BEFORE THE MAHARASHTRA REAL ESTATE

APPELLATE TRIBUNAL, MUMBAI

Appeal No. AT006000000345549 of 2024
In
Complaint No. CC006000000375000 of 2023

Echjay Industries Private Limited]
A company incorporated under]
Provisions of the Companies Act 1956,]
Having its corporate office at 83,]
Bajaj Bhavan, Nariman Point,] ... Appellant/Org.
Mumbai-400 021.] Complainant.

Versus

1. M/s. R. R. Builders,]
A partnership firm having its office]
At 14th Ruparel Iris, Senapati Bapat]
Marg, Matunga (W),]
Mumbai-400 016.]

2. Mr. Amit Mahendra Ruparel,]
Partner/member of Respondent]
No.1, currently having his office]
At 14th Floor, Ruparel Iris,]
Senapati Bapat Marg,]
Matunga (W), Mumbai-400 016.]

3. Godrej Projects Development Ltd.,]
A company incorporated under the]
Provisions of the Companies Act,]
1956, having its registered office at]
Godrej One, 5th Floor, Pirojshanagar]
Eastern Express Highway,] ... Respondents/
Vikhroli (E), Mumbai-400 079.] Org. respondents.

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Sr. Adv. Mr. Naushad Engineer a/w. Sr. Adv. Mr. Sharad Bansal for appellant.
Adv. Mr. Abir Patel for respondent no.1.
None for Respondent No.2.
Ms. Jennifer Michael for Respondent No.3.

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

RESERVED ON : 22nd April, 2026

PRONOUNCED ON : 4th May, 2026

(THROUGH VIDEO CONFERENCING)

JUDGEMENT

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

1. The captioned appeal arises from the interim order dated 14.06.2024 passed by the learned Chairperson, Maharashtra Real Estate Regulatory Authority (for short "the Authority") in the captioned complaint No.CC006000000375000, filed by the appellant herein/allottee.
2. The brief facts, gathered from the pleadings, documents on record, and the impugned order which led to filing of this appeal reveal that the appellant is an allottee in respect of the residential project namely "Ruparel Vivanja" (Earlier known as "Godrej Sky" when the subject flat was marketed and was purchased by the appellant), situated at plot bearing C.S. No. 1D/716 at E-400027, Ward E, Mumbai City, 400027 at Mazgaon Division, Byculla, Mumbai (for short 'the said project').
3. The respondent no.1, i.e. M/s. R.R. Builders is the owner of the project land. The respondent no.3 i.e. Godrej Projects

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Development Limited (formerly known as Godrej Projects Development Private Limited) is the co-promoter of the project.

4. The respondent no.3 has entered into Development Management Agreement dated 09.04.2012 with respondent no.1 (for short 'DMA'). Under the said agreement, the respondent no.3 has permitted the respondent no.1 to use brand name "Godrej" for the said project and project has been launched and/or marketed using respondent no.3's brand name. The respondent no.3' detailed roles are set out in the said DMA.
5. In the year 2013, the respondent no.1 represented to the appellant that they were developing a new project at Mazgaon, Byculla, known as "Godrej Sky" which consisted of various amenities to be provided by the respondent no.1. Further, the respondent no.1 has also represented to the appellant that they shall collaborate/partner with Godrej Projects i.e. respondent no.3 for developing the said project. The brochure issued by respondent no.3 with respect to the said project advertised the project as "Godrej Sky".
6. By virtue of the Memorandum of Understanding dated 28.02.2013 (for short 'the MOU') entered into between the appellant and the respondent no.1, the appellant was allotted a residential flat admeasuring 1339.90 sq. ft. carpet area, equivalent to 2194 sq. ft salable area bearing flat no. 1602 (for short 'said flat') on the 16th floor, in the proposed original building named as "Godrej Sky" for total consideration of Rs.3,85,92,000/-.

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7. The appellant has admittedly paid Rs.1,92,96,000/- towards consideration of the said flat, receipt whereof is recorded and acknowledged in the said MOU. Besides the said consideration amount the appellant also admittedly made payment of Rs.5,96,246/- to respondent no.1 towards service tax.
8. By 2019, more than six years had elapsed since the execution of the MOU and the respondents had failed to hand over possession of the flat to the appellant. Thereafter, the appellant was constrained to sent legal notice dated 19.12.2019 through his Advocate calling upon the respondent no.1 to refund the amount of Rs.1,98,92,246/- paid by the appellant towards purchase of the said flat. Despite receipt of the said legal notice, the respondents failed to reply to the said notice.
9. The project being ongoing when RERA came into force, it was registered with the MahaRERA under the provisions of RERA Act, 2016. The original application for registration uploaded on the MahaRERA website regarding subject project states that the completion date of project as 30.11.2021. The said completion date was unilaterally decided by the respondents. The said application further states that the respondent no.3 is co-promoter of the said project.
10. The respondent changed the said project completion date to 30.11.2021 whereas the appellant was promised to hand over possession of the flat by February 2016.
11. Thereafter, the respondent again sought extension for completion of the project unilaterally and revised proposed date of completion. The name of the project was also changed from "Godrej Sky" to "Ruparel Vivanza". The appellant further

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noticed that the registration under the name "Ruparel Vivanza" was granted on 29.11.2022 with registration no. P51900003595. The said certificate of registration further stated that the registration is valid till 30.06.2025 thereby implying that the proposed completion date was further extended up to 30.06.2015. The appellant further noticed that on 15.12.2022 the respondent no.1 was granted further extension till 31.03.2027. By virtue of certificate of extension for registration of the said project, the extended completion date stood to 31.03.2027 i.e. six year after the initial promised completion date filed with the MahaRERA and 11 years after the date of hand over of possession, promised to the appellant. Till date the appellant has not been received possession of the said flat even though 13 years have been lapsed since the execution of the MOU. The project is still incomplete and the appellant has not been offered possession of the flat.

12. Aggrieved by this the appellant filed the captioned complaint seeking, inter-alia, reliefs that the respondent be jointly and severally directed to refund:

    i) Part consideration amount of Rs.1,92,96,000/- along with interest as per the Maharashtra Real Estate (Regulation and Development) (Registration of Real Estate Projects, Registration of Real Estate Agents, Rates of Interest and Disclosures on Website) Rules 2017 (for short 'the said Rules'),

    ii) The amount of Rs.5,96,246/- paid by the appellant towards service tax for purchase of the said flat along with interest as prescribed in the said rules.

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13. Thereafter, during the complaint proceedings, the respondent no.3 filed an application dated 15.05.2023 seeking a declaration that it is not a necessary party to the complaint and stands therefore discharged from the complaint. Further, respondent no.3 prayed that the appellant may be directed to delete the name of respondent no.3 as party respondent.
14. The Authority heard the parties on the said application. The applicant/respondent no.3 mainly contended as follows:
    a) The MahaRERA portal with respect to the project reflects status of respondent no.3 as "inactive" promoter.
    b) Although the respondent no.3 initially a part of the project, the same is not factual position as on the date of filing of the complaint.
    c) The respondent no.3 had initiated arbitration proceedings against respondent no.1 seeking specific performance in accordance with the said DMA and supplementary agreement executed between the respondent no.1 and respondent no.3 with respect to the said project before a sole arbitrator.
    d) A consent award dated 30.09.2021 was passed in the said arbitration proceedings whereby the liabilities pursuant to the said project was absorbed by the respondent no.1,
    e) As per the orders of the MahaRERA in previous complaint in the said project it has been held that the respondent no.3 being project manager can not be held liable for the any violation under the RERA Act, 2016,
    f) The respondent no.3 is not part of the said MOU entered into between the respondent no.1 and the appellant.

