IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.559 OF 2025
WITH
INTERIM APPLICATION NO.12226 OF 2025

Rajan Chandiramani ... Appellant/Applicant
versus
Swadhinta Builders LLP … Respondent

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WITH
SECOND APPEAL NO.600 OF 2025
WITH
INTERIM APPLICATION NO.12904 OF 2025

Jagruti Parikh and Anr. ... Appellants/Applicants
versus
Swadhinta Builders LLP … Respondent

WITH
SECOND APPEAL NO.598 OF 2025
WITH
INTERIM APPLICATION NO.12897 OF 2025

Priyanka Waghela ... Appellant/Applicant
versus
Swadhinta Builders LLP … Respondent

WITH
SECOND APPEAL NO.599 OF 2025
WITH
INTERIM APPLICATION NO.12899 OF 2025

Srichand Makhija ... Appellant/Applicant
versus
Swadhinta Builders LLP … Respondent

WITH
SECOND APPEAL NO.597 OF 2025
WITH
INTERIM APPLICATION NO.12896 OF 2025

Jayesh Jagdish Thakkar ... Appellant/Applicant
versus
Swadhinta Builders LLP … Respondent

Case Citation: (2026) ibclaw.in 3407 HC

Mr. Jay Chhabria with Ms. Tvishi Pant, Mr. Aditya Shete i/by Keystone Partners, for Appellants.
Mr. Rubin Vakil with Mr. Abir P. (through VC), Mr. Kartik Joshi i/by Wadia Ghandy and Co., for Respondent.

CORAM: N.J.JAMADAR, J.

RESERVED ON : 12 MARCH 2026
PRONOUNCED ON : 24 JUNE 2026

JUDGMENT :

1. These Second Appeals are directed against a common order dated 10 July 2025 passed by the Maharashtra Real Estate Appellate Tribunal (the Appellate Tribunal), whereby the applications preferred by the respective Appellants bearing Misc. Application No.351 of 2025, 352 of 2025, 353 of 2025, 354 of 2025 and 355 of 2025, for amendment in Execution Application Nos.13 of 2023, 14 of 2023, 15 of 2023, 16 of 2023 and 17 of 2023, came to be disallowed to the extent the Appellants sought direction that the construction of the real estate project in question be done by the decree holders or such other persons appointed by the Tribunal at the cost of the judgment debtor and the expenses thereof be ascertained and recovered from the judgment debtor as if it were included in the decree, so as to execute the decree in the manner provided under Order XXI Rule 32(5) of the Code of Civil Procedure, 1908 (the Code).

2. Since the appeals arise out of identical facts, assail the common order and identical questions of law arise for consideration, all these appeals were

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taken up for hearing together and are being decided by this common judgment. For the sake of convenience, the facts in Second Appeal No.559 of 2025 are noted as a representative case.

3. The background facts can be stated as under :

3.1 The Respondent is a promoter of real estate project “Shri Vallabh Residency” which was being developed by the Respondent at Shivaji Road, Kandivali (West), Mumbai (the subject project). The Appellant was allotted an Apartment bearing No.902 in the subject project vide allotment letter dated 28 October 2010 for a total consideration of Rs.48,78,125/-. The allotment letter, inter alia, provided that the possession of the subject apartment was to be delivered to the allottee within 36 months from the date of commencement certificate for work above plinth level or within 36 months from the date of the amended plan sanctioned by MCGM after loading of TDR on the plot, whichever was later.

3.2 The Appellant claimed to have paid a sum of Rs.7.5 Lakhs to the respondent towards the part consideration. On account of inordinate delay in the completion of the subject project and failure on the part of the promoter to execute the agreement for sale, despite having received the aforesaid part consideration, the Appellant filed a complaint against the Respondent before the Maharashtra Real Estate Regulatory Authority (the Authority), seeking diverse reliefs.

3.3 By an order dated 28 March 2020, the Authority disposed the complaint expressing its inability to issue directions under Section 13 of the Real Estate (Regulation and Development) Act, 2016 (the RERA, 2016) as no commencement certificate had been obtained by the Respondent – Promoter. It was further directed that the rights of the complainant – allottee with respect to the subject project stand protected and whenever the promoter starts the project, it shall fulfill its statutory obligations.

3.4 Aggrieved by the aforesaid order, the Appellant preferred an appeal before the Appellate Tribunal. By a judgment and order dated 30 June 2022, the Appellate Tribunal was persuaded to partly allow the appeal and set aside the order passed by the Authority and direct the Respondent – promoter to execute the agreement for sale in respect of the subject apartment with the respective complainants within 30 days; complete construction of the subject project within 12 months after obtaining the requisite approvals and permissions from the Competent Authorities, failing which liberty was granted to the Appellant to take appropriate action under Sections 7 and 35 of the RERA, 2016 and claim compensation in accordance with law. The Respondent – promoter was also directed to pay interest on the amounts paid by the allottees till handing over possession of the respective apartments.

3.5 In the wake of default on the part of the Respondent to comply with the decree passed by the Appellate Tribunal, the Appellants sought execution of

the decree by filing Execution Application No.13 of 2023 before the Appellate Tribunal. By successive orders, the Appellate Tribunal noted the non-compliance of the decree by the Respondent. By an order dated 22 June 2024, the Appellate Tribunal was constrained to issue warrant for recovery of the amount due and payable by the Respondent and also impose penalty of Rs.5,000/- for each day's delay till the Respondent – judgment debtor complied with the order of the Appellate Tribunal i.e. till the execution of the agreement for sale in favour of the allottees – decree holders.

