BEFORE THE MAHARASHTRA REAL ESTATE

APPELLATE TRIBUNAL, MUMBAI

Appeal No. AT006000000053544 of 2022
@ Misc. Application No.515 of 2022 (Stay)
In
Complaint No.CC000000100455

Ganga Jamuna Sangam CHS Limited]
Khar, West, Mumbai-400 052.]...Appellant

Versus

~~1. Sunil Mirchandani,~~]
~~1101, Samyakth Bliss, 11th floor, Tower-A,~~]
~~5th Road, Khar (West)~~.].. Deleted

1A Jaishankar Housing and Finance Pvt. Ltd.]
102-103, "A" Wing, Rizvi Park, S.V. Road,]
Santacruz (West), Mumbai-400054.]

2. M/s. Parthesh Developers]
4, Pushpa Varkha, 97 S.V.Road,]
Khar (West), Mumbai-400 052,]
Maharashtra,]

3. Mrs. Monica Nirav Shah,]
4, Pushpa Varkha, 97 S.V.Road,]
Khar (West), Mumbai-400 052,]
Maharashtra,]

4. Mr. Nirav P. Shah,]
4, Pushpa Varkha, 97 S.V.Road,]
Khar (West), Mumbai-400 052,]
Maharashtra,] .. Respondents

ALONGWITH
Appeal No. AT006000000053539 of 2022
@ Misc. Application No.303 of 2022 (Stay)
In
Complaint No.CC000000100398

Ganga Jamuna Sangam CHS Limited]
Khar, West, Mumbai-400 052.]...Appellant

Versus

1. Bhagwan Chandnani]
Flat No.43, Shailesh Building, 94 Linking]
Road, Santacruz (West), Mumbai.]

2. M/s. Parthesh Developers]
4, Pushpa Varkha, 97 S.V.Road,]
Khar (West), Mumbai-400 052,]
Maharashtra,]

3. Mrs. Monica Nirav Shah,]
4, Pushpa Varkha, 97 S.V.Road,]
Khar (West), Mumbai-400 052,]
Maharashtra,]

4. Mr. Nirav P. Shah,]
4, Pushpa Varkha, 97 S.V.Road,]
Khar (West), Mumbai-400 052,]
Maharashtra,] .. Respondents

ALONGWITH
Appeal No. AT006000000053540 of 2022
@ Misc. Application No.513 of 2022 (Stay)
In
Complaint No.CC000000100457

Ganga Jamuna Sangam CHS Limited]
Khar, West, Mumbai-400 052.]...Appellant

Versus

1. Bharati Shah]
12, J Mehta Marg, Nepean Sea Road,]
Mumbai.]

2. M/s. Parthesh Developers]
4, Pushpa Varkha, 97 S.V.Road,]

Khar (West), Mumbai-400 052,]
Maharashtra,]

3. Mrs. Monica Nirav Shah,]
4, Pushpa Varkha, 97 S.V.Road,]
Khar (West), Mumbai-400 052,]
Maharashtra,]

4. Mr. Nirav P. Shah,]
4, Pushpa Varkha, 97 S.V.Road,]
Khar (West), Mumbai-400 052,]
Maharashtra,] .. Respondents

ALONGWITH
Appeal No. AT006000000053545 of 2022
@ Misc. Application No.517 of 2022 (Stay)
In
Complaint No.CC000000100401

Ganga Jamuna Sangam CHS Limited]
Khar, West, Mumbai-400 052.]...Appellant

Versus

1. Rajeev Asija]
Room No.3 and 4, Rukhmani Niwas,]
Off Marve Road, Malad (West), Mumbai.]

2. M/s. Parthesh Developers]
4, Pushpa Varkha, 97 S.V.Road,]
Khar (West), Mumbai-400 052,]
Maharashtra,]

3. Mrs. Monica Nirav Shah,]
4, Pushpa Varkha, 97 S.V.Road,]
Khar (West), Mumbai-400 052,]
Maharashtra,]

4. Mr. Nirav P. Shah,]
4, Pushpa Varkha, 97 S.V.Road,]
Khar (West), Mumbai-400 052,]
Maharashtra,] .. Respondents

Adv. Mr. Dev Tejani a/w. Mona Soni for Appellants.
Adv. Ms. Kinnari Mehta for respondent no.1 in Appeal Nos.53544/22, 53539/22 and 53545/22.
C.A. Ms. Meera Joisher for respondent no.1 in Appeal No.53540/22.

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

RESERVED ON : 6th May, 2026

PRONOUNCED ON : 9th June, 2026

(THROUGH VIDEO CONFERENCING)

JUDGMENT

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

1. The captioned appeals arise from the common order dated 18.08.2021 passed by the learned Chairperson, Maharashtra Real Estate Regulatory Authority (for short "the Authority") in the captioned complaints.
2. The appellant is a housing society registered under the Maharashtra Societies Act, 1960, which is also land owner of the project land (for short 'the society'). The respondent no.2 Parthesh Developers is a partnership firm engaged in real estate activities. The respondent nos. 3 Monica Nirav Shah and respondent no.4 Nirav Shah are partners of respondent no.2. The respondent nos. 2 to 4 collectively are of the promoters of the project Ganga Jamuna Sangam Co-operative Housing Society, who registered the said project with the

MahaRERA (fort short 'the erstwhile promoters'). Rest of the respondents are allottees who have purchased their respective flats from the erstwhile promoter.

3. The facts in these appeals are almost identical and the law points involved being same, these appeals were heard together and are being decided by this common judgment.

4. The brief facts culled out from the pleadings, the impugned order, and the material available on record reveal that the appellant society is owner of the plot of land admeasuring 1128.8 sq. meters bearing CTS No. F/111 and F/115 of village Bandra, Taluka Andheri, Mumbai along with building standing thereon consisting of ground plus three floors, having two wings, Wing-A and Wing-B. In the said building known as Ganga Jamuna Sangam Housing Society, which was occupied by the 17 original members of the said society. Since the Wing-A and Wing-B required heavy structural repairs in the passage of time, the said society and its members decided to redevelop the said original building by demolishing the same and constructing a new building thereon.

