IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 302 OF 2026

1. Ashwin Jain

2. Bhavana Jain,
Age: Not known, Adult Indina Inhabitant
Both Appellant Nos. 1 and 2 having
Address at 203/204, Vishwas Building,
DK Sandu Marg, Chembur,
Mumbai 400 071. ...Appellants

Versus

1. Chembur Shivmurti Cooperative Housing Society,
Registered under MCS Act, 1960,
bearing Registration No. OM/HSCi/7647
Through Its Secretary, Vijay C Sharma,
Having address at Bldg No. 22, Subhash Nagar,
Chembur, Mumbai – 400 071.

ARUN RAMCHANDRA SANKPAL

Digitally signed by ARUN RAMCHANDRA SANKPAL
Date: 2026.11.19 18:28:27 +0530

2. Adityaraj Housing Corporation
a partnership firm, duly registered under the
Indian Partnership Act, 1932
Through its authorised parnter Rajkumar G Khushalani.

3. Afzal Alarakha Mansuri
Age: Not Known, Adult Indian Inhabitant,
Having address At 17, Khan Cottage,
2nd Floor, Flat No. 3 Tandel St, M. A. Marg,
Near Haji Abdul Rahman Shah Baba Dargha,
Dongri, Chinchbunder, Mumbai 400 009.

4. Arvind Chanderdev Singh,
Age: Not Known, Adult Indian Inhabitant,
Having Address at -Flat No. 840,

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MS Building No. 24, Chembur Camp,
Chembur, Mumbai 400 074.

5. Deepak Prabhakar Thakoor,
Age: Not Known, Adult Indian Inhabitant,
Having address at Flat No. C-305,
Springfields Housing Society,
Kothrud, Pune-411 038.

6. Ashok Vishwakarma,
Age: Not Known, Adult Indian Inhabitant,
Having address at 4/40,
Sahyog Building, 5 Mint Road,
Fort, Mumbai 400 001.

7. Association of Allottees of Subhash
Nagar Building No.22,
An unregistered association not having
any specific address hence served
through Respondent Nos. 3 to 8 & 10
being members thereof.

8. G. A. Builders Pvt Ltd,
Having its address at 606,
RNA Business Park Near Ambedkar Garden,
Chembur, Mumbai 400 071.

9. Michael Mascarenhas
Age: Not Known, Adult Indian Inhabitant,
Having address at Room No. 721, Chembur
Senhasadan CHS, Building No. 21, Subhash
Nagar, Chembur East, Mumbai 400 071.

10. Jyoti H Chandragiri,
Age: Not Known, Adult Indian Inhabitant,
Having address at Room No. 722, Chembur
Senhasadan CHS, Building No. 21, Subhash
Nagar, Chembur East, Mumbai 400 071.

11. Ragunath S Karle,
Age: Not Known, Adult Indian Inhabitant,
Having address at Room No. 723, Chembur
Senhasadan CHS, Building No. 21, Subhash
Nagar, Chembur East, Mumbai 400 071.

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12. Narangibai L Kasbe,
Age: Not Known, Adult Indian Inhabitant,
Having address at Room No. 725, Chembur
Senhasadan CHS, Building No. 21, Subhash
Nagar, Chembur East, Mumbai 400 071.

13. Otilia Pinto
Age: Not Known, Adult Indian Inhabitant,
Having address at Room No. 726, Chembur
Senhasadan CHS, Building No. 21, Subhash
Nagar, Chembur East, Mumbai 400 071.

14. Suganda S Rant,
Age: Not Known, Adult Indian Inhabitant,
Having address at Room No. 727, Chembur
Senhasadan CHS, Building No. 21, Subhash
Nagar, Chembur East, Mumbai 400 071.

15. Sanjay M Veshvikar,
Age: Not Known, Adult Indian Inhabitant,
Address at Room No. 728, Chembur Senhasadan
CHS, Building No. 21, Subhash Nagar, Chembur
East, Mumbai 400 071.

16. Suresh G Narvekar,
Age: Not Known, Adult Indian Inhabitant,
Having address at Room No. 729, Chembur
Senhasadan CHS, Building No. 21, Subhash
Nagar, Chembur East, Mumbai 400 071.

17. Chandrashekar N Devadiga,
Age: Not Known, Adult Indian Inhabitant,
Having address at Room No. 730, Chembur
Senhasadan CHS, Building No. 21, Subhash
Nagar, Chembur East, Mumbai 400 071.

18. Chandrakant B Mayekar,
Age: Not Known, Adult Indian Inhabitant,
Having address at Room No. 731, Chembur
Senhasadan CHS, Building No. 21, Subhash
Nagar, Chembur East, Mumbai 400 071.

19. Kanchan C Mayekar,

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Age: Not Known, Adult Indian Inhabitant,
Having address at Room No. 732, Chembur
Senhasadan CHS, Building No. 21, Subhash
Nagar, Chembur East, Mumbai 400 071.

20. Pushpalata B Salvi,
Age: Not Known, Adult Indian Inhabitant,
Having address at Room No. 733, Chembur
Senhasadan CHS, Building No. 21, Subhash
Nagar, Chembur East, Mumbai 400 071.

21. Naru G Waghmare,
Age: Not Known, Adult Indian Inhabitant,
Having address at Room No. 734, Chembur
Senhasadan CHS, Building No. 21, Subhash
Nagar, Chembur East, Mumbai 400 071.

22. Anna Durai,
Age: Not Known, Adult Indian Inhabitant,
Having address at Room No. 742, Chembur
Senhasadan CHS, Building No. 21, Subhash
Nagar, Chembur East, Mumbai 400 071.

23. Nita B Nalavde,
Age: Not Known, Adult Indian Inhabitant,
Having address at Room No. 743, Chembur
Senhasadan CHS, Building No. 21, Subhash
Nagar, Chembur East, Mumbai 400 071.

24. Govind R Ambekar,
Age: Not Known, Adult Indian Inhabitant,
Having address at Room No. 744, Chembur
Senhasadan CHS, Building No. 21, Subhash
Nagar, Chembur East, Mumbai 400 071.

25. Madhukar S Veshvikar,
Age: Not Known, Adult Indian Inhabitant,
Having address at Room No. 745, Chembur
Senhasadan CHS, Building No. 21, Subhash
Nagar, Chembur East, Mumbai 400 071.

26. P. L. Franics,
Age: Not Known, Adult Indian Inhabitant,
Having address at Room No. 746, Chembur

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Senhasadan CHS, Building No. 21, Subhash Nagar, Chembur East, Mumbai 400 071.

27. J. K. Fernandes,
Age: Not Known, Adult Indian Inhabitant,
Having address at Room No. 748, Chembur Senhasadan CHS, Building No. 21, Subhash Nagar, Chembur East, Mumbai 400 071.

28. Prerna P Bhatkar,
Age: Not Known, Adult Indian Inhabitant,
Having address at Room No. 750, Chembur Senhasadan CHS, Building No. 21, Subhash Nagar, Chembur East, Mumbai 400 071.

29. Kashinath S Bhayje,
Age: Not Known, Adult Indian Inhabitant,
Having address at Room No. 751, Chembur Senhasadan CHS, Building No. 21, Subhash Nagar, Chembur East, Mumbai 400 071.

30. John A D'Souza,
Age: Not Known, Adult Indian Inhabitant,
Having address at Room No. 752, Chembur Senhasadan CHS, Building No. 21, Subhash Nagar, Chembur East, Mumbai 400 071.

31. Sandip B Akolkar,
Age: Not Known, Adult Indian Inhabitant,
Having Address at Room No. 754, Chembur Senhasadan CHS, Building No. 21, Subhash Nagar, Chembur East, Mumbai 400 071.

32. Shobha B Chawan,
Age: Not Known, Adult Indian Inhabitant,
Having address at Room No. 755, Chembur Senhasadan CHS, Building No. 21, Subhash Nagar, Chembur East, Mumbai 400 071.

33. Sunil B Chawan, …Respondents
Age: Not Known, Adult Indian Inhabitant,
Having address at Room No. 756, Chembur Senha Sadan CHS, Building No. 21, Subhash Nagar, Chembur East, Mumbai 400 071.

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WITH

SECOND APPEAL NO. 313 OF 2026

Deepak Prabhakar Thakoor
Age: Not Known, Adult Indian Inhabitant,
Having address at Flat No. C 305, Springfields
Housing Society, Kothrud, ...Appellant
Pune – 411 038.

Versus

1. Chembur Shivmurti Cooperative Housing Society,
Registered under MCS Act, 1960,
bearing Registration No. OM/HSCi/7647
Through Its Secretary, Vijay C Sharma,
Having address at Bldg No. 22, Subhash Nagar,
Chembur, Mumbai – 400 071.

…Respondents

2. Adityaraj Housing Corporation
a partnership firm, duly registered under the
Indian Partnership Act, 1932
Through its authorised parnter Rajkumar G
Khushalani, Shop No. 9, Ground Floor,
Kambodhi CHS Ltd, Building No. 106,
Road No. 13, Tilak Nagar, Chembur,
Mumbai 400 089.

3. Afzal Alarakha Mansuri
Age: Not Known, Adult Indian Inhabitant,
Having address At 17, Khan Cottage,
2nd Floor, Flat No. 3 Tandel St, M. A. Marg,
Near Haji Abdul Rahman Shah Baba Dargha,
Dongri, Chinchbunder, Mumbai 400 009.

4. Arvind Chanderdev Singh,
Age: Not Known, Adult Indian Inhabitant,
Having Address at -Flat No. 840,
MS Building No. 24, Chembur Camp,
Chembur, Mumbai 400 074.

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5. Ashwin Jain

6. Bhavana Jain
Age: Not Known, Adult Indian Inhabitant,
Both Respondent Nos. 5 and 6 having address at
203/204, Vishwas Building, D. K. Sandu Marg,
Chembur, Mumbai 400 071.