3.6 In the intervening period, certain proposals were made for development of the subject project by entrusting it to a SPV – UHT Projects LLP. However, the resolution could not materalise as the Promoter wanted another 66 months from the date it obtained consent of 2/3 allottees in the project. Thereafter, the Appellant filed an application for amendment to the Execution Application, inter alia, to seek an additional mode of assistance of the Appellate Tribunal for execution of the decree in the manner provided under Order XXI Rule 32 of the Code, in accordance with the Schedule of amendment appended thereto.

3.7 In the context of the controversy, it would be apposite to extract the Schedule of amendment. It reads as under :

Schedule

> In Sr. No. J in the Execution Application, after clause (i) add the following clause as (i-a) :

> "(i-a) Under Order XXI Rule 32 of the CPC :
>
> (i) the partners of the Judgment Debtor viz. Mr. Manish Thakkar and Mr. Bhavesh Thakkar be detained in civil prison and the properties of the Judgment Debtor be attached and on the Judgment Debtor not obeying the decree even after the attachment has been in force for 6 months, the property attached be sold on the Decree Holder applying for the same and out of the proceeds, the Decree Holder be paid such compensation as this Hon'ble Tribunal deems fit;
>
> **(ii) this Hon'ble Tribunal in lieu of or in addition to all or any of the processes aforesaid, direct that the construction of the building being the subject matter of the real estate project in question, be done by the Decree Holder or such other person appointed by this Hon'ble Tribunal, at the cost of the Judgment Debtor and the expenses in this behalf be ascertained and recovered from the Judgment Debtor as if it were included in the decree**."

3.8 The application was resisted by the Respondent.

3.9 By the impugned order dated 10 July 2025, the Appellate Tribunal was persuaded to partly allow the application to the extent of sub-clause (i) in clause (i-a) and disallow the proposed amendment to incorporate the prayer in sub-clause (ii), extracted above. The Appellate Tribunal was of the view that the amendment proposed in terms of sub-clause (ii) cannot be allowed, at that stage, as other allottees of the subject project were not before the Appellate Tribunal and by the decree sought to be executed the Appellants were

granted liberty to take recourse to the provisions contained in Section 7 of the RERA, 2016 so that the Authority could take further steps as envisaged under Section 8 of the RERA, 2016 in order to complete the project to protect the interest of not only the Appellants – allottees but also all the allottees who were not before the Appellate Tribunal.

3.10 Being aggrieved, the Appellants have preferred these appeals.

4. By an order dated 26 August 2025, these appeals were admitted on the following substantial questions of law :

> "i. Whether the learned Maharashtra Real Estate Appellate Tribunal, Mumbai has committed grave illegality and irregularity in considering the merits while deciding the amendment application ?
>
> ii. Whether clause 2 of the proposed amendment is in accordance with sub Rule (5) of Rule 32 of Order XXI of the Code of Civil Procedure, 1908 ?
>
> iii. Whether the remedy under Order XXI Rule 32(5) of the Code of Civil Procedure, 1908 which is an independent remedy in execution, is in addition to the remedies under Sections 7 and 35 of the RERA Act ?

5. I have heard Mr. Chhabria, learned Counsel for the Appellants and Mr. Rubin Vakil, learned Counsel for the Respondent, at some length. With the assistance of the learned Counsel for the parties, I have perused the material

on record, including the orders passed by the Authority and the Appellate Tribunal.

Submissions :

6. Mr. Chhabria, learned Counsel for the Appellants submitted that the Appellate Tribunal committed grave error in law in delving into the merits of the matter, while determining the justifiability of the proposed amendment. The approach of the Appellate Tribunal in examining the merits and the consequences that ensue the proposed amendment was clearly in teeth of the settled position in law that, while considering the application for amendment, the Court shall not delve into the merits of the matter, sought to be introduced by way of amendment. Such an erroneous approach, according to Mr. Chhabria, completely vitiated the consideration by the Tribunal.

7. Mr. Chhabria would further submit that the Appellate Tribunal not only delved into the merits of the matter and disputed questions of facts, but also rendered findings on the merits of the matter, which was wholly impermissible and unwarranted, while determining an application for amendment.

8. Mr. Chhabriya further submitted that, the Appellate Tribunal has completely misconstrued the import of the amendment proposed in clause (ii). In effect the Appellants were seeking to add an additional mode of assistance of the Executing Court in executing the decree passed by the Appellate

Tribunal, provided under Rule 32(5) of Order XXI for due execution of clause (iv) of decree passed by the Appellate Tribunal. An executing Court is empowered to order the execution of the decree in various modes prescribed under Order XXI. A prayer for adding another mode of execution thus, could not have been construed as travelling beyond the scope of the decree.

9. Laying emphasis on the provisions contained in Section 57 of RERA 2016, Mr. Chhabria would submit that, while executing an order, the Appellate Tribunal is duty bound to execute the order as a decree of Civil Court, and for that purpose, the Appellate Tribunal has been invested with the powers of a Civil Court. Thus Appellate Tribunal while executing its order exercises the power and performs the duties of the executing Court as envisaged under the Code. The Appellate Tribunal, according to Mr. Chhabria, completely failed to notice the statutory intendment in constituting the Appellate Tribunal as an executing Court and for that purpose and conferring the powers of the Civil Court upon the Appellate Tribunal. If considered through this prism Mr. Chhabriya would urge, the application for amendment can only be said to be in conformity with the provisions contained in Sub-Rule (5) of Rule 32 of Order XXI of the Code.

