

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

**SECOND APPEAL NO.726 OF 2022
WITH
INTERIM APPLICATION NO.20494 OF 2022**

Adam A. Jumma Proprietor of
Aman Builders and Developers, Goa ...Appellant
Versus
Guddu S. Malha ...Respondent

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WITH
INTERIM APPLICATION NO.20495 OF 2022**

Adam A. Jumma Proprietor of
Aman Builders and Developers, Goa ...Appellant
Versus
Guddu S. Malha ...Respondent

Mr. Nikhil Wadikar a/w. Mr. Pradip Zende & Faiza Shaikh, i/b. Mr.
Nandu Pawar, for the Appellant.

Mr. Preetam Talaulikar, for the Respondent.

**CORAM : MADHAV J. JAMDAR, J.
DATED : 12th JANUARY 2023**

P.C. :

1. Heard Mr. Nikhil Wadikar, learned counsel appearing for the Appellant and Mr. Preetam Talaulikar, learned counsel appearing for the Respondent.
2. In Second Appeal No.726 of 2022 which has been filed

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under Section 58 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as **“the RERA Act”** for short), the challenge is to the legality and validity of the judgment and order dated 28th April 2022 passed by the learned Adjudicating Officer, Goa RERA in Case No.4/RERA/Adj. Matters(11)/2021/356 as well as to the order dated 8th September 2022 passed by the learned Maharashtra Real Estate Appellate Tribunal, Mumbai (hereinafter referred to as **“Maharashtra Appellate Tribunal”** for short) in M.A. No.671/2022 in M.A. No.672/2022 in Appeal G-04/2022. It is significant to note that although the said order has been passed by the Maharashtra Real Estate Appellate Tribunal, Mumbai however, the same has been passed by the Maharashtra Appellate Tribunal acting as Real Estate Appellate Tribunal for Goa i.e. Goa Real Estate Appellate Tribunal, Mumbai (hereinafter referred to as **“Goa Appellate Tribunal”**).

3. In Second Appeal No.727 of 2022 challenge is to the order dated 29th October, 2021 passed by learned Member, Goa RERA in F.No.3/RERA/Complaint(123)/2020/655 as well as to the order dated 8th September, 2022 passed by the learned

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Maharashtra Appellate Tribunal acting as “Goa Appellate Tribunal” in M.A. No.669/2022 in M.A. No.670/2022 in Appeal G-03/2022.

4. By the above referred impugned orders dated 8th September 2022, the direction was issued to deposit entire amount awarded in the complaint, in compliance with Section 43(5) of the RERA Act.

5. At the outset, Mr. Preetam Talaulikar, learned counsel appearing for the Respondent raised the preliminary objection. He submitted that the Second Appeals filed at the Principal Seat of High Court of Judicature at Bombay are not maintainable and the same are required to be filed at the Bombay High Court at Goa. To substantiate his contention, he has relied on the decisions of Supreme Court in **Ambica Industries vs. Commissioner of Central Excise**¹ and **Principal Commissioner of Income Tax-I, Chandigarh vs. ABC Papers Limited**².

6. It is the contention of Mr. Talaulikar, learned counsel appearing for the Respondent that these Second Appeals are

1 (2007) 6 SCC 769

2 (2022) 9 SCC 1

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filed under Section 58 of the RERA Act to the High Court from a decision of the Appellate Tribunal. He submits that as per the explanation provided under Section 58, the expression “High Court” means the “High Court of a State or Union territory where the real estate project is situated”. He submitted that real estate project regarding which Second Appeals are filed is situated in Goa and therefore, in terms of Section 58, the Second Appeals should have been filed before the Bombay High Court at Goa.

7. On the other hand, it is the contention of Mr. Nikhil Wadikar, learned counsel appearing for the Appellant that the Appellate Tribunal is situated in Mumbai and therefore, the Second Appeals will lie at the Principal Seat of the Bombay High Court. To substantiate his contention, he has relied on the Goa, Daman and Diu Reorganisation Act, 1987 (hereinafter referred to as **“the Reorganization Act”**). He relied on Section 20 of the Reorganization Act and submitted that there is common High Court for the States of Maharashtra and Goa, and for the Union Territories of Dadra and Nagar Haveli and Daman and Diu, to be called the “High Court of Bombay”. He submitted that as per the

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explanation to Section 58, the expression “High Court” means “the High Court of a State where the real estate project is situated”. He submitted that admittedly, real estate project is situated at Goa. Therefore, the High Court of Bombay which has got territorial jurisdiction over Goa will be the High Court where the Appeals will lie. He submitted that as the Appellate Tribunal whose order is being challenged is at Mumbai and therefore, Appeal under Section 58 can be filed at the Principal Seat of the Bombay High Court. He submitted that as the real estate project is at Goa, Appeal also can be filed at the High Court of Bombay at Goa. He submitted that in any case, the present Appeals which have been lodged at the Principal Seat of the Bombay High Court are maintainable. To substantiate his contention, he has relied on the decision of the Madras High Court in the matter of **Orj Electronics Oxides Ltd. vs. Cestat, Chennai³**.