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15. The appellant/complainant opposed the application by contending the following:

a) The respondent nio.3 is one of the promoters of the project within the meaning of RERA Act, 2016 and the circulars issued thereunder. The original application on the portal of MahaRERA filed for the project shows respondent as "co-promoter" and the of type of arrangement/agreement between respondent no.3 and respondent no.1 as per the original application as stated to be "revenue share"

b) The respondent no.3 also filed declaration/affidavit in form B dated 28.07.2017 under Section 4(2)(l) of the Act, read with Rule 3(6) of the said Rules. This form is required to be filed by the promoter under Section 4(2)(l) of the RERA Act, 2016. Therefore, the respondent no.3 as per its own showing has always represented to be a promoter of the project.

c) Under the said DMA the respondent no.3 has consented to lend its brand name 'Godrej' to the project and the project has been launched and/or marketed using the respondent no.3's brand name.

d) The said MOU dated 28.02.2013 executed between the appellant and the respondent no.1 stated in clause 5 of the said MOU that once the project was officially launched, a fresh allotment letter would be issued to the appellant "*on a Godrej Properties letterhead and this agreement will stand null and void*"

e) The brochure issued by respondent no.3 with respect to the said project advertises the said project as "Godrej Sky",

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f) The mere fact that the status of the respondent no.3 in the revised MahaRERA website is shows as "inactive" does not in any manner imply that the respondent no.3 is no longer a promoter within the meaning of RERA Act, 2016. Even the project details/MahaRERA application in respect of the said project which was relied upon by the respondent no.3 shows as the promoter with type of arrangement/ agreements detailed as 'revenue share' and therefore the respondent no.3 continues to be the promoter,

g) the terms of the said consent award do not exonerate the respondent no.3 from its statutory and contractual obligations owed to the appellant. In fact, the annexure-4 of the consent terms dated 03.09.2021 recognized the appellant as an allottee of the project and acknowledges the receipt of the sum of Rs.1,92,96,000/- from the appellant. Any inter-se contractual arrangement between the respondent no.3 and the respondent no.1 can not negate the obligations cast upon the respondent no.3 under the RERA Act, 2016 vis-a-vis the appellant.

16. The respondent no.3 in its affidavit-in-rejoinder dated 06.09.2023 to affidavit-in-reply dated 19.05.2023 filed before the Authority, inter-alia, stated that annexure-4 to the consent award stated that it is respondent no.1's liability to settle claim of the appellant.

17. The appellant in its written submissions filed before the Authority also relied upon judgments annexed to the said written submissions which were also relied upon during the course of hearing.

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18. After hearing the parties, the Authority passed the said interim order dated 14.06.2024 which is impugned in this appeal. The Authority observed that the said arbitration award clearly exonerated the respondent no.3 from any responsibilities and duties as a promoter of the project. Further, the only document executed between the complainant for allotment of the said flat is the MOU dated 28.02.2013 issued by the respondent no.1. As per the MahaRERA project registration details, the respondent no.3 shown as inactive. With these observations the Authority concluded that the respondent no.3 is neither a promoter of the project for the purpose of the complaint nor can it be held liable to fulfil the reliefs sought by the complainant. With these observations the Authority allowed the application filed by the respondent no.3 and directed that the name of respondent no.3 be deleted as a party respondent.

19. Aggrieved by the said order, the appellant has filed the captioned appeal on the grounds set out in the said memorandum of appeal seeking following reliefs:

    i) Set aside the impugned order dated 14.06.2024 and consequently dismiss the application dated 19.05.2023 filed by the respondent no.3 seeking directions to delete its name as party respondent.

    ii) Any other reliefs as may deem fit.

20. We have heard the learned Advocate for the parties at length. The submissions of learned Advocates for the parties are nothing but reiteration of the contents of the memorandum of appeal, reply, rejoinder, and written submissions.

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21. The learned Senior Advocate Mr. Naushad Engineer for the appellant has submitted that the impugned order is premised on the following reasons given by the Authority to allow the application filed by the respondent no.3 for deletion of its name from the array of party respondents:
    a) As per the MahaRERA project registration details the respondent no.3 is shown as an "inactive" promoter,
    b) The only document executed between the appellant is an allotment of the said flat id MOU which is issued by the respondent no.1,
    c) The arbitration award entered into between the respondent no.1 and respondent no.3 exonerated the respondent no.3 from its responsibilities and duties as the promoter of the project.
22. The learned Senior Advocate Mr. Naushad Engineer for the appellant submitted that the respondent no.3 is "promoter" under the RERA Act, and its status from the webpage of the project is co-promoter. Firstly, the respondent no.3 is shown as co-promoter on the webpage of the MahaRERA for the said project. As per the original application for the project registration on MahaRERA portal also represents the status of the respondent no.3 as co-promoter with type of arrangement/agreement detailed as 'revenue share'. Further, the respondent no.3 has filed declaration/ affidavit in Form B dated 28.07.2017 under section 4(2)(l) of the RERA Act, 2016 read with Section 3(6) of the said Rules. In Form B the respondent no.3 on oath has declared and provided an undertaking inter-alia in relation to the time period for

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completion of the project as 30.11.2021. Form-B is required to be filed by every promoter of the project. The respondent no.3 is promoter as defined under section 2(zk) of the RERA Act, 2016. From Section 2(zk) and the explanation thereto stipulates that if a person (a) who constructs or converts the building into apartments and developing a flat for sale and (b) persons who sells the apartment or flat are different persons, both shall be deemed to be the promoter and shall jointly liable for such function and responsibilities specified under the RERA Act, 2016 and Rules made thereunder.

23. The learned Senior Advocate submitted that the reliance of the respondent no.3 and the Authority in the impugned order that the status of the respondent no.3 on the MahaRERA website as inactive is wholly irrelevant as the said alleged status can not negate the rights for the allottees under the RERA Act, 2016. Once it is determined by the MahaRERA that the respondent no.3 falls within the definition of "promoter" under the RERA Act, 2016, the status of respondent no.3 as "inactive" on the MahaRERA website has no bearing on respondent no.3's substantive obligations owed to allottees under the Act. In the original MahaRERA application, the respondent no.3 is shown as co-promoter and therefore any subsequent change of status of respondent no.3 to inactive can not negate the rights of the appellant vis-à-vis respondent no.3. When the Act came into force on 1st May, 2017 and when application for declaration were filed with the MahaRERA, the respondent no.3 declared itself to be a promoter. Thus, the respondent no.3 continued to be the promoter and liable towards the liabilities towards the

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appellant under the provisions of the RERA Act, 2016. The alleged subsequent change in the status can not absolve the respondent no.3 from his statutory obligations.

24. The learned Senior Advocate further submitted that since the respondent no.3 has shown as co-promoter on the webpage of MahaRERA, the respondent no.3' contention that it is not a promoter ought to have been dismissed by the Authority at the threshold. The Hon'ble Bombay High Court in case of *Wadhwa Group Housing Private Limited V/s. Mr. Vijay Choksi & Anr.* [Second Appeal (Stamp) No.21842 of 2023 decided by the Hon'ble Bombay High Court on 26.02.2024] has held that "*while registering the project as ongoing project under Section 3 of the RERA Act, 2016, the appellant's name has been included in the list of promoters. Therefore, the appellant can not be run away from the fact that it is the promoter in respect of the project*". Thus, as per the above settled law, the respondent no.3 is promoter since it has been registered in the MahaRERA website as promoter with arrangement/agreement of 'revenue share' when the project was registered under section 3 of the RERA Act, 2016 as an ongoing project and therefore can not absolve itself from the liability arising out of the RERA Act, 2016.