10. Mr Chhabria would further urge that the Appellate Tribunal committed a manifest error in observing that Section 7 of RERA 2016 in the given circumstances can be the appropriate remedy for the allottees as the decree

gives the allottees liberty to take recourse to Section 7 of RERA 2016. It was urged that the said liberty does not imply that the other modes of execution of the decree passed by the Appellate Tribunal cannot be resorted to. The liberty granted to the allottees cannot be construed as an obligation to force the allottees to resort to another round of litigation. Mr. Chhabria would urge Section 7 is not a measure of enforcement of the order passed by the Appellate Tribunal. Therefore, the second and third substantial questions of law also deserve to be answered in favour of the allottees.

11. To lend support to these submissions Mr. Chhabria placed reliance on the judgments of the Supreme Court in the cases of ***Rajes Kanta Roy vs. Shrimati Shanti Debi and Another[1], AIR 1957 SC 255***, and ***Kamlesh Aggarwal vs. Narain Singh Dabbas and Another[2].***

12. Per contra, Mr. Rubin Vakil, the learned Counsel for the Respondents, would support the impugned order. It was submitted that the principles which govern an application for amendment in the pleadings, informed by liberal consideration do not apply to an application for amendment in the execution proceeding. The power of the executing Court to amend the execution application is thus not as wide as the amendment in the original proceeding. To this end, Mr.Vakil placed reliance on a judgment of this Court in the case of

1 AIR 1957 SC 255.
2 (2015) 11 SCC 661.

Ratnakar Bank Ltd, Kolhapur Vs Usha Rajaram Nimbalkar and Ors.[3]

13. Secondly, Mr. Vakil would urge the executing Court, as a matter of law, cannot go beyond the decree. Thus, the amending power of the executing Court must be exercised keeping in view the overarching principle that the executing Court cannot travel beyond the decree. If the proposed amendment has the effect of expanding the scope of the decree and the prayers travels beyond the stipulation in the decree, the executing Court cannot permit such amendment. A very strong reliance was placed by Mr. Vakil on the judgment of the Supreme Court in the case of **Topanmal Chhotamal Vs Kundomal Gangaram and others**[4] and a decision of this Court in the case of **Iqbal Hussain Vs Municipal Council, Purna.**[5]

14. Premised on the aforesaid limitation on the amending power of the executing Court, Mr. Vakil submitted in the case at hand, the Appellate Tribunal was wholly justified in declining to permit the allottees to introduce the amendment at clause (ii) extracted above as the consequence of such amendment would be to materially expand the scope of the decree.

15. Mr. Vakil, urged with tenacity that Clause (iv) of the order passed by the Appellate Tribunal itself provides the remedy available to the allottees in the event of failure to comply with the directions in the said order. The Appellate

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3 2013(4) Mh.L.J. 524.
4 AIR 1960 SC 388.
5 2015(6) Mh.L.J. 833.

Tribunal was, therefore, within its rights in holding that if recourse to the provisions of Section 7 is taken, the interest of all the allottees in the subject project can be adequately considered.

16. RERA 2016 provides a framework to take over real estate project with an in built mechanism for protecting the rights of the stake holders. In contrast, if one or two individual allottees are permitted to execute the project by invoking the aid of Rule 32(5) of Order XXI of the Code, there is clear and present danger of such allottees executing the project focusing on the particular apartment agreed to be allotted to such allottees living a large section of allottees in the lurch. It is for this reason, RERA 2016 gives preference to the collective interest over the interest of an individual allottee.

17. Reliance on the provisions contained in Section 57 of RERA 2016, according to Mr. Vakil, does not advance the cause of the submission on behalf of the allottees. The provision contained in Section 57 of RERA 2016, is in the nature of a deeming fiction. The deeming fiction, Mr. Vakil would urge, is not to be expanded beyond the purpose or the language of the Section for which it is created. Thus a limited deeming fiction cannot be permitted to be expanded to circumvent or bypass the substantive provisions under Sections 7 and 8 of RERA 2016. To buttress this submission, Mr Vakil placed reliance on the judgment of the Supreme Court in the case of **Mancheri Puthusseri**

Ahmed and Ors Vs Kuthiravattam Estate Receiver.[6]

18. Lastly, Mr. Vakil would submit that the provisions contained in Sections 7 and 8 of RERA 2016 being in the nature of a special law, the provisions of general law contained in Order XXI Rule 32(5) of the Code must yield to the provisions of RERA 2016. At any rate, if any conflict arises, between the provisions of general law and a special law, the special law prevails. Reliance was placed on the judgment of the Supreme Court in the case of **Sanwarmal Kejriwal Vs Vishwa Coop Housing Society Ltd.**[7]

19. Mr. Vakil would thus urge that all the questions are required to be answered in the negative.

20. In the alternative, Mr. Vakil would submit if the Court were to hold in favour of the allottees on first question of law, questions 2 and 3 need not be answered as, in that event, post the proposed amendment the matter would be required to be determined by the Appellate Tribunal. If this Court renders the finding on substantial question of law No. 3, in particular, nothing would survive for determination by the Appellate Tribunal in the underlying proceeding.

21. Mr Chhabriya, the learned Counsel for the Appellants, joined the issue by canvassing a submission that the promoter was raising bogie of interest of all the allottees. It was submitted that had the Appellate Tribunal allowed the

6 (1996) 6 SCC 185.
7 (1990) 2 SCC 288.

amendment, and eventually decides to execute the decree in the manner provided under Sub-Rule (5) of Rule 32, the execution need not by the allottees-decree holders only. The Appellate Tribunal can appoint a receiver, a new developer, or even an association of allottees can be appointed. Thus, the submission canvassed on behalf of the Respondent, which found favour with the Appellate Tribunal, that the interest of the other allottees may be jeopardized, is unsustainable.

