13(1) of the RERA Act ?

III) Whether the terms of a letter of allotment can be enforced despite the same being contrary to the provisions of MOFA and the RERA Act ?

8) An ad-interim relief was granted in favour of the Appellant while admitting the Second Appeal restraining the Respondents from creating third party rights in respect of the flat. By order dated 7 January 2025, this Court made the ad-interim relief absolute during pendency of the Appeal.

9) The Appeal is taken up for final hearing. The learned counsel appearing for rival parties have canvassed extensive submissions in support of their respective cases. It would be apt to briefly record the gist of submissions canvassed by them.

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10) Mr. Kunal Mehta, the learned counsel appearing for the Appellant submits that the REAT has grossly erred in directing deposit of amount of Rs.38.18 crores as a pre-condition for granting status-quo in respect of the flat. That the impugned order is contrary to the provisions of Section 13 of RERA. That 10% price of the flat is Rs.7.64 crores and considering the payment of amount of Rs.5.51 crores and credit of Rs.12.01 crores toward delayed interest, what is actually paid by the Appellant is Rs.17.52 crores. That until a registered agreement is executed in accordance with Section 13 of RERA, Respondent No.1 cannot demand any further amount from the Appellant. If Respondent No.1 cannot demand the amount, the Tribunal cannot direct deposit of the same. What cannot be done directly, cannot be permitted to be done indirectly. In support of this proposition, he places reliance on a judgment of the Hon'ble Supreme Court in ***State of Tamil Nadu & Ors. Versus. K. Shyam Sunder & Ors.***[1]. That the Tribunal's reasoning that Rs.38.18 crores being immediately payable under the LOA inverts the statute since the clause itself is an illegality. That readiness and willingness cannot be tested by directing deposit of an amount which the law forbids the promoter to receive. That Appellant Tribunal is creature of RERA and not a court of plenary jurisdiction. That the REAT is required to function within the statutory framework and does not have any inherent powers as held in ***Standard Chartered Bank Versus.***

1 2011 8 SCC 737

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Dharminder Bhohi & Ors.[2] and in ***Praveen Chhabra Versus. Real Estate REAT***[3].

11) Mr. Mehta further submits that the order of MahaRERA itself is contrary to the Section 11(5) and that the complaint deserves to be remanded. That under Section 11(5), an allottee can approach the Authority for relief if he is aggrieved by the cancellation of allotment. That therefore MahaRERA has grossly erred in dismissing the complaint as not maintainable. That Appellant's right under the LOA are the same as those of an allotee holding an Agreement for Sale. That Section 2(c) does not require an agreement to be in writing as held in ***Bombay Dyeing & Manufacturing Company Limited Versus. Ashok Narang & Anr***[4]**.** The absence of a registered agreement in the present case is a direct consequence of the promoter's own breach of Section 13(1) of RERA and Section 4 of MOFA. A promoter cannot rely on its own default to strip the allottee of protection of Section 11(5) and 18 of RERA. That MahaRERA did not decide the complaint on merits and therefore the Appellate Court ought to have set aside MahaRERA's order at the threshold by making an order for remand rather than making the Appellant deposit any amount as a precondition for grant of stay.

12) Mr. Mehta further submits that only MahaRERA can decide the issue of readiness and willingness. That there is dispute between the parties as to the balance amount payable. That Appellant is always ready

2 (2013) 15 SCC 341
3 2022 SCC Online Del 1568
4 2021 SCC Online 12330

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and willing to pay the balance consideration and to execute the Agreement for Sale. That it is Respondent No.1 who has expressly stated that it is not willing to abide by the conditions of allotment. That Respondent No.1 has refused to execute Agreement for Sale and has offered to refund the paid consideration.

13) Mr. Mehta concludes by submitting that the order of Maha RERA is liable to be set aside and the complaint deserves to be remanded for deciding the issue of validity of termination, executing the terms of registered Agreement for Sale and interest for delay and its adjustment against the balance price. In any case, the condition imposed for grant of status-quo is unsustainable. That therefore the Appeal can also be directed to be decided by the Tribunal by continuing the stay order granted by this Court.

14) Mr. Joshi, the learned Senior Advocate appearing for Respondent No.1 opposes the Appeal. At the outset, he submits that the questions of law framed by this Hon'ble Court warrants recasting/reframing, a power vested in this Court, as held in the judgment of the Hon'ble Supreme Court in ***Thiagarajan & Ors. Versus. Sri Venugopalaswamy B. Koil & Ors.***[5]. He submits that the REAT has rightly imposed the condition of deposit of at least the amount which was payable at the time of execution of the LOA as a precondition for grant of status-quo order. That the entire project now stands complete and Occupancy Certificate has been issued even in respect of the flat on

5 (2004) 5 SCC 762

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17 December 2024. That therefore full consideration is now payable by the Appellant in the event he has interest in completing the sale transaction. That having paid only Rs. 5.51 crores towards the total consideration of Rs. 76.36 crores, the Appellant cannot be permitted to keep the flat embroiled in litigation.

15) Mr. Joshi further submits that there is no limitation on exercise of discretion by the Appellate Court to pass conditional interim orders. That under Section 44(3) of RERA read with Section 53, the Tribunal has wide discretionary powers to pass such orders as it thinks fit. That the issue involved in the present case is not permissibility to accept monies beyond the threshold prescribed under Section 13 of RERA or Section 4 of MOFA, the issue for consideration is whether Tribunal can grant interim protection to an unsuccessful party by imposing conditions. That the Tribunal is empowered to balance the equities by imposing conditions on the ground of interim relief especially at the appellate stage. In support, he relies on judgments in ***Bal Krishan Gupta & Anr. Versus. Vikas Aggarwal & Anr.***[6] and ***Mohan Overseas Pvt. Ltd. Versus. Goyal Tin & General Industries***[7]**.** That the impugned order merely seeks to balance equities between the parties and there is no perversity in exercise of jurisdiction by the REAT.

16) Mr. Joshi further submits that the applicable provision at the relevant time was Section 4 of MOFA and not Section 13 of RERA and that there is no breach of either of the provisions. That the Appellant has

6 2014 SCC Online Del 3081
7 2009 SCC Online Del 3846

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not paid 20% of the amount required under Section 4 of MOFA nor has paid 10% of the amount required under Section 13 of RERA and therefore there is no question of execution or registration of agreement for sale with him. That the previous promoter was always ready and willing to execute the Agreement for Sale with the Appellant upon payment of consideration of Rs.38.18 crores. That there is no limitation or restriction on quantum of consideration acceptable by the promoter against execution of Agreement for Sale either under MOFA or under RERA.