25. The learned Senior Advocate further submitted that from the various clauses of the DMA it also reveals that the respondent no.3 having been as a promoter. As per the DMA the respondent no.3 lent its brand name 'Godrej' to the project, which are reflected in the Recital E and various Clauses 3.2.1 & 5.1 of the said DMA. As per the Clause 3.1.1. of the DMA, the respondent no.3 was appointed as Development Manager to undertake,

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provide, and carry out the management, supervision and fulfillment of the respondent no.1's obligations under the project. As per Clase 3.6.3 of the DMA, the respondent no.3 has to ensure, supervise and manage the performance of duties of the main contractor and the other contractors. Clause 4.2 prescribed that the respondent no.3 has to sign the agreements for sale till all the unsold premises had been sold. Further, Clause 7.1 stipulates that the respondent no.3 would recommend to the respondent no.1 the complete design of the project. Clause 5.5 stipulates that the consideration payable to respondent no.3 for its role as Development Manager labelled as 'Development Manager Fees', was to be paid from the sale proceeds of units in the project. From, the above, it is apparent that the respondent no.3 had a substantial role to play in the development of the project and thus agreed to develop the project. Hence, the respondent no.3 is the promoter as defined under Section 2(zk) of the RERA Act, 2016.

26. The learned Senior Advocate submitted that the MahaRERA has failed to consider its own order dated 05.03.2021 in the case of *Gauri Thatte V/s. Nirmal Developers & Ors.*, which was brought to the notice of the Authority in its written submissions. The facts of that case and the present case are similar and the Development Manager therein had the Authority to supervise and control all the activities of planning, selling, funding and construction of the project. The MahaRERA in the said order has held that the Development Manager is a promoter within the meaning of promoter under Section 2(zk) of the RERA Act, 2016.

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27. The learned Senior Advocate for the appellant submitted that the Authority in the impugned order allowed the application to delete the respondent no.3 on the ground that the only document executed by the appellant is the MOU issued by the respondent no.1, thereby accepting the contention of the respondent no.3 that there is no privity of contract between the appellant and respondent no.3. The said contention is contrary to the settled position of law as laid down by the Hon'ble High Court in the case of *Wadhwa Group Housing Pvt. Ltd.* (supra), wherein the Hon'ble Bombay High Court has held that the definition of the promoter under Section 2(zk) of the RERA Act, would indicate that even persons/entities with whom a flat purchaser does not enter into a contract and with whom there is no privity are also covered by definition of the term promoter. In the said judgment it has been held that it is a matter of indoor management between the promoters and the flat purchaser who is not supposed to know the intricacies of the arrangement between several promoters amongst themselves and when a claim is raised under the Act, all promoters become jointly liable *qua* the flat purchasers, irrespective of whether there is a privity of contract with each of the promoter or not. Further, it is immaterial whether the co-promoter received the amount from the allottee or not. Thus, the fact that the said MOU was executed by the appellant with the respondent no.1 has no bearing on respondent no.3' obligation as a promoter.

28. The learned Senior Advocate further submitted that it was expressly represented to the appellant and the public at large that the respondent no.3 is promoter. Clause 5 of the said MOU

states that once the project was officially launched, a fresh allotment letter would be issued to the appellant *"on a Godrej Properties letterhead and this agreement will stand null and void."* Further, the brochure issued by the respondent no.3 with respect to the said project advertises the said project as 'Godrej Sky'. The project is marketed under the brand name of 'Godrej'. It was represented to public at large that the respondent no.3 will also be developing the property along with other promoters. It is evident that it was represented to the appellant that it was always the intention of the respondent no.3 that they were co-promoter. The appellant had invested in the project by relying upon the 'Godrej' brand and believing that the respondent no.3 is a co-promoter. Therefore, the respondent no.3 is jointly and severally be liable under the provisions of RERA Act, 2016.

29. The learned Senior Advocate further submitted that the impugned order erred in relying upon an inter-se arrangement between the co-promoters to exonerate the respondent no.3 of its obligations owed to the appellant arising out of RERA Act, 2016. The respondent no.3 has pleaded that the alleged dispute between the respondent no.1 and respondent no.3 arising out of the said DMA were referred to arbitration. The respondent no.1 and 3 entered into the consent terms on 03.09.2021. Pursuant to the said consent terms, a consent award dated 30.09.2021 was passed by the MahaRERA. Pertinently, the appellant is not party to the said consent terms dated 03.09.2021 and the provisions of the said consent terms cannot bind the appellant and negate the appellant's rights to seek refund of the paid amount with interest from the respondent

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no.3 under the RERA Act, 2016 once it is held that the respondent no.3 is promoter. It is trite law that an agreement between two private parties cannot bind a non-signatory. Therefore, such inter-se arrangements/agreements between the respondent no.1 and respondent no.3 are not binding on the appellant. Therefore, the respondent no.3 continued to be liable to the appellant and is necessary party to the complaint. The Authority has not considered its own decision in case of *Gauri Thatte* (supra) in which it was held that any internal arrangement between the co-promoters cannot bind third parties including allottees.

30. The learned Senior Advocate submitted that without prejudice to the above, in so far as the terms of consent terms dated 03.09.2021 do not absolve the respondent no.3 of its liability towards the appellant. Such consent terms apportioned the liabilities in respect of the project amongst various individuals such as respondent no.3 (claiming thereunder) and respondent nos. 2 to 22 therein (who were apparently a part of the old management of respondent no.1). Clause 20(a) of the consent terms dated 03.09.2021 read with annexure 4 thereto clearly state that the liability of respondent no.2 to 22 therein do not include liability towards the appellant. Therefore, it is clear that the respondent no.3 was not absolved of its liability towards the appellant. The respondent no.3 for the first time in the affidavit in reply dated 06.06.2025 to the appeal has contended that there exists a typographical error in the said Clause 20(a) and that word 'excluding' in Clause 20(a) ought to be read as 'including'. This was never argued before the Authority.

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Thereafter, there are supplementary consent terms which were executed between the parties whereby the said error as claimed by respondent no.3 was never rectified. Clause 6 of the consent terms dated 02.11.2022 confirmed that the consent award dated 30.09.2021 stands modified to the extent set out in the consent terms dated 02.11.2022. Therefore, the above contention of typographical error is an afterthought and liable to be rejected.

31. The learned Advocate submitted that the respondent no.3 has suppressed the existence of execution proceedings being commercial Execution Application (L) No.8570 of 2022 filed by respondent no.3 against the respondent no.1 before the Hon'ble Bombay High Court. The existence of the said execution proceedings and the consent terms dated 02.11.2022 were only disclosed before this Tribunal by the respondent no.3 in its affidavit in reply dated 06.06.2025, although, the said execution proceedings were initiated and consent terms dated 02.11.2022 were filed much before filing of the complaint on 27.03.2023.

32. The learned Senior Advocate further submitted that once the liability of respondent no.3 has already been triggered as a result of its failure to refund the monies to the appellant, any subsequent deletion of its name as a promoter from the MahaRERA portal is irrelevant. The DMA, consent terms dated 03.09.2021, and the consent terms dated 02.22.2022 do not bind the appellant as appellant was not party to the said document/consent terms. Further, any internal arrangement or agreement between the prompter/co-promoter as to allocation of liability cannot bind third parties which are not the party to

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the agreement. Further, the promoter/co-promoter will therefore be obligated to perform their statutory duties under the RERA Act, 2016.

33. With these submissions, the learned Advocate for the appellant submitted that the respondent no.3 being a promoter cannot wriggle out of its statutory obligation to refund the part consideration along with interest thereon to the appellant. The impugned order allowing deletion of respondent no.3 is patently in violation of the position of law laid down in binding precedents of superior courts and prayed that the appeal be allowed.

34. The learned Senior Advocate for the appellant has placed reliance on the following judgments:

    i) *Wadhwa Group Housing Private Limited V/s. Mr. Vijay Choksi & Anr. [Second Appeal (Stamp) No.21842 of 2023 decided by the Hon'ble Bombay High Court on 26.02.2024],*

    ii) *Gauri Thatte V/s. Nirmal Developers & Ors. [Complaint No.CC006000000192458 decided on 05.03.2021 by the Maharashtra Real Estate Regulatory Authority, Mumbai],*

    iii) *Lucrative Properties Private Limited V/s. P.N. Kutty Nair Shekharan [Review Application cum Complaint No.CC006000000196488 in Complaint No. No.CC006000000192888 decided on 23.05.2023 by the Maharashtra Real Estate Regulatory Authority, Mumbai].*

35. The learned Advocate for the respondent no.1, Mr. Abir Patel has submitted that the appellant has challenged the impugned order on the limited issue of deletion of respondent no.3. The

original complaint was never heard on merits and the same is evident from para-10 pf the impugned order which states that "*the complaint shall be listed for hearing on merits as per seniority*". Therefore, the captioned appeal is against an order that never gone into the merits of the case. However, the appellant is under the guise of appeal, trying to agitate its case on merits.