5. The appellant society entered into a development agreement dated 23.02.2011 with the respondent nos. 2 to 4 i.e. erstwhile promoters and granted redevelopment rights in favour of the respondent nos. 2 to 4 with the terms and conditions contained in the said development agreement. The respondent no.2 registered the said project "Ganga Jamuna Sangam CHS Ltd. as an ongoing project under the provisions of RERA Act, 2016, bearing registration no. P51800010901 with project completion date as 30.01.2021.

महाराष्ट्र

6. The allottees purchased their respective flats with following details:

Sr No	Name	Flat No.	Date of Agreement for Sale	Consideration (Rs.)	Paid amount (Rs.)	Date of Possession
1	Sunil Mirchandani	B-304	28.12.2012	02,40,00,000	2,15,96,489	31.08.2014
2	Bhagwan Chandanani	B-804	05.05.2014	03,25,00,000	2,78,80,000	31.12.2014
3	Bharati Bharat Shah	B-1003	12.12.2014	03,10,00,000	2,75,00,000	31.12.2014
4	Rajeev Asija	B-803	31.05.2014	03,25,00,000	2,74,67,360	31.12.2014

7. The respondent no.1 in the respective appeals/allottees purchased their flats from the erstwhile promoters and paid amounts towards consideration to the erstwhile promoters. Due to change in the Development Control Rules and Regulations, the appellant society and erstwhile promoters agreed to construct residential cum commercial building instead of commercial building. In view thereof, the deed of rectification dated 26.05.2013 came to be executed between the appellant society and the erstwhile promoters. The appellant society and erstwhile promoters subsequently entered into supplemental development agreement dated 29.10.2013 (collectively "development agreements") wherein it was held, inter-alia, that the appellant society shall have no objection to the promoters creating simple mortgage of the said land of the said project.

8. The promoters obtained further IOD dated 09.01.2014 and in pursuance of the development agreement read with deed of rectification and supplemental development agreement, the promoters agreed to construct total 31 original flats in A-Wing and B-Wing of the project, out of which 17 flats were reserved

for the original members of the society. Thereafter, the promoters obtained Rs.20 crore loan from the Bank of Baroda and mortgaged the said project land with the said bank on 27.12.2013. The promoter defaulted on the loan repayment.

9. As per the development agreements, the promoters were to complete the project within a period of 24 months from the date of handing over of possession of the premises to the promoters. However, the promoters failed to complete the construction and obtain occupation certificate within the stipulated time period. The promoters constructed the super structure of the new building, but stopped with further work from the year 2015-2016.

10. The promoters registered the said project as ongoing project under the RERA Act, 2016 on 31.08.2017. The respondent no.2 is shown as promoter on the records of the MahaRERA and the appellant society is not shown as co-promoter when the said project was registered with the MahaRERA.

11. Since the promoters defaulted in the loan repayment, the Bank of Baroda sent a notice under the provisions of Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'the SARFAESI Act,) which stated that the premises to be newly constructed building falling in the share of promoters will be auctioned. The promoters abandoned the project over the period 2017 to 2019. The due date of completion of the project undertaken by the promoters lapsed in July 2019.

12. The allottees purchased their respective flats from the erstwhile promoters from the sale component vide respective

agreements for sale as mentioned in the table in para 6 above. The erstwhile promoter however failed to hand over possession of the flats to the allottees by the due date of possession in the respective agreements for sale. Aggrieved by the failure on the part of the promoters to complete the construction and hand over possession of the flats, allottees filed the captioned complaints before the Authority, seeking the relief of possession and interest on account of delay in possession.

13. The Authority vide its interim order dated 21.01.2020 recorded that the promoters if failed to implement the order passed by the Authority, the allottees shall explore the possibility of invoking the provisions of Section 7 of the RERA Act, 2016 and thereafter if required to complete the balance development work in order to complete the project, through association of allottees in accordance with the provisions of Section 8 of the RERA Act, 2016.

14. The appellant society in its Extra Ordinary General Meeting dated 24.10.2020 agreed to admit the flat purchasers (19) to whom the promoters have sold the flats from sale component in the new building as members of the appellant society. Thus, the total number of members of the appellant society became 33, which included allottees in these appeals, who purchased their respective flats from the erstwhile promoters. The resolution dated 09.04.2021 was passed by the appellant society which now included newly admitted allottees from the free sale component to terminate the development agreements and subsequent agreements with the promoters. In view of the fact that the promoters abandoned the said project without

उमा देशमाने

completing it, the appellant society terminated the development agreement read with deed of rectification and supplemental development agreement by sending termination notice dated 30.04.2021. The appellant society was not party to the complaint which was subsequently allowed to intervene in the complaints by the Authority.

15. The promoters settled the dispute with Bank of Baroda and entered into consent terms dated 17.05.2023 and deed of re-conveyance of the said project was executed between the Bank of Baroda and the promoters on 25.08.2023, with appellant society as confirming party in view of the termination of the development agreements. However, the promoters were still acting in accordance with the development agreements, the appellant society was constrained to invoke Arbitration as per the development agreement dated 23.02.2011 and Commercial Arbitration Petition No.417 of 2024 was filed by the appellant society against the promoters on 18.01.2024.

16. The consent terms dated 05.05.2025 were executed between the appellant society and the promoters before the Hon'ble Bombay High Court in the said Commercial Arbitration Petition. As per the Clause 15 of the consent terms, the appellant society was not be liable for any liabilities, responsibilities, costs, claims, proceedings and/or consequences of the promoters. Further, Clause 19 of the said consent terms states that all the disputes, claims and/or proceedings which may arise in future from or relating to any representations, allotments or transactions undertaken by the promoter in relation to the third-party purchasers shall be sole and

exclusive liability of the promoters. On the basis of the said consent terms the appellant society and respondent no.1 in these appeals sought de-registration of the project before the Authority. The Authority passed the order dated 24.07.2025 on the basis of the said consent terms dated 05.05.2025 filed before the Hon'ble Bombay High Court.