7. Ashok Vishwakarma,
Age: Not Known, Adult Indian Inhabitant,
Having address at 4/40,
Sahyog Building, 5 Mint Road,
Fort, Mumbai 400 001.

8. Association of Allottees of Subhash
Nagar Building No.22,
An unregistered association not having
any specific address hence served
through Respondent Nos. 3 to 8 & 10
being members thereof.

9. G. A. Builders Pvt Ltd,
Having its address at 606,
RNA Business Park Near Ambedkar Garden,
Chembur, Mumbai 400 071.

10. Michael Mascarenhas
Age: Not Known, Adult Indian Inhabitant,
Having address at Room No. 721, Chembur
Senhasadan CHS, Building No. 21, Subhash
Nagar, Chembur East, Mumbai 400 071.

11. Jyoti H Chandragiri,
Age: Not Known, Adult Indian Inhabitant,
Having address at Room No. 722, Chembur
Senhasadan CHS, Building No. 21, Subhash
Nagar, Chembur East, Mumbai 400 071.

12. Ragunath S Karle,
Age: Not Known, Adult Indian Inhabitant,
Having address at Room No. 723, Chembur
Senhasadan CHS, Building No. 21, Subhash
Nagar, Chembur East, Mumbai 400 071.

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13. Narangibai L Kasbe,
Age: Not Known, Adult Indian Inhabitant,
Having address at Room No. 725, Chembur
Senhasadan CHS, Building No. 21, Subhash
Nagar, Chembur East, Mumbai 400 071.

14. Otilia Pinto
Age: Not Known, Adult Indian Inhabitant,
Having address at Room No. 726, Chembur
Senhasadan CHS, Building No. 21, Subhash
Nagar, Chembur East, Mumbai 400 071.

15. Suganda S Rant,
Age: Not Known, Adult Indian Inhabitant,
Having address at Room No. 727, Chembur
Senhasadan CHS, Building No. 21, Subhash
Nagar, Chembur East, Mumbai 400 071.

16. Sanjay M Veshvikar,
Age: Not Known, Adult Indian Inhabitant,
Address at Room No. 728, Chembur Senhasadan
CHS, Building No. 21, Subhash Nagar, Chembur
East, Mumbai 400 071.

17. Suresh G Narvekar,
Age: Not Known, Adult Indian Inhabitant,
Having address at Room No. 729, Chembur
Senhasadan CHS, Building No. 21, Subhash
Nagar, Chembur East, Mumbai 400 071.

18. Chandrashekar N Devadiga,
Age: Not Known, Adult Indian Inhabitant,
Having address at Room No. 730, Chembur
Senhasadan CHS, Building No. 21, Subhash
Nagar, Chembur East, Mumbai 400 071.

19. Chandrakant B Mayekar,
Age: Not Known, Adult Indian Inhabitant,
Having address at Room No. 731, Chembur
Senhasadan CHS, Building No. 21, Subhash
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20. Kanchan C Mayekar,

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Age: Not Known, Adult Indian Inhabitant,
Having address at Room No. 732, Chembur
Senhasadan CHS, Building No. 21, Subhash
Nagar, Chembur East, Mumbai 400 071.

21. Pushpalata B Salvi,
Age: Not Known, Adult Indian Inhabitant,
Having address at Room No. 733, Chembur
Senhasadan CHS, Building No. 21, Subhash
Nagar, Chembur East, Mumbai 400 071.

22. Naru G Waghmare,
Age: Not Known, Adult Indian Inhabitant,
Having address at Room No. 734, Chembur
Senhasadan CHS, Building No. 21, Subhash
Nagar, Chembur East, Mumbai 400 071.

23. Anna Durai,
Age: Not Known, Adult Indian Inhabitant,
Having address at Room No. 742, Chembur
Senhasadan CHS, Building No. 21, Subhash
Nagar, Chembur East, Mumbai 400 071.

24. Nita B Nalavde,
Age: Not Known, Adult Indian Inhabitant,
Having address at Room No. 743, Chembur
Senhasadan CHS, Building No. 21, Subhash
Nagar, Chembur East, Mumbai 400 071.

25. Govind R Ambekar,
Age: Not Known, Adult Indian Inhabitant,
Having address at Room No. 744, Chembur
Senhasadan CHS, Building No. 21, Subhash
Nagar, Chembur East, Mumbai 400 071.

26. Madhukar S Veshvikar,
Age: Not Known, Adult Indian Inhabitant,
Having address at Room No. 745, Chembur
Senhasadan CHS, Building No. 21, Subhash
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27. P. L. Franics,
Age: Not Known, Adult Indian Inhabitant,
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29. Prerna P Bhatkar,
Age: Not Known, Adult Indian Inhabitant,
Having address at Room No. 750, Chembur Senhasadan CHS, Building No. 21, Subhash Nagar, Chembur East, Mumbai 400 071.

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Age: Not Known, Adult Indian Inhabitant,
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31. John A D'Souza,
Age: Not Known, Adult Indian Inhabitant,
Having address at Room No. 752, Chembur Senhasadan CHS, Building No. 21, Subhash Nagar, Chembur East, Mumbai 400 071.

32. Sandip B Akolkar,
Age: Not Known, Adult Indian Inhabitant,
Having Address at Room No. 754, Chembur Senhasadan CHS, Building No. 21, Subhash Nagar, Chembur East, Mumbai 400 071.

33. Shobha B Chawan,
Age: Not Known, Adult Indian Inhabitant,
Having address at Room No. 755, Chembur Senhasadan CHS, Building No. 21, Subhash Nagar, Chembur East, Mumbai 400 071.

34. Sunil B Chawan,
Age: Not Known, Adult Indian Inhabitant,
Having address at Room No. 756, Chembur Senha Sadan CHS, Building No. 21, Subhash Nagar, Chembur East, Mumbai 400 071.

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WITH

SECOND APPEAL NO. 304 OF 2026

Afzal Alarakha Mansuri
Age: Not Known, Adult Indian Inhabitant,
Having address At 17, Khan Cottage,
2nd Floor, Flat No. 3 Tandel St, M. A. Marg,
Near Haji Abdul Rahman Shah Baba Dargha,
Dongri, Chinchbunder, Mumbai 400 009.
Through Power of Attorney Holder Shabana
Banu Afzal Mansuri, 17, Khan Cottage, 2nd Floor,
Room No.3, Mumbai 400 009. ...Appellant

Versus

1. Chembur Shivmurti Cooperative Housing
Society,
Registered under MCS Act, 1960,
bearing Registration No. OM/HSCi/7647
Through Its Secretary, Vijay C Sharma,
Having address at Bldg No. 22, Subhash Nagar,
Chembur, Mumbai – 400 071.

…Respondents

2. Adityaraj Housing Corporation
a partnership firm, duly registered under the
Indian Partnership Act, 1932
Through its authorised parnter Rajkumar G
Khushalani, Shop No. 9, Ground Floor,
Kambodhi CHS Ltd, Building No. 106,
Road No. 13, Tilak Nagar, Chembur,
Mumbai 400 089.

3. Ashwin Jain

4. Bhavana Jain
Age: Not Known, Adult Indian Inhabitant,
Both Respondent Nos. 3 and 4 having address at
203/204, Vishwas Building, D. K. Sandu Marg,
Chembur, Mumbai 400 071.

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5. Arvind Chanderdev Singh,
Age: Not Known, Adult Indian Inhabitant,
Having Address at -Flat No. 840,
MS Building No. 24, Chembur Camp,
Chembur, Mumbai 400 074.

6. Deepak Prabhakar Thakoor
Age: Not Known, Adult Indian Inhabitant,
Having address at Flat No. C 305, Springfields
Housing Society, Kothrud,
Pune – 411 038.

7. Ashok Vishwakarma,
Age: Not Known, Adult Indian Inhabitant,
Having address at 4/40,
Sahyog Building, 5 Mint Road,
Fort, Mumbai 400 001.

8. Association of Allottees of Subhash
Nagar Building No.22,
An unregistered association not having
any specific address hence served
through Respondent Nos. 3 to 8 & 10
being members thereof.

9. G. A. Builders Pvt Ltd,
Having its address at 606,
RNA Business Park Near Ambedkar Garden,
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10. Michael Mascarenhas
Age: Not Known, Adult Indian Inhabitant,
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Age: Not Known, Adult Indian Inhabitant,
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Age: Not Known, Adult Indian Inhabitant,
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Having address at Room No. 729, Chembur Senhasadan CHS, Building No. 21, Subhash Nagar, Chembur East, Mumbai 400 071.

18. Chandrashekar N Devadiga,
Age: Not Known, Adult Indian Inhabitant,
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19. Chandrakant B Mayekar,
Age: Not Known, Adult Indian Inhabitant,
Having address at Room No. 731, Chembur Senhasadan CHS, Building No. 21, Subhash

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Age: Not Known, Adult Indian Inhabitant,
Having address at Room No. 748, Chembur
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34. Sunil B Chawan,
Age: Not Known, Adult Indian Inhabitant,

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Having address at Room No. 756, Chembur
Senha Sadan CHS, Building No. 21, Subhash
Nagar, Chembur East, Mumbai 400 071.

WITH

SECOND APPEAL NO. 286 OF 2026

Arvind Chanderdev Singh
Age: Not known, Adult Indian Inhabitant,
Having address At Flat No. 840, M.S. Building
No. 24, Chembur Camp, Chembur, ...Appellant
Mumbai 400 074.