36. The learned Advocate further submitted that the respondent no.1 cannot be made to defend its case on merits at appellate stage when the original complaint before the Authority below is pending adjudication, and one stage of appeal is denied to it. Therefore, there is no question arises of the captioned appeal being argued on the merits of the case of the appellant pending its original complaint.

37. Without prejudice to the above, the learned Advocate submitted that the appellant's primary case is of delay in possession. Further, as per the appellant, the promised date of possession is February 2016. However, the appellant has not produced any evidence to that effect. The only document that existed between the parties is MOU dated 28.02.2013. Clause 5 of the said MOU stipulates that the parties were to execute and register an agreement for sale which was to contain the date of possession. However, the appellant has not once expressed any inclination to sign the same. Further, the complaint is barred by limitation and suffers from delays. With these submissions, the learned Advocate for the respondent no.1 prayed to dismiss the appeal *qua* respondent no.1.

38. The learned Advocate for the respondent no.1 has placed reliance on the following judgments:

    i) *Institute of Chartered Accountants of India V/s. L.K. Ratna and others [(1986) 4 Supreme Court Cases 537],*

    ii) *Daman Singh and others V/s. State of Punjab and others [(1985) 2 Supreme Court Cases 670],*

    iii) *Prabhakar V/s. Joint Director, Sericulture Department and others [(2015) 15 SCC 1].*

39. The learned Advocate for the respondent no.3, Ms. Jenifer Michal submitted that in the arbitration proceedings between the respondent no.1 and 3 arising out of DMA dated 09.04.2012, the parties entered into the consent terms based on which the consent award were 30.09.2021 was passed, whereby it was agreed that the respondent no.3 will cease to be a promoter in respect of the subject project from the date of the award. Further, the respondent no.1 will take all steps for removal of name of respondent no.3 as promoter of the subject project on the website of the MahaRERA. It was also agreed that the respondent no.1 including its partners, to refrain from holding out that the respondent no.3 is a promoter of the project.

40. The learned Advocate submitted that thereafter upon disputes arising between the respondent nos. 1 and 3, Commercial Execution Application (L) No.8570 of 2022 was filed by the respondent no.3 against the respondent no.1 before the Hon'ble Bombay High Court seeking execution of the consent award. The respondent nos. 1 and 3 once again entered into the consent terms dated 02.11.2022, whereupon it was once again *inter alia*, agreed that the respondent no.1 shall make necessary

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application for removal of the name of respondent no.3 as promoter or co-promoter, as the case may be, in respect of the subject project. In compliance thereof, the name of respondent no.3 has been removed from the project details of the subject project on the MahaRERA website. On 18.11.2022 the Hon'ble High Court disposed of the Commercial Execution Application (L) No.8570 of 2022 in terms of the consent terms dated 02.11.2022.

41. The learned Advocate submitted that thus, though the arrangement between the respondent no.1 and 3 originally arose out of the said DMA, the same was superseded by virtue of the consent award read with consent terms as a result of which the respondent no.3 exited from the subject project for all purposes, and ceased to have any participation whatsoever, with respect to the subject project.

42. The learned Advocate submitted that in view of the aforesaid having received the imprimatur of the Hon'ble Bombay High Court, there is no question of respondent no.3 being saddled with any liability and/or obligation under the provisions of RERA Act, 2016 in as much as, the same is not merely an inter-se arrangement arrived at between the respondent no.1 and 3. In view of this, the respondent no.3 is not promoter or co-promoter in respect of the subject project and is neither connected nor concerned with the same in any capacity whatsoever.

43. The learned Advocate further submitted that learned senior Advocate for the appellant relies on the alleged MOU dated 28.02.2013 executed between the appellant respondent no.1 as the basis of its claims in the complaint. The said MOU is issued

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by respondent no.1 on its letterhead and has been signed by respondent no.1 and appellant. Clause 5 of the said MOU stipulates that "*the regular agreement for sale will be entered into between yourself and R.R. Builders. Once the project is officially launched a fresh allotment letter will be issued to you on a Godrej Properties letterhead and this agreement will stand null and void.*" Further Clause 6 stipulated that "*in the event that the project does not officially launch after a period of 180 days from the signing of this agreement, the buyer reserves the right to recall their payment to R.R. Builders which shall be refunded by R.R. Builders without the payment of any interest*".

44. The learned Advocate submitted that from the above Clauses of the MOU it is clear that any and all claims that the appellant might have, would lie only against the respondent no.1. Therefore, the appellant's right to seek refund of the amounts paid would only lie against the respondent no.1 and not against respondent no.3. The respondent no.3 has neither signed the MOU nor subsequently issued any allotment letter and/or signed any agreement for sale in the appellant's favour as per Clauses 5 and 6 of the said MOU. Without respondent being signatory, the appellant cannot style itself as allottee of respondent no.3 in any manner, as there is no privity of contract between the appellant and respondent no.3.

45. The learned Advocate submitted that the terms of the DMA itself make it clear that the appellant cannot make any claims whatsoever against respondent no.3. Clause 3.1.2 of the DMA stipulates that "*it is clarified and agreed between the parties that the Development Manager does not and shall not have any*

liability of any nature whatsoever in relation to the said property and/or the project before or after the completion of the project." Further, the Clause 3.1.3 stipulates that "*notwithstanding anything contained in this agreement the Development Manager shall not be liable and/or responsible for any claim made in relation to or arising out of or stemming from the said property and the project.*" Further, Clause 16.1.19 stipulates that "*R.R. Builders shall be solely responsible for all its obligations towards unit purchasers/lessee/licensee and for compliances towards statutory authorities...and GPDPD shall in no manner and for no reason whatsoever be liable for the same.*" Clause 16.1.20 also stipulates that "*all allotment letters and agreement for sale with respect to the free sale of the project shall be signed by R.R. Builders and developers and purchasers and GPDPL (in their capacity as Development Manager as and when required) with the prospective unit purchasers in the format as may be mutually agreed by GPDPL and R.R. Builders. The purpose of the execution of such agreement by GPDPL is to ensure that the commitments made by R.R. Builders and the purchasers to each other are in conformity with the services to be provided by GPDPL and for no other purpose. It is clarified that GPDPL shall in no manner be responsible or liable with regard to the respective performances of R.R. Builders and the purchasers.*"

46. The learned Advocate submitted that the above-mentioned Clauses substantiate that the respondent no.3 is not liable to refund or pay any amounts a claimed by the appellant or otherwise, and as such the impugned order permitting deletion

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of respondent no.3 from the array of the parties in the complaint has been rightly passed by the Authority.

47. The learned Advocate further submitted that the consent award read with consent terms clearly record that the DMA stands terminated and further records that any and all liability in respect of the appellant would be dealt with by respondent no.1 alone. As regards annexure 4 to the consent terms, the word "excluding" appearing therein is a typographical error, Clause 20(a) read with annexure 4 makes it clear that the word "excluding" is nothing but a typographical error and should be read as "including". Further, the respondent no.1 has admitted their liability *qua* allottees mentioned in the annexure 4 of the consent award, which is evident from the fact that no statement to the contrary by respondent no.1 is on record of the present proceedings and therefore the entire liability as well as the obligations with respect to the subject project has been taken over by respondent no.1, who continues to remain the promoter of the subject project under the provisions of the RERA Act. Further, the subject project has now been entirely taken over by respondent no.1 and rebranded from 'Godrej Sky' to 'Ruparel Vivanza'.