17. The Authority heard the parties and passed the impugned order. In the impugned order the Authority observed that the relationship of the promoters and allottees was in the first place created by the act of the society, who appointed the promoters/respondents to carry out the redevelopment. The said society can not now by the actions of termination wish away the liabilities created by the promoters appointed by it. The said society falls within the definition of the promoters. On termination of the development agreements, the said society became the promoter and all earlier bonafide liabilities created by the erstwhile promoters/respondents, who were appointed by the said society, would now squarely rest on the shoulder of the said society.

18. With these observations, the Authority directed that the society shall step into the shoes of the promoter from hereon and shall ensure the smooth completion of the project safeguarding interest of allottees, which shall include payment of interest on delayed possession of all the allottees and all new purchasers, if any, in the said project and in no manner jeopardize their interest in terms of their individual rights and interest in terms of their individual rights and interest of the said project. Further, the Authority directed that the society to pay interest

to the complainants/allottees from 01.04.2016 till hand over of possession of their respective flats at the rate prescribed under Rule 18 of the Maharashtra Real Estate (Regulation and Development) (Registration of Real Estate Projects, Registration of Real Estate Agents, Rate of Interest and Disclosures on Website) Rules 2017 [for short "said Rules"].

19. Aggrieved by the said impugned order, the appellant society has filed the captioned appeals on the grounds set out in the said respective memorandums of appeals seeking relief of setting aside the impugned order dated 18.08.2021.

20. We have heard the learned Advocate for the parties at length. Their submissions are nothing but re-iteration of the contents of the memorandum of appeal, reply and written submissions.

21. The learned Advocate for the appellant society has submitted that pursuant to the development agreement dated 23.02.2011, deed of rectification dated 26.05.2013, and supplemental development agreement dated 29.10.2013, the respondent no.2 society registered the project as ongoing project with the MahaRERA. The respondent no.2 alone is shown on the MahaRERA website as the promoter of the project. Further, the appellant society is not shown as land owner co-promoter having any area or revenue sharing arrangement.

22. The learned Advocate submitted that the respondent no.2 to 4 were to give 17 flats to the original members of the society from the rehabilitation component and the remaining units to be constructed to be sale component and respondent no.2 to 4 were free to sell those flats from sale component on their

own account and appropriate the sale proceeds to themselves without any recourse to the society. The promoters only constructed the super structure of the building and thereafter abandoned the project. The promoters failed to complete the construction of the project in terms of the development agreements.

23. The learned Advocate submitted that the promoters executed the agreements for sale with the allottees and received consideration thereof to themselves. The appellant society is not party to the said agreements for sale nor received any consideration amounts from the allottees. As such, there is no privity of contract between the appellant society and allottees.

24. The learned Advocate submitted that the allottees were duly admitted into the society as members by Extra Ordinary General Meeting dated 24.12.2020. The respondent no.3 and 4 were office bearers of the said society then in the capacity of Secretary and Chairman of the said society. In the Extra Ordinary Meeting dated 29.12.2020, wherein the respondent no.3 and 4 resigned from the respective positions as Secretary and Chairman of the said society and handed over management of the society to the appellant society which now comprised of original members and allottees, which were admitted as members of the said society.

25. Subsequently, due to various lapses and non-performance of the promoters, in Extra General Meeting dated 09.04.2021, the members of the said society, which now included original members of the society as well as allottees who were inducted in the said society, unanimously passed resolution to terminate

the said development agreements citing the serious breaches of the terms of the said development agreements, the appellant society terminated the development agreement, deed of rectification and supplemental development agreement vide termination notice dated 30.04.2021. The said notice was served on the respondent nos. 2 to 4, however the respondent nos. 2 to 4 failed to respond and/or take any steps to contest their purported rights flowing from the said development agreement, deed of rectification, and supplemental development agreement. Their silence and inaction in this regard further underscores their acquiescence to the termination and the lack of any legitimate objection to the same.

26. The learned Advocate submitted that thereafter the appellant society filed Commercial Arbitration Petition No.417 of 2024 before the Hon'ble Bombay High Court under Section 9 of the Arbitration and Conciliation Act, 1996 against the respondent nos. 2 to 4. In the said petition appellant society and respondent no.2 executed consent terms dated 05.05.2025. The said petition was disposed of by the Hon'ble Bombay High Court in terms of the said consent terms. As per clause 12 of the said consent terms, which records that the appellant society shall complete the balance construction work. Further, the appellant society shall have unencumbered right to appoint any contractor for execution of said self redevelopment. The respondent no.2 to 4 expressly agreed not to obstruct or interfere with the process of self redevelopment by the society.

उमा देसाई

27. The learned Advocate submitted that as per the Clause 15 of the consent terms, it was agreed that the appellant society shall not be liable for any liabilities, responsibilities, claims, cost, proceedings and/or consequences which have arisen or may arise in future relating to any representations, allotments, or transactions undertaken by the respondent nos. 2 to 4 in relation to third party purchasers of premises under the said project and it shall be the sole and exclusive liability of the respondent no.2 to 4. The appellant/society was exclusively indemnified and held harmless from any such claim, losses or consequences arising from any contractual privity or arrangement between the respondent nos. 2 to 4- and third-party purchasers. Further, it is agreed that the appellant society shall not be bound to recognize any third-party purchasers of the allottees, save and except for (i) those specifically listed in annexure-A in the consent terms (which include the allottee in these appeals) and (ii) prospective allottee of flat no.604 in favour of whom the respondent no.1 to 3 may execute and register a valid agreement for sale.

28. The learned Advocate submitted that upon becoming member of the appellant society, the allottees in the captioned appeals have no locus to file an appeal against themselves, since as and when and individual become member of the society, he/she loses of his/her individual identity and is considered as a member of the society as has been held by various courts in catena of judgments. Accordingly, having been allotted their flats and accepted as members of the society they have no surviving claims against the appellant society.