17) Mr. Joshi further submits that the condition of deposit tests the readiness and willingness of the Appellant to make the payment in terms of the LOA. That the conduct exhibited by the Appellant in the past makes it clear that he has no semblance of intention to act in terms of the LOA. That it is settled law that parties seeking specific performance of the contract must first prove continuous readiness and willingness to perform its obligation under the contract as held in ***U.N. Krishnamurthy (since deceased) through Legal Heirs Versus. A.M. Krishnamurthy***[8]**.**

18) Mr. Joshi further submits that since the REAT has merely exercised discretion while granting interim relief, no interference is warranted in exercise of appellate jurisdiction by this Court as held in

8 (2023) 11 SCC 775

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Wander Ltd. & Anr. Versus. Antox India P. Ltd.[9] and ***Mohd Mehtab Khan & Ors. Versus. Khushnuma Ibrahim Khan & Ors***.[10]

19) Mr. Joshi further submits that the Appellant is not entitled to claim any set-off against the interest payable, as the interest awarded under Section 18 of RERA is compensatory in nature. Without adjudication of disputes, no amount of damages can be awarded as held in ***Union of India Versus. Raman Iron Foundry***[11] and ***Neelkamal Realtors Suburban Pvt. Ltd. Versus. Union of India & Ors.***[12] Mr. Joshi further submits that the Appellant cannot be permitted to argue merits of RERA order which is beyond the scope of the present Second Appeal. That the remit of the present enquiry is only about correctness of interim order passed by the REAT and therefore the merits of RERA order cannot be decided at this stage. He prays for dismissal of the Appeal.

20) Rival contentions urged on behalf of the parties now fall for my consideration.

21) This is an Appeal under Section 58 of the RERA against a mere interim order passed by the REAT granting conditional order of *status-quo* in favour of the Appellant. The scope of the Appeal is essentially restricted to the condition of deposit of Rs.38.18 crores by the REAT for grant of interim relief of *status-quo* in respect of the flat in question. Because Section 58(1) of RERA uses the words '*any decision or*

9 1990 Supp SCC 727
10 (2013) 9 SCC 221
11 (1974) 2 SCC 231
12 2017 SCC Online Bom 9302

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order of the REAT', the present Second Appeal is filed against a mere interim order passed by the REAT. The Division Bench of this Court in ***Man Global Ltd. Mumbai Verus. Ram Prakash Joukani***[13] has answered the Reference on the issue on interpretation of provisions of Section 58 of RERA about the remedy available to a party aggrieved by interim order made by the REAT. The Division Bench has held that Appeal under Section 58 of RERA would lie even against an interim order made by the REAT. This is how the present Second Appeal is filed challenging the discretion exercised by the REAT in imposing a condition for grant of interim relief in favour of the Appellant. The Appeal has been admitted by this Court on the three questions of law as reproduced above. I accordingly proceed to take the questions for answer:

Question Nos.1 and 2

> *I) As a matter of law, if the Real Estate (Regulation and Development (RERA) REAT is of the view that interim reliefs in an Appeal may be granted subject to an allottee depositing monies towards allotment of a flat, then whether the condition of deposit can exceed the maximum quantum contemplated by Section 13(1) of the RERA Act?*
>
> *II) Whether the RERA REAT can pass interim orders subject to compliance with conditions which have the effect of defeating the prohibition stipulated by Section 13(1) of the RERA Act?*

13 2023:BHC-AS:9136

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22) Both the questions essentially relate to the power of the REAT to impose a condition of deposit of amount exceeding 10% amount of flat for making interim order of status quo in favour of an allotee who is without an Agreement for Sale. The first question is about permissibility for REAT to exceed the maximum limit imposed under Section 13(1) of RERA while making an order for deposit by the allottee without an Agreement for Sale as a pre-condition for grant of interim relief. The second question is about the REAT circumventing the prohibition under Section 13(1) of RERA while directing deposit of amount exceeding the prescribed limit while making an interim arrangement. The two questions are interlinked as both relate to the counters of jurisdiction and powers of the REAT to impose conditions while making interim order in the context of restriction/prohibition imposed under Section 13(1) of RERA.

23) To answer both the questions, it is necessary to take into consideration provisions of Section 13 of RERA, which provides thus:

> **13. No deposit or advance to be taken by promoter without first entering into agreement for sale.**
>
> (1) A promoter shall not accept a sum more than ten per cent of the cost of the apartment, plot, or building as the case may be, as an advance payment or an application fee, from a person without first entering into a written agreement for sale with such person and register the said agreement for sale, under any law for the time being in force.
>
> (2) The agreement for sale referred to in sub-section (1) shall be in such form as may be prescribed and shall specify the particulars of development of the project including the construction of building and apartments, along with specifications and internal development works

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> and external development works, the dates and the manner by which payments towards the cost of the apartment, plot or building, as the case may be, are to be made by the allottees and the date on which the possession of the apartment, plot or building is to be handed over, the rates of interest payable by the promoter to the allottee and the allottee to the promoter in case of default, and such other particulars, as may be prescribed.

24) Thus, under Section 13 a prohibition is imposed on the promoter on acceptance of sum of more than 10% of cost of the flat as an advance payment or application fee from the allottee before first entering into written agreement for sale and registration thereof. The prohibition imposed under Section 13(1) applies only to the promoter and not to any other person, authority, Tribunal or Court. The primary objective behind Section 13(1) prohibition in RERA is to protect the homebuyers from significant financial vulnerability and unfair trade practices by capping unsecured advance payments at 10%. The provision ensures that the agreed sale transaction is put into public domain by execution and registration of a written agreement for sale. Section 13(2) ensures that the agreement is in the prescribed form eschewing the unliteral and arbitrary terms tilted heavily in favour of the promoter.

25) However, this restriction imposed on the promoter under Section 13(1) has nothing to do with the exercise of discretion by the REAT while making a discretionary and equitable arrangement during pendency of appeal before it. The two concepts of '*restriction on promoter*' and '*discretion to be exercised by REAT while making an interim order*' cannot be conflated. They are separate and distinct concepts having no link to each other. If a promoter has breached the provisions

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of Section 13(1), the Regulatory Authority or the REAT can make necessary order to enforce the obligation under Section 13(1) by directing the promoter to execute and register the written agreement for sale. This can be done either by way of a final order or even by way of an interim order by both Regulatory Authority and by the REAT. This restriction/prohibition imposed on the promoter cannot be overstretched in its application to the limits of jurisdiction to be exercised by the REAT while considering grant of interim relief in a pending appeal.

