



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.80 OF 2026**

Bhishma Realty Limited ... Appellant
versus
Suresh Narayan Kolhapure and Anr. ... Respondents

Mr. Kevic Setalwad, Sr. Advocate with Mr. Kaewan Setalwad, Ms. Archana Malvankar i/by Vikram Jakhadi, for Appellant.
Mr. Deepak Y. Chitnis, for Respondent No.1.
Mr. Mukesh Vashi, Sr. Advocate i/by Ms. Sonali Salaskar, for Respondent No.2.

CORAM: N.J.JAMADAR, J.

DATE : 18 FEBRUARY 2026

ORDER :

1. Heard the learned Counsel for the parties.
2. This Appeal is directed against an order dated 18 December 2025 passed by the Maharashtra Real Estate Appellate Tribunal, Mumbai in Appeal No.325291 of 2024, whereby the appeal preferred by Appellant against the order dated 13 May 2024 passed by the Maharashtra Real Estate Regulatory Authority, Mumbai (MAHARERA) in Complaint No.199191 filed by the Respondent No.1 – complainant, came to be dismissed on the ground that the Appellant did not deposit a sum of Rs.1,34,49,670/- towards the compliance of the proviso to sub-section (5) of Section 43 of the Real Estate (Regulation and Development) Act, 2016.
3. The Appellant is the owner of the land over which the real estate project

“Rustomjee Crown” is developed. Under an agreement dated 31 July 2009, Real Gem Buildtech Pvt. Ltd. (R2) was granted development rights. Respondent No.1 – complainant agreed to purchase a flat bearing No.4501 in Tower B for a total consideration of Rs.8,18,75,000/-. A registered agreement for sale was executed in favour of Respondent No.1 on 31 December 2014. 95% of the agreed consideration was paid by Respondent No.1. Possession of the subject flat was agreed to be delivered to the Respondent No.1 by 30 June 2019.

4. In the wake of default in the performance of the obligations, Respondent No.1 filed a complaint before the MAHARERA seeking, inter alia, directions to pay interest on the consideration amount for delayed possession till the date of handing over the actual possession thereof, under Section 18 of the RERA Act, 2016.

5. By an order dated 13 May 2024, MAHARERA partly allowed the complaint. The Respondent No.1 – Appellant and Respondent No.2 herein, were directed to pay interest for the delayed possession of the subject flat to the complainant from 1 January 2022, after deducting the grace period, under the terms of the contract and on account of Covid-19 Pandemic, till the actual date of possession of the subject flat to the complainant on the actual amount paid by the complainant towards consideration of the said flat at the rate of Marginal Cost Lending Rate (MCLR) of SBI plus 2% as prescribed under the

provisions of Section 18 of the RERA Act, 2016 and the rules made thereunder.

6. Being aggrieved, both the Appellant and Respondent No.2 preferred separate appeals before the Appellate Tribunal. By an order dated 21 August 2025, the Appellate Tribunal, after noting that the amount of interest at the prescribed rate on the consideration parted with by the Respondent No.1 i.e. Rs.7,20,81,250/- from 1 January 2022 till 27 June 2025, (date of delivery of possession of the subject flat), came to Rs.2,68,99,340/- directed the Appellants in each of the appeals to deposit an amount of Rs.1,34,49,670/- towards the compliance of the proviso to sub-section (5) of Section 43 of the RERA Act, 2016.

7. As the Appellant failed to deposit the amount despite ample opportunities, by the impugned order dated 18 December 2025, the Appellate Tribunal dismissed the appeal preferred by the Appellant for non-compliance of the mandate contained in the proviso to sub-section (5) of Section 43 of the RERA Act, 2016. It was, however, made clear that since the Respondent No.2 had deposited the amount, the challenge in the said appeal would remain unaffected. Being aggrieved, the Appellant has preferred this appeal.

8. Mr. Setalvad, learned Senior Advocate for the Appellant, made an endeavour to urge that the Appellant is only the land owner. Apart from being the land owner, the Appellant had no role in the development of the project in

question. The entire development activity was entrusted to the Respondent No.2 – developer. For the mere reason that the Appellant was entitled to a share in the developed project, in consideration of the land, the Appellant could not have been implicated as a promoter. The Appellate Tribunal did not advert to the said crucial fact while directing the Appellant to make a pre-deposit. Even the order passed by MAHARERA does not adequately delve into the question as to whether the Appellant can be fastened with the liability as a promoter, within the meaning of Section 2(zk) of RERA Act, 2016.