29. The learned Advocate submitted that as per the minutes of the meeting dated 29.12.2020, all the members of the said society including the allottees in these appeals, who have been admitted as members of the society, have unanimously agreed that they will withdraw all claims, if any, for compensation for delay against the society and will not stake claim and/or compensation for delay of the project and/or any shortcomings in the future and will cooperate in completion of the building by paying the amounts due to the appellant society as per the said resolution. The learned Advocate submitted that the appellant society which now consists of original members and allottees who have admitted as members of the society does not assume the status, role and/or responsibility of a promoter with respect to the construction of the new building, vis-a-vis, the said allottees.

30. The learned Advocate further submitted that the respondent no.2 undertaken their redevelopment of the project and executed development agreements on principal-to-principal basis with no formation of partnership, joint venture or agency relationship between the appellant society and respondent nos. 2 to 4. There is no privity of contract between the appellant society and the allottees. In absence of privity of contract, between the appellant society and third-party purchasers claiming through respondent no.2, third party purchasers can not seek specific performance of their respective agreements for sale except through respondent no.2. They are bound by the rights and obligations of respondent no.2. When the rights of the respondent no.2 are lawfully terminated by following

proper due process the third-party purchasers can not seek any pending claim against the appellant society and/or any party claiming through the appellant society.

31. In support of the above contention, the learned Advocate has placed reliance on the judgment of the Hon'ble Bombay High Court in case of *Vaidehi Akash Housing Pvt. Ltd. Versus New D. N. Nagar Co.-Op. Housing Society Union Ltd. & Ors [2014 SCC Online Bom.5068].*

32. With these submissions, the learned Advocate for the appellant/society prayed to allow the appeals and set aside the impugned order.

33. The learned Advocate for the allottees has submitted that the complaints of the allottees were against the respondent nos. 2 to 4 for failure to complete the project and hand over possession. The respondent nos. 2 to 4 have abandoned the project since 2014 after having completed only RCC structure and have shown no interest or inclination to complete the project. The learned Advocate submitted that the allottees have duly inducted as members of the appellant society. The said society has done lot of work to complete the project. The members of the society including the allottees have contributed over and above the aggregate consideration amounts. The claims of the allottees were initially against the respondent nos. 2 to 4 only and allottees do not have any claims or complaints against the appellant society.

34. With these submissions, the learned Advocate for the allottees prayed that the assets of the respondent nos. 2 to 4 may be

attached and short fall of money for completion of the building may be reimbursed from respondent nos. 2 to 4.

35. The learned advocate for the respondent nos. 2 to 4 has submitted that the present appeals have been filed on false and frivolous grounds and liable to dismissed. By filing these appeals challenging the impugned order, the appellant society is not willing to take responsibility as the promoter, hence the matters may be remanded back to the Authority for fresh consideration after hearing by the parties concerned. The appellant society who has challenged the impugned order will also not be prejudiced if the matters are remanded back to the Authority. The respondent nos. 2 to 4 were to complete the construction which also safeguarded the interest of the appellant society. However, the appellant society has only created hurdles, therefore, issuing purported termination letter which the appellant/society has no authority to do so. With these submissions, the learned Advocate for the respondent nos. 2 to 4 prayed to remand back the matter to the Authority for deciding afresh.

36. We have given due consideration to the submissions of the parties, material placed on record, memorandum of appeal and written submissions. On examination of the pleadings of the parties, submissions advanced by the parties, the impugned order and the material placed on record, the following points arise for our consideration and we have recorded our findings thereupon, for the reasons to follow, as below.

Sr.No.	Points	Findings
1	Does the appellant society fall within the meaning of "promoter" *qua* the flat purchasers/allottees under the provisions of RERA Act, 2016?	In the negative.
2.	Does the impugned order warrant interference in this appeal?	In the affirmative.
3.	What order?	As per final order.

REASONS

Point No.1

37. From the pleadings and submissions made by the parties, it reveals that the appellant society is holder of the project property and has entered into development agreement dated 23.02.2011 with the erstwhile promoter for redevelopment of its property, which envisaged construction of the society building to accommodate its members and also construction of flats/premises to be sold to the outsiders by the promoters. The appellant society also executed deed of rectification dated 26.05.2013, supplemental development agreement dated 29.10.2013 with the erstwhile promoters. The development agreement read with deed of rectification and supplemental development agreement entitled the erstwhile promoter to construct the building and sale flats therein from the sale

hmtkmit

component to outsiders. Such entitlement is to the erstwhile promoters' own account and its own rights as an independent contractor. After obtaining the requisite permissions from the concerned authorities, the erstwhile promoter launched the subject project, allottees purchased the subject flats from the sale component of the project from the erstwhile promoters and paid substantial amount to the erstwhile promoter which are used for construction of rehabilitation building as well as the sale component.

38. It is seen from the submissions of the appellant society and material on record particularly the development agreement and supplemental development agreement that the terms of the said agreements executed by and between the appellant society and erstwhile promoter have clearly provided in no uncertain manner that the erstwhile promoters were entitled to construct free sale component on their own account as an independent contractor and erstwhile promoters alone would be liable and responsible to the flat buyers in case of delay in construction and other issues and shall bear all the related consequences. Thus, society is kept absolved of any obligations relating to the erstwhile promoters towards allottees, who executed agreement for sale with the erstwhile promoters. Thus, the terms of the development agreements create no vested rights or obligations of the allottees which the appellant society is liable to discharge as a "promoter" nor there is any document to establish that the society has privity of contract with allottees. All the agreements for sale have been issued by the erstwhile promoters and appellant society

is not party to such agreements. Further, the subject project was registered by the erstwhile promoter on its name and the appellant society is not shown as co-promoter having any area or revenue sharing arrangements, when the said project was registered. Further, there is no area sharing or revenue sharing arrangement between the appellant/society and the erstwhile promoter being revealed in the said development agreements. Therefore, it's the contention of the appellant society that it cannot be termed as promoter *qua* the allottees, liable to perform obligations towards the allottees and therefore the allottees cannot enforce their agreements for sale or make any claims against the society or its property.