26) In a given case, where the Regulatory Authority has dismissed the complaint and the allottee has preferred an appeal before the REAT and in such appeal, if the allottee seeks interim relief, the REAT is entitled to test the *bona fides* of the unsuccessful complainant by directing him to deposit an amount exceeding 10% of the cost of the flat. Under Section 44(3) and Section 53 of RERA, the REAT has wide discretion to pass such interim order as it may deem fit. When power to make interim order under Section 44(3) of RERA is read in conjunction with provisions of Section 53, it is clear that the Legislature has not intended to impose any restrictions on power of REAT while exercising the power of making interim orders. Sections 44 and 53 of RERA Act provide thus:

> **44. Application for settlement of disputes and appeals to REAT.**
>
> (1) The appropriate Government or the competent authority or any person aggrieved by any direction or order or decision of the Authority or the adjudicating officer may prefer an appeal to the REAT.

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(2) Every appeal made under sub-section (1) shall be preferred within a period of sixty days from the date on which a copy of the direction or order or decision made by the Authority or the adjudicating officer is received by the appropriate Government or the competent authority or the aggrieved person and it shall be in such form and accompanied by such fee, as may be prescribed:

Provided that the REAT may entertain any appeal after the expiry of sixty days if it is satisfied that there was sufficient cause for not filling it within that period.

(3) On receipt of an appeal under sub-section (1), the REAT may after giving the parties an opportunity of being heard, pass such orders, including interim orders, as it thinks fit.

(4) The REAT shall send a copy of every order made by it to the parties and to the Authority or the adjudicating officer, as the case may be.

(5) The appeal preferred under sub-section (1), shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose of the appeal within a period of sixty days from the date of receipt of appeal:

Provided that where any such appeal could not be disposed of within the said period of sixty days, the REAT shall record its reasons in writing for not disposing of the appeal within that period.

(6) The REAT may, for the purpose of examining the legality or propriety or correctness of any order or decision of the Authority or the adjudicating officer, on its own motion or otherwise, call for the records relevant to deposing of such appeal and make such orders as it thinks fit.

53. Powers of Tribunal

(1) The REAT shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908 but shall be guided by the principles of natural justice.

(2) Subject to the provisions of this Act, the REAT shall have power to regulate its own procedure.

(3) The REAT shall also not be bound by the rules of evidence contained in the Indian Evidence Act, 1872.

(4) The REAT shall have, for the purpose of discharging its functions under this Act, the same powers as are vested in a civil court under the

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> Code of Civil Procedure, 1908 in respect of the following matters, namely:—
>
> (a) summoning and enforcing the attendance of any person and examining him on oath;
> (b) requiring the discovery and production of documents; (c) receiving evidence on affidavits;
> (d) issuing commissions for the examinations of witnesses or documents;
> (e) reviewing its decisions;
> (f) dismissing an application for default or directing it ex parte; and
> (g) any other matter which may be prescribed.
>
> (5) All proceedings before the REAT shall be deemed to be judicial proceedings within the meaning of sections 193, 219 and 228 for the purposes of section 196 of the Indian Penal Code, and the REAT shall be deemed to be civil court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.
>
> *(emphasis added)*

27) The wide powers conferred upon the REAT under Sections 44(3) and 53 of RERA cannot be circumscribed by the restriction imposed under Section 13 on a promoter from accepting any amount beyond the prescribed limit as advance payment or application fee. Imposing such a restriction on the powers of the REAT would amount to rewriting the statute. Such restriction would also provide an undue advantage to an allottee who has paid an insignificant amount to the promoter, enabling such allottee to entangle the flat in a protracted and endless litigation. Let us take for consideration a hypothetical illustration:

(i) An intending flat purchaser approaches the promoter for buying a flat worth Rs.10 crores and pays a token amount of Rs.1 lakh.

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(ii) The intending purchaser shows no interest in paying further amounts to the promoter.

(iii) When the promoter cancels the transaction, a complaint is filed before the Regulatory Authority by the intending purchaser.

(iv) The Regulatory Authority dismisses the complaint after noting that the complaint has no real interest in purchasing the flat or for any other reason.

(v) In the meantime, the construction of the building is almost complete and for any other purchase transaction, what is now payable is the full amount of consideration.

(vi) The complainant files an appeal before the REAT and prays for interim order not to create any third-party rights in the flat.

In the above illustration, can it be said that the REAT cannot direct such complainant to deposit amount exceeding 10% of the cost of the flat by importing on its wide powers the restriction under Section 13(1) of RERA? The answer, to my mind, appears to be in the emphatic negative. If the appeal is ultimately dismissed after few years or if it is found that the Complainant does not possess the financial wherewithal to complete the transaction, the promoter would lose interest on the consideration (*while paying interest to financial institution from whom he may have borrowed funds*), maintain the flat, pay maintenance charges to the organisation of flat purchasers, etc. Thus, by playing a gamble on deposit of 10% consideration amount the Complainant would seek a prohibitory

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injunction on creation of third-party rights from the Appellate Tribunal thereby causing huge financial losses to the promoter.

28) The extent to which deposit can be directed depends on the facts of each case. By the time the proceedings reach the REAT, if the project is virtually complete with issuance of Occupancy Certificate, where full amount of consideration is due and payable, it would be unjust to grant interim order staying creation of third-party rights in the flat upon deposit of just 10% amount in the Tribunal by importing the restriction under Section 13(1) of RERA on the powers of the REAT. This is a reason why I have held that the concept of discretionary power of REAT to impose conditions for grant of interim order cannot be conflated with the concept of restriction/prohibition imposed on the promoter under Section 13(1) to accept advance amount from an allottee.

29) Non-application of the restriction/prohibition under Section 13(1) of 10% deposit to the wide and discretionary powers of REAT while making interim order does not invert the statute, as sought to be suggested by Mr. Mehta. The consumer-protection mechanism designed to prevent developers from locking homebuyers into heavy financial commitments without a binding legal framework cannot be conflated with the independent adjudicatory mandate for the REAT under Section 44 and 53 of RERA. The REAT is not a commercial counterparty to the transaction and cannot be bound by the restriction/prohibition imposed on the promoters under Section 13(1) of the Act. On the other hand, it is

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an adjudicating authority, whose power to issue interim directives is not bound by the operational caps placed on the promoters.

30) In the present case, the agreed consideration of the flat in the year 2010 was Rs.76.36 crores and what was agreed to be paid by the Appellant in the year 2010 was an amount of Rs.38.18 crores for the purpose of execution and registration of the Agreement for Sale. Now the Project is virtually complete and Occupancy Certificate even in respect of the concerned Flat is already issued on 17 December 2024. If at this stage, if the Appellant is made to deposit only 10% of the agreed amount of consideration, it would be like providing a handle to him to embroil the flat in litigation by depositing only 10% of the agreed consideration, when 100% consideration is payable. The Appellant is looking towards a long drawn litigation. It looks forwards to the REAT remanding the complaint on merits. Thus if the Appellant succeeds in the Appeal, the whole process of adjudication of his grievances would commence from the first stage. It is not known as to how long it would take to adjudicate the Appellant's grievances finally. The Appellant desires adjustment of the amount of interest on the monies paid by him to SRUIL for satisfying the 10% amount. Thus by not depositing anything further or by depositing further amount of Rs. 2 odd crores (*if the interest is not to be adjusted*), Appellant wants endless engagement of flat which is now worth about 125 cores.