Versus

1. Chembur Shivmurti Cooperative Housing
Society,
Registered under MCS Act, 1960,
bearing Registration No. OM/HSCi/7647
Through Its Secretary, Vijay C Sharma,
Having address at Bldg No. 22, Subhash Nagar,
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a partnership firm, duly registered under the
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2nd Floor, Flat No. 3 Tandel St, M. A. Marg,
Near Haji Abdul Rahman Shah Baba Dargha,
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4. Ashwin Jain

5. Bhavana Jain
Age: Not Known, Adult Indian Inhabitant,

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Both Respondent Nos. 4 and 5 having address at
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Chembur, Mumbai 400 071.

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Age: Not Known, Adult Indian Inhabitant,
Having address at Flat No. C 305, Springfields
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Nagar Building No.22,
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Having address at Room No. 721, Chembur
Senhasadan CHS, Building No. 21, Subhash
Nagar, Chembur East, Mumbai 400 071.

11. Jyoti H Chandragiri,
Age: Not Known, Adult Indian Inhabitant,
Having address at Room No. 722, Chembur
Senhasadan CHS, Building No. 21, Subhash
Nagar, Chembur East, Mumbai 400 071.

12. Ragunath S Karle,
Age: Not Known, Adult Indian Inhabitant,
Having address at Room No. 723, Chembur
Senhasadan CHS, Building No. 21, Subhash

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Nagar, Chembur East, Mumbai 400 071.

13. Narangibai L Kasbe,
Age: Not Known, Adult Indian Inhabitant,
Having address at Room No. 725, Chembur
Senhasadan CHS, Building No. 21, Subhash
Nagar, Chembur East, Mumbai 400 071.

14. Otilia Pinto
Age: Not Known, Adult Indian Inhabitant,
Having address at Room No. 726, Chembur
Senhasadan CHS, Building No. 21, Subhash
Nagar, Chembur East, Mumbai 400 071.

15. Suganda S Rant,
Age: Not Known, Adult Indian Inhabitant,
Having address at Room No. 727, Chembur
Senhasadan CHS, Building No. 21, Subhash
Nagar, Chembur East, Mumbai 400 071.

16. Sanjay M Veshvikar,
Age: Not Known, Adult Indian Inhabitant,
Address at Room No. 728, Chembur Senhasadan
CHS, Building No. 21, Subhash Nagar, Chembur
East, Mumbai 400 071.

17. Suresh G Narvekar,
Age: Not Known, Adult Indian Inhabitant,
Having address at Room No. 729, Chembur
Senhasadan CHS, Building No. 21, Subhash
Nagar, Chembur East, Mumbai 400 071.

18. Chandrashekar N Devadiga,
Age: Not Known, Adult Indian Inhabitant,
Having address at Room No. 730, Chembur
Senhasadan CHS, Building No. 21, Subhash
Nagar, Chembur East, Mumbai 400 071.

19. Chandrakant B Mayekar,
Age: Not Known, Adult Indian Inhabitant,
Having address at Room No. 731, Chembur
Senhasadan CHS, Building No. 21, Subhash
Nagar, Chembur East, Mumbai 400 071.

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20. Kanchan C Mayekar,
Age: Not Known, Adult Indian Inhabitant,
Having address at Room No. 732, Chembur
Senhasadan CHS, Building No. 21, Subhash
Nagar, Chembur East, Mumbai 400 071.

21. Pushpalata B Salvi,
Age: Not Known, Adult Indian Inhabitant,
Having address at Room No. 733, Chembur
Senhasadan CHS, Building No. 21, Subhash
Nagar, Chembur East, Mumbai 400 071.

22. Naru G Waghmare,
Age: Not Known, Adult Indian Inhabitant,
Having address at Room No. 734, Chembur
Senhasadan CHS, Building No. 21, Subhash
Nagar, Chembur East, Mumbai 400 071.

23. Anna Durai,
Age: Not Known, Adult Indian Inhabitant,
Having address at Room No. 742, Chembur
Senhasadan CHS, Building No. 21, Subhash
Nagar, Chembur East, Mumbai 400 071.

24. Nita B Nalavde,
Age: Not Known, Adult Indian Inhabitant,
Having address at Room No. 743, Chembur
Senhasadan CHS, Building No. 21, Subhash
Nagar, Chembur East, Mumbai 400 071.

25. Govind R Ambekar,
Age: Not Known, Adult Indian Inhabitant,
Having address at Room No. 744, Chembur
Senhasadan CHS, Building No. 21, Subhash
Nagar, Chembur East, Mumbai 400 071.

26. Madhukar S Veshvikar,
Age: Not Known, Adult Indian Inhabitant,
Having address at Room No. 745, Chembur
Senhasadan CHS, Building No. 21, Subhash
Nagar, Chembur East, Mumbai 400 071.

27. P. L. Franics,
Age: Not Known, Adult Indian Inhabitant,

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Having address at Room No. 746, Chembur Senhasadan CHS, Building No. 21, Subhash Nagar, Chembur East, Mumbai 400 071.

28. J. K. Fernandes,
Age: Not Known, Adult Indian Inhabitant,
Having address at Room No. 748, Chembur Senhasadan CHS, Building No. 21, Subhash Nagar, Chembur East, Mumbai 400 071.

29. Prerna P Bhatkar,
Age: Not Known, Adult Indian Inhabitant,
Having address at Room No. 750, Chembur Senhasadan CHS, Building No. 21, Subhash Nagar, Chembur East, Mumbai 400 071.

30. Kashinath S Bhayje,
Age: Not Known, Adult Indian Inhabitant,
Having address at Room No. 751, Chembur Senhasadan CHS, Building No. 21, Subhash Nagar, Chembur East, Mumbai 400 071.

31. John A D'Souza,
Age: Not Known, Adult Indian Inhabitant,
Having address at Room No. 752, Chembur Senhasadan CHS, Building No. 21, Subhash Nagar, Chembur East, Mumbai 400 071.

32. Sandip B Akolkar,
Age: Not Known, Adult Indian Inhabitant,
Having Address at Room No. 754, Chembur Senhasadan CHS, Building No. 21, Subhash Nagar, Chembur East, Mumbai 400 071.

33. Shobha B Chawan,
Age: Not Known, Adult Indian Inhabitant,
Having address at Room No. 755, Chembur Senhasadan CHS, Building No. 21, Subhash Nagar, Chembur East, Mumbai 400 071.

34. Sunil B Chawan,
Age: Not Known, Adult Indian Inhabitant,
Having address at Room No. 756, Chembur Senha Sadan CHS, Building No. 21, Subhash

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Nagar, Chembur East, Mumbai 400 071.

WITH

SECOND APPEAL NO. 287 OF 2026

Ashok Vishwakarma
Age: Not Known, Adult Indian Inhabitant,
Address at 4/40, Sahyog Bldg No. 5, Mint Road, Fort, Mumbai 400 001. ...Appellant

Versus

1. Chembur Shivmurti Cooperative Housing Society,
Registered under MCS Act, 1960,
bearing Registration No. OM/HSCi/7647
Through Its Secretary, Vijay C Sharma,
Having address at Bldg No. 22, Subhash Nagar,
Chembur, Mumbai – 400 071. …Respondents

2. Adityaraj Housing Corporation
a partnership firm, duly registered under the Indian Partnership Act, 1932
Through its authorised parnter Rajkumar G Khushalani.

3. Afzal Alarakha Mansuri
Age: Not Known, Adult Indian Inhabitant,
Having address At 17, Khan Cottage,
2nd Floor, Flat No. 3 Tandel St, M. A. Marg,
Near Haji Abdul Rahman Shah Baba Dargha,
Dongri, Chinchbunder, Mumbai 400 009.

4. Arvind Chanderdev Singh
Age: Not known, Adult Indian Inhabitant,
Having address At Flat No. 840, M.S. Building No. 24, Chembur Camp, Chembur,
Mumbai 400 074.

5. Ashwin Jain

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6. Bhavana Jain
Age: Not Known, Adult Indian Inhabitant,
Both Respondent Nos. 5 and 6 having address at
203/204, Vishwas Building, D. K. Sandu Marg,
Chembur, Mumbai 400 071.

7. Deepak Prabhakar Thakoor
Age: Not Known, Adult Indian Inhabitant,
Having address at Flat No. C 305, Springfields
Housing Society, Kothrud,
Pune – 411 038.

8. Association of Allottees of Subhash
Nagar Building No.22,
An unregistered association not having
any specific address hence served
through Respondent Nos. 3 to 8 & 10
being members thereof.

9. G. A. Builders Pvt Ltd,
Having its address at 606,
RNA Business Park Near Ambedkar Garden,
Chembur, Mumbai 400 071.

10. Michael Mascarenhas
Age: Not Known, Adult Indian Inhabitant,
Having address at Room No. 721, Chembur
Senhasadan CHS, Building No. 21, Subhash
Nagar, Chembur East, Mumbai 400 071.

11. Jyoti H Chandragiri,
Age: Not Known, Adult Indian Inhabitant,
Having address at Room No. 722, Chembur
Senhasadan CHS, Building No. 21, Subhash
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12. Ragunath S Karle,
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Age: Not Known, Adult Indian Inhabitant,
Having address at Room No. 726, Chembur
Senhasadan CHS, Building No. 21, Subhash
Nagar, Chembur East, Mumbai 400 071.

15. Suganda S Rant,
Age: Not Known, Adult Indian Inhabitant,
Having address at Room No. 727, Chembur
Senhasadan CHS, Building No. 21, Subhash
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16. Sanjay M Veshvikar,
Age: Not Known, Adult Indian Inhabitant,
Address at Room No. 728, Chembur Senhasadan
CHS, Building No. 21, Subhash Nagar, Chembur
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17. Suresh G Narvekar,
Age: Not Known, Adult Indian Inhabitant,
Having address at Room No. 729, Chembur
Senhasadan CHS, Building No. 21, Subhash
Nagar, Chembur East, Mumbai 400 071.