39. It is not in dispute or the case of the allottees that there is privity of contract with the society nor appellant society is party to the agreements for sale executed by the erstwhile promoters with the allottees. Further, there is no case of allottees or the erstwhile promoters that the appellant society had any area or revenue sharing arrangements with the erstwhile promoters. Scanning of the development agreement read with deed of rectification and supplemental development agreement reveals that the appellant society had no any area/revenue sharing arrangement with the erstwhile promoters. It is also not in dispute that the erstwhile promoter registered the project with the MahaRERA as an ongoing project, when the appellant society was not shown as promoter or co-promoter of the project. The erstwhile promoter was alone shown as promoter of the project. Further, the development agreements executed with the erstwhile

promoters is on principal-to-principal basis and there is no principal agent relationship between the appellant society and the erstwhile promoters.

40. The appellant/society on non-performance and deficiencies on the part of the erstwhile promoter to complete the building project in accordance with the terms of the development agreements terminated the said development agreement read with deed of rectification and supplemental development agreement on 30.04.2021.

41. In the above circumstances, the issue of whether the allottees who have executed and registered the agreements for sale with the erstwhile promoters can enforce their agreements for sale or any entitlements against the society or its property or the new promoter appointed by the society as well as whether the society can be termed as promoter within the meaning under section 2 (zk) of the RERA Act, 2016 have been answered by the series of judgments of the Hon'ble Bombay High Court.

42. The Hon'ble Bombay High Court in *Vaidehi Akash Housing Pvt. Ltd. Versus New D. N. Nagar Co.-Op. Housing Society Union Ltd. & Ors [2014 SCC Online Bom.5068]* has held as under.

"88. The Society is the owner of the property and has entered into an agreement with the developers, i.e. Vaidehi, for redevelopment of its property. The redevelopment envisages construction of the Society's building to accommodate its members and also construction of building/s of flats/premises to be sold to outsiders. The agreement authorizes or entitles the

developers to construct such building/s and sell flats/premises therein to outsiders. Such authority or entitlement is to the developers account and in their own right and as an independent contractor. If in exercise of such authority or entitlement, a building is constructed by the developers, it cannot be said that such building is caused to be constructed by the Society within the meaning of Section 2(c) of the MOFA.

89. Any other interpretation would lead to anomalous consequences, which could never have been contemplated by MOFA..."

43. In the case of *Goregaon Pearls CHSL Versus Dr. Seema Mahadev Paryekar & Ors. [Appeal from Order (Stamp) No.22143 of 2019 decided on 14th September, 2019 by the Hon'ble Bombay High Court]*, the Hon'ble Bombay High Court reiterated the above position in *Vaidehi Akash Housing Pvt. Ltd. (supra)* in the context of RERA. The Hon'ble High Court in para-6 and 8 of the said judgement has held as under:

"6. Learned Counsel for Respondent No.1, however, makes a few legal submissions based on the provisions of the newly enacted Real Estate (Regulation and Development) Act, 2016 ('RERA'). Relying on these provisions and in particular, the definition of "promoter" contained in Clause (zk) of Section 2 thereof, learned Counsel submits that the Appellant society is one, who has caused to be constructed a building consisting of apartments for the purpose of selling apartments to other persons and as much as Respondent No.2 developer, it

must be treated as a promoter of the project under the provisions of RERA. I am afraid, prima facie It is not possible to accept this submission. This court, in its judgment delivered in the case of Vaidehi Akash Housing Pvt. Ltd. vs. New D.N. Nagar Co-op. Housing Society Union Ltd., has considered a more or less similarly worded definition of "promoter" in Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 ("MOFA") in the context of a similar development agreement, where the landowner society had terminated the agreement on account of breaches of the developer and third party purchasers claiming under the developer had claimed that the society should be treated as a promoter and be asked to complete the project. This court held that there was no privity of contract in such a case as between the society and third-party purchasers, claiming through the developer. If, for any justifiable reason, the development agreement is terminated by the society and the developer is unable to obtain specific performance of the development agreement as against the society, no third-party purchaser claiming under the developer can likewise seek specific performance against the society. This Court, in Vaidehi Akash, observed as follows:

> *"15.7 Let us now consider if these third-party purchasers have any rights under MOFA against the Society. It is submitted on their behalf that the Society is very much a 'promoter' within the meaning*

of MOFA as regards their respective agreements for sale. Learned Counsel for the purchasers rely upon the definition of "promoter" contained in Section 2(c) of MOFA. The definition is in the following terms:

"promoter" means a person and includes a partnership firm or a body or association of persons. whether registered or not who constructs or causes to be constructed a block or building of flats, or apartments for the purpose of selling some or all of them to other persons, or to a company, co-operative society or other association of persons, and includes his assignees; and where the person who builds and the person who sells are different persons, the term includes both."

It is submitted that the Society can at any rate be said to have caused the building of flats to be constructed for the purpose of selling the same, and as a person, who causes such building to be built, is as much a promoter as a person who sells premises in such building.

15.8 The Society is the owner of the property and has entered into an agreement with the developers, i.e. Vaidehi, for redevelopment of its property. The redevelopment envisages construction of the Society's building to accommodate its members and also construction of building/s of flats/premises to be sold to outsiders. The agreement authorizes or *entitles the developers to construct such building/s and sell flats/premises therein to outsiders. Such authority or entitlement is to the developers' account and in their own right, and as an independent contractor. If in exercise of such authority or entitlement, a building is constructed by the developers, it cannot be said that such building is caused to be constructed by the Society within the meaning of Section 2(c) of MOFA.*

15.9 Any other interpretation would lead to anomalous consequences, which could never have been contemplated by MOFA. The owners of lands entering into agreements for sale or development agreements with promoters/developers would be held as being subject all liabilities of à promoter, such as liability of disclosure of plans and specifications, outgoings etc. under Section 3 of MOFA, entering into agreements in accordance with Section 4, giving possession of flats and suffering the consequences of Section 8, forming co-operative societies of flat purchasers under Section 10, and so on. This would be plainly inconceivable.