22. Mr. Chhabriya would further urge if the contention of the Respondent is acceded to, then it would imply that the other modes of execution namely, attachment of the property of the Judgment Debtor or the detention of the Judgment Debtor in civil prison cannot also be resorted to. Such an interpretation would render the provisions of Section 40(2) and 57 of RERA 2016 completely otiose.

Consideration:

Question Nos.(i) and (ii)

23. As the controversy revolves around the execution of the order passed by the Appellate Tribunal especially in relation to the completion of the project, it may be appropriate to extract the relevant directions in the said order.

24. Clause (iv) of the said order reads as under:

> "(iv) Respondent/Promoter is directed to complete construction of subject project within 12 months after taking due approvals and permissions from the competent Authorities, failing which appellants

are at liberty to take appropriate action under Sections 7 and 35 of the Act of 2016 and claim compensation in accordance with the law."

25. The Appellate Tribunal, in the impugned order construed the liberty granted by the aforesaid order to the allottees as the appropriate remedy provided in the decree for non-compliance of the said direction. The failure on the part of the allottees to take recourse to the dispensation provided under Section 7 was arrayed against the allottees.

26. On the first substantial question of law, the legal position is absolutely clear. At the stage of consideration of application for amendment in the pleadings, the Court need not delve into the merits of the amendments. The enquiry at that stage is confined to the permissibility and desirability of the proposed amendment through the prism of two broad principles, namely, whether the proposed amendment is necessary for the determination of real question in controversy and whether the proposed amendment has the potentiality of such prejudice to adversary that it cannot be compensated.

27. A useful reference in this context can be made to a judgment of the Supreme Court in the case of **Rajesh Kumar Aggarwal And Ors Vs K. K. Modi and Ors,**[8] wherein it was enunciated that while considering whether the application for amendment should be allowed, the Court should not go into the correctness or falsity of the case sought to be introduced by way of

8 (2006) 4 SCC 385.

amendment nor the Court should record a finding on the merits of the amendment. The observations in paragraphs 18 and 19 are instructive and hence extracted below.

> "18. As discussed above, the real controversy test is the basic or cardinal test and it is the primary duty of the Court to decide whether such an amendment is necessary to decide the real dispute between the parties. If it is, the amendment will be allowed; if it is not, the amendment will be refused. On the contrary, the learned Judges of the High Court without deciding whether such an amendment is necessary has expressed certain opinion and entered into a discussion on merits of the amendment. In cases like this, the Court should also take notice of subsequent events in order to shorten the litigation, to preserve and safeguard rights of both parties and to sub-serve the ends of justice. It is settled by catena of decisions of this Court that the rule of amendment is essentially a rule of justice, equity and good conscience and the power of amendment should be exercised in the larger interest of doing full and complete justice to the parties before the Court.
>
> 19. While considering whether an application for amendment should or should not be allowed, the Court should not go into the correctness or falsity of the case in the amendment. Likewise, it should not record a finding on the merits of the amendment and the merits of the amendment sought to be incorporated by way of amendment are not to be adjudged at the stage of allowing the prayer for amendment. This cardinal principle has not been followed by the High Court in the instant case."
>
> (emphasis supplied)

28. It is true, powers of the executing Court to permit the amendment are

not as wide as the Court dealing with the original proceeding. Yet, the aforesaid principles, govern an application for amendment in an execution proceeding as well as it cannot be controverted that the power to order amendment can be exercised by executing Court under Section 151 and the general amending power under Section 153 of Code (**Ratnakar Bank Ltd, Kolhapur (Supra)**

29. If the impugned order is tested on the aforesaid touchstone, it becomes abundantly clear that the Appellate Tribunal has delved into the merits of the amendment. It was observed that the recourse to the execution in the manner provided under Rule 32(5) of Order XXI appeared to be the last resort for execution of decree, if the decree remains unexecuted despite the attachment and sale of the property of the Judgment Debtor and the detention of the Judgment Debtor in civil prison. The Appellate Tribunal went on to hold that the Judgment Debtor had made attempts to satisfy the decree in earnest and there was no willful disobedience on the part of the Judgment Debtor. Thirdly, the Applicant had not resorted to the provisions contained in Section 7 of RERA 2016 which appeared to be the appropriate remedy.

30. All the aforesaid findings, in the considered view of this Court, touch upon the merits of the proposed amendment. Whether to extend the aid in the manner provided under Rule 32(5) of Order XXI is a matter to be determined by the executing Court having regard to the fact-situation which may obtain

when the Appellate Tribunal is called upon to pass such order.

31. However, the Appellate Tribunal could not have declined to grant leave to amend the execution application so as to incorporate the said additional mode of execution on the premise that it would be the last resort. Findings of the Appellate Tribunal that there was no willful disobedience on the part of the Judgment Debtor was also inapposite while considering the prayer for amendment. The said finding has the propensity to influence the further orders that may be passed by the Appellate Tribunal in the execution proceeding. Likewise, the view of the Appellate Tribunal that in view of the liberty granted by the Appellate Tribunal in the order dated 30th June 2022 in Clause (iv) [extracted above] recourse to Section 7 of the RERA 2016 appeared to be the appropriate remedy, and, thus, the proposed amendment seeking the execution of the decree in the manner provided under Rule 32(5) of Order XXI of the Code was not warranted again betrays a determination on the merits of the amendment.