8. Before considering the rival submissions and relevant provisions of law, it is to be noted that the Supreme Court in **Principal Commissioner of Income Tax-I, Chandigarh** (supra) has held that a judicial remedy must be effective, independent

3 Writ Appeal No.1559 of 2007 decided on 14th December 2007.

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and at the same time certain. Certainty of forum would involve unequivocal vesting of jurisdiction to adjudicate and determine the dispute in a named forum. Thus, certainty of forum is held to be hallmark for a judicial remedy to be effective, independent and at the same time certain. In this particular case, certainty of forum is relevant from the point of view whether Second Appeal will lie to the Principal Seat of the Bombay High Court or Bombay High Court at Goa in view of the specific contention raised by Mr. Wadikar, learned counsel appearing for the Appellant that the Second Appeals shall lie at both the places.

9. Section 58 of the RERA Act provides Appeal to High Court and the same reads as under:-

“58. Appeal to High Court.—(1) Any person aggrieved by any decision or order of the Appellate Tribunal, may, file an appeal to the High Court, within a period of sixty days from the date of communication of the decision or order of the Appellate Tribunal, to him, on any one or more of the grounds specified in section 100 of the Code of Civil Procedure, 1908 (5 of 1908):

Provided that the High Court may entertain the appeal after the expiry of the said period of sixty

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days, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal in time.

***Explanation.*—The expression “High Court” means the High Court of a State or Union territory where the real estate project is situated.**

(2) No appeal shall lie against any decision or order made by the Appellate Tribunal with the consent of the parties.”

(emphasis added)

10. It is very clear that any person aggrieved by any decision or order of the Appellate Tribunal may file Appeal to the High Court within a period of 60 days from the date of communication of the decision or order of the Appellate Tribunal to him. The said Appeal is to be filed on any one or more of the grounds specified in Section 100 of the Code of Civil Procedure, 1908. The expression “High Court” in Section 58 means “the High Court of a State or Union territory where the real estate project is situated”. Admittedly, in the present case, real estate project is situated at Goa and as per the provisions of the Reorganisation Act, for the State of Goa, High Court means the High Court of Bombay. Section 20, 26 and 28 of the

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Reorganisation Act are relevant and the same are reproduced herein-below for ready reference :-

“20. Common High Court for Maharashtra, Goa, Dadra and Nagar Haveli and Daman and Diu.—(1)

On and from the **appointed day**,—

(a) there shall be **a common High Court for the States of Maharashtra and Goa**, and for the Union territories of Dadra and Nagar Haveli, and Daman and Diu, **to be called the High Court of Bombay** (hereinafter referred to as the **common High Court**);

(b) the Judges of the High Court of Bombay (hereinafter referred to as the existing High Court), holding office immediately before that day shall, unless they have elected otherwise, become, on that day, the Judges of the common High Court.

(2) The expenditure in respect of the salaries and allowances of the Judges of the common High Court shall be allocated amongst the States of Maharashtra and Goa and the Union in such proportion as the President may, by order, determine.

(3) On and from the appointed day, the common High Court shall have, in respect of the territories comprised in the States of Maharashtra and Goa and the Union territories of Dadra and Nagar Haveli

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and Daman and Diu, all such jurisdiction, powers and authority as, under the law in force immediately before the appointed day, are exercisable in respect of those territories by the High Court of Bombay.”

“26. Principal seat and other places of sitting of the common High Court.—(1) The principal seat of the common High Court shall be at the same place at which the principal seat of the existing High Court is located immediately before the appointed day.

(2) The president may, by notified order, provide for the establishment of a permanent bench or benches of the common High Court at one or more places within the territories to which the jurisdiction of the High Court extends, other than the principal seat of the High Court, and for any matters connected therewith:

Provided that before issuing any order under this sub-section, the President shall consult the Chief Justice of the common High Court, and the Governor of the State in which the bench or benches is or are proposed to be established.

(3) Notwithstanding anything contained in sub-section (1) or sub-section (2), the Judges and division Courts of the common High Court may also sit at such other place or places within the

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territories to which the jurisdiction of that High Court extends as the Chief Justice of that High Court may, with the approval of the Governor of the State or the Administrator of the Union territory concerned, appoint.”