48. The learned Advocate submitted that the appellant has placed reliance on the judgment of the Hon'ble Bombay High Court in the case of *Wadhwa Group Housing Pvt. Ltd.*, (supra) as well as the judgment of the Authority in the case of *Gauri Thatte* (supra). However, the same are not applicable as the facts of those case and present case are entirely different. The aforesaid citations proceed on a footing in a situation wherein two

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promoters are jointly developing a project. However, considering the consent award read with consent terms, the respondent no.3 has for all intents and purposes exited from the subject project and therefore not being involved in the implementation of the subject project cannot be held liable as the promoter under the Act. With these submissions, the learned Advocate for the respondent no.3 has prayed to dismiss the appeal.

49. After hearing learned counsels for the parties at length and having regard to the material produced on record by the parties, the following points that arise for our consideration and our findings thereon for the reasons to follow, are as under:

Sr.No.	Points	Findings
1.	Whether the respondent no.3 is promoter within the menaing of "promoter" under the provisions of RERA Act, 2016 *qua* the appellant?	In the Affirmative.
2.	Whether the impugned order warrants interference in this appeal?	In the affirmative
3.	What order?	As per final order.

REASONS

Point No.1 and 2

50. On ensemble of the facts as submitted by the parties above, it is not in dispute that the appellant is an allottee in respect of

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the promoter's subject project which was earlier known as "Godrej Sky" and the subject flat was marketed in the brand name of "Godrej" to the appellant and based on this representation the said was purchased by the appellant. It is also not in dispute that when the project was registered as ongoing project with the MahaRERA the respondent no.1 is shown as promoter and respondent no.3 as co-promoter with the arrangement/agreement as "revenue share". The respondent no.3 entered into a Development Management Agreement dated 09.04.2012 with respondent no.1. Under the said agreement, the respondent no.3 had permitted the respondent no.1 to use the brand name of Godrej" for the said project and the project has been launched by using the respondent no.3's brand name. The detailed roles of respondent nos. 1 and 3 are set out in the said DMA.

51. In the year 2013, the respondent no.1 represented to the appellant that they were developing the new project known as "Godrej Sky" consisted with various amenities to be provided by the respondent no.1. Further, the respondent no.1 also represented to the appellant that there shall be collaboration with the Godrej Properties i.e. respondent no.3 for development of the said project. The brochure issued by the respondent no.3 with respect to the said project advertises and marketed with the brand name as "Godrej Sky".

52. By virtue of MOU dated 28.02.2013 entered into between the appellant and the respondent no.1, the appellant was allotted the residential subject flat from the said project "Godrej Sky" for total consideration of Rs.3,85,92,000/-. Admittedly, the

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appellant has paid Rs.1,92,96,000/- towards consideration, the receipt whereof is recorded and acknowledged in the said MOU. Besides, the said consideration amount paid, the appellant admittedly made payment of Rs.5,96,246/- to respondent no.1 towards service tax. By 2019, more than 6 years had lapsed since execution of the said MOU and the respondent failed to hand over possession of the flat to the appellant. Therefore, the appellant sent a legal notice dated 19.12.2019 through his Advocate calling upon the respondent no.1 to refund the amount of Rs.1,98,92,246/- paid by the appellant towards the purchase of the said flat. Despite receipt of the said legal notice, the respondent no.1 failed to reply to the said notice.

53. It is also not in dispute that the original application of project registration uploaded on the MahaRERA website regarding the said project states for the completion date of project was 30.11.2021. The said completion date was unilaterally decided by the respondents. Thereafter, the respondent again sought extension for completion of the project and unilaterally proposed the date of completion. The name of the project was also changed from "Godrej Sky" to "Ruparel Vivanza". The registration under the name "Ruparel Vivanza" was granted on 29.11.2022 with registration no. P51900003595. The said certificate of registration further stated that the registration is valid till 30.06.2025, thereby implying the proposed completion date as 30.06.2025. The respondent no.1 was granted further extension up to 31.03.2027 by virtue of certificate of extension for registration of the said project. The extended project stood on 31.03.2027 i.e. 6 years after initial promised completion date

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filed with the MahaRERA and 11 years after the date of hand over of possession promised to the appellant. Till date the appellant has not received possession of the said flat even though 13 years have been lapsed since execution of the MOU. The project is still incomplete and appellant has not been offered possession.

54. On closer examination of the said MOU dated 28.02.2013 it reveals that all the ingredients of valid and concluded contract are fulfilled. The said MOU reveals the details of the project property, discerption of the flat, total consideration for the subject flat, payment schedule along with terms and conditions. The said MOU records and confirms the receipt of Rs.1,92,96,000/- towards consideration amount. It is significant that the respondents have not specifically denied the factum of payment made by the appellant as recorded in the said MOU. Thus, both the parties have acted in furtherance of the said MOU and have received the payment as recorded in the said MOU. Therefore, we are of the considered view that the said MOU is valid and concluded contract as it depicts clear picture from the point of view of Clause (a) and (b) of Section 2 of the Indian Contract Act, 1872. Therefore, the said MOU is enforceable under the law, including provisions of RERA Act, 2016.

55. The respondent no.1 has contended that the said MOU does not disclose the date of possession. The date of possession was to be mentioned in the agreement for sale as per the Clause 5 of the MOU.

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56. Although the date of possession has not been mentioned in the said MOU, the Hon'ble Supreme Court in case of *Fortune Infrastructure (Now known as M/s. Hicon Infrastructure) & Anr. V/s. Trevor D'Lima & Ors.* [(2018) 5 SCR 273] wherein the Hon'ble Apex Court has held that if the date of possession is not mentioned in the agreement, the promoter is expected to hand over the possession of the unit within a reasonable time and in the facts and circumstances of the case the period of three years was held to be reasonable time. Pertinently, in the facts and circumstances of this case, when the project was registered under the provisions of RERA Act, 2016 as ongoing project, the respondents registered the said project and mentioned the project completion date as 30.11.2021. Thus, by their own admission, the reasonable period for completion of the project according to the respondents would be the period up to 30.11.2021. Therefore, according to the admission on the part of the respondents, it is reasonable to take 30.11.2021 as the date of possession.

57. Even after more than 6 years lapsed since execution of the MOU and that the respondent failed to hand over possession, the appellant vide its legal notice dated 19.12.2019 called upon the respondent no.1 to refund the paid amount of Rs.1,98,92,246/- along with interest. Thus, 19.12.2019 is the date of trigger date which put the respondent no.1 to notice for refund of the amount along with interest. Even by the date of 30.11.2021 (proposed completion date in the project registration) which can be reduced as reasonable date of possession as per their own admission of the respondents), the respondents failed to hand

over possession of the flat. Therefore, in our view, the respondents failed to hand possession of the said flat even within the reasonable period as per project completion date proposed by the respondents. Pertinently till the date of 30.11.2021, the respondent no.3 was shown as co-promoter of the said project and its name was not removed. Therefore, when the claim of refund with interest under Section 18 of the RERA Act, 2016 was crystalized and accrued in favour of the appellants, the respondent no.3 still continued as co-promoter of the said project on the records of the MahaRERA.

58. Although the said MOU was executed prior to RERA coming into force, we are of the view that the said MOU is enforceable under the provisions of RERA Act, 2016, the Act being retroactive in nature.

59. The Hon'ble Supreme Court in the case of *M/s. Newtech Promoters and Developers Pvt. Ltd. V/s. State of U.P. & Others* [Civil Appeal No(s). 6745-6749 of 2021 (arising out of SLP (Civil) No(s). 3711-3715 of 2021 decided on 21st November, 2021] has held that the RERA Act, 2016 is retroactive in its operation and held in Para-37, 41 and 45 as under:

> "37. *Looking to the scheme of Act 2016 and Section 3 in particular the of which a detailed discussion has been made, all "ongoing projects" that commence prior to the Act and in respect to which completion certificate has not been issued are covered under the Act. It manifests that the legislative intent is to make the Act applicable not only to the projects which were yet to commence after the Act became operational but also to bring under its fold the ongoing projects and to protect from its inception the inter se rights of the stake holders, including allottees/home buyers, promoters and real estate agents while imposing certain duties and responsibilities on each of them and to*

regulate, administer and supervise the unregulated real estate sector within the fold of the real estate authority.