15.10 Prima facie, thus, there is no case to treat the Society, who is merely in the position of an owner vis-a-vis the third party purchasers, as a 'promoter' within the meaning of MOFA and foist the obligations of a promoter on the Society in relation to the purchasers."

8. The provisions of RERA do not make any difference either. RERA has been introduced to establish a regulatory authority for regulation and promotion of the real estate sector and to ensure sales in the sector in an efficient and transparent manner and to protect consumers of the sector. The definition of 'promoter' in RERA, for our purposes, is on similar lines as MOFA. Section 18 of RERA, on which strong reliance is placed by learned Counsel for Respondent No.1, requires promoters to discharge their obligations and provides remedies for the purchasers, without prejudice to the purchasers' other rights, in the event of the promoters' failure to discharge the obligations. Section 19, which follows, entitles the allottee to obtain possession of the flat or apartment. Any grievance of the purchaser under RERA is redressed by the regulatory authority appointed under It. None of these provisions either make the owner of the freehold or leasehold interest in the land, who enters into a development agreement with a developer (who, in turn, enters into flat purchase agreements with third parties on the basis of such development agreement), liable for complying with the obligations of the developer under RERA. In fact, if at all there is any doubt in respect of the position of landowners vis-a-vis development projects registered under RERA, particularly where such landowners are entitled to a share in the total revenue generated from sale of apartments, the same has now been clarified by Maharashtra Real Estate Regulatory

Authority that only such individuals/organizations would fall within the definition of 'promoter' in RERA, on account of being landowners, as would be specified as such at the time of on-line registration with the Authority. It is nobody's case that the Appellant society is such specified promoter in the on-line registration. Besides, grievance, if any, in this behalf must be addressed to the regulatory authority thereunder, and not to a civil court. There is, thus, no merit in any of the submissions of learned Counsel based on RERA."

Thus, the said judgment has also reiterated the ratio as held by the Hon'ble Bombay High Court in the case of *Vaidehi Akash Housing Pvt. Ltd. (supra)*.

44. The Division Bench of Hon'ble Bombay High Court in the case of *Deepak Prabhakar Thakoor & Ors. Versus Maharashtra Housing and Area Development Authority (MHADA) & Ors [W.P. (L) No.1776 of 2023 decided on 12th October, 2023 by the Division Bench of Hon'ble Bombay High Court]* in para-7 and 14 has reaffirmed the ratio of the judgement in *Goregaon Pearl* (supra) has held as under:

"7. These two provisions read together are nothing more than an indemnity. They do not and cannot be held to create substantive right in praesenti to the Society building and properties nor in respect of the development rights of the Society in regard to the property that the Society itself owns. At best, if there is a claim that the Petitioners have against the developer, it may be open for the developer to then claim that the developer is fully

indemnified by the undertaking given by the Society and which is Condition 16 of the MHADA permission.

14. We now reaffirm Goregaon Pearl as well."

In the above judgment also, the Hon'ble High Court has re-affirmed and confirmed the ratio in case *Goregaon Pearls* (supra).

45. The Hon'ble Bombay High Court in the case of *Kapilkunj Co-operative Housing Society Ltd Versus State of Maharashtra & Ors [W.P.No.2157 of 2021 decided on 12th & 13th December, 2023 by the Division Bench of Hon'ble Bombay High Court]* in para-23 and 42 has held as under:

"23. The Society will have to now take an informed decision in regard to its redevelopment agreement and about the completion of the construction at the Society's cost. We understand that there are third party sale agreements that may have been entered into by Ved. These will not be allowed to compromise the rights of the members. In any case, even as against the rights of the Society, the claims of third party purchasers and their rights are issues that have been decided by this Court in Vaidehi Aakash Housing Pvt Ltd v New DN Nagar Co-op Housing Society Union Ltd & Ors and Goregaon Pearl CHSL v Dr Seema Mahadev Paryekar & Ors., and both of which our Division Bench in Deepak Prabhakar Thakoor & Ors v MHADA & Ors has reaffirmed. Third party purchasers will have no rights over the assets of the Society. If, therefore, the balance development is done by the Society following a termination of its redevelopment agreement, then any

additional Floor Space Index ("FSI") or buildable area benefits will be to the benefit of the Society and may be used to defray costs.

41. Some of the Respondents to the Petition are third party flat purchasers. Once again, as we have set out above, their rights as against Ved are preserved intact in law by series of judgements including our own reaffirmation as a Division Bench of two decisions of the Single judge in Vaidehi Akash and Goregaon Pearl. This necessarily means that after termination of the agreement, third party flat purchasers have no rights, claims or equities in respect of assets of the Society. This means not only the original structure but the entire redevelopment project including all additional FSI and all free sale components. It is always open to those flat purchasers to negotiate with the Society. It is, however, clear that amounts paid to Ved cannot possibly given credit to by the Society. This Court has already repeatedly held that in such a situation, in law, there is absolutely no privity of contract between third party purchasers and the Society or its members. We decline to revisit that aspect of the law or permit fresh arguments re-agitating the same issue. This law is no longer res integra.