32. For the forgoing reasons, this Court is persuaded to hold that the Appellate Tribunal committed an error in delving into the merits of the amendment and the consequences that would ensue if the Decree Holders are permitted to incorporate the prayer in Clause (ii) extracted above while deciding the application for amendment. The said course was in dissonance with the settled position in law.

33. The proposed amendment at sub-clause (ii) extracted above, essentially seeks another mode of assistance of the Appellate Tribunal in the execution of the decree. The proposed sub-clause (ii) sought to be added in the prayer clause of the execution application is a replica of the text of sub-rule (5) of Rule 32 of Order XXI of the Code.

34. It would be relevant to note that by the order dated 30th June, 2022, the Appellate Tribunal has directed the respondent-promoter to (i) execute an Agreement for Sale in respect of the appellant's apartment within 30 days and (ii) complete the construction of the subject project within 12 months after taking due approvals and permissions. The relief sought to be added by inserting sub-clause (ii) seeks the execution of the aforesaid part of the order dated 30th June, 2022 by the decree-holders themselves or by such other person as may appointed by the Tribunal, on account of the failure of the respondent judgment-debtor to comply with the said directions contained in the order dated 30th June, 2022. Thus, Sub-clause (ii) of the proposed amendment is in complete accord with sub-rule (5) of Rule 32.

35. Resultantly, the question Nos. 1 and 2 are required to be answered in the affirmative.

Question No.(iii)

36. Though Mr Vakil submitted that if this Court renders an affirmative finding on Question No. (i), then this Court may not record findings on

Question No. (iii) yet this Court considers it expedient to record findings on Question No. (iii) as the impugned order proceeds on the premise that in view of the liberty granted to the allottees to take recourse to Section 7 of RERA 2016, it is impermissible to invoke the provisions contained in Order 32(5) of the Code.

37. Before appreciating whether the aforesaid approach of the Appellate Tribunal is justifiable, a reference to few provisions of RERA 2016 may be apposite. Section 40(2) of the RERA 2016 provides that if any adjudicating officer or Regulatory Authority or the Appellate Tribunal, as the case may be, issues any order or directs any person to do any act, or refrain from doing any act, then in case of failure by any person to comply which such order or direction, the same shall be enforced, in such manner as may be prescribed.

38. Section 57 of RERA 2016 which confers the powers of the executing Court upon the Appellate Tribunal reads as under:

> "**57. Orders passed by Appellate Tribunal to be executable as a decree**.
>
> (1) Every order made by the Appellate Tribunal under this Act shall be executable by the Appellate Tribunal as a decree of civil court, and for this purpose, the Appellate Tribunal shall have all the powers of a civil court.
>
> (2) Notwithstanding anything contained in sub-section (1), the Appellate Tribunal may transmit any order made by it to a civil court having local jurisdiction and such civil court shall execute the order as if it were a decree made by the court."

39. The relevant part of Section 7 which empowers the Authority to revoke the registration reads as under:

"**7. Revocation of registration**

(1) The Authority may, on receipt of a complaint or suo motu in this behalf or on the recommendation of the competent authority, revoke the registration granted under section 5, after being satisfied that—

(a) the promoter makes default in doing anything required by or under this Act or the rules or the regulations made thereunder;

(b) the promoter violates any of the terms or conditions of the approval given by the competent authority;

(c) the promoter is involved in any kind of unfair practice or irregularities.

Explanation.— … … …

(2) The registration granted to the promoter under section 5 shall not be revoked unless the Authority has given to the promoter not less than thirty days notice, in writing, stating the grounds on which it is proposed to revoke the registration, and has considered any cause shown by the promoter within the period of that notice against the proposed revocation.

…….

(4) The Authority, upon the revocation of the registration,—

(a) shall debar the promoter from accessing its website in relation to that project and specify his name in the list of defaulters and display

his photograph on its website and also inform the other Real Estate Regulatory Authority in other States and Union territories about such revocation or registration;

(b) shall facilitate the remaining development works to be carried out in accordance with the provisions of section 8;

(c) shall direct the bank holding the project bank account, specified under sub-clause(D) of clause (l) of sub-section (2) of section 4, to freeze the account, and thereafter take such further necessary actions, including consequent de-freezing of the said account, towards facilitating the remaining development works in accordance with the provisions of section 8;

(d) may, to protect the interest of allottees or in the public interest, issue such directions as it may deem necessary"

40. Section 8 of RERA 2016 casts an obligation on the Authority to take measures consequent upon lapse or revocation of registration. It reads as under:

8. Obligation of Authority consequent upon lapse of or on revocation of registration

Upon lapse of the registration or on revocation of the registration under this Act, the Authority, may consult the appropriate Government to take such action as it may deem fit including the carrying out of the remaining development works by competent authority or by the association of allottees or in any other manner, as may be determined by the Authority:

> **Provided** that no direction, decision or order of the Authority under this section shall take effect until the expiry of the period of appeal provided under the provisions of this Act:
>
> **Provided further** that in case of revocation of registration of a project under this Act, the association of allottees shall have the first right of refusal for carrying out of the remaining development works.