“28. Transfer of proceedings to the common High Court.—(1) All proceedings pending in the existing High Court immediately before the appointed day shall, from such day, stand transferred to the common High Court.

(2) Every proceeding transferred under sub-section (1) shall be disposed of by the common High Court as if such proceeding was entertained by that High Court.”

(emphasis added)

The Central Government had specified 30th day of May 1987 as the appointed day for the purpose of the Reorganization Act.

11. As per Section 20 of the Reorganization Act, there shall be a common High Court for the States of Maharashtra and Goa, and for the Union territories of Dadra and Nagar Haveli, and Daman and Diu, to be called the “High Court of Bombay”. Said High Court of Bombay is referred as the common High

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Court. Sub-Section 3 of Section 20 provides that the common High Court shall have, in respect of the territories comprised in the States of Maharashtra and Goa and the Union territories of Dadra and Nagar Haveli and Daman and Diu, all such jurisdiction, powers and authority as, under the law in force immediately before the appointed day, are exercisable in respect of those territories by the High Court of Bombay.

12. Section 26 is regarding the Principal Seat and other places of sitting of the common High Court. As per Sub-Section 1 of Section 26, the Principal Seat of the common High Court shall be at the same place at which the principal seat of the existing High Court is located immediately before the appointed day. The said Principal Seat of the High Court of Bombay is at Mumbai.

13. Sub-Section 2 of the Section 26 provides that the President may, by notified order, provide for the establishment of a permanent bench or benches of the common High Court at one or more places within the territories to which the jurisdiction of the High Court extends, other than the Principal Seat of the High Court.

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14. Section 28 provides that all proceedings pending in the existing High Court immediately before the appointed day shall, from such day, stand transferred to the common High Court.

15. Thus, it is clear that the High Court of Bombay is the common High Court for the States of Maharashtra and Goa and for Union territories of Dadra and Nagar Haveli, and Daman and Diu.

16. For deciding whether the present Appeals are maintainable at the Principal Seat of the High Court of Bombay, Chapter XXXI of the Bombay High Court Appellate Side Rules, 1960 (hereinafter referred to as "Appellate Side Rules") are relevant. Said Chapter XXXI is regarding presentation of proceedings at the office of the High Court of Bombay at the Principal Seat, its Benches and at Goa. The said Chapter consists of Rules 1 to 4 and Rule 4A. The said Chapter is extensively amended by notification dated 21st April 2022. The title of said Chapter XXXI is relevant and the same reads as under:-

"Chapter XXXI

**Presentation of Proceedings at The Office of
The High Court of Bombay at the Principal Seat, its**

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Benches and at Goa.”

17. Rule 3 contained in said Chapter XXXI of the Appellate Side Rules are regarding presentation of proceedings at the office of the High Court of Bombay at Goa and the same reads as under:-

“3. All appeals, applications, references, petitions including petitions for exercise of powers under Articles 226 and 227 of the Constitution of India, arising in the State of Goa, which lie to the High Court at Bombay, shall be presented to the Registrar, High Court of Bombay at Goa and shall be disposed of by the Judges sitting at High Court of Bombay at Goa.

(emphasis added)

18. The title of Chapter XXXI is presentation of proceedings at the office of the High Court of Bombay at the Principal Seat, its Benches and at Goa. Rules 1 to 4 inter alia provides presentation of appeals, applications, references, petitions including petitions for exercise of powers under Articles 226 and 227 of the Constitution of India arising in the various judicial districts mentioned in said Rules 1 to 4 to be presented

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to the Registrar of High Court of Bombay Bench at Nagpur, Registrar of High Court of Bombay Bench at Aurangabad and Registrar, High Court of Bombay at Goa and Registrar (Judicial), High Court of Judicature at Bombay respectively as more particularly set out in said Rules.

19. We are concerned with the Appeals filed under Section 58 of the RERA Act regarding real estate project situated at Goa. Rule 3 of Chapter XXXI of the Appellate Side Rules inter alia specifies that all Appeals arising in the State of Goa, which lie to the High Court of Bombay, shall be presented to the Registrar, High Court of Bombay at Goa and shall be disposed of by the Judges sitting at High Court of Bombay at Goa. Therefore, it is very important to ascertain whether the present Appeals are arising in the State of Goa. The same is also required to be examined on the touchstone of explanation to Section 58 of the RERA Act which specifies that “High Court” means “the High Court of a State or Union territory where the real estate project is situated”. The undisputed factual position on record shows that in this case, the concerned real estate project is at Goa, complaint was filed under Section 31 of the RERA Act before

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the Adjudicating Officer of the Goa Real Estate Regulatory Authority i.e. Goa, RERA/Member, Goa Real Estate Regulatory Authority i.e. Goa RERA, respectively. By the Judgment and order dated 28th April 2022/29th October 2021, the said complaint was decided by the learned Adjudicating Officer, Goa RERA/learned Member, Goa RERA, respectively and the impugned orders in this Second Appeals is in effect passed by the Goa Real Estate Appellate Tribunal.