31) The Tribunal while exercising appellate powers is empowered to balance the equities by imposing conditions for grant of

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interim relief. Imposition of conditions such as directing the appellant to deposit a portion of the disputed amount, furnish a bank guarantee, or give an undertaking, etc while making interim order is to ensure that the balance of convenience is maintained and neither party suffers irreparable injury. This ensures that if the appeal ultimately fails, the successful party is protected from financial loss or administrative delay caused by the interim stay. Interim relief is an equitable and discretionary remedy, and it is not an absolute right. Therefore, the REAT can shape the interim relief to be fair to both sides based on the facts of the case before it. If the concept of restriction/prohibition of 10% is imported to the scheme of making interim orders under Section 44(3) of RERA (*when Legislature has not intended so*), the same may create inequities amongst the parties and in some cases (*like the one discussed above*) would result in injustice to one of the parties.

32) It is well settled that Appellate Courts are empowered to impose conditions, including the deposit of consideration while granting interim relief so as to balance equities between the parties. In ***Mohan Overseas (Pvt.) Ltd. Versus. Goyal Tin & General Industries*** (supra) the Delhi High Court has held in paragraphs 35 and 40 of the judgment as under :

> **35.** The issue that also has been argued before us in detail pertains to the legality of the directions of the learned Single Judge, calling upon the Plaintiffs to file an undertaking to pay damages to the Defendants upon being unsuccessful in the suit. The learned Single Judge had found it expedient to make this direction, keeping Section 52 of the TP Act in perspective. The principle of lis pendens has agitated the minds

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of several of our learned Brothers for the reason that this principle works hardship on the owner inasmuch as it creates a clog on the property in litigation. We have already expanded on this legal nodus and, therefore, shall not reiterate these jural concerns. The learned Single Judge noted that the current market price of the shop was between Rupees four and five crores and since the purchaser/tenant had been permitted by him to let out the property, "three years rent or the price at which the plaintiff claims to have an agreement to sell should furnish a good estimate of the damages with which the plaintiffs should compensate the defendants". These concerns would not have vexed the learned Single Judge had he thought it expedient and appropriate to dismiss the suit so far as the claim for specific performance of the contract was concerned, leaving it open for the plaintiffs to prove damages if so advised. Mr. Maninder Singh, learned Senior Counsel appearing for the Appellant, submits that the learned Single Judge did not possess jurisdiction to make these direction and he should have traversed no further than dismissing the interim application for injunction. Perhaps, it is for this reason that the Plaintiffs/Appellants have not considered it necessary to challenge the impugned Order in the context of CS(OS) No.1894/2008. Reliance has been placed on a recent Judgment of the Supreme Court in *Ashok Kumar Mittal -vs- Ram Kumar Gupta, 2009(234) ELT 193(SC) : 2009(2) SCC 656*. We are unable to appreciate any manner by which this decision would be of any assistance to the arguments raised before us. Their Lordships in that case had imposed exemplary costs of Rupees 1,00,000/- each which were to be deposited with the Delhi High Court Legal Services Committee by both the parties. It was in that context that Sections 35 and 35A of the Code of Civil Procedure Code, 1908 were adverted to which stipulates a ceiling of Rupees 3,000/-. Their Lordships had recommended amendments to these provisions to make them relevant. The previous decision of a Three-Judge Bench in *Salem Advocate Bar Association -vs- Union of India, (2005) 6 SCC 344* was not specifically adverted to.

40. The impugned Order has been passed by the second successor Court. We have pointed this out for the reason that the initial Order directing the Plaintiffs to make deposit the balance sale consideration was a discretionary order which ordinarily would not be open to modification by a successor Court, unless circumstances had changed to such an extent that modifying the initial Order would be necessitated

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in the interest of justice. It could have been assailed in Appeal, but since this was not done, the ad interim arrangements had become unalterable during the pendency of the suit. In fact, it is the Plaintiffs who had taken several adjournments and they could not, therefore, make a grievance that the amounts deposited were not available to the Plaintiffs because of willful defaults of the Defendants.

33) Similarly, in ***Shri Bal Krishan Gupta*** the Delhi High Court has held in paragraphs 13 and 14 of the judgment as under :

13. The counsel for the appellants / defendants has drawn our attention to paras 35 & 40 of Mohan Overseas P. Ltd. (supra) to contend that it was for the respondent no.1 / plaintiff to tender the balance sale consideration to the appellants / defendants and that once the balance sale consideration had been deposited in this Court and on the basis whereof the appellants / defendants had been directed to maintain status quo qua title and possession of the land, the said amount could not be permitted to be withdrawn without the circumstances having drastically and significantly changed and from which it could be said that continuing with the prevailing interim order would be inappropriate. Attention in this regard is invited to para 11 of the application for withdrawal of the deposited monies to contend that the only ground pleaded in the application is of the long time which the adjudication of the suit will take.

14. One of us (Rajiv Sahai Endlaw, J.) recently in Rakesh Kumar Vs. Kalawati 206 (2014) DLT 363 had an occasion to consider the aspect of issuance of direction to the plaintiff in suits for specific performance of agreements of sale of property to deposit the balance sale consideration, and it was inter alia held as under:

> "14. Otherwise merit is found in the contention of the counsel for the appellant/plaintiff that as per the Agreement to Sell, the appellant/plaintiff was entitled to part with the balance sale consideration only against delivery of title and physical possession of the land to him. To make the appellant/plaintiff part with the balance sale consideration without delivery of title and possession of the land to him,

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> would be contrary to the agreement and the jurisdiction of specific performance thereof. To hold, that though as per the Agreement, the appellant/plaintiff is liable to part with the balance sale consideration only against the delivery of title and possession, but to test his readiness and willingness he can be directed to part therewith even without delivery of title and possession would amount to the Court making a new contract and which is beyond the scope of jurisdiction of specific performance. I may however add that in a given case where the Court entertains doubts about the readiness and willingness of the appellant/plaintiff till the date of institution of the suit itself, the Court may to test the readiness and willingness, direct such deposit. However in the present case, finding of the learned ADJ is of the appellant/plaintiff being ready and willing till coming to the Court.
>
> 15. The Division Bench of this Court in Ansal Properties Vs. Rajinder Singh 41 (1990) DLT 510, referring to the Explanation to Section 16(c) of the Specific Relief Act held that normally no money is to be tendered and it is only in cases where the Court feels that though an averment as postulated in Section 16 is made but the plaintiff may not actually have the money to pay the consideration, can the Court to satisfy itself about the truthfulness of the averment, direct to deposit money in Court. It was however held that this course should be adopted rarely. It was yet further held that the question of payment would arise only after the trial of the suit and when the rights of parties are determined and such a direction should be issued when the final decree is passed and not at an earlier point of time."