9. Mr. Setalvad took the Court through the various clauses of the Development Agreement dated 31 July 2009 between the Appellant and Respondent No.2 to drive home the point that the Appellant had no role in the development of the project and did not bear any responsibility for the delay. To buttress the submission that, a person cannot be implicated as a promoter for being a mere owner of the property on which the project is developed, Mr. Setalvad placed reliance on a judgment of the learned Single Judge of this Court **Nagpur Integrated Township Pvt. Ltd. V/s. Maharashtra Real Estate Regulatory Authority, Mumbai and Ors.**¹; a judgment of the learned Single Judge of the Kerala High Court in the case of **Pooja Constructions V/s. The Secretary, Kerala Uranma Devaswom Board**² and a Division Bench judgment of the Allahabad High Court in the case of **Larsen & Toubro Ltd.**

1 SAST 92158 of 2020 dt. 11 Sept. 2020

2 MSA 16 of 2024 dated 30 August 2024

V/s. State of U.P. and Ors.³

10. In contrast to this, Mr. Chitnis, learned Counsel for Respondent No.1 – complainant, submitted that the Appellant had, in fact, received the consideration which was paid by the complainant under an agreement for sale. The subject flat was sold out of the constructed portion falling to the share of the Appellant, under the development agreement. The subject project was registered with RERA with the Appellant shown as the co-promoter. Therefore, the submissions sought to be canvassed on behalf of the Appellant that the Appellant is not a promoter are against the weight of the material on record.

11. Mr. Vashi, learned Senior Advocate for Respondent No.2, also countered the submissions on behalf of the Appellant. It was urged that the Appellant has read the development agreement in a selective manner. Taking the Court through the other clauses of the development agreement, Mr. Vashi would submit the Appellant was involved in the project at every stage; from construction to the sale of units in the project. Therefore, the Appellant cannot be now permitted to contend that he is not a promoter.

12. 'Promoter' is defined under Section 2(zk) of the RERA, 2016, as under :

“(zk) “ promoter” means, -

(i) a person who constructs or causes to be constructed an independent building or a building consisting

³ WP-C No.16616 of 2024 dated 1 Oct. 2024

of apartments, or converts an existing building of 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 on 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; or

(b) plots owned by such authority or body or placed at their disposal by the Government;

(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.”

13. On its plain reading, definition of ‘promoter’ is of so wide amplitude as to include in its fold every person who constructs or causes to be constructed a building for the purpose of selling the apartments therein, and any person who is associated with the construction of the building, be it in the capacity of builder, contractor, developer and even a person who claims to be acting as a holder of a power of attorney from the owner of the land on which a building or apartment is constructed. The Explanation is of immense significance. The Explanation expands scope of the definition of promoter. The Explanation makes the import of the term ‘promoter’ even more clear. Under the Explanation, where a person who constructs or converts a building into apartment 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 promoter and shall be jointly liable for such functions and responsibilities specified under the Act.

14. In the case at hand, first and foremost, it is incontrovertible that the Appellant is one of the co-promoter of the project registered with the

MAHARERA. Secondly, the Appellant has joined with the Respondent No.2 in the execution of the agreement for sale of the subject flat in favour of Respondent No.1 -complainant. Thirdly, the subject flat was part of the constructed portion which fell to the share of the Appellant under the development agreement; under the terms of which, the Appellant and Respondent No.2 were to jointly execute the instruments. Fourthly and, more importantly, as noted by MAHARERA, 95% of the total consideration i.e. Rs.7,20,81,250/- was paid by the Respondent No.1 – complainant to the Appellant.

15. In the face of the aforesaid uncontroverted facts, the endeavour of the Appellant to wriggle out of the situation by submitting that the Appellant is a mere land owner cannot be countenanced. Reliance placed by Mr. Setalvad on the judgments in the cases of **Nagpur Integrated Township Pvt. Ltd. (supra)**, **Pooja Constructions (supra)** and **Larsen & Toubro Ltd. (supra)**, is of no avail. Likewise, reliance on the Circular dated 4 December 2017 issued by MAHARERA does not advance the cause of the submission on behalf of the Appellant. On the contrary, if construed in a correct perspective, the Circular squarely nails the Appellant as a Promoter.

16. It would be suffice to make a reference to a judgment of a learned Single Judge of this Court in the case of **Wadhwa Group Housing Pvt. Ltd.**

V/s. Vijay Choksi and Anr.⁴ wherein this Court repelled the submission that the Appellant therein was not a promoter premised on the fact that the subject flat fell in the share of the second Respondent therein, under the joint development agreement. The observations in paragraph Nos.18, 19 and 21 are material, and, hence, extracted below :

“18. 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 alongwith 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

4 2024 SCC Online Bom 660

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.

19. 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.

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21. 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."

(emphasis supplied)

17. For the foregoing reasons, no infirmity can be found with the order passed by the Appellate Tribunal on 21 August 2025 and the impugned order dismissing the Appeal for non-compliance of the first order of pre-deposit.

18. No question of law, much less, substantial question of law arises for consideration. The Second Appeal, therefore, deserves to be dismissed.

19. Hence, the Second Appeal stands dismissed.

(N.J.JAMADAR, J.)