18. Chandrashekar N Devadiga,
Age: Not Known, Adult Indian Inhabitant,
Having address at Room No. 730, Chembur
Senhasadan CHS, Building No. 21, Subhash
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19. Chandrakant B Mayekar,
Age: Not Known, Adult Indian Inhabitant,
Having address at Room No. 731, Chembur
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Age: Not Known, Adult Indian Inhabitant,
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Senhasadan CHS, Building No. 21, Subhash Nagar, Chembur East, Mumbai 400 071.

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Age: Not Known, Adult Indian Inhabitant,
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22. Naru G Waghmare,
Age: Not Known, Adult Indian Inhabitant,
Having address at Room No. 734, Chembur Senhasadan CHS, Building No. 21, Subhash Nagar, Chembur East, Mumbai 400 071.

23. Anna Durai,
Age: Not Known, Adult Indian Inhabitant,
Having address at Room No. 742, Chembur Senhasadan CHS, Building No. 21, Subhash Nagar, Chembur East, Mumbai 400 071.

24. Nita B Nalavde,
Age: Not Known, Adult Indian Inhabitant,
Having address at Room No. 743, Chembur Senhasadan CHS, Building No. 21, Subhash Nagar, Chembur East, Mumbai 400 071.

25. Govind R Ambekar,
Age: Not Known, Adult Indian Inhabitant,
Having address at Room No. 744, Chembur Senhasadan CHS, Building No. 21, Subhash Nagar, Chembur East, Mumbai 400 071.

26. Madhukar S Veshvikar,
Age: Not Known, Adult Indian Inhabitant,
Having address at Room No. 745, Chembur Senhasadan CHS, Building No. 21, Subhash Nagar, Chembur East, Mumbai 400 071.

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Age: Not Known, Adult Indian Inhabitant,
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Age: Not Known, Adult Indian Inhabitant,
Having address at Room No. 748, Chembur
Senhasadan CHS, Building No. 21, Subhash
Nagar, Chembur East, Mumbai 400 071.

29. Prerna P Bhatkar,
Age: Not Known, Adult Indian Inhabitant,
Having address at Room No. 750, Chembur
Senhasadan CHS, Building No. 21, Subhash
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30. Kashinath S Bhayje,
Age: Not Known, Adult Indian Inhabitant,
Having address at Room No. 751, Chembur
Senhasadan CHS, Building No. 21, Subhash
Nagar, Chembur East, Mumbai 400 071.

31. John A D'Souza,
Age: Not Known, Adult Indian Inhabitant,
Having address at Room No. 752, Chembur
Senhasadan CHS, Building No. 21, Subhash
Nagar, Chembur East, Mumbai 400 071.

32. Sandip B Akolkar,
Age: Not Known, Adult Indian Inhabitant,
Having Address at Room No. 754, Chembur
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33. Shobha B Chawan,
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34. Sunil B Chawan,
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Having address at Room No. 756, Chembur
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WITH

SECOND APPEAL (ST) NO. 10515 OF 2026

Association of Allottees of Subhash Nagar,
Building No. 22, an unregistered association
not having any specific address hence served
through Respondent Nos. 3 to 9 being members
thereof ...Appellant

Versus

1. Chembur Shivmurti Cooperative Housing
Society,
Registered under MCS Act, 1960,
bearing Registration No. OM/HSCi/7647
Through Its Secretary, Vijay C Sharma,
Having address at Bldg No. 22, Subhash Nagar,
Chembur, Mumbai – 400 071. …Respondents

2. Adityaraj Housing Corporation
a partnership firm, duly registered under the
Indian Partnership Act, 1932
Through its authorised parnter Rajkumar G
Khushalani.

3. Afzal Alarakha Mansuri
Age: Not Known, Adult Indian Inhabitant,
Having address At 17, Khan Cottage,
2nd Floor, Flat No. 3 Tandel St, M. A. Marg,
Near Haji Abdul Rahman Shah Baba Dargha,
Dongri, Chinchbunder, Mumbai 400 009.

4. Ashwin Jain
Age: Not Known, Adult Indian Inhabitant,

5. Bhavana Jain
Age: Not Known, Adult Indian Inhabitant,
Both Respondent Nos. 4 and 5 having address at
203/204, Vishwas Building, D. K. Sandu Marg,
Chembur, Mumbai 400 071.

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6. Arvind Chanderdev Singh
Age: Not known, Adult Indian Inhabitant,
Having address At Flat No. 840, M.S. Building
No. 24, Chembur Camp, Chembur,
Mumbai 400 074.

7. Deepak Prabhakar Thakoor
Age: Not Known, Adult Indian Inhabitant,
Having address at Flat No. C 305, Springfields
Housing Society, Kothrud,
Pune – 411 038.

8. Ashok Vishwakarma
Age: Not Known, Adult Indian Inhabitant,
Address at 4/40, Sahyog Bldg No. 5, Mint Road,
Fort, Mumbai 400 001.

9. G. A. Builders Pvt Ltd,
Having its address at 606,
RNA Business Park Near Ambedkar Garden,
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10. Michael Mascarenhas
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34. Sunil B Chawan,
Age: Not Known, Adult Indian Inhabitant,
Having address at Room No. 756, Chembur Senha Sadan CHS, Building No. 21, Subhash Nagar, Chembur East, Mumbai 400 071.

Dr. Sanjay Chaturvedi, for the Appellant in SA/302/2026, SA/304/2026, SA/313/2026, SA/286/2026 and SA/287/2026.

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Mr. Sarosh Bharucha, with Shreeram and Mehdarin Bhatt, I/b M/s MV Law Partners, for the Appellant in SAST/10515/2026 and for Respondent No.7 in SA/302/2026.
Mr. Mohanish Chaudhari, for Respondent Nos. 1 and 2 in All Appeals.
Ms. Dipashri Raorane, for Respondent No.8.

CORAM : N. J. JAMADAR, J.
RESERVED ON : 12th AUGUST 2026
PRONOUNCED ON : 18th NOVEMBER 2026

JUDGMENT:

1. These Appeals are directed against a common judgment and order passed by the Maharashtra Real Estate Appellate Tribunal, Mumbai ("the Appellate Tribunal") dated 6th January 2026, in the appeals preferred by respondent Nos. 1 and 2 herein, whereby the common order passed by the Maharashtra Real Estate Regulatory Authority ("the Authority") dated 31st July 2025 on the complaints filed by the complainants-appellants herein, *inter alia,* directing that the registration of the project to be kept in abeyance and status-quo be maintained till the proceedings between the parties in the other Courts/Forums were adjudicated, came to be set aside.

2. Though there is a chequered history of litigation before the Arbitral Tribunal, this Court and the Consumer Fora, yet, the background facts necessary for the determination of these appeals can be stated in brief as under:

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2.1 As these appeals arise out of identical background facts and the authorities below have adverted to the common questions of law, which in their estimation arose for consideration, all these appeals were heard together and are being decided by this common judgment.

2.2 For the sake of clarity and convenience, the appellants are hereinafter referred to as the complainants, respondent No.1 as the society, and respondent No.2, as the new developer and respondent No.8 as the erstwhile developer. The facts in Second Appeal (Stamp) No. 10515 of 2026 arising out of Appeal No. AT006/00937/2025 before the Appellate Tribunal and Complaint No. CC12400064, preferred before the Authority, are taken as a representative case.

2.3 Chembur Shivsmruti Cooperative Housing Society ("the society)-respondent No.1, is a society registered under the Maharashtra Cooperative Societies Act, 1960. It comprised 36 members. The society is the holder of land and building No. 22, Wings A and B, situated at Subhash Nagar, Chembur, Mumbai ("the society premises"). Under a development agreement dated 25th October 2007, G.A. Builders Pvt Ltd, respondent No. 8 (the erstwhile developer), was initially appointed by the society as a developer to redevelop the society premises, as it was in a dilapidated state.

2.4 The erstwhile developer committed default in the performance of its part of the contract. The erstwhile developer allegedly abandoned

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the redevelopment project with partially constructed structures on the society premises. The erstwhile developer also committed default in payment of transit rent to the members of the society who had vacated their respective premises in the said building. Eventually, the society professed to terminate the said development agreement on 8th August 2019.

2.5 The society also appointed respondent No.2 as a new developer, to redevelop the society premises. However, the society alleged, the erstwhile developer put hindrances in the redevelopment of the society premises by the new developer. A series of proceedings followed.

2.6 The society filed an arbitration petition No. 1474 of 2019, under Section 9 of the Arbitration And Conciliation Act, 1996 ("the Act, 1996") and by an order dated 4th December 2019, the erstwhile developer was restrained from obstructing the process of appointing a new developer or the self-development process initiated by the society for redevelopment of the society premises. Eventually, the said order was made absolute by a further order dated 20th February 2020.

2.7 Two applications under Section 17 of the Act, 1996, were filed before the Arbitral Tribunal. By an order dated 26th June 2023, the prayers in the application of the erstwhile developer were rejected, whereas the application filed by the society came to be allowed and the

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erstwhile developer was directed to remove articles, things and machinery from the society premises.

2.8 The appellants-complainants claim that they had entered into agreements with the erstwhile developer to purchase the respective units, in the sale component of the project in question and parted with varying amounts. It was alleged that, there were 17 persons who had purchased the units in the sale component of the project. Out of those persons, nine purported allottees filed Writ Petition (L) No. 1776 of 2023 before this Court.

2.9 By a judgment and order dated 12th October 2023, a Division Bench of this Court dismissed the said petition, opining *inter alia* that the purported allottees of the units in the sale component of the project being the third party purchasers from the erstwhile developer were not entitled to enforce their substantive rights qua the society.