34) In my view therefore, the REAT is fully justified in balancing the equities between the parties by directing deposit of amount exceeding 10% limit even in cases where there is no written and registered agreement for sale as a pre-condition for making an interim

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order. How much deposit is to be directed depends on facts and circumstances of each case. Circumstantial flexibility is the key and not rigid application of 10% limit prescribed under Section 13(1) of RERA.

35) In the present case, the REAT is testing the *bona fides* of an unsuccessful complainant, who has failed before the MahaRERA. It is entitled to do so. Considering the facts and circumstances of the present case where 100% consideration is now due and payable by the Appellant on account of the flat being fit for occupation, it would be ludicrous to import and impose the inapplicable restriction of 10% deposit envisaged under Section 13(1) of RERA.

36) Also of relevance is the fact that the Appellant has not paid even 10% of consideration envisaged under Section 13(1) of RERA for execution or registration of the Agreement for Sale. As a matter of fact, when the LOA was issued on 20 January 2010, provisions of Section 4 of MOFA were applicable which imposed prohibition on the promoter on acceptance of more than 20% of the consideration prior to execution of Agreement for Sale. This restriction was reduced to 10% by virtue of provisions of Section 13 of RERA. However, in the present case the Appellant has paid only an amount of Rs.5.51 crores during 23 January 2010 to 14 July 2011 as against the agreement to pay amount of Rs.38.18 crores simultaneously with execution and registration of Agreement for Sale. The LOA called upon the Appellant to execute the agreement for sale upon payment of the first tranche of Rs.38.18 crores. A draft of Agreement for Sale was enclosed alongwith LOA dated 20 January 2010.

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The Appellant was called upon to pay the stamp duty on the same and forward the same for execution to the erstwhile promoter. The LOA reads thus:

To,

Mr. Sachin Bajla

Hallmark Business Plaza, 5th Floor,
Opp. Guru Nanak Hospital,
Bandra (E), Mumbai- 400 051

Dear Sir.

RE: Residential unit admeasuring 13,376 sq.ft. approx. carpet area (including Municipal Carpet area 4,445 sq.ft, deck (terrace) / moat/ flower beds admeasuring 5252 sq. ft. and box room/loft/service areas admeasuring 658 sq. ft.) together with stilt parking admeasuring 1000 sq.ft. built up on the 46th NW level of the Building known as Palais Royale, proposed to be constructed by us on property bearing Cadastral Survey No. 288 (Part), 289 (Part), 1/1540 (Part). 2/1540 (Part), 3/1540 (Part) of Lower Parel division situated at G.K. Marg, Worli, Mumbai 400018.

Palais Royale is a high end residential building being constructed at our above mentioned Worli premises. We hereby agree and confirm to reserve for you and allot the abovementioned Residential Unit on the 46th NW level of the abovementioned building.

The correct description of the abovementioned Residential Unit and the detailed terms and condition in respect of the sale of the abovementioned Residential Unit are contained in the **Agreement for Sale, enclosed herewith.** You have confirmed that you have perused the aforesaid enclosed Agreement for Sale and that the same (including the terms, conditions and covenants contained therein) is acceptable to you and duly approved by you. **You are requested to get the said Agreement duty stamped and forward the same to us for execution. Needless to add, both of us shall also attend the office of the Sub-Registrar of Assurances for admitting execution of the said Agreement.**

The total consideration works out to Rs. 76,36,00,000/-. Out of Which Rs. 38.18,00,000/-is payable immediately and Balance amount payable

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> works out to Rs. 38,18,00,000/- will be payable as per enclosed payment schedule.
>
> Upon the execution and payment of the full instalment of Rs. 38,18,00,000/- hereof, we shall not offer the abovementioned Residential Unit to any third party and the amount paid by you, as referred to herein, shall be a charge on the Said Residential Unit.
>
> Kindly sign on the left hand bottom corner of this letter, in token of your confirmation of the above.
>
> *(emphasis and underlining added)*

37) The case thus does not involve violation of provisions of either Section 4 of MOFA or Section 13 of RERA by the erstwhile promoter. Neither the Appellant has paid 20% amount as required under Section 4 of MOFA or 10% amount as required under Section 13 of RERA nor the erstwhile promoter ever refused to execute or register Agreement for Sale. If Agreement for Sale is not executed and registered, Appellant himself is responsible for the said act and not the erstwhile promoter. The Appellant is thus attempting to take benefit of his own wrong. Despite being in possession of the draft agreement for sale, he failed to pay the stamp duty on the same. He showed no interest in paying the first tranche of Rs.38.18 crores which were payable against execution of Agreement for Sale.

38) Section 4 of MOFA and Section 13 of RERA, do not impose any upper limit on acceptance of consideration at the time of execution and registration of Agreement for Sale. In a given case, where the appartment is ready, a promoter can demand full consideration against

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execution and registration of Agreement for Sale and the restriction under Section 13(1) would not apply. The restriction is applicable only on the act of acceptance of monies in excess of 10% without registering an agreement. In a given case, with a view to hedge against inflation or anticipated increase in the price of the flat, a prospective purchaser may consider it prudent to pay the entire consideration, or as much as 80% or 90% thereof, at the time of execution and registration of the Agreement for Sale. Such action does not cause violence to Section 4 of MOFA or Section 13 of RERA. Therefore, mere demand by the erstwhile promoter of amount of Rs.38.18 crores against execution and registration of Agreement for Sale, did not violate the provisions of Section 4 of MOFA nor does it amount to breach of provisions of Section 13 of RERA. If Appellant was to pay the stamp duty on the draft agreement for sale and was ready and willing to pay the first tranche of Rs.38.18 crores, the erstwhile promoter was willing to execute and register the Agreement for Sale. The prohibition under Section 4 of MOFA and Section 13 of RERA is to merely accept the payment in excess of the prescribed limit without executing the Agreement for Sale. In a given case, where the promoter is willing to execute the Agreement for Sale, the allottee cannot highlight the condition imposed in the allotment letter for payment of amount in excess of 10% of the agreed consideration and cry of violation of provisions of Section 4 of MOFA or Section 13 of RERA.