41. The phraseology of Section 57 makes the Legislative intendment absolutely clear. Firstly, it provides that every order made by the Appellate Tribunal shall be executable. Secondly, such order is to be executed by the Appellate Court itself. Thirdly, an order made by the Appellate Tribunal is to be executed as a decree of civil Court, and, fourthly, for that purpose, i.e., execution of order made by Appellate Tribunal, the Appellate Tribunal shall have all the powers of a civil Court. The necessary implication is that the Appellate Tribunal while executing its own order is empowered with the powers of the executing Court.

42. The provisions contained in sub-Section (2) of Section 57, which opens with a non-obstante clause, makes the import of sub-Section (1) of Section 57 crystal clear. Under sub-Section (2), notwithstanding the power conferred on the Appellate Tribunal to execute its own order, the Appellate Tribunal has been conferred discretion to transmit any order made by it to a civil Court having local jurisdiction. The later part of the sub-Section (2) of Section 57 enjoins the civil Court to execute the order passed by the Appellate Tribunal

as if it were a decree passed by the Court.

43. The contrast in the first and second part of sub-Section (2) of Section 57 is of material significance. The first part uses the word, “may” to emphasize the discretionary nature of the power to transmit the order to a civil Court having local jurisdiction. The later part by employing the word, “shall” makes it obligatory on the civil Court to execute the order as if it were a decree made by the Court. It is also imperative to note that while conferring the discretion to transmit the order for execution to civil Court, the Legislature has not hedged the said discretion by providing the conditions in regard to the cases in which the order can be transmitted for execution. The only restriction is that the civil Court to which the order is to be transmitted for execution shall have the local jurisdiction.

44. Keeping in view the aforesaid legislative intendment discernible from the plain reading of Section 57, the submission of Mr. Vakil that Section 57 creates a deeming fiction and, therefore, it is required to be construed strictly and, if so construed, the Appellate Tribunal would not have power to entertain a prayer for execution of the order in the manner provided by sub-Rule (5) of Rule 32 of Order XXI deserves to be appreciated.

45. The principles of interpretation of a deeming fiction are well-founded. The Court must first ascertain the purpose for attainment of which a legal fiction is created. The import of the legal fiction must be restricted by its plain

terms. The fiction cannot be enlarged to encompass in its fold the matters beyond the text of such fiction. In the case of **Mancheri Puthusseri Ahmed and Ors (Supra),** on which reliance was placed by Mr.Vakil, the Supreme Court expounded the principles which govern the construction of a legal fiction in the following terms:

> "8… … … In the first place the Section creates a legal fiction. Therefore, the express words of the Section have to be given their full meaning and play in order to find out whether the legal fiction contemplated by this express provision of the Statute has arisen or not in the facts of the case; Rule of construction of provisions creating legal fictions is well settled. <u>In interpreting a provision creating a legal fiction the Court is to ascertain for what purpose the fiction is created, and after ascertaining this, the Court is to assume all those facts and consequences which are incidental or inevitable corollaries to the giving effect to the fiction.</u> But in so construing the fiction it is not to be extended beyond the purpose for which it is created or beyond the language of the section by which it is created. It cannot also be extended by importing another fiction. In this connection we may profitably refer to two decisions of this Court. In the case of **CIT Vs Shakuntala (AIR 1966 SC 719)** a three-Judge Bench of this Court speaking through S.K. Das,J., made the following pertinent observation in paragraph 8 of the Report :

"The question here is one of interpretation only and that interpretation must be based on the terms of the section. The fiction enacted by the Legislature must be restricted by the plain terms of the statute."

In another case reported in the same volume at page 870, namely, **CIT V Moon Mills Ltd (AIR 1966 SC 870)** another three- Judge Bench of this Court speaking through Subha Rao,J., observed in para 8 of the Report in connection with the provision creating such legal fictions as under :

"The fiction is an indivisible one. It cannot be enlarged by importing another fiction.."

… … …" (emphasis supplied)

46. Applying the aforesaid principles of construction to Section 57 of RERA 2016, as noted above, the legislative purpose becomes explicitly clear: the orders passed by the Appellate Tribunal shall be executable by the Appellate Tribunal as if it were a decree of a civil Court. The purpose is to make the orders executable and for that purpose clothe the order with the character of a decree and empower the Appellate Tribunal with the powers which the civil Court would exercise in the execution of the decree. If this is the plain construct of Section 57 of RERA 2016, I find it difficult to accede to the submission of Mr. Vakil that the execution of decree by resorting to the mode

prescribed under the sub-Rule (5) of Rule 32 of Order XXI of the Code would amount to expanding the scope of the fiction beyond the terms of Section 57.

47. At this juncture, it is necessary to note that the Parliament despite providing measures in RERA 2016 itself for enforcement of certain orders, designedly conferred the power of the executing Court on the Appellate Tribunal to execute its own orders.

48. Section 40(2) provides that if there is a non-compliance of any order or directions issued by the Authorities under RERA 2016, including the Appellate Tribunal, then such order or direction shall be enforced in such manner as may be prescribed. Rule 4 of the Maharashtra Real Estate (Regulation And Development) (Recovery of Interest, Penalty, Compensation, Fine Payable, Forms Complaints And Appeal, Etc) Rules, 2017, provides that the order made by the Appellate Tribunal under Section 40(2), shall be enforced by the Appellate Tribunal in the same manner as if it were a decree or order made by the principal civil Court of original jurisdiction in a suit. The later part of the Rule again empowers the Appellate Tribunal to transmit the order for execution to the principle civil Court. Section 64 of RERA 2016, empowers the Appellate Tribunal to impose penalty if any promoter fails to comply with, or contravenes any of the orders, decisions or directions of the Appellate Tribunal.