20. Sub-Section 1 of Section 44 of the RERA Act provides that the appropriate Government or the competent authority or any person aggrieved by any direction or order or decision of the Authority or the adjudicating officer may prefer an appeal to the Appellate Tribunal.

21. Section 43 of the RERA Act provides for the establishment of Real Estate Appellate Tribunal. Sub-Section 1 of Section 43 provides that the appropriate Government shall, within a period of one year from the date of coming into force of said RERA Act, by notification, establish an Appellate Tribunal to be known as the – (name of the State/Union territory) Real Estate Appellate Tribunal.

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22. The appropriate Government is defined in Section 2(g) of the RERA Act, which reads as under:-

“2 Definitions

In this Act, unless the context otherwise requires:-

(a) to (f).....

(g) **"Appropriate Government" means in respect of matters relating to,-**

- (i) the Union territory without Legislature, the Central Government;
- (ii) the Union territory of Puducherry, the Union territory Government;
- (iii) the Union territory of Delhi, the Central Ministry of Urban Development;
- (iv) **the State, the State Government;”**
(emphasis added)

23. Thus, it is clear that appropriate Government for the State of Goa is the State Government of Goa and as per Section 43, State Government of Goa is empowered to establish an Appellate Tribunal to be known as the Goa Real Estate Appellate Tribunal.

24. Accordingly, Government of Goa vide Notification No.11/50/2017-DMA/RERA/2146 published in the official gazette on 23rd September 2021 under Department of Urban Development (Municipal Administration) has designated the

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Maharashtra Real Estate Appellate Tribunal to be the Appellate Tribunal for the State of Goa to hear Appeals under the RERA Act w.e.f. 23rd September 2021. Reference to the said Notification dated 23rd September 2021 is in the Notification dated 1st October 2021 published in the Official Gazette of Government of Goa dated 14th October 2021. The same reads as under:-

“Department of Urban Development
Goa Real Estate Regulatory Authority

Notification

1/RERA/Regulations of GREERA/2020/6

Transaction of Business by the Goa Real
Estate Regulatory Authority Regulation
(Amendment), 2021

Amendment to the notification, 1/RERA/
Regulations of GREERA/2021/1, printed in Official
Gazette, Series I NO. 2, dated 8th April, 2021

In exercise of the powers conferred by
section 29 and section 85 of the Real Estate
(Regulation and Development) Act, 2016 hereby
makes the following regulation so as to amend the
Transaction of Business by the Goa Real Estate
Regulatory Authority Regulation, 2021.

1. Short title and commencement.-

(1) These regulations may be called The

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Transaction of Business by the Goa Real Estate Regulatory Authority Regulation (Amendment), 2021.

(2) They shall come into force at once.

2. Amendment of Regulation.

3.(X) In regulation 3 of the Transaction of Business by the Goa Real Estate Regulatory Authority Regulation 2021, for clause (X), the following clause shall be substituted, namely:-

(X) All cases of complaints on registration, violation against various provisions of the act/rules shall be assigned to the Member(s) by the Chairperson. They shall hear the complaints and decide on merits. **Such decision of the member is final and an aggrieved person may appeal to the designated Goa Real Estate Appellate Tribunal. The Government of Goa vide Notification 11/20/2017-DMA/RERA/2016. published in Official Gazette, Series I No. 26, dated 23rd September, 2021 under Department of Urban Development (Municipal Administration) has designated the Maharashtra Real Estate Appellate Tribunal to be the Appellate Tribunal for the State of Goa to hear appeals under the said Act with effect from 23-09-2021.**

S. KUMARASWAMY, IAS (Retd).

Chairperson, Goa RERA.

Panaji, 1st October, 2021.”