39) Mr. Mehta has contended that the REAT has sought to do something that is expressly prohibited under Section 13 of RERA. He has contended that what cannot be done directly can also not be achieved in

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an indirect manner. He has relied on judgment of the Apex Court in ***State of Tamilnadu Versus. K. Shyam Sunder***. While there can be no dispute about this settled principle of law, the same has no application to the questions that are framed for answer in the present appeal. As observed above, the prohibition under Section 13 of RERA on a promoter has no correlation with the exercise of discretion by the REAT while making an interim order. The prohibition under Section 13(1) of RERA is not applicable to the adjudicatory powers of REAT and therefore the principle of impermissibility to do something indirectly what cannot be done directly, pressed into service by the Appellant would have no application to the present case.

40) Mr. Mehta has contended that the REAT is a creature of statute and therefore cannot exceed its powers beyond the statutory provisions. It is contended that the REAT is not a Court of plenary jurisdiction nor does it have inherent powers. The contention is not entirely wrong, but does not aid the case of the Appellant in any manner and in fact militates against him. The REAT has acted well within the bounds of limits under Sections 44(3) and 53 of RERA. The case does not involve statutory overreach by a tribunal of limited jurisdiction. Power to make interim order brings within its sweep the power to balance the equities, power to impose conditions, power to test bona fides of parties, power to ensure preservation of interest of parties, etc. Also, once the prohibition imposed under Section 13(1) of RERA is held to be not applicable to the REAT, the question of REAT exceeding the powers in making an order for deposit in excess of 10% of the consideration does

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not arise. On the other hand, the Tribunal has wide powers under Section 44(3) and 53 of RERA which would take into sweep the power to impose such conditions as it deems fit for balancing equities while making an interim order. Therefore, reliance by Mr. Mehta on judgment of the Apex Court in ***Standard Chartered Bank Versus. Dharminder Bhohi*** (supra) and of Delhi High Court in ***Praveen Chhabra*** (supra) is inapposite.

41) As a matter of fact, the condition of depositing atleast the initially agreed amount actually tests the readiness and willingness of the Appellant in the present case to complete the sale transaction. If the terms of the LOA are taken into consideration, the same creates rights in favour of the Appellant in respect of the flat only upon payment of amount of Rs.38.18 crores. This is explicitly clear from the penultimate paragraph of the LOA. When the Appellant has not paid the agreed amount of Rs.38.18 crores, did not pay the stamp duty on draft Agreement for Sale and showed no interest in execution and registration of the Agreement for Sale, no right got created in his favour. These factors are indicative of absence of readiness and willingness on the part of the Appellant to complete the sale transaction. However, with a view to afford Appellant an effective opportunity to prosecute the Appeal and, in the event of remand of the complaint to MahaRERA, the REAT has considered it appropriate to grant an interim order of status quo in favour of the Appellant. However, while doing so, it wants to test the readiness and willingness on the part of the Appellants to complete the sale transaction. It is settled position of law that a party seeking specific performance must plead and prove continuous readiness and

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willingness, including financial capacity to perform its obligations. Reliance by Mr. Joshi on judgment of the Apex Court in ***U.N. Krishnamurthy*** is apposite in which it is held in paragraphs 23, 24 and 45 to 48 as under:

> 23. Section 16 (c) of the Specific Relief Act, 1963 bars the relief of specific performance of a contract in favour of a person, who fails to aver and prove his readiness and willingness to perform his part of contract. In view of Explanation (i) to clause (c) of Section 16, it may not be essential for the plaintiff to actually tender money to the defendant or to deposit money in court, except when so directed by the Court, to prove readiness and willingness to perform the essential terms of a contract, which involves payment of money. However, Explanation (ii) says the plaintiff must aver performance or readiness and willingness to perform the contract according to its true construction.
>
> 24. To aver and prove readiness and willingness to perform an obligation to pay money, is not have sufficient funds with him to discharge his obligations in terms of a contract, which requires payment of money, the plaintiff would have to specifically plead how the funds would be available to him. To cite an example, the plaintiff may aver and prove, by adducing evidence, an arrangement with a financier for disbursement of adequate funds for timely compliance with the terms and conditions of a contract involving payment of money.
>
> 45. It is settled law that for relief of specific performance, the Plaintiff has to prove that all along and till the final decision of the suit, he was ready and willing to perform his part of the contract. It is the bounden duty of the Plaintiff to prove his readiness and willingness by adducing evidence. This crucial facet has to be determined by considering all circumstances including availability of funds and mere statement or averment in plaint of readiness and willingness, would not suffice.
>
> 46. In this case, the Respondent Plaintiff has failed to discharge his duty to prove his readiness as well as willingness to perform his part of the contract, by adducing cogent evidence. Acceptable evidence has not been placed on record to prove his readiness and willingness. Further, it is clear from the Respondent Plaintiff's balance sheet that he did not have sufficient funds to discharge his part of contract in March 2003. Making subsequent deposit of balance consideration after lapse of

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seven years would not establish the Respondent Plaintiff's readiness to discharge his part of contract. Reliance may be placed on Umabai v. Nilkanth Dhondiba Chavan (supra) where this Court speaking through Justice SB Sinha held that deposit of amount in court is not enough to arrive at conclusion that Plaintiff was ready and willing to perform his part of contract. Deposit in court would not establish Plaintiff's readiness and willingness within meaning of section 16(c) of Specific Relief Act. The relevant part of the judgment is reproduced below: -

> "45. ...Deposit of any amount in the court at the appellate stage by the plaintiffs by itself would not establish their readiness and willingness to perform their part of the contract within the meaning of Section 16(c) of the Specific Relief Act..."

47. It is, therefore, patently clear that the Respondent Plaintiff has failed to prove his readiness to perform his part of contract from the date of execution of the agreement till date of decree, which is a condition precedent for grant of relief of specific performance. This Court finds that the Respondent Plaintiff was not entitled to the relief of specific performance.

48. The Respondent Plaintiff may have been willing to perform his part of contract. It however appears that he was not ready with funds. He was possibly trying to buy time to discharge his part of contract.

42) The condition of deposit of Rs.38.18 crores imposed by the REAT clearly serves a legitimate purpose. It serves to test whether the Appellant is genuinely willing and financially capable of performing his obligations under the LOA, which he seeks to enforce, while simultaneously safeguarding Respondent No. 1 against the prejudice that may be caused by an interim injunction operating in respect of an asset of substantial value. According to Mr. Joshi, his flat is now valued approximately at Rs.130 crores. The Appellant wants a fetter to be imposed on Respondent No.1 dealing with the flat without depositing any amount as a precondition and only on the basis of payment of Rs.5.51 crores as against the agreed sale consideration of Rs.76.36 crores.

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Therefore, there is nothing wrong in REAT testing not just the willingness but also financial capacity of Appellant to complete the sale transaction.