41.The clear and unambiguous language of the statute is retroactive in operation and by applying purposive interpretation rule of statutory construction, only one result is possible, i.e. the legislature consciously enacted a retroactive statute to ensure sale of plot, apartment or building, real estate project is done in an efficient and transparent manner so that the interest of consumers in the real estate sector is protected by all means and Sections 13, 18(1) and 19(4) are all beneficial provisions for safeguarding the pecuniary interest of the consumers/allottees. In the given circumstances, if the Act is held prospective then the adjudicatory mechanism under Section 31 would not be available to any of the allottee for an on-going project. Thus, it negates the contention of the promoters regarding the contractual terms having an overriding effect over the retrospective applicability of the Act, even on facts of this case.

45. At the given time, there was no law regulating the real estate sector, development works/obligations of promoter and allottee, it was badly felt that such of the ongoing projects to which completion certificate has not been issued must be brought within the fold of the Act 2016 in securing the interests of allottees, promoters, real estate agents in its best possible way obviously, within the parameters of law. Merely because enactment as prayed is made retroactive in its operation, it cannot be said to be either violative of Articles 14 or 19(1)(g) of the Constitution of India. To the contrary, the Parliament indeed has the power to legislate even retrospectively to take into its fold the pre-existing contract and rights executed between the parties in the larger public interest."

The subject project was ongoing when the RERA Act, 2016 came into force and the said project is therefore registered with MahaRERA under the provisions of RERA Act, 2016. In the light of the above exposition of law in the case of *M/s. Newtech Promoters and Developers* (supra), the MOU which was

executed prior to coming into force the RERA Act, 2016 can be enforced under the provisions of RERA Act, 2016. As we have already observed that the said MOU is a valid and concluded contract enforceable under law. Hence, we are of the considered view that the appellant/allottee is entitled to seek relief under the provisions of the RERA Act, 2016 even though the said MOU is executed prior to RERA Act, 2016 coming in force.

60. The project is still incomplete and respondents have not obtained occupation certificate. Therefore, the respondents have failed to hand over possession of the said flat within the reasonable period i.e by 30.11.2021. Once there is delay in handing over of possession, the appellant is entitled to relief of refund with interest and compensation under Section 18 of the RERA Act, 2016.

61. It is the contention of the respondent no.3 that from Clauses 5 and 6 of the said MOU any claims that appellant might have would lie only against the respondent no.1 and not against respondent no.3. Therefore, the appellant's right to seek refund of paid amount with interest would lie only against the respondent no.1 and not against respondent no.3. It is apposite to reproduce the said Clauses:

> *"5. The regular Agreement for sale will be entered into between yourself and R.R. Builders at your cost of payment of stamp duty, registration charges and taxes as applicable in law. Once the project is officially launched, a fresh allotment letter will be issued to you on a Godrej*

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Properties letterhead and this agreement will stand null and void.

6. In the event that the project does not officially launch after a period of 180 days from the signing of this agreement, the buyer reserves the right to recall their payment to R.R. Builders, which shall be refunded by R.R. Builders without the payment of any interest."

62. As per Clause 6, in the event that the project does not officially launch after 180 days from the signing of this agreement, the buyer reserves the right to recall their payment to R.R. Builders i.e. respondent no.1 which shall be refunded by R.R. Builders without the payment of any interest. The said Clause is very clear that it is up to the appellant/buyer to seek refund of the paid amount as per the said Clause. It is not the case of the respondents that the appellant has invoked the said Clause soon after 180 days of MOU. Therefore, the said Clause is not relevant in the facts of this case, since the appellant has not invoked the said Clause to seek refund of the paid amount soon after expiry of period of 180 days. It was only on 19.12.2019, after expiry of 6 years of the MOU the respondents failed to give possession of the said flat, the appellant vide its legal notice to the respondent no.1 asked for refund. Till 19.12.2019 Clause 6 was not invoked by the appellant and therefore under Clause 5 it was the obligation on the part of the respondents to execute regular agreement for sale and after the project was officially launched to issue fresh allotment letter on the letterhead of Godrej Properties. Admittedly, no such allotment letter was issued till 19.12.2019, even though the project was registered

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with the MahaRERA in the year 2017 after RERA coming into force thereby signifying launch of the project. Further, even till date of 19.12.2019, the respondent no.3 was still the co-promoter of the subject project on MahaRERA website and failed to fulfil the obligation under clause 5 of the MOU. This clarifies that there was representation made to the appellant that the respondent no.3 will issue fresh allotment letter on Godrej Properties letterhead. Further, having failed to fulfil the obligation under clause 5 of the MOU, the respondent no.3 cannot take advantage of its wrong claiming that the allotment letter did not come to be issued and therefore respondent no.3 is not liable to discharge its obligation as the promoter. Further having placed reliance on the said MOU, the respondent no.3 has admitted to have executed the said MOU.

63. It is the contention of the respondent no.3 that it is not the promoter or co-promoter of the said project. It is not in dispute that the respondent no.3 was appointed by the respondent no.1 vide Development Management Agreement dated 09.04.2012 undertaking the responsibility and obligations to the extent of Development Manager. It is also the contention of the respondent no.3 that the respondent no.1 had the authority and obligations to make allotment of the units and sale thereof. Further, the allotment letter is issued by the respondent no.1. By no means whatsoever was the respondent no.3 was responsible to any offer of possession of the said flat to the appellant being merely a Development Manager.

64. It is pertinent that the respondent no.3 in the project registration is shown as promoter/land owner, having revenue

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sharing arrangement. The respondent no.3 has not disputed this fact. Therefore, as per the registration of the project at the relevant time, the respondent no.3 was shown as co-promoter of the project. It is pertinent that as per the Circular No.12 of 2017 of the MahaRERA, land owners or investors who are entitled the share of the total revenue generated from the sale of apartments or share of the total area developed for the sale which are also marketed and sold by such individuals/ organizations will squarely falls within the meaning of the promoter. In accordance with the said circular when the project was registered with the MahaRERA, on account of revenue sharing arrangement between the respondent no.1 and respondent no.3, the respondent no.3 is shown as the promoter of the project along with the respondent no.1.

65. It is also pertinent to note the conduct of the respondent no.3. The respondent no.3 i.e. Godrej has represented itself as a promoter of the project to the appellant. Further, the project is marketed and sold under the brand name of "Godrej" of which respondent no.3 is absolute legal owner and propriety holding of the legal rights and licenses as such. Marketing of the project was being done by respondent no.3 as one of the Godrej Properties. Further, the respondent no.3 has all the legal contractual rights under Clause 18.6 of the Development Management Agreement and undertaken the completion of the project in the event the project is stalled/stopped/ suspended/slowed down. Thus, it is clearly evident that the respondent no.3 by its acts as mentioned above acted like promoter.

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66. While deliberating on the definition of the promoter under RERA Act, 2016 and on the liability of the promoter under RERA Act, 2016, it has been held by the Hon'ble Bombay High Court [*Second Appeal(stamp) No. 21842 of 2023] in Wadhwa Group Housing Private Ltd. V/s. 1. Mr. Vijay Choksi 2. SSS Escatics Pvt. Ltd.* as under:

> *"17. The project 'The Nest' has been registered as an ongoing project under Section 3 of RERA Act. To decide liability of Appellant to refund amount paid for purchase of flat in the real estate project, it would be necessary to determine whether Appellant falls in the definition of the term 'promoter'. Section 2(zk) of RERA defines the term "Promoter" thus:*
>
> *(zk) "promoter" means, -*
>
> *(i) a person who constructs or causes to be constructed an independent building or a building consisting of apartments, or converts an existing building or a part thereof into apartments, for the purpose of selling all or some of the apartments to other persons and includes his assignees; or*
>
> *(ii) a person who develops land into a project, whether or not the person also constructs structures or any of the plots, for the purpose of selling to other persons all or some of the plots in the said project, whether with or without structures thereon; or*
>
> *(iii) any development authority or any other public body in respect of allottees of-*
>
> *(a) buildings or apartments, as the case may be, constructed by such authority or body on lands owned by them or placed at their disposal by the Government;*
>
> *(b) plots owned by such authority or body or placed at their disposal by the Government;*

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(c) for the purpose of selling all or some of the apartments or plots,

or

(iv) an apex State level co-operative housing finance society and a primary co-operative housing society which constructs apartments or buildings for its Members or in respect of the allottees of such apartments or buildings; or

(v) any other person who acts himself as a builder, coloniser, contractor, developer, estate developer or by any other name or claims to be acting as the holder of a power of attorney from the owner of the land on which the building or apartment is constructed or plot is developed for sale; or

(vi) such other person who constructs any building or apartment for sale to the general public.