2.10 Seven purported allottees filed a consumer complaint before the National Consumer Dispute Redressal Commission ("NCDRC"), being complaint No. 170 of 2023. By an order dated 13th May 2024, the NCDRC vacated the ex parte interim order initially granted. Those complainants preferred an appeal before the Supreme Court, being Civil Appeal (Dairy) No. 23166 of 2024 which was disposed of by the Supreme Court observing that a fresh application, if any, for interim relief could be considered on its own merits by the NCDRC.

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2.10A Another group of allottees filed a second consumer complaint No. 27 of 2024, before the NCDRC, in which interim application was filed but not moved.

2.11 In the backdrop of the aforesaid proceedings, the appellants-complainants filed complaints before the Authority. An association of purported allottees of the Subhash Nagar Building No.22 in the sale component of the project, filed another complaint No. CC1250081. The complainants *inter alia* sought directions to direct the erstwhile developer and the society to give possession of their respective units and also directions to the society to grant the complainants its membership.

2.12 By a common order dated 31st July 2025, the Authority, after noting the history and outcome of the proceedings that had taken place between the parties and the pendency of the proceedings, posed unto itself the question, whether it would be appropriate to adjudicate the complaints on merits, in the face of aforesaid orders and the pendency of the proceedings.

2.13 The Authority was of the view that, the new developer was not the promoter of the subject project. Yet, the new developer was executing the redevelopment project. The record to be mandatorily disclosed by the promoter under the regime of the Real Estate (Regulation and Development) Act, 2016 (" the RERA") did not disclose

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the fact that the new developer was not the promoter of the project and thus there was a risk of further third party rights being created in the subject project, which may impair the rights and interests of the purported allottees of the units in the sale component of the project.

2.14 Adverting to the object of the RERA, the Authority considered it appropriate to protect the rights of the allottees and, thus, without delving into the merits of the matter, disposed the complaints by directing that the registration of the subject project be kept in abeyance till the proceedings before the Arbitral Tribunal and all other Courts of law, were finally determined, restrained the new developer from advertising the project and entering into any transaction in connection with the subject project and directed all parties to maintain status-quo with respect to all the activities pertaining to the subject project.

2.15 Being aggrieved, the society and the new developer preferred the appeals before the Appellate Tribunal.

2.16 By the impugned common judgment and order, the Appellate Tribunal was persuaded to interfere with the order passed by the Authority, primarily for the reason that, in the backdrop of the facts that there was no privity of contract between the society and the complainants, who were the allottees of the erstwhile developer, the complainants were not entitled to enforce their remedies against the society and the new developer.

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2.17 Support was sought to be drawn from a line of judgments delivered by this Court starting from a decision of a learned Single Judge in the case of **Vaidehi Akash Housing Pvt Ltd Vs New D. N. Nagar CHS Union Ltd & Ors**[1], wherein it has been consistently enunciated that the third party purchasers will have no rights over the assets of the society on the basis of the contract entered into by them with the erstwhile developer, whose appointment has been terminated, and that they cannot enforce their rights against the society or the new developer. The Appellate Tribunal thus allowed the appeals and set aside the orders passed by the Authority.

2.18 Being aggrieved, the complainants have preferred these appeals.

3. I have heard Dr. Sanjay Chaturvedi, the learned Counsel for the appellants in Second Appeal Nos. 302 of 2026, 304 of 2026, 313 of 2026, 286 of 2026 and 287 of 2026, Mr. Sarosh Bharucha, the learned Counsel for the appellant in Second Appeal (Stamp) No. 10515 of 2026 and for respondent No. 7 in Second Appeal No. 302 of 2026, Mr. Mohanish Chaudhari, for respondent Nos. 1 and 2 in all appeals and Ms. Dipashri Raorane, the learned Counsel for respondent No. 8, at some length. With the assistance of the learned Counsel for the parties, I have perused the material on record.

4. Dr. Sanjay Chaturvedi, the learned Counsel for the appellants in Second Appeal Nos. 302 of 2026, 304 of 2026, 313 of 2026, 286 of

1 2014 SCC OnLine Bom 5068.

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2026 and 287 of 2026 would submit that the Appellate Tribunal completely misdirected itself in overturning the findings of the Authority by following the line of decisions in regard to the rights of the third party purchasers from the erstwhile developer qua the society, without appreciating the significant legislative change brought by the enactment of the RERA 2016. It was submitted that the Appellate Tribunal was completely swayed by the aforesaid line of decisions rendered while the legal regime was completely different.

5. Under the provisions of Section 15 (1) of RERA 2016, obligations are cast on the promoter not to transfer, or assign his majority rights and liabilities in a project to a third party without obtaining prior written consent from 2/3 allottees, and without prior written approval of the Authority. Section 18 of RERA 2016 confers indefeasible substantive rights on the allottees in the event of default on the part of the promoter. The effect of the aforesaid change in the legislative regime was not properly appreciated by the Appellate Tribunal.

6. Moreover, Dr. Chaturvedi would urge that the Supreme Court in the case of **Goregaon Pearl Cooperative Housing Society Limited Vs Sandeep Grover and Ors**[2] has deviated from the line of decisions representing **Vaidehi Akash Housing Pvt Ltd (Supra)**. The Appellate Tribunal simply observed that the said decision in the case of

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2 2023 SCC OnLine SC 1687.

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Sandeep Grover and Ors (Supra) did not govern the facts of the case, and the Appellate Tribunal was bound by the law laid down by this Court. The aforesaid reasoning of the Appellate Tribunal gives rise to substantial questions of law, especially, in the light of the judgment of the Supreme Court in the case of **Sandeep Grover (Supra)**.

7. Mr. Sarosh Bharucha, the learned Counsel for the appellant in Second Appeal (Stamp) No. 10515 of 2026, while supplementing the aforesaid submissions of Dr. Chaturvedi, would urge that the Appellate Tribunal has completely ignored the doctrine of merger. The decision of the Supreme Court in the case of **Sandeep Grover And Anr (Supra)** arose out of a statutory appeal preferred against the order passed by the National Consumer Commission. It was not rendered in a Special Leave Petition under Article 136 of the Constitution of India. Therefore, the decision of the National Consumer Commission merged into the decision of the Supreme Court. Consequently, the decision of the Supreme Court, in the case of **Sandeep Grover And Anr (Supra)** which takes a different view than the one that has been followed in the judgments of this Court commencing from **Vaidehi Akash Housing Pvt Ltd (Supra)** impliedly overrules the said line of decisions.

8. Mr. Bharucha would urge that, if the view of the Appellate Tribunal is accepted, then it would imply that the judgment of the Supreme Court is not binding on the Appellate Tribunal. Therefore, a

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substantial question of law as to whether the decision of the Supreme Court in the case of **Sandeep Grover and Anr (Supra)** overrules the earlier line of decisions and consequently protects the rights of the third party allottees of the erstwhile developer arises for consideration. To lend support to these submissions, Mr. Bharucha placed reliance on the decision of the Supreme Court in the case of **Kunhayammed And Ors Vs State of Kerala and Anr**[3] and another decision in the case of **Pernod Ricard India Private Limited Vs Commissioner of Customs, ICD Tughlakabad.**[4]

9. Mr. Bharucha further submitted that the impugned judgment and order suffers from another patent error. The Appellate Tribunal has not at all delved into the reasons ascribed by the Authority to direct the parties to maintain status-quo and keep the project in abeyance. As the Authority had not delved into the merits of the matter, the Appellate Tribunal, if it was not inclined to affirm the view of the Authority, that the project was required to be kept in abeyance till the final decisions of the arbitral proceedings and proceedings before the Courts/Forums, it ought not to have decided the matter on merits. To buttress this submission, Mr. Bharucha placed reliance on a judgment of the

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3 (2000) 6 SCC 359.

4 (2010) 8 SCC 313.

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Supreme Court in the case of **Surendra G Shankar and Anr Vs Esque Finamark Pvt Ltd & Ors.**[5]

10. In opposition to this, Mr. Mohanish Chaudhari, the learned Counsel for respondent Nos. 1 and 2, would submit that the Appellate Tribunal has justifiably exercised the jurisdiction to correct the manifest error committed by the Authority. In fact, the complainants and/or the purported allottees of the units in the sale component of the project of the erstwhile developer have instituted multiple proceedings before the Courts and Authorities seeking identical reliefs. Having been unsuccessful in those proceedings, the complainants approached the Authority belatedly, with the self-same assertions. In fact in Writ Petition (L) No. 1776 of 2023, the Division Bench, had expressly dealt with the question whether the third party flat purchasers from the erstwhile developer could claim substantive rights as against the society and after an elaborate analysis dismissed the petition. The said order was not challenged by the petitioners/appellants and has thus attained finality. It was, therefore, not open to the petitioners to agitate again the very same point before different forums. Yet, the purported allottees continued to file proceedings.

11. Even otherwise, Mr. Chaudhari would urge, the order passed by the Authority was riddled with contradictory and inconsistent findings. The Authority had directed that the project be kept in abeyance and the

5 2025 SCC OnLine SC 134.

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status-quo be maintained despite having noticed that on account of the default on the part of the erstwhile developer, the members of the society were made to suffer incalculable hardship and prejudice, and that the erstwhile developer had not succeed in any of the proceedings.

12. Mr. Chaudhari submitted that, reliance on the order passed by the Supreme Court in the case of **Sandeep Grover and Anr (Supra)** is of no assistance to the appellants as the decision in the said case was confined to the facts therein and cannot be said to operate as a precedent. A very strong reliance was placed by Mr. Chaudhari on a three Judge Bench judgment of the Supreme Court in the case of **Experion Developers Private Limited Vs Himanshu Dewan and Ors.**[6]

13. I have given anxious consideration to the submissions canvassed across the bar.

14. The background facts in the context of the jural relationship between the society and the erstwhile developer, on the one part, and the erstwhile developer and the complainants on the other part, are not much in dispute. As noted above, the erstwhile developer was appointed as a developer to redevelop the society premises, pursuant to the development agreement dated 25th October 2007. It is indubitable that the redevelopment did not take place in the manner and within the time-frame, intended by the society and the erstwhile developer. The society thus professed to terminate the development agreement on 8th

6 2023 SCC OnLine SC 1029.