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

46. The Division Bench of the Hon'ble High Court in the case of *Rakhi Kamal Thakur nee Rakhi Hiralal Rohra Versus M/s. Rebuilt & Ors [Appeal from Order No.534 of 2023 with I.A.No.13262 of 2023 decided on 31st August 2023 by the Hon'ble Bombay High Court]* in para-10 has held as under:

> *"10. Ms. Khanwilkar, the learned counsel for the defendant No. 5 would urge that the controversy sought to be raised on behalf of the plaintiff as regards the liability of the society and the subsequent developer, as the promoters, is no longer res integra. A Single Judge of this Court in the case of Vaidehi Akash Housing Pvt Ltd Vs. New D. N. Nagar Co-op Housing Society Union Ltd and Others has enunciated the law in clear and explicit terms that if the rights of a prior developer are brought to an end upon a lawful termination of the Development Agreement, the third party purchasers cannot lay any independent claim against the Society or anyone claiming through the Society."*

47. The Hon'ble Bombay High Court in case of *Tuvin Constructions LLP V/s. State of Maharashtra, (Through Urban Development Department) and another* [Writ Petition No.1673 of 2025 decided by the Hon'ble Bombay High Court on 9th September, 2025], has reiterated the law laid down in *Vaidehi Akash Housing Pvt. Ltd.* (supra) and *Goregaon Pearl CHSL* (supra), *Deepak Prabhakar Thakoor and others* (supra). The Hon'ble Bombay High Court in paras-14 and 15 of the said judgement has held as under:

14. We are of the considered view that such a condition imposed by MahaRERA vide the impugned communication, is contrary to the settled law, as laid down by this Court in Vaidehi Akash Housing Pvt. Ltd. vs. New D. N. Nagar Co-op. Housing Society Union Ltd. and others (supra), Goregaon Pearl CHSL vs. Dr. Seema Mahadev Paryekar and others (supra) and as confirmed by the Division Bench of this Court in Deepak Prabhakar Thakoor and others vs. Maharashtra Housing and Area Development Authority (MHADA) and others (supra). It has been the consistent view of this Court that there is no privity of contract between the Society or new developer, as in the present case, with third party purchasers claiming through the erstwhile developer. Where the Development Agreement is terminated by the Society and the erstwhile developer is unable to obtain specific performance of the Development Agreement against the Society, no third party developer can seek specific performance against the Society or new developer, as in the present case.

15. In the present case, the promoter is the Petitioner-new developer, who has made the application for registration of the Petitioner's project with MahaRERA. The contention on behalf of Respondent No.2-MahaRERA that the Society is the co-promoter and in view of the Society having transferred its majority rights in the RERA project to the new developer, prior written consent from 2/3rd allottees is mandated is in our view, misconceived. The Society cannot be considered as co-promoter as it is the erstwhile *developer, who alone can be considered as the erstwhile promoter of the project and upon termination of the erstwhile developer vide Arbitral Award dated 28.11.2023 passed in Arbitration Petition No.44 of 2022, any allottee of the erstwhile developer cannot make a claim against the new developer, who is appointed pursuant to the Development Agreement and Power of Attorney executed by the Society on 03.10.2024."*

From the above settled position of law, the appellant society clearly does not fall within the terms "promoter" under section 2(zk) (i) of the RERA Act *qua* the allottees, who have purchased their flats from the erstwhile promoters.

48. The development agreements having been terminated, the allottees who have executed agreements for sale with the erstwhile promoters cannot claim performance of their agreements for sale against the appellant society as well as anyone claiming through the society or the new promoter. The Hon'ble Bombay High Court has laid down this position and reiterated the same in series of judgments as mentioned above. This Tribunal has also re-iterated the above settled position of law in various judgments viz: *Samudra Darshan CHS Ltd Versus Peter Almeida & Ors [Appeal No.AT006000000053403 decided on 6th May, 2022 by the Maharashtra Real Estate Appellate Tribunal, Mumbai] and Hava Hira CHS Ltd Versus Hava Hira Flat Purchasers Association and Ors. [MA No.614 of 2019 in Appeal No.AT006000000052078 decided on 6th January, 2021 by the Maharashtra Real Estate Appellate Tribunal, Mumbai].*

49. The definition of "promoter" is very wide. However, in the context of definition of "promoter" under RERA, the Division Bench of the Hon'ble Bombay High Court in the case of *Goregaon Pearl CHSL* (supra) has categorically held that *"The provisions of RERA do not make any difference either. RERA has been introduced to establish a regulatory authority for regulation and promotion of the real estate sector and to ensure sales in the sector in an efficient and transparent manner and to protect consumers of the sector. The definition of 'promoter' in RERA, for our purposes, is on similar lines as MOFA. Section 18 of RERA, on which strong reliance is placed by learned Counsel for Respondent No.1, requires promoters to discharge their obligations and provides remedies for the purchasers, without prejudice to the purchasers' other rights, in the event of the promoters' failure to discharge the obligations. Section 19, which follows, entitles the allottee to obtain possession of the flat or apartment. Any grievance of the purchaser under RERA is redressed by the regulatory authority appointed under It. None of these provisions either make the owner of the freehold or leasehold interest in the land, who enters into a development agreement with a developer (who, in turn, enters into flat purchase agreements with third parties on the basis of such development agreement), liable for complying with the obligations of the developer under RERA".* [emphasis added]

50. In the present cases, there is no privity of contract with the appellant society, who has validly terminated development agreements with the erstwhile promoters. As the law laid down

in *Vaidehi Akash Housing Pvt. Ltd.* (supra) and *Goregaon Pearl CHSL* (supra), *Deepak Prabhakar Thakoor and others* (supra) is that the "society" is not the promoter and third-party purchasers from the erstwhile promoters cannot claim their rights against the society or anyone claiming through society including the new promoter.

51. As already observed above, the Hon'ble Bombay High Court has laid down the law and re-iterated in the judgments discussed above, wherein it has been held that the third-party purchasers have no privity of contract and therefore can not claim their rights against the society or anyone through the society including the new promoter.