Explanation.- For the purposes of this clause, where the person who constructs or converts a building into apartments or develops a plot for sale and the person who sells apartments or plots are different persons, both of them shall be deemed to be the promoters and shall be jointly liable as such for the functions and responsibilities specified, under this Act or the rules and regulations made thereunder;

Thus, definition of the term "Promoter" under Section 2(zk) of RERA is wide enough to include every person who is associated with construction of the building such as builder, coloniser, contractor, developer, estate developer or by any other name or even the one who claims to be acting as the holder of a power of attorney from the owner of the land. One of the principal objectives of RERA is to bring transparency in real estate sector and to protect the interests of the consumers in the real estate project. The term 'Promoter' has been so widely defined that it virtually includes every person associated with construction of

the building. Thus, even a person who is merely an investor in the project along with the Promoter and who is entitled to benefit in the real estate project is also covered by definition of the term 'Promoter'. In the present case, I need not delve deeper into the enquiry as to whether Appellant is covered by the expression 'Promoter' or not. While registering the project as ongoing project under Section 3 of the RERA, Appellant's name has been included in the list of Promoters. Therefore, Appellant cannot run away from the fact that it is the promoter in respect of the project 'The Nest'. Explanation to Section 2(zk) makes all persons who construct or convert building into apartments or develop a plot for sale, as well as a person who sells apartments or plots to be promoters making them jointly liable as such for the functions and responsibilities specified under the Act, or the Rules and Regulations made thereunder. Thus, a person who does not actually construct or causes to be constructed a building but merely takes part in the joint venture and sells flats, becomes a Promoter. Appellant admits that it is entitled to a share in the joint venture in the constructed area, which it is entitled to sell. Thus, the Appellant is entitled to sell flats in the project and accept consideration for such sale. There is therefore no doubt to the position that, both Appellant as well as the second Respondent are Promoters and are jointly liable in respect of the responsibilities under the RERA and Rules and Regulations made thereunder.

18. In my view therefore, mere falling of flat in the share of the second Respondent under the Joint Development Agreement, would not excuse the Appellant from the responsibilities and liabilities under the RERA, Rules and Regulations made thereunder qua that flat. RERA does not demarcate or restrict liabilities of different promoters in different areas. The liability is joint for all purposes under the Act, Rules and Regulations.

19. Circular dated 4 December 2017, on which reliance is placed on behalf of the Appellant, far from assisting it, actually mitilates against the Appellant. The Circular is issued with a view to tackle a situation where several developers had entered into

agreements with individuals/organisations like land owners or investors by which such individuals/organisations were also entitled to share in the total revenue generated out of sale of apartments. It was observed that such individuals/ organisations were not included in the online registration with MahaRERA. With a view to ensure their inclusion in the online registration with MahaRERA, the Circular dated 4 December 2017 is issued. Relevant part of the Circular reads thus:

> ***Whereas**, during the online registration process, especially for on-going projects, it was observed that several developers (who actually obtain building permissions and construct) of the real estate project, have entered into arrangement with individuals/organizations like land owners or investors, by which the said Individuals/organizations are entitled to a share of the total revenue generated from sale of apartments or share of the total area developed for sale which are also marketed and/or sold by such individuals/organizations.*
>
> ***Whereas**, a careful consideration of the aforesaid definition in the light of the true object and purpose of the said Act leaves no manner of doubt that such individuals/organizations are also covered and clearly fall within the aforesaid definition of the term 'Promoter' and as such are Promotors within the meaning of the said terms for the purpose and for the implementation of the said Act and all the rules framed thereunder. They are therefore jointly liable for the functions and responsibilities specified in the Act in the same manner as the Promoter who actually obtains building permissions and carries out construction.*
>
> ***Whereas**, for the ease of filing online registration application and for the benefit of the consumers it is necessary to distinguish and / or identify whether such Promoter is the land owner, investor or is actually obtaining the building permissions for carrying out the construction and is in fact carrying out construction.*

***Therefore**, it is directed that*

(1) Such individuals/organizations who fall within the aforesaid definition of the term 'Promoter' on account of being landowners or investors, shall be specified as such, at the time of online registration with MahaRERA.

(2) Though liabilities of such landowner Promoter or investor Promoter shall be as co-terminus with the written agreement /arrangement governing their rights in the real estate project, for the purpose of withdrawal from the designated bank account of a real estate project, the obligations and liabilities of all such Promoters shall be at par with each other.

(3) A copy of the written agreement or arrangement between Promoters (whether landowner or investor) which clearly specifies and details the rights and shares of each Promoter, should be uploaded on the MahaRERA website, along with other details for public viewing.

(4) Such landowner Promoter and investor Promoter should also submit declaration in Form B of Maharashtra Real Estate (Regulation and Development) (Registration of Real Estate Projects, Registration of Real Estate Agents, rates of Interest and Disclosures on website) Rules, 2017.

(5) Further each such landowner Promoter or investor Promoter, who is entitled to a share of the total area developed, should also open separate bank account for deposit of 70% of the sale proceeds realized from the allottees of their share.

20. Thus, the Circular dated 4 December 2017 also makes it abundantly clear that even the entities who are entitled to share in the revenue generated from sale of flats are jointly responsible/liable for functions and responsibilities specified under the Act as if they are Promoters themselves".

Thus, the above judgement has laid down the position of law that "*while registering the project as ongoing project under Section 3*

of the RERA, Appellant's name has been included in the list of Promoters. Therefore, Appellant cannot run away from the fact that it is the promoter in respect of the project." In the present case admittedly the name of respondent no.3 is shown as co-promoter of the project. Hence by the ratio laid down in the above judgment, the respondent no.3 being co-promoter is liable to discharge all the functions and liabilities arising out of the provisions of RERA Act, 2016.

67. In the light of the aforesaid judgement, it is apposite to scan the terms of the Development Management Agreement executed between the respondent no. 2 and 1. Recital E of the said DMA states that "..... *appointment of a Development Manager who as a part of its scope of work will be managing, facilitating, assisting, and supervising through contractors the construction and development of the said project which construction and development shall be undertaken by such contractors, consultants, and availing of the Development Manager's consideration skills and expertise in the business of design, conceptualization and planning of real estate development project and being also desirous of Development Manager's Brand Name associated with the project."*

68. Clause 3.1.5 of the said DMA states that "*The Development Manager shall have overall responsibilities, obligations including but not limited to supervision, management and marketing for developing the project which shall mean the services as more particularly set out in Annexure B*". Further, Clause 3.2.1 states that "*The Development Manager on the Commencement Date shall permit the use of the Brand Name of the project to "Godrej" solely for the purpose of branding and marketing the project. RR Builder*

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agrees that all intellectual property rights in and arising out of or connected with the Brand Name including all corporate logos, shall be the sole, absolute and exclusive property of the Development Manager alone. .... Marketing shall all times be under the sole control of the Development Manager....".