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August 2019. In the wake of the dispute, the society invoked the jurisdiction of this Court in Arbitration Petition No. 1474 of 2019, and by an order dated 4th December 2019, this Court restrained the erstwhile developer from obstructing the process of appointing a new developer or undertaking the self-development process for completion of the redevelopment project and also granted allied interim reliefs in favour of the society. By a subsequent order dated 20th February 2020, the said petition under Section 9 of the Act, 1996, was made absolute.

15. Secondly, by a common order dated 26th June 2023, the learned sole arbitrator by invoking the power under Section 17 of the Act, 1996, directed the erstwhile developer to remove all his articles, things and machinery lying on the society premises. An appeal preferred against the said order, being Commercial Arbitration Petition (L) No. 20764 of 2023, was dismissed by a learned Single Judge of this Court by a judgment and order dated 23rd October 2023.

16. Thus the situation which now obtains as between the society and the erstwhile developer is that, the development agreement dated 25th October 2007 stands terminated, the erstwhile developer has been removed from the society premises, and a new developer has been appointed to execute the redevelopment project, though the legality and validity of the said termination is yet to be decided by the Arbitral Tribunal. In contrast, the complainants claim that they had entered into

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agreements to purchase the respective units in the sale component portion which was to be developed by the erstwhile developer in the said project. They have parted with valuable consideration. They being the allottees, their rights cannot be trampled upon by terminating the development agreement between the society and the erstwhile developer. The complainants thus seek to enforce their purported rights as the allottees of the erstwhile developer qua the society.

17. The aforesaid scenario gives rise to a familiar question as to whether the third party purchasers of the erstwhile developer can enforce their rights against the society and its assets, where the society professes to terminate the development agreement with the erstwhile developer.

18. In fact, the complainants did not expressly raise the aforesaid question in Writ Petition (L) No. 1776 of 2023 **(Deepak Prabhakar Thakoor & Ors Vs Maharashtra Housing And Area Development Authority (MHADA) & Ors[7]).** Though the reliefs sought in the said petition were couched in a different language, yet, the Division Bench appreciated what was at the heart of the controversy and considered the question whether the third party flat purchasers from the erstwhile developer could claim substantive rights as against the society.

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7 Original Side Writ Petition (L) No. 1776 of 2023, decided on 12th October 2023.

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19. While exploring an answer to the aforesaid question, the Division Bench, observed that the aforesaid question and the subsidiary issues sought to be agitated on behalf of the petitioners were no longer *res integra.* Those questions were answered by the decisions of a learned Single Judge in the cases of **Vaidehi Akash Housing Pvt Ltd (Supra)** and **Goregaon Pearl CHSL Vs Dr Seema Mahadev Paryekar and Ors.**[8] After extracting the observations in paragraphs 80 to 93 of the decision in the case of **Vaidehi Akash Housing Pvt Ltd (Supra),** the Division Bench observed that it was in respectful agreement with all the findings of law and it emphatically reaffirmed **Vaidehi Akash Housing Pvt Ltd (Supra).**

20. It is imperative to note that the Division Bench also gave its imprimatur to the judgment in the case of **Goregaon Pearl CHSL (Supra)** wherein a submission was sought to be canvassed on the basis of the provisions contained in RERA 2016, to question the correctness of the view in **Vaidehi Akash Housing Pvt Ltd (Supra).** The observations of the Division Bench in paragraphs 11 and 12 are material and hence extracted below:

> "11. We are in respectful agreement with all these findings on law. We emphatically reaffirm Vaidehi Akash.
>
> 12. The second decision also by Gupte J is of 14th October 2019 in Goregaon Pearl CHSL (Supra). This dealt inter alia not

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8 2019 SCC OnLine Bom 3274.

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only with the issue of third-party flat purchasers but specifically from paragraph 7 onwards the question of whether RERA gave them additional or superior rights. Goregaon Pearl referenced the previous decision in Vaidehi Akash expressly. The distinguishing feature of that case was set out in paragraph 8. Ultimately, the learned Single Judge held on a careful consideration of these provisions that the provisions of RERA do not make any difference. RERA was introduced to set up a regulatory authority for the real estate sector and to ensure efficiency and transparency and consumer protection in that sector. It defines promoter in a manner similar to that in the Maharashtra Ownership Flats Act, 1969 ("MOFA"). Even Section 18 of RERA, on which considerable emphasis was laid in Goregaon Pearl, requires promoters to discharge obligations and provides remedies for purchasers without prejudice to other rights if there is a default by the promoter. Section 19 entitles the allottee to obtain possession. Purchasers' grievances are redressed by the authority. None of these provisions, Gupte J held, make the owner of the freehold or leasehold interest in the land (the party who enters into a development agreement with a developer) liable for compliance with and fulfillment of the developer's obligations."

(emphasis supplied)

21. The aforesaid legal position has been reiterated by another Division Bench of this Court in the case of **Kapilkunj Cooperative Housing Society Ltd Vs State of Maharashtra & Ors.**[9] The

9 Original Side Writ Petition No. 2157 of 2021, decided on 13th December 2023.

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observations in paragraphs 23, 41 and 42, which have been extracted by the Appellate Tribunal also, read as under:

> "23. The Society will have to now take an informed decision in regard to its redevelopment agreement and about the completion of the construction at the Society's cost. We understand that there are third party sale agreements that may have been entered into by Ved. These will not be allowed to compromise the rights of the members. In any case, even as against the rights of the Society, the claims of third party purchasers and their rights are issues that have been decided by this Court in **Vaidehi Aakash Housing Pvt Ltd (Supra)** and **Goregaon Pearl CHSL (Supra)** and both of which our Division Bench in **Deepak Prabhakar Thakoor & Ors (Supra)** has reaffirmed. Third party purchasers will have no rights over the assets of the Society. If, therefore, the balance development is done by the Society following a termination of its redevelopment agreement, then any additional Floor Space Index ("FSI") or buildable area benefits will be to the benefit of the Society and may be used to defray costs.
>
> … … …
>
> 41. Some of the Respondents to the Petition are third party flat purchasers. Once again, as we have set out above, their rights as against Ved are preserved intact in law by series of judgments including our own reaffirmation as a Division Bench of two decisions of the Single Judge in **Vaidehi Aakash Housing Pvt Ltd (Supra)** and **Goregaon Pearl (Supra)**. This necessarily means that after termination of the agreement, third party flat purchasers can have no rights, claims or equities in respect of assets of the Society. This means not only the original structure but the entire redevelopment project including all additional FSI and all free-sale components. It is always open to those flat

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purchasers to negotiate with the Society. It is, however, clear that amounts paid to Ved cannot possibly be given credit to by the Society. This Court has already repeatedly held that in such a situation, in law, there is absolutely no privity of contract between third party flat purchasers and the Society or its members. We declined to revisit that aspect of the law or to permit fresh arguments re-agitating the same issue. That law is no longer res integra.

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

(emphasis supplied)

22. The position in law which thus seems to have crystallised is that, in case the society terminates the development agreement entered into with an erstwhile developer and either enters into a development agreement with a new developer or proceeds to self-develop the society premises, the third party purchasers cannot enforce their rights against the society or its assets as the third party purchasers have no right, claim or equities in respect of the assets of the society, inclusive of the additional FSI and free sale components. Such third party purchasers are required to workout their remedies against the erstwhile developer. The absence of privity of contract between the third party purchasers

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and the society is the rationale for not upholding the claim of such third party purchasers, to enforce their rights against the society.

23. If the facts of the case are appraised in the light of the aforesaid well-settled position in law, the submissions of Mr. Chaudhari that the complainants who were the petitioners in Writ Petition (L) No. 1776 of 2023, cannot be permitted to agitate the same question in the proceedings before the authorities under RERA, at least qua the society, cannot be said to be unfounded. The Division Bench considered the precise question of the entitlement of the petitioner therein - the purported allottees, to enforce their rights qua the society premises and expressly negatived the same.

24. The learned Counsel for the appellants joined the issue by canvassing the submission that the aforesaid position in law cannot be said to be no longer res integra in view of the decision of the Supreme Court in the case of **Sandeep Grover and Anr (Supra).** It was urged that the facts in the said case have a striking resemblance to the facts of the case at hand. In that case as well, the society had terminated the development agreement with the developer with whom the allottees therein had entered into the agreements to purchase the flat. As the society had contested the claim of the third party flat purchasers, they had approached the NCDRC. The NCDRC, after considering the submissions on behalf of the parties, including the contention of the

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society that there was no privity of contract between the society and flat purchasers, was persuaded to allow the complaint and direct the society to refund the entire amount deposited by the complainants with interest. The NCDRC was of the view that after deriving the benefits under the development agreement, the society could not be permitted to usurp the flat falling to the share of the developer. Since the society had taken possession of the flats (allotted by the erstwhile developer to complainants) and had allotted those flats to its members, the society was liable to return the entire amount deposited by the complainants.

25. In the appeals before the Supreme Court, i.e. Civil Appeal No. 5188 of 2023 with Civil Appeal No. 5288 of 2023 and Civil Appeal No. 5186 of 2023, decided on 3rd October 2023, the Supreme Court passed the following order:

> " ORDER
>
> 1. On the last date of hearing, Mr. Amit Sibal, learned Senior Counsel appearing for the appellant had addressed lengthy arguments in the matters, but we were not persuaded by the submission made.
>
> 2. At that stage, a request was made to this Court that the appellant be permitted to negotiate a settlement with the respondents-flat buyers and the developer. At the request, the matters were adjourned.
>
> 3. Today, Mr. Sibal, the learned Senior Counsel, states that a settlement could not be worked out with the respondents-flat buyers.