43) Mr. Mehta has contended that since MahaRERA's order itself is egregiously erroneous, the REAT ought to have set aside at the order at the threshold rather than directing the Appellant to make deposit of hefty amount of Rs.38.18 crores. The submission appears to be attractive in the first blush but is baseless to the core. It is the Appellant who pressed for interim relief before the REAT in the Appeal filed against the order passed by MahaRERA. The chronology of events would indicate that the transaction was terminated by Respondent No.1 on 6 October 2022. Appellant filed his complaint before the MahaRERA in December 2022. The complaint remained pending for almost 2 years before the Regulatory Authority, when Appellant showed no interest in seeking any interim stay on creation of third-party rights in respect of the flat. While he could have simply challenged MahaRERA's order dated 16 April 2024 and sought an order of remand (*if he believed that the order is so erroneous*), he filed application for interim injunction simultaneously with logging an Appeal before the REAT in May 2024. This conduct is inconsistent with his conduct of not seeking any interim stay before MahaRERA for over two years when the compliant was pending. The Appellant could have simply pressed his Appeal before the REAT for securing an order of remand, if the Appellant really believed that provisions of Section 11(5) clearly enables the Regulatory Authority to entertain a challenge even to cancellation of sale transaction. However,

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the Appellant did not choose to do so. While the Appellant was content without any interim relief during the pendency of the complaint before MahaRERA, he sought such relief before the REAT, thereby inviting the Tribunal to exercise its discretionary powers to grant an interim injunction. Once he invoked the equitable jurisdiction of the REAT to make interim order, he cannot question the wisdom of the REAT or the ambit of its powers to impose conditions for balancing equities between the parties.

44) I am therefore not impressed by the contention raised by Mr. Mehta that since the order passed by the Regulatory Authority is egregiously erroneous, the REAT ought to have allowed the Appeal at the threshold by making an order of remand before the Regulatory Authority. Appellant did not permit REAT to determine whether MahaRERA's order is erroneous or not. Instead it pressed the application of interim relief. Now that a condition is imposed while granting interim relief, he takes a volte face and contends that the REAT ought to have remanded the complaint to MahaRERA instead of granting conditional stay. Having pressed the application for interim injunction, the Appellants must also accept the wide jurisdiction of the REAT to impose conditions for making interim order by balancing the equities between the parties.

45) Since the limited issue for consideration in the appeal is about the scope of powers of REAT to impose conditions while making interim orders, it is not necessary to consider the ratio of judgment of this Court in ***Bombay Dyeing and Mfg. Co. Ltd.*** (supra) on the issue of

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provisions of Section 18 not requiring a written agreement. That is an issue on merits, which would be considered by the REAT while deciding the appeal on merits or for MahaRERA, if the complaint is remanded.

46) It is also well settled principle that while deciding the application for temporary injunction, the Court essentially exercises discretion. An Appellate Court, while entertaining and deciding an appeal against the exercise of such discretion, cannot substitute its own discretion for the one exercised by the Court whose order is under challenge. In a matter of temporary injunction, a Court does not adjudicate on the subject matter or any part of it on merits and considers application for temporary injunction in the light of well-known principles and exercises its discretion weighing all relevant considerations without expressing any opinion on the merits of the matter. Unless the discretion is exercised arbitrarily, capriciously, perversely or in disregard to the settled principles of law, the Appellate Court cannot interfere in exercise of discretion by the Lower Court as held by the Apex Court in ***Wander Ltd*** (supra) and ***Mohd. Mehtab Khan*** (supra). The Full Bench of this Court in ***UTO Nederland B.V. and anr. Versus. Tilaknagar Industries Ltd.***[14] has reiterated the principles of Apex Court judgment in ***Wander Ltd.*** and has held that while deciding the Appeal, the Appellate Court has to examine whether the discretion exercised is arbitrary, capricious or contrary to the principles of law. While answering the Reference, the Full Bench of this Court has held in para-31 of the judgment as under:

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31. For the aforementioned reasons, the questions referred to us are answered as follows:

(i) The Division Bench decision of this Court in COLGATE PALMOLIVE COMPANY (SUPRA) sets out the correct principle of law. An order of temporary injunction does not cease to be a discretionary order merely because the learned motion Judge did not find any prima facie case and refused to grant interim restraint order. It correctly holds that in the matter of temporary injunction, the Court does not adjudicate on the subject matter or any part of it on merits and considers the application for temporary injunction in the light of well-known principles and exercises its discretion weighing all relevant consideration without any expression of opinion on merits of the matter. The Division Bench has rightly held that the decisions of this Court in HIRALAL PARBHUDAS (SUPRA) and M/S. NATIONAL CHEMICALS AND COLOUR CO. (SUPRA) have no relevance while deciding an appeal arising out of an order of injunction.

(ii) The scope and ambit of an appeal from an order passed by the trial Judge has already been delineated by the Supreme Court in WANDER LTD. (SUPRA), SHYAM SEL AND POWER LIMITED (SUPRA) and RAMAKANT AMBALAL CHOKSI (SUPRA). In view of aforesaid enunciation of law by Supreme Court, it is evident that the appellate court will not interfere with exercise of discretion of Court of first instance and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily or capriciously or perversely or where the Court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. The Appellate Court while deciding an appeal, has to examine whether the discretion exercised is not arbitrary, capricious or contrary to the principles of law and the appellate Court may, in a given case, has to adjudicate on facts even in such discretionary orders.

47) In the present case, it cannot be held that exercise of discretion by the REAT is arbitrary, capricious, perverse or in disregard of settled principles of law. The exercise of discretion by the REAT appears, to my mind, to be sound and in accordance with the settled principles of law warranting no interference in exercise of second appellate

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jurisdiction by this Court under Section 58 of RERA or Section 100 of the Civil Procedure Code, 1908.

48) The contention of the Appellant that interest accrued on the amount of Rs.5.51 crores of Rs.12.01 crores needs to be considered for application of provisions of Section 13(1) of RERA is baseless to the core. Whether Respondent No.1 is liable to pay interest or not is a matter of adjudication. The REAT cannot presume at an interim stage that Appellant is entitled to recover interest from Respondent No.1 and add the amount of interest in the amount actually paid by Respondent No.1 for the purpose of examining whether there is violation of any provisions of Section 13(1) of RERA.

49) In view of the above discussion, the first two questions are answered by holding as under:

(i) The REAT while granting interim relief can impose a condition for depositing amount in excess of the limit prescribed under Section 13(1) of RERA for grant of interim relief.

(ii) The prohibition/restriction imposed on a promoter in accepting a sum in excess of 10% of cost of flat as advance payment or application fee has no application to the wide and discretionary powers of the REAT to pass such interim order as if deems fit and to impose any condition as is found necessary in the facts of the case. Section 13 (1) of RERA does not impose any fetter on the wide and discretionary powers of REAT to make interim

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order under Section 44(3) and Section 54 of RERA. *A fortiori* REAT can pass interim orders by imposing a condition for deposit of amount exceeding the limit of 10% of cost of a flat.