52. Reiterating above position of law, the Hon'ble Bombay High Court in the case of *Kapilkunj Co-operative Housing Society Ltd.(supra)* in para-23 and 42 has categorically held as under:

> *"23. The Society will have to now take an informed decision in regard to its redevelopment agreement and about the completion of the construction at the Society's cost. We understand that there are third party sale agreements that may have been entered into by Ved. These will not be allowed to compromise the rights of the members. In any case, even as against the rights of the Society, the claims of third party purchasers and their rights are issues that have been decided by this Court in Vaidehi Aakash Housing Pvt Ltd v New DN Nagar Co-op Housing Society Union Ltd & Ors and Goregaon Pearl CHSL v Dr Seema Mahadev Paryekar & Ors., and both of which our Division Bench in Deepak Prabhakar Thakoor & Ors v*

MHADA & Ors has reaffirmed. Third party purchasers will have no rights over the assets of the Society. If, therefore, the balance development is done by the Society following a termination of its redevelopment agreement, then any additional Floor Space Index ("FSI") or buildable area benefits will be to the benefit of the Society and may be used to defray costs.

41. Some of the Respondents to the Petition are third party flat purchasers. Once again, as we have set out above, their rights as against Ved are preserved intact in law by series of judgements including our own reaffirmation as a Division Bench of two decisions of the Single judge in Vaidehi Akash and Goregaon Pearl. This necessarily means that after termination of the agreement, third party flat purchasers have no rights, claims or equities in respect of assets of the Society. This means not only the original structure but the entire redevelopment project including all additional FSI and all free sale components. It is always open to those flat purchasers to negotiate with the Society. It is, however, clear that amounts paid to Ved cannot possibly given credit to by the Society. This Court has already repeatedly held that in such a situation, in law, there is absolutely no privity of contract between third party purchasers and the Society or its members. We decline to revisit that aspect of the law or permit fresh arguments re-agitating the same issue. This law is no longer res integra.

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

53. From the discussion above, the position of law is now clear that the appellant society is not promoter under the provisions of RERA Act, 2016 qua the allottees who have purchased their flats from the erstwhile promoters. Further, the allottees who have executed agreements for sale with the erstwhile promoter have no privity of contract with the appellant society and therefore can not claim their rights against the society or anyone through the society including a new promoter. Accordingly, we answer the point no.1 in the negative.

54. It is also pertinent that the allottees were duly admitted as the members of the appellant society vide Extra Ordinary General Meeting dated 24.12.2020. The respondent no.3 and 4 were office bearers of the said society at that time in their capacity as Secretary and Chairperson. In the Extra Ordinary General Meeting dated 29.12.2020 wherein the respondent nos. 3 and 4 resigned from their respective position as a Secretary and Chairperson of the said society and handed over management of the society to the appellant society which comprises now of original members and allottees, who purchased their respective flats from the erstwhile promoters. Subsequently, due to various lapses and non performance of the promoter, in an Extra Ordinary General Meeting dated 09.04.2021, the

members of the said society, which now included allottees who were inducted as members of the said society, unanimously passed resolution to terminate the said development agreements with the erstwhile promoters. Accordingly, the appellant society terminated the development agreement, deed of rectification and supplemental development agreement vide termination notice dated 30.04.2021. Thereafter, the appellant society filed the Commercial Arbitration Petition before the Hon'ble Bombay High Court under Section 9 of the Arbitration and Reconciliation Act, 1996 against the respondent no.2 to 4. In the said petition the appellant society and respondent no.2 executed consent terms on 05.05.2025. The said petition was disposed of by Hon'ble Bombay High Court in terms of the consent terms.

55. As per the Clause 12 of the consent terms, it records that the appellant society shall complete the balance consideration work. Further, the appellant society has unencumbered right to appoint any contractor for execution of the said self re-development and respondent nos. 2 to 4 expressly agreed not to obstruct or interfere with the process of self redevelopment by the said society. Further, as per the Clause 15 it was agreed that the appellant society shall not be liable for any liabilities, responsibilities, claims, costs, proceedings, and/or consequences, which have arisen or may arise in future from or relating to any representations, allotments or transactions undertaken by the respondent no. 2 to 4 in relation to third party purchasers of the premises in the project and shall be the sole and exclusive liability of the respondent nos. 2 to 4.

The appellant society is exclusively indemnified and held harmless from any such claim, losses and/or consequences arisen from any contractual privity or arrangement with the erstwhile promoters and third-party purchasers. Further, it is agreed that the appellant/society shall not be bound to recognize any third-party purchasers or allottees. The said consent terms executed between the erstwhile promoter and the appellant/society in arbitration petition are binding on the allottees under Section 37 of the Arbitration and Conciliation Act, 1996, who claim their rights through the erstwhile promoters.

56. It is also pertinent that upon becoming members of the appellant society, the allottees in the captioned appeals have no locus to file claim against itself/society since as and when an individual becomes member of the society, he/she loses his/her individual identity and is considered as members of the society. Further, as per the minutes of the meeting dated 29.12.2020 of the members of the said society, including who had been admitted as members of the society, have unanimously agreed that they will withdraw all claims, if any for compensation on delay against the society and will not stake claims and/or compensation for delay of the project and/or any shortcomings in the future against the society. Further, the allottees in their affidavit in reply have clearly stated that they do not have any claims against the appellant society and all their claims are in respect of respondent nos. 2 to 4.

57. In view of above, and in the light of the settled position of law we are of the view that the impugned order is unsustainable in the eyes of law and contrary to the settled position of law, as discussed above. Therefore, the impugned order warrants interference in this appeal. Accordingly, we answer the point no.2 in the affirmative.

58. Accordingly, we pass the following order.

ORDER

1. The captioned Appeal No. AT006000000053544 of 2022, AT006000000053539 of 2022, AT006000000053540 of 2022 and AT006000000053545 of 2022 are allowed and the impugned order dated 18.08.2021 is set aside.
2. In view of disposal of appeals, nothing survives for our consideration in Misc. Application 515 of 2022 (Stay), 303 of 2022 (Stay), 513 of 2022 (Stay) and 517 of 2022 (Stay) and the same also stands disposed of.
3. Parties to bear their own costs.
4. Accordingly, all the captioned appeals stand disposed of.
5. 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.)**

Mulla