49. The power to execute the order under Section 57, despite the

availability of aforesaid measures for enforcement of the orders passed by the Appellate Tribunal, underscores the fact that the Parliament intended to equip the Appellate Tribunal with requisite powers to achieve the legislative object. Therefore, the submission of Mr. Vakil that the power conferred on the Appellate Tribunal under Section 57 of the RERA 2016 is required to be construed in a restricted sense cannot be countenanced.

50. In my considered view the Appellate Tribunal can exercise all the powers which the civil Court can exercise while executing its decree unless the said provisions are inconsistent with the provisions of RERA 2016, which have been given overriding effect under Section 89 of the RERA 2016.

51. This takes me to the nature of the powers exercised by the civil Court while executing the decree, especially the decree for specific performance of the contract.

52. Section 51 of the Code provides that, subject to such conditions and limitations as may be prescribed, the Court may, on the application of the decree-holder, order execution of the decree by following modes.

> "(a) by delivery of any property specifically decreed;
> (b) by attachment and sale or by the sale without attachment of any property;
> (c) by arrest and detention in prison for such period not exceeding the period specified in section 58, where arrest and detention is permissible under that section;
> (d) by appointing a receiver; or

(e) <u>in such other manner as the nature of the relief granted may require:</u>
… … ...”

53. Rule 30 to 36 of Order XXI of the Code under the caption, “Mode of execution” provide specific modes of execution of the decrees of different nature, like a money decree, decree for specific movable property, a decree for immovable property etc. Rule 32 of Order XXI of the Code makes provisions for the execution for decree for specific performance, for restitution of conjugal rights, or for an injunction.

54. Sub-Rule (1) of Rule 32 of the Code provides that a decree for specific performance may be executed by detention of the Judgment Debtor in civil prison or by attachment of his property or by both. Sub-Rule (5) of Rule 32 of the Code, with which we are primarily concerned in these Appeals, reads as under.

“ **32. Decree for specific performance for restitution of conjugal rights, or for an injunction.—**

(5) Where a decree for the specific performance of a contract or for an injunction has not been obeyed, the Court may, in lieu of or in addition to all or any of the processes aforesaid, direct that the act required to be done may be done so far as practicable by the decree-holder or some other person appointed by the Court, at the cost of the judgment-debtor, and upon the act being done the expenses incurred may be ascertained in such manner as the Court may direct and may be recovered as if they were included in the decree.

[Explanation.—For the removal of doubts, it is hereby declared that the

expression "the act required to be done" covers prohibitory as well as mandatory injunctions.]"

55. It would contextually relevant to note that Clause (e) of Section 51 of the Code provides a residuary mode of execution of decree, namely, in such other manner as the nature of the relief granted may require. In a sense, sub-Rule (5) of Rule 32 of the Code is an amplification of residuary mode of execution of the decree by empowering the executing Court to direct the specific performance by appointing another person at the cost of Judgment Debtor.

56. The text of sub-Rule (5) of Rule 32 of the Code makes it clear that the said mode of execution is discretionary. The said mode of execution can be resorted to in lieu of or in addition to all or any of the processes, namely attachment and sale of the property and detention of the Judgment Debtor in civil prison. The Explanation makes it clear that the sub-rule covers in its sphere both prohibitory and mandatory orders.

57. The purpose of sub-Rule (5) of Rule 32 of the Code is to give meaning and effect to a decree passed by the Court. If the Judgment Debtor willfully or otherwise disables himself from performing the obligations under the decree, especially in case of a decree for specific performance, neither the executing Court can be rendered powerless nor the Decree Holder can be rendered remediless. It is to address such a contingency, sub-Rule (5) of Rule 32 of the

Code, empowers the executing Court to execute the decree *de hors* the disobedience on the part of the Judgment Debtor.

58. This propels to me to the thrust of the submission on behalf of the Respondents that in the instant case in view of Clause (iv) of the order passed by the Appellate Tribunal dated 30th June 2022 (extracted above), the only recourse available to the allottees is to invoke the provisions contained in Section 7 of RERA 2016.

59. Sections 7 and 8 are subsumed under Chapter II dealing with registration of real estate project. Section 3 makes the prior registration of the project mandatory. Section 4 makes provision in regard to application for registration of real estate project. Section 5 empowers the Authority to grant registration or reject the application for registration. For the reasons specified in Section 6, the Authority may grant extension of registration.

60. Section 7 empowers the Authority either on receipt of a complaint or suo motu or on the recommendation of the competent authority to revoke the registration granted under Section 5 upon satisfaction of the occurrence of the events specified in Clauses (a), (b) and (c).

61. Section 8 of RERA 2016 casts an obligation on the Authority to take measures consequent upon lapse or revocation of registration.

62. A plain textual reading of the provisions contained in Chapter II makes it explicitly clear that the power to revoke the registration is primarily regulatory

in nature. Clauses (a) to (c) of Section 7 of the RERA, 2016 do not envisage the revocation of registration as a mode of execution of the decree. In contrast, Chapter III of RERA 2016 makes provision for the function and duties of the promoter. It is in pursuance of the provisions contained in Chapter III, the Appellate Tribunal has directed the promoter to complete the project. If the revocation of registration was to be provided as a panacea for the disobedience of the orders passed by the Authorities under the RERA 2016, the Parliament would not have made multiple provisions for enforcement of the orders passed by the Authorities under the Act.

