

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**SECOND APPEAL NO. 565 OF 2022
ALONGWITH
CIVIL APPLICATION NO. 663 OF 2019
IN
SECOND APPEAL NO. 565 OF 2022**

Sheth Infraworld Pvt. Ltd. ...Appellant
vs.
Mahesh Mahadeo Kelkar and Anr. ...Respondents

**ALONGWITH
INTERIM APPLICATION NO. 308 OF 2021
IN
SECOND APPEAL NO. 565 OF 2022**

Sheth Infraworld Pvt. Ltd. Mumbai - 400057 ...Applicant
vs.
Mahesh Mahadeo Kelkar and Anr. ...Respondents

**ALONGWITH
SECOND APPEAL NO. 601 OF 2022**

Sheth Infraworld Pvt. Ltd. ...Appellant
vs.
Prasannaraj Prakash Bhatawdekar
Mumbai and Anr. ...Respondents

**ALONGWITH
INTERIM APPLICATION NO. 307 OF 2021
IN
SECOND APPEAL NO. 601 OF 2022**

Prasannaraj Prakash Bhatawdekar
Mumbai and Anr. ...Applicants
vs.
Sheth Infraworld Pvt. Ltd. Mumbai - 400057 ...Respondent

**ALONGWITH
CIVIL APPLICATION NO. 665 OF 2019
IN
SECOND APPEAL NO. 601 OF 2022**

Sheth Infraworld Pvt. Ltd. Mumbai – 400057 ...Applicant
vs.
Prasannaraj Prakash Bhatawdekar
Mumbai and Anr. ...Respondent

**ALONGWITH
SECOND APPEAL NO. 600 OF 2022**

Sheth Infraworld Pvt. Ltd. ...Appellant
vs.
Saurabh Kesarwani and Anr. ...Respondents

**ALONGWITH
CIVIL APPLICATION NO. 664 OF 2019
IN
SECOND APPEAL NO. 600 OF 2022**

Sheth Infraworld Pvt. Ltd. Mumbai – 400057 ...Applicant
vs.
Saurabh Kesarwani and Anr. ...Respondents

**ALONGWITH
INTERIM APPLICATION NO. 306 OF 2021
IN
SECOND APPEAL NO. 600 OF 2022**

Saurabh Kesarwani and Anr. ...Applicants
vs.
Sheth Infraworld Pvt. Ltd. Mumbai – 400057 ...Respondent

Ms. Pragathi Malle a/w Ms. Pavitra Pillay - Advocate for the Appellant
Mr. Dharam Juman with Mrs. Meenakshi Dhanuka-Rungta i/by Dhanuka
and Partners - Advocate for the Respondents

CORAM : S. M. MODAK, J.

DATE : 24th AUGUST, 2022

P.C. :-

1. Heard, learned Advocate for the Appellant/Developer and learned Advocate for the Respondent-Allottee. The Respondent-Allottee has approached the authorities as per RERA Act with certain grievances After hearing the RERA Authorities as per Order dated 12/06/2018 was pleased to direct the present Appellant/Developer to pay interest for certain duration to the Respondent-allottee. However while issuing those directions, the Developer was granted a concession of deduction balance consideration to be payable by the allottee and then to pay remaining amount of interest to the allottee.
2. The said Order was challenged before the Appellate Tribunal by the allottees by way of separate appeals. As contemplated under provision of Section 43 (3) of RERA Act, 2016 bench of Appellate Tribunal consist of atleast one Judicial Member and one administrative/technical member. However at that time, the Appellate tribunal was presided over only by judicial member and administrative/Technical member was not there.
3. Accordingly, the Appeals filed by the allottees were decided by learned President of the Tribunal on 20/12/2018. It seems that it was allowed in favour of the allottees. The present Second Appeals are filed by

the Developer. In the meantime, issue ‘whether only one member can comprise the Appellate tribunal’ was decided by this Court in few matters.

Two of such Orders are placed for perusal. They are as follows :

- (a) *Larsen and Toubro Limited Vs. Ms. Rekha Sinha* in Second Appeal (ST) No. 14061 of 2019 delivered on 17/10/2019.
- (b) *Man Global Limited Vs. Bharat Prakash Joukani* in Second Appeal (ST) No. 14845 of 2019 delivered on 01/10/2019.

4. There is no dispute amongst both the sides about applicability of observation therein to the facts of these Appeals. After considering the provisions of RERA Act and particularly Section 43 (3) and Section 55 of the said Act, it has been observed that

“On plain reading of the section 43(3) of the Act, it is clear that the sole member of the said Tribunal does not have jurisdiction to dispose of appeal or any application including even an application for condonation of delay in filing appeal. The impugned order thus passed by the Administrative member alone is without jurisdiction and deserved to be set aside on this ground alone. Substantial question of law formulated aforesaid is answered accordingly in aforesaid terms.”

5. The said observations are reiterated in subsequent decision in case of *Larsen and Toubro Limited* (Supra). In both these appeals, substantial

question of law whether sole member can decide the appeal or other proceedings or not was framed.

6. Coming to the facts of present Appeals only learned President of the Appellate Tribunal has decided the appeal. This is not permissible as interpreted in above two referred judgments.

7. Hence the Orders passed by learned President of the Appellate Tribunal cannot be sustained.

8. As issue is already covered in above referred judgments by consent without conducting deeper enquiry, these appeals are decided. Hence matter needs to be remanded to the Appellate Tribunal.

9. Hence following Order is passed:-

ORDER

(i) The Orders dated 20/12/2018 and 01/10/2018 passed by the learned President Maharashtra Real Estate Appellate Tribunal Mumbai in Second Appeal No. 565 of 2022 are set aside.

(ii) The Orders dated 12/06/2018 and 20/12/2018 passed by the learned President Maharashtra Real Estate Appellate Tribunal Mumbai in Second Appeal No. 601 of 2022 are set aside.

(iii) The Orders dated 12/06/2018 and 20/12/2018 passed by the learned President Maharashtra Real Estate Appellate Tribunal Mumbai in Second Appeal No. 600 of 2022 are set aside.

(iv) Both the parties are directed to appear before the Appellate Tribunal on 19/09/2022.

(v) The Appellate Tribunal is at liberty to hear the parties and dispose of Appeal in accordance with law.

(vi) This Court has not made any observations so far as merits of the Appeals are concerned. Contentions of both the parties are kept open.

10. Second Appeal Nos. 565 of 2022, 601 of 2022 and 600 of 2022 are disposed of and Civil Application and Interim Applications are also disposed of.

[S. M. MODAK, J.]