69. The clause 3.6.3.1 of the DMA states that "*the Development Manager shall ensure, supervise and manage the performance of the duties and services of the Main contractor and Other Contractors and third-party consultants, as it may be required.*" Further the Clause 3.6.3.2 states that "*the Development Manager shall be entitled to appoint construction management agencies, third party consultants including but not limited to marketing/creative agencies at the costs of Development Manager to perform part of the services/obligations under the Agreement.*"

70. The clause 3.6.3.4 of the DMA states that "*the Development Manager shall execute marketing strategy and also provide personnel for the purpose of marketing and to manage the site sales and marketing office. All costs relating to marketing, advertising, promoting, and events organized by the Development Manager or participated in respect of the project shall be sole responsibility of the Development Manager.*" Further, Clause 5.5 of the DMA states that "*It is agreed between the parties that the Sale Revenue shall be deposited in the Escrow Account to be first utilized towards (a) Project costs, (b) tax, and (c) payment of Development Management Fees.....*". Further, Clause 17.2.9 of the DMA states that "*Development Manager shall promote, advertise and facilitate sales of the said project.*"

71. Thus, collective reading of the said clauses of the Development Management Agreement clearly depicts the picture of respondent no.3 as promoter as respondent no.3 has caused construction of the said project and solely responsible for marketing of the project, exclusively under its Brand name, and also having responsivities of appointment of construction management agencies, third party consultants it its own costs. The respondent no.3 thus fits into definition of promoter under the explanation of the section 2 (zk) of the RERA Act, 2016 which states that "*Explanation.- For the purposes of this clause, where the person who constructs or converts a building into apartments or develops a plot for sale and the person who sells apartments or plots are different persons, both of them shall be deemed to be the promoters and shall be jointly liable as such for the functions and responsibilities specified, under this Act or the rules and regulations made thereunder.*" Thus, from the clauses of the Development Management Agreement, it is clear that the respondent no.3 falls within the definition of the "promoter" within the meaning of section 2(zk) of RERA Act, 2016.

72. In the case of *Wadhwa Group Housing Pvt. Ltd.*(supra) the Hon'ble Bombay High Court in para-17 has held as under:

> "17.... *While registering the project as ongoing project under Section 3 of the RERA, the Appellant's name has been included in the list of promoters. Therefore, Appellant cannot run away from the fact that it is the promoter in respect of the project...*"

73. Thus, by the ratio laid down by the Hon'ble Bombay High Court In the said judgment, since the name of the respondent no.3 has been

included in the list of the promoters as co-promoter, the respondent no.3 is the promoter of the said project. It is pertinent that at the relevant period when the respondents were put to notice for refund, the respondent no.3 was promoter on the MahaRERA webpage. Even till the proposed date of completion of the said project when the said project was registered with the MahaRERA the date of completion is shown as 30.11.2021. Therefore, even during this period till 30.11.2021, when the appellant's rights under Section 18 were crystalized and accrued to the appellant, the respondent no.3 continued to be the co-promoter of the subject project. Therefore, respondent no.3 is liable for all liabilities towards the appellant arising out of the provisions of RERA Act, 2016.

74. It is also the contention of the respondent no.3 that is has no privity of contract with the appellant. The respondent no.1 received the consideration amount, the respondent no.1 issued MOU in favour of the appellant hence on the ground of privity, the respondent no.3 is not liable to pay refund of the amount with interest to appellant under the provisions of RERA Act, 2016. It is pertinent that the Hon'ble Bombay High Court in case of *Wadhwa Group Housing Private Limited (supra)* in para-24 and 25 has held as under:

> *"24. The Appellant's contention about absence of privity of contract between it and the Complainant is totally misplaced. Definition of the term 'promoter' under Section 2(zk) of the RERA would indicate that even persons/entities with whom a flat purchaser does not enter into contract are also covered by definition of the*

term 'promoter'. Therefore, it is not necessary that there has to be an agreement between every Promoter and the flat purchaser. As observed above, it is a matter of indoor management between the Promoters and the flat purchaser who is not supposed to know the intricacies of the arrangements made between several promoters amongst themselves. When a claim is raised in respect of a real estate project by a flat purchaser, all promoters become jointly liable qua that flat purchasers, irrespective of whether there is privity of contract with each of the promoter or not. This is the scheme of RERA and mere absence of privity of contract with a particular promoter does not relieve such promoter in respect of the liabilities under RERA.

25. I am therefore of the view that Appellant cannot escape the liability to refund the amount received towards sale of flat to Respondent No. 1."

75. From the ratio laid down by the Hon'ble Bombay High Court, the privity of contract with each of the promoter is immaterial so far as the liability under the RERA of all the promoters is concerned. All the promoters are jointly and severally liable to discharge the functions and liabilities arising under the provisions of RERA Act, 2016.

76. We reiterate that the DMA, consent terms, which are entirely contract between private parties are not binding on the appellant as the appellant is not party to those documents/ agreements. Consent terms are inter-se arrangement between the respondent nos. 1 and 3 and it can not override or defeat the statutory liabilities

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arising out of the RERA Act, 2016. The respondent no.3 is promoter during the relevant period when the rights of the appellant were crystalized and accrued to the appellant and therefore is jointly and severally liable for all the liabilities towards the appellant arising out of the provisions of the RERA Act, 2016.

77. It is the contention of the respondent no.3 that after the second consent terms dated 02.11.2022 wherein it was agreed between the respondent nos. 1 and 3 that the respondent no.1 shall make necessary application for removal of the name of the respondent no.3 as promoter or co-promoter, as the case may be, in respect of the subject project. It thus clear that the name of the respondent no.3 appears to have been removed from the MahaRERA website as co-promoter after 02.11.2022. We re-iterate that the rights of the appellant for relief under Section 18 of the RERA Act, 2016 for the refund of the paid amount with interest has been crystalized by the date 30.11.2021. When this appellant's rights crystalized and accrued to the appellant, during the relevant period the respondent no.3 is co-promoter in the MahaRERA website. Therefore, the removal of the name of respondent no.3 subsequently does not have any bearing on the liabilities towards the appellant of respondent no.3 arising out of the provisions of RERA Act, 2016. It is also noteworthy that there is no statement on record of respondent no.1 that the respondent no.1 alone is liable to discharge all the liabilities of appellant arising out of the RERA Act, 2016.

78. In view of the aforesaid, we have therefore no hesitation to conclude that the respondent no.3 was co-promoter when the rights under the provisions of RERA Act, 2016 were crystalized and

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accrued to the appellant and during that relevant period the respondent no.3 continued to be co-promoter of the said project on the project registration on the MahaRERA. Therefore, the respondent no.3 as co-promoter is jointly and severally liable for the liabilities of refund of amount with interest under Section 18 of the RERA Act, 2016. Therefore, the respondent no.3 is necessary party to the complaint.

79. We also note that the impugned order is not a speaking order. The written or oral arguments, judgments cited by the appellant are not even referred to in the said impugned order nor also discussed while coming to the conclusion.

80. In view of the above, we are of the considered view that the impugned order is not sustainable in the eyes of law and is contrary to the settled position of law. Therefore, the impugned order warrants interference in this appeal. Accordingly, we answer point nos. 1 and 2 in the affirmative.

81. Accordingly, we proceed to pass the following order.

ORDER

1. The captioned Appeal No.AT006000000345549 of 2024 in Complaint No. CC006000000375000 of 2023 is allowed and the impugned order dated 14.06.2024 is set aside and consequently the application dated 19.05.2023 filed by the respondent no.3 before the Authority is also dismissed.
2. It is held that the respondent no.3 is co-promoter *qua* the appellant and therefore necessary party to the complaint.
3. The observations made here-in-above are *prima facie* in nature and confined to the adjudication of the legality of the impugned order and all the contentions of the parties on

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merits of the complaint are kept open and can be agitated before the Authority when the complaint is finally heard.

4. Parties to bear their own costs.
5. Accordingly, the appeal stands disposed of.
6. Copy of this Order be communicated to the Authority and the respective parties as per Section 44(4) of RERA Act, 2016.

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

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