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4. If that is the position, then the appeals having already been heard on merits on the last date of hearing, need no further consideration and the same are dismissed.

5. Pending applications are disposed of."

26. It was the thrust of the submission on behalf of the appellants that the aforesaid decision of the Supreme Court which affirms the decision of the NCDRC which has in turn completely deviated from the line of the decisions representing **Vaidehi Aakash Housing Pvt Ltd (Supra)** binds all the Courts and Tribunals and, therefore, the Appellate Tribunal was not at all justified in allowing the appeals by banking upon **Vaidehi Aakash Housing Pvt Ltd (Supra)** line of judgments.

27. At this juncture the implications of the doctrine of merger become relevant. In the system of hierarchy of Courts, the orders passed by the Courts/Tribunals of the first instance are subject to appeal or revision before the superior Courts/Tribunals. Thus where a decree or order passed by a Court or Tribunal of first instance is carried in appeal or revision before the superior Courts/Tribunals, the validity of the decree or order passed by the former is, in a sense, put in jeopardy and if the superior Court affirms, sets aside or modifies the decree or order passed by the first Court/Tribunal, then it is the decree or order of the superior Court/Tribunal that becomes operative and in the said decree or order, the decree or order passed by the Court or Tribunal of first instance (which is affirmed, set aside or modified) merges. The

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rationale for the application of the doctrine of merger is that there cannot be more than one decree or operative order governing the same subject matter at a given point of time.

28. At the same time, it must be noted that, the doctrine of merger is held not to be of universal or unlimited application. The factors like the nature of the jurisdiction exercised by the superior forum, and the scope and content of the challenge to the decree or order of the Court of first instance., bear upon the applicability of the doctrine of merger. Whether the superior forum exercises full appellate jurisdiction or discretionary jurisdiction, the extent of scrutiny of the decree or order challenged by the superior forum, and the necessity to record adequate reasons are also the matters which may bear upon the applicability of doctrine of merger.

29. In the case of **Kunhayammed And Ors (Supra)**, a three Judge Bench of the Supreme Court culled out the propositions in regard to the application of the doctrine of merger, with special reference to the provisions contained in Article 136 of the Constitution of India. They read as under:

> 44. To sum up our conclusions are :-
> (i) Where an appeal or revision is provided against an order passed by a court, tribunal or any other authority before superior forum and such superior forum modifies, reverses or affirms the decision put in issue before it, the decision by the subordinate forum merges in the decision by the superior

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forum and it is the latter which subsists, remains operative and is capable of enforcement in the eye of law.

ii) The jurisdiction conferred by Article 136 of the Constitution is divisible into two stages. First stage is upto the disposal of prayer for special leave to file an appeal. The second stage commences if and when the leave to appeal is granted and special leave petition is converted into an appeal.

(iii) Doctrine of merger is not a doctrine of universal or unlimite application. It will depend on the nature of jurisdiction exercised by the superior forum and the content or subject-matter of challenge laid or capable of being laid shall be determinative of the applicability of merger. The superior jurisdiction should be capable of reversing, modifying or affirming the order put in issue before it. Under Article 136 of the Constitution the Supreme Court may reverse, modify or affirm the judgment-decree or order appealed against while exercising its appellate jurisdiction and not while exercising the discretionary jurisdiction disposing of petition for special leave to appeal. The doctrine of merger can therefore be applied to the former and not to the latter.

iv) An order refusing special leave to appeal may be a non-speaking order or a speaking one. In either case it does not attract the doctrine of merger. An order refusing special leave to appeal does not stand substituted in place of the order under challenge. All that it means is that the Court was not inclined to exercise its discretion so as to allow the appeal being filed.

v) If the order refusing leave to appeal is a speaking order, i.e. gives reasons for refusing the grant of leave, then the order has two implications. Firstly, the statement of law contained in the order is a declaration of law by the Supreme Court within the meaning of Article 141 of the Constitution. Secondly, other

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than the declaration of law, whatever is stated in the order are the findings recorded by the Supreme Court which would bind the parties thereto and also the court, tribunal or authority in any proceedings subsequent thereto by way of judicial discipline, the Supreme Court being the apex court of the country. But, this does not amount to saying that the order of the court, tribunal or authority below has stood merged in the order of the Supreme Court rejecting special leave petition or that the order of the Supreme Court is the only order binding as res judicata in subsequent proceedings between the parties.

(vi) Once leave to appeal has been granted and appellate jurisdiction of Supreme Court has been invoked the order passed in appeal would attract the doctrine of merger; the order may be of reversal, modification or merely affirmation.

(vii) On an appeal having been preferred or a petition seeking leave to appeal having been converted into an appeal before Supreme Court the jurisdiction of High Court to entertain a review petition is lost thereafter as provided by sub-rule (1) of Rule (1) of Order 47 of the C.P.C."

30. In the case of **Khoday Distilleries Limited (Now Known As Khoday India Limited) And Ors Vs Sri Mahadeshwara Sahakara Sakkare Karkhane Limited, Kollegal (Under Liquidation) represented by the Liquidator**[10], a three Judge Bench of the Supreme Court summarised the legal position on merger and the relevant paragraphs read as under:

"20. The Court thereafter analysed number of cases where orders of different nature were passed and dealt with these judgments by classifying them in the following categories:

(i) Dismissal at the stage of special leave petition — without reasons — no res judicata, no merger.

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10 (2019) 4 SCC 376.

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(ii) Dismissal of the special leave petition by speaking or reasoned order — no merger, but rule of discipline and Article 141 attracted.

(iii) Leave granted —dismissal without reasons —merger results.

… … …

26. From a cumulative reading of the various judgments, we sum up the legal position as under:

… … ...

26.3 Once we hold that law laid down in **Kunhayammed And Ors (Supra)** is to be followed, it will not make any difference whether the review petition was filed before the filing of special leave petition or was filed after the dismissal of special leave petition. Such a situation is covered in para 37 of **Kunhayammed And Ors (Supra)** case."

31. In the case of **Pernod Ricard India Private Limited (Supra),** on which reliance was placed by Mr. Bharucha, the Supreme Court, expounded the distinction between the application of the doctrine of merger to the petitions decided by the Supreme Court under Article 136 of the Constitution of India and the statutory appeal. The Supreme Court enunciated that once the statutory right of appeal is invoked, dismissal of such appeal by the Supreme Court, whether by speaking order or non-speaking order, the doctrine of merger does apply unlike in the case of dismissal of special leave to appeal under Article 136 of the Constitution of India by a non-speaking order.

32. The observations of the Supreme Court in paragraphs 30 and 31 are material and hence extracted below.

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"30. In the present case, the appellant preferred statutory appeal under Section 130-E of the Act against order of the Tribunal dated 25th March 2003 and, therefore, the dismissal of appeal by this Court though by a non-speaking order, was in exercise of appellate jurisdiction, wherein the merits of the order impugned were subjected to judiciary scrutiny. In our opinion, in the instant case, the doctrine of merger would be attracted and the appellant is estopped from raising the issue of applicability of Rule 6 in their case.

31. In the view we have taken, we are fortified by a decision of this Court in V.M. Salgaocar & Bros (P) Ltd Vs Commissioner of Income Tax ((2000) 5 SCC 373), wherein the Court was called upon to consider the effect of dismissal of an appeal under Section 261 of the Income Tax Act, 1961 by a non speaking order. Speaking for the Bench, D.P. Wadhwa, J. while drawing distinction between an order dismissing in limine a special leave petition under Article 136 of the Constitution and an appeal under Article 133, and drawing support from the decision of this Court in Supreme Court Employees' Welfare Assn Vs Union of India ((1989) 4 SCC 187) held that former case does not but the latter does attract the doctrine of merger. The Court observed thus:-

> "8. Different considerations apply when a special leave petition under Article 136 of the Constitution is simply dismissed by saying 'dismissed' and an appeal provided under Article 133 is dismissed also with the words 'the appeal is dismissed'. In the former case it has been laid by this Court that when a special leave petition is dismissed this Court does not comment on the correctness or otherwise of the order from which leave to appeal is sought. But what the court means is that it does not consider it to be a fit case for exercise

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> of its jurisdiction under Article 136 of the Constitution. That certainly could not be so when appeal is dismissed though by a non-speaking order. Here the doctrine of merger applies. In that case, the Supreme Court upholds the decision of the High Court or of the Tribunal from which the appeal is provided under clause (3) of Article 133. This doctrine of merger does not apply in the case of dismissal of special leave petition under Article 136. When an appeal is dismissed the order of the High Court is merged with that of the Supreme Court."

33. In the case of **Experion Developers Private Limited (Supra)** a three Judge Bench of the Supreme Court considered the question from the perspective of binding efficacy of the judgment delivered by the Supreme Court in a statutory appeal as law declared by the Supreme Court under Article 141 of the Constitution of India.

34. In that case also, the Supreme Court had exercised the statutory appellate jurisdiction against the order passed by the NCDRC in the case of **Pawan Gupta Vs Experion Developers Private Limited,**[11] and in that backdrop the question whether the order passed by the Supreme Court in the latter decision amounted to a precedent under Article 141 of the Constitution of India, as the doctrine of merger was clearly attracted, arose for consideration.

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35. While recognizing that in the case of **Pawan Gupta (Supra)**, it had exercised statutory appellate jurisdiction in contradistinction to the jurisdiction conferred in Article 136 of the Constitution of India and, thus in terms of the decision in the case of **Kunhayammed And Ors (Supra),** the final order passed by the Supreme Court became executable and the principle of merger applied, the Supreme Court enunciated that the dismissal of the appeal in the case **Pawan Gupta (Supra)** without any reasons being recorded would not attract Article 141 of the Constitution as no law was declared by the Supreme Court which would have a binding force on the Courts and Tribunals. Further the Supreme Court emphasised the distinction between the binding law of precedent in terms of Article 141 of the Constitution and the doctrine of merger and res judicata. The observations in paragraphs 31, 32, 36 and 37 are instructive and hence extracted below.