Question No.3

III) Whether the terms of a letter of allotment can be enforced despite the same being contrary to the provisions of MOFA and the RERA Act ?

50) The third question relates to enforcement of terms of LOA in the light of provisions of Section 4 of MOFA and Section 13 of RERA. As a matter of fact, it is the Appellant who is seeking enforcement of LOA and can not contend that the same is contrary to the provisions of MOFA or RERA. In that sense, the question, as framed, need not really be answered. However, it appears that the question is framed in the context of a possible complaint that the erstwhile promoter as well as Respondent No.1 have violated the provisions of Section 4 of MOFA or Section 13(1) of RERA in the facts and circumstances of the present case by not executing the agreement for sale. However, the present Appeal is merely against an interim order made by the REAT which infact is in favour of the Appellant. He is aggrieved by only that part of the interim order which seeks to impose condition of deposit of amount of Rs.38.18 crores for grant of interim relief of *status-quo qua* the flat in question. Therefore, while considering the Appeal against that condition, this Court cannot expand the scope of appeal and go into the merits of decision of MahaRERA. As a matter of fact, even MahaRERA has not

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adjudicated the complaint on merits and has shut its doors on the Complainant/Appellant on the ground that since the LOA is terminated, the complaint is not maintainable. Whether MahaRERA is right in holding so or not would be decided by the REAT while deciding the Appeal on merits. As of now, the REAT is yet to undertake that exercise. It has only made an interim order, that too on an application made by the Appellant. Therefore, this Court cannot go into the merits of the contentions raised in the complaint filed before the MahaRERA. I therefore find it unnecessary to decide this issue, both on account of the fact that it is the Appellant who is seeking enforcement of the LOA, as well as on account of the issue travelling beyond the remit of enquiry in the present appeal.

51) Mr. Mehta has relied on interim order passed by the REAT in case of the allottees, Sachin Jagdishprasad Joshi and Jagdishprasad Mohanlal Joshi on 23 October 2026, in support of his contention that in respect of the same project, the REAT has granted relief in favour of the allottee by setting aside termination of Agreement for Sale by directing handing over of possession of the flat by accepting only balance amount of agreed consideration. However, the fact situation in that case is clearly distinguishable. In that case, the allottee had paid consideration of Rs.54.40 crores and the balance payable consideration was only Rs.6.60 crores. Thus about 90% consideration was already paid by the allottee whereas in the present case not even 10% consideration is paid by the Appellant. Also, that case involved execution of registered agreement for sale, which is not executed in the present case due to conduct of the

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Appellant in not paying the stamp duty and not paying the agreed consideration. Therefore, apart from the fact that the REAT's interim order is not binding on this Court, the same is clearly distinguishable on facts and does not warrant extension of similar treatment to the Appellant, who is not similarly situated.

52) In view of the above discussion, I do not find any valid reason to interfere in the impugned order passed by the REAT. The REAT has rightly imposed the condition of deposit of amount of Rs.38.18 crores as a precondition for grant of interim order of status-quo *qua* the flat in question. As a matter of fact, when the entire sale consideration is payable on account of flat being fit for occupation, the REAT has still taken an extremely lenient view by directing deposit of just about 50% of the consideration payable. When the modalities of settlement were being discussed between the parties, it has transpired that Appellant is also liable to pay several other amounts towards stamp duty, registrar, GST, clubhouse charges, advance maintenance charges, etc to complete the transaction of sale. Those amounts are in the range of Rs.10 to 15 crores, which are over and above the agreed consideration of Rs.76.36 crores under the LOA. If Appellant does not have financial capacity or willingness to pay even the first tranche of consideration of Rs.38.18 crores which was payable in the year 2010, he cannot put a fetter on Respondent No.1 from creating third party rights in respect of the flat, which Mr. Joshi claims to be worth Rs.130 crores as on date. As observed above, even going by the agreed consideration (*ignoring the current market price*) as per the LOA, the total amount that will have to be spent

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to complete the sale transaction would be in the range of Rs.90 crores. The flat is now ready for occupation. If the Appellant does not have willingness or financial capacity to deposit even 50% amount of Rs. 76. 36 crores in the Tribunal, the least that he must suffer is creation of third party rights in respect of the flat. The Appellant is free to prosecute the appeal in absence of interim relief. Even if the flat in question is sold to a third party, the Appellant can seek enforcement of the obligations against any other unsold flat in the project. In the event of all the flats in the building being sold, the REAT/MahaRERA would be empowered to mould the relief appropriately by directing refund of the amount already paid, together with interest, compensation and damages, as may be warranted in the facts and circumstances of the case.

53) It must also be borne in mind that Respondent No.1 has invested huge amount in the project while taking it over under the SARFAESI auction process. It is because of entry of Respondent No.1, that the project which has been stuck for the last about 15 years, is getting completed. The Appellant cannot keep engaged the flat until he tries his luck in the last possible Court without even taking pains of depositing in the Tribunal even 40% of the amount that may be required for completion of the sale transaction (*since Rs. 90 odd crores would be required to be spent considering statutory levies and other charges*). Even if Appellant's claim of interest on amount of Rs.5.51 crores is to be momentarily taken into consideration, the interest would be to the tune of Rs.12.01 crores and if the same is added to the amount of Rs.5.51 crores, the total amount would only be Rs.17.52 crores, which would be

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still insufficient for blocking the flat in question for purchase of which, the Appellant is expected to spend approximately Rs.90 crores. Respondent No. 1 has also raised a claim for interest from the date of obtaining the Occupancy Certificate. If such claim is set off against the Appellant's claim for interest, it would entirely extinguish the Appellant's claim of Rs. 12.01 crores towards interest payable by Respondent No. 1. In fact, in such a scenario, the interest payable by the Appellant would exceed the amount of interest claimed by him.

54) The conspectus of the above discussion is that the Appellant has failed to make out any case for interference in the impugned order passed by the REAT. The Second Appeal is accordingly **dismissed**.

55) It is however clarified that the findings recorded in the judgment are only *prima-facie* for testing the correctness of interim order made by the REAT and therefore the same would not bind the REAT while deciding the Appeal finally.

[SANDEEP V. MARNE, J.]

56) After the Judgment is pronounced, the learned counsel appearing for the Petitioner seeks continuation of the interim relief granted by this Court. The request is opposed by the learned counsel appearing for Respondents. Considering the nature of findings recorded in the Judgment, I am not inclined to continue the interim protection

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any further. However, in the event the Appellant is desirous of depositing the amount as directed by the REAT, it can do so within a period of two weeks and in that event the order of status quo granted by REAT would continue to operate during pendency of the Appeal.

[SANDEEP V. MARNE, J.]

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