63. The submissions of Mr. Vakil premised on the consequence that entail the revocation of registration, under Section 8 of RERA 2016, cannot be acceded to unreservedly. Undoubtedly, Section 8 empowers the Authority to take necessary action including the carrying out the remaining development work by competent authority or by the association of the allottees or in any other manner, as may be determined by the Authority, and the second proviso to Section 8 provides the association of allottees the first right of refusal for carrying out the remaining development works. However, these provisions which operate in a completely different sphere cannot be conflated with the provisions which empower the Appellate Tribunal to execute its own order.

64. As there is no conflict between the provisions contained in Sections 7 and 8, and Section 57, read with the provisions contained in Order XXI of the

Code, the principle sought to be pressed into service by Mr. Vakil that, in view of the dichotomy between the provisions of the general law and the provisions of the special law, the special law prevails, is not attracted in the fact-situation at hand. The maxim, *generalia specialibus non derogant* has no application to the situation at hand.

65. In any event, the exercise of the power under Rule 32(5) of Order XXI is discretionary in nature. The Appellate Tribunal may or may not lend its assistance to the execution of the decree under sub-rule (5) of Rule 32, having regard to the facts of the given case. For instance, if the grievance of the allottee is that though the project is complete, yet the promoter has not provided the amenities, the Appellate Tribunal may exercise the discretion to execute the remaining work of providing the necessary amenities by appointing an appropriate agency. In contrast, if the project is at the nascent stage, the Appellate Tribunal may not be persuaded to entrust the development of the project to an individual allottee. However, this difficulty in the practical application of sub-rule (5) of Rule 32 of Order XXI cannot be a barometer to hold that a allottee is not entitled to seek the assistance of the Appellate Tribunal in the matter of execution of the decree in the manner provided under Rule 32(5) on account of the provisions contained in Section 7 of the RERA, 2016.

66. I find substance in the submission of Mr. Chhabria that the liberty granted to the allottees in Clause (iv) of the order dated 30th June 2022 to seek revocation of registration of the project does not foreclose the right of the allottees to seek the execution of the decree in accordance with the provisions of RERA 2016 and the Code.

67. If the submission on behalf of the Respondent that, the only course available to the allottees is to invoke Section 7 of RERA 2016 is taken to its logical corollary then the very execution petition for execution of the order passed by the Appellate Tribunal would become untenable. It is pertinent to note that, by the impugned order, the Appellate Tribunal has permitted the amendment to execute the decree by attachment of the property and arrest of the Judgment Debtor. If the reasoning of the Appellate Authority that recourse to sub-Rule (5) of Rule 32 of the Code is impermissible is accepted, then a fortiori the recourse to the mode of execution by the arrest of the Judgment Debtor would also be not available.

68. Another factor which bears upon the determination whether to foreclose the option to execute the decree by resorting to Rule 32(5) of Order XXI is the nature of the proceeding under Section 7 of the RERA, 2016. The allottee would be required to again approach the Authority after having obtained an order from the Appellate Tribunal and commence a fresh proceeding before the Authority, with all the travails and vicissitudes of the fortunes in litigation,

first before the Authority and then in appeal before the Appellate Tribunal. If such an interpretation is adopted, the allottee would be left in the lurch despite being armed with an order passed by the Appellate Tribunal and that would frustrate the very object of RERA, 2016.

69. Thus the submission of Mr. Vakil that the provisions contained in Section 7 of RERA, 2016 prescribe the manner of executing the decree of the present nature, where the promoter is directed to complete the construction and deliver the possession and the said direction cannot be enforced in any other manner, does not merit acceptance. The rule enunciated in ***Taylor v. Taylor***[9] and followed in ***Nazir Ahmad vs. King Emperor***[10], that where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all, reiterated in the case of ***Meera Sahni v. Lieutenant Governor of Delhi***[11], on which reliance was placed by Mr. Vakil, has no application to the controversy at hand.

70. Undoubtedly, if an order of revocation of registration is passed, then the carrying out of the remaining development work can only be in the manner prescribed under Sections 7 and 8 of the RERA, 2016. Those provisions will, however, have no application where the order passed by the Appellate Tribunal is put to execution under Section 57 of RERA, 2016. I must hasten to add that the Appellate Tribunal retains the discretion in the matter of the

9 (1875) 1 Ch D 426.
10 (1936) 63 IA 372; AIR 1936 PC 253 (2).
11 (2008) 9 SCC 177.

manner of execution of the order.

71. For the forgoing reasons question Nos. (i) and (ii) are answered in the affirmative. And question No. (iii) is answered as under:

(a) The remedy of execution of the order passed by the Appellate Tribunal as a decree is independent of the remedies under Sections 7 and 35 of RERA 2016.

(b) The Appellate Tribunal has the discretion in the matter of the manner of the execution of the decree.

(c) In a given case, the Appellate Tribunal may exercise the power to execute the decree in the manner provided under Order XXI Rule 32(5).

72. Hence, the following order :

: O R D E R :

(i) The Appeals stand allowed.

(ii) The impugned order stands quashed and set aside.

(iii) The applications for amendment in the Execution Application Nos.13 of 2023, 14 of 2023, 15 of 2023, 16 of 2023 and 17 of 2023 stand allowed.

(iv) The applicants-allottees in the respective Applications shall carry out the necessary amendment within a period of three weeks from the date of uploading of this judgment and serve its copy on the

Respondent within one week thereafter.

(v) The Appellate Tribunal is requested to decide the execution applications on their own merits and in accordance with law, as expeditiously as possible.

(vi) In view of disposal of the Appeals, all Interim Applications also stand disposed.

No costs.

(N.J.JAMADAR, J.)