> "31. No doubt, in Pawan Gupta's case (supra), this Court had not exercised the power or jurisdiction conferred by Article 136 of the Constitution of India, but had exercised its appellate power, which would, in terms of the ratio in Kunhayammed And Ors (Supra), becomes the final order which is executable. Thus, the dismissal of the appeal by this Court in the case of Pawan Gupta (Supra), had put a finality and an end to the litigation in the said case. To this extent, therefore, the application of the general principle of res judicata would bar the party from raising the plea once again. The order passed by this Court, on the application of the principle of judicial discipline, bars and prevents any tribunal or parties from canvassing or taking a view which would have the

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effect of re- examination of the issues and points determined in the case of Pawan Gupta (supra) inter-se the parties to the decision. However, dismissal of the appeal would not operate as res judicata in the case of the respondents against the appellant as they were not parties to the said case, and the proceedings initiated by Pawan Gupta were fact specific and not in a representative capacity.

32. The dismissal of the appeal in the case of Pawan Gupta (supra) without any reasons being recorded would not attract Article 141 of the Constitution of India as no law was declared by the Supreme Court, which will have a binding effect on all courts and tribunals in India. There is a clear distinction between the binding law of precedents in terms of Article 141 of the Constitution of India and the doctrine of merger and res judicata. To merge, as held in Kunhayammed And Ors (Supra), and Khoday Distilleries Ltd (supra) means to sink or disappear in something else, to become absorbed or extinguished. The logic behind the doctrine of merger is that there cannot be more than one decree or operative orders governing the same subject matter at a given point of time. When a decree or order passed by an inferior court, tribunal or authority is subjected to a remedy available under law before a superior forum, then the decree or order under challenge continues to be effective and binding; nevertheless, its finality is put in jeopardy. Once the superior court disposes the dispute before it in any manner, either by affirming the decree or order, by setting aside or modifying the same, it is the decree of the superior court, tribunal or authority, which is the final binding and operative decree. The decree and order of the inferior court, tribunal or authority gets merged into the order passed by the superior forum. However, as has been clarified in both decisions, this doctrine is not of universal or unlimited application. The nature of jurisdiction exercised by the superior court and the

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content or subject matter of challenge laid or could have been laid will have to be kept in view.

… … …

36. In the context of factual background of the present case, and on examining the judgment in the case of Pawan Gupta (Supra) passed by the National Commission, we are clearly of the view that the order passed by this Court dismissing the appeal in the case of Pawan Gupta (Supra) would operate as res judicata in the said case but does not lay down a binding precedent which would be applicable to other cases. As it transpires from the judgment in the case of Pawan Gupta (Supra), the National Commission itself had specifically observed inter alia that "there was no harm in communicating and charging for the extra area at the final stage, but for the sake of transparency opposite party must share the actual reason for the increase in the super area based on comparison of the originally approved buildings and finally approved buildings. Basically, the idea is that the allottee must know the change in the finally approved layout and areas of common spaces and the originally approved layout and areas". It is true that there was no material on record placed by the appellant in the said case of Pawan Gupta (Supra) showing the actual increase in the sale area. Nonetheless, the appellant in the instant case, along with its detailed reply, had produced the documents, i.e. the certificate dated 23.09.2020 given by the Architects D-idea, the Report dated 23.09.2020 given by Knight Frank (India) Private Limited, the affidavit dated 31.08.2021 by Mr. Muninder Pal Singh, and the affidavit dated 26.04.2022 by Mr. Anurag Mahajan, to show that there was an actual increase in the sale area, justifying its demand for the extra payment. The respondents, in rejoinder, had neither placed any material to contradict the said Architect's certificates and reports nor had they disputed the contents thereof. The only contention raised by them was that the said documents

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were produced as an afterthought and, therefore, could not be taken into consideration. At this juncture, it is also pertinent to note that clause 8.6 of the agreement, provided for an increase/decrease in the sale area as defined and also the corresponding sale price increase of upto 10%. The appellant, by producing the said documents, had sought to justify that the variance, i.e. increase in the built up area of the project, which was less than 5% and such variance was within the permissible limits."

37. Thus, we are clearly of the view that the order of this Court dismissing the appeal in the case of Pawan Gupta (supra) cannot be read as a precedent and applied to the cases in hand. In fact, precedents cannot decide questions of fact. The decision in the case of Pawan Gupta (supra) was based on evidence adduced by the appellant/builder/developer, which in the said case was not found to be sufficient and cogent to justify and substantiate the demand raised in view of the increased sale area. No doubt, the architect's certificate and report dated 23.09.2020 was filed before this Court as additional documents, but a non-reasoned order passed by this Court dismissing the case cannot be read as accepting and considering the additional evidence, or as rejecting justification and reasons given therein for claiming additional/increased sale area. Any additional evidence sought to be produced at the appellate stage can only be introduced when an appropriate application under Rule 27 to Order XLI of the Code of Civil Procedure, 1908 is moved and an order is passed taking them on record. Therefore, the order passed by this Court dismissing the appeal in the case of Pawan Gupta (supra) is confined to the facts of the said case, including the evidence led by the parties before the National Commission. The National Commission was therefore required to consider and examine the contentions of the appellant and not overrule the same on the grounds of the principle of res

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judicata and on the rule of binding precedent, which do not apply. An order of remand on the question of merits as to the stipulation and increase in the sale area is therefore required."

36. The aforesaid enunciation of law makes it explicitly clear that where the order dismissing the appeal is confined to the facts of the case and the evidence adduced therein without any principle of law having been enunciated, such order does not command the precedential value and though it would bind the parties to the said proceeding as res judicata, it would not lay down a binding precedent which would be applicable to other cases. On the contrary, if the Supreme Court passes a reasoned order from which the ratio decidendi is discernible, then, howsoever brief the reasons may be, the law declared by the Supreme Court would command observance as a precedent.

37. On the aforesaid touchstone, reverting to the facts of the case at hand, the two factors assume importance. First, the decision in the case of **Sandeep Grover And Anr (Supra)** turned on its peculiar facts. The NCDRC found that the society had taken benefit under the development agreement in as much as the society had taken possession of the flats falling to the share of the developer and allotted to complainants therein, and had thereafter allotted those flats to its

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members. In that context, the NCDRC ordered that the society was liable to return the entire money deposited by the complainants therein.

38. The facts of the case at hand are materially distinct. No substantial development could be carried out by the erstwhile developer although a period of more than 12 years had elapsed. The members of the society had vacated their original flats a decade ago. The erstwhile developer committed default in payment of transit rent. A partially constructed building was left abandoned. Therefore, the decision in the case of **Sandeep Grover And Anr (Supra)** cannot be imported to the facts of the case at hand ,with equal force.

39. Second the order passed by the Supreme Court (extracted above), in the respectful understanding of this Court, does not record any reasons. The fourth paragraph of the order simply records that as the appeals had been heard on merits on the previous date and needed no further consideration, the appeals were dismissed.

40. In the aforesaid view of the matter, the decision in the case of **Experion Developers Private Limited (Supra),** rendered by a three Judge Bench of the Supreme Court, seems to govern the fact-situation in the case at hand. The final order passed by the Supreme Court in the statutory appeal against the order passed by NCDRC, in the case of **Sandeep Grover And Anr (Supra)** may bind the parties thereto as res judicata or it could be urged that the order of the NCDRC merged with

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the final order passed by the Supreme Court, yet, the said order dated 3rd October 2023 passed by the Supreme Court, in **Sandeep Grover And Anr (Supra)** cannot be construed as laying down a law which overrules the line of decisions rendered by this Court which holds that, sans privity of contract, the third parties are not entitled to enforce their rights against the society, where the society terminates the development agreement with the erstwhile developer, with whom the third party purchasers, had entered into contract to purchase the units in the project in question.

41. The submission of Mr. Bharucha that this line of reasoning, which is adopted by the Appellate Tribunal, amounts to holding that the Appellate Tribunal is not bound by the decision of the Supreme Court, does not merit acceptance as in the first place, no law can be said to have been declared by the Supreme Court in the case of **Sandeep Grover And Anr (Supra)**. The decision therein turned on its peculiar facts and the Supreme Court, in the backdrop of those peculiar facts and the material which was fact specific, declined to interfere with the order passed by the NCDRC without recording any reasons.

42. The upshot of aforesaid consideration is that, in the backdrop of the rather incontrovertible facts which indicate that the members of the society have been left in the lurch for almost 15 years, the direction by the Authority to keep the project in abeyance and maintain status-quo

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till the final determination of the proceedings before the Arbitral Tribunal and the Courts/Forums would add insult to the injury, as their aspirations to have units upon redevelopment of the society premises would hinge upon the vicissitudes of fortunes in litigation. Since the appellants can workout their remedies against the erstwhile developer, the Appellate Tribunal was fully justified in interfering with the wholly unsustainable order passed by the Authority.

43. The second limb of the submission of Mr. Bharucha that the Appellate Tribunal has not dealt with the reasons recorded by the Authority for keeping the project in abeyance and directing the parties to maintain status-quo need not detain the Court as the very foundation of the order passed by the Authority was legally unsustainable.

44. The upshot of the aforesaid consideration is that, no question of law, much less a substantial question of law, arises for consideration.

45. Hence, the following order:

: O R D E R :

(i) Second Appeals stand dismissed.

(ii) In view of the dismissal of the Second Appeals, Interim Application/s, if any, stand/s disposed.

No costs.

[N. J. JAMADAR, J.]

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