(emphasis added)

25. Thus, it is clear that Maharashtra Real Estate Appellate Tribunal acts as Appellate Tribunal for the State of Goa i.e. Goa Real Estate Appellate Tribunal to hear the Appeals under the RERA Act w.e.f. 23rd September 2021. Thus, the impugned orders passed in the present Second Appeals dated 8th September 2022 passed by the Maharashtra Real Estate Appellate Tribunal, Mumbai are in effect orders passed by the Goa Real Estate Appellate Tribunal. The said order is passed by the Maharashtra Real Estate Appellate Tribunal, Mumbai as Maharashtra Real Estate Appellate Tribunal is designated as Appellate Tribunal for the State of Goa as set out hereinabove. Thus, it is clear that as per Section 58, Appeal lies to “the High Court” and “High Court means the High Court of a State or Union territory where the real estate project is situated”. It is true that there is common High Court for the States of Maharashtra and Goa and for the Union territories of Dadra and Nagar Haveli and Daman and Diu i.e. the High Court of Bombay. Thus, as the real estate project in question is situated at Goa and the High Court for the State of Goa is High Court of

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Bombay, it is clear that Appeal will lie to the High Court of Bombay. The only question is whether it lies to the Principal Seat of High Court of Bombay or High Court of Bombay at Goa.

26. In this context, it is significant to note that Rule 3 of Chapter XXXI of the Appellate Side Rules inter alia clearly provides that all appeals arising in the State of Goa which lie to the High Court at Bombay shall be presented to Registrar, High Court of Bombay at Goa and shall be disposed of by the Judges sitting at Goa. It is significant to note that the expression in the said Rule 3 that “all appeals arising in the State of Goa” are required to be interpreted in the light of Section 58 of the RERA Act. The same is very relevant for deciding whether the present Second Appeals will lie to the Principal Seat of High Court of Bombay or to the High Court of Bombay at Goa.

27. It is the contention of Mr. Wadikar that as the impugned order of the Appellate Tribunal is passed by the Maharashtra Real Estate Appellate Tribunal, Mumbai which is situated at Mumbai, the Second Appeals will lie to the Principal Seat of Bombay High Court. However, what is significant is the expression “arising in the State of Goa” “as appearing in Rule 3

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of Chapter XXXI of the Appellate Side Rules. The said expression “arising in the State of Goa” is also to be understood from the point of view of explanation to Section 58 of the RERA Act, which clearly provides that the expression “High Court” means “the High Court of a State or Union territory where the real estate project is situated”.

28. It is admitted position that the real estate project in question is situated at Goa and therefore, it has to be held that the Appeal is arising in the State of Goa. Merely by Notification dated 23rd September 2021, the Government of Goa has designated the Maharashtra Real Estate Appellate Tribunal to be the Appellate Tribunal for the State of Goa to hear Appeals under the RERA Act w.e.f. 23rd September 2021 doesn't mean that the Appeal is not arising in the State of Goa. The said Notification issued by the Government of Goa set out hereinabove clarifies that aggrieved person may appeal to the designated Goa Real Estate Appellate Tribunal and further states that Government of Goa has designated the Maharashtra Real Estate Appellate Tribunal to be the Appellate Tribunal for the State of Goa. Thus, in fact, the impugned order has been

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passed by the Goa Real Estate Appellate Tribunal, as Maharashtra Real Estate Appellate Tribunal is designated as Real Estate Appellate Tribunal for the State of Goa. Thus, these Second Appeals challenging the order of the Maharashtra Real Estate Appellate Tribunal in the present case are the Appeals arising in the State of Goa and therefore, as per Rule 3 of the Chapter XXXI of the Appellate Side Rules, these Second Appeals will have to be presented before the Registrar, High Court of Bombay at Goa.

29. It is the contention of Mr. Wadikar that the Second Appeals will lie to the Principal Seat of the Bombay High Court as well as to the High Court of Bombay at Goa. However, the decision of the Supreme Court in **Principal Commissioner of Income Tax-I, Chandigarh (supra)** clearly held that a judicial remedy must be effective, independent and at the same time certain. Certainty of forum would involve unequivocal vesting of jurisdiction to adjudicate and determine the dispute in a named forum. Therefore, what is contemplated is certainty as far as the forum is concerned. It is true that, in this case there is common High Court inter alia for the State of Maharashtra as

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well as for the State of Goa. However, in this particular case, the real estate project is situated at Goa, the complaint under Section 31 of the RERA Act was filed before GoaRERA. It is only for the reason that the Maharashtra Real Estate Appellate Tribunal has been designated as Appellate Tribunal for the State of Goa to hear Appeals i.e. the Goa Real Estate Appellate Tribunal to which Appeal lies and therefore, it is clear that these Second Appeals will only lie to the High Court of Bombay at Goa.

30. To appreciate the contention of Mr. Wadikar that in addition to High Court of Bombay at Goa even, the Principal Seat of High Court of Bombay will have jurisdiction, it is also necessary to consider Rule 4 of the said Chapter XXXI which is regarding matters which will lie at the Principal Seat of High Court of Bombay. The said Rule 4 reads as under:-

“4. **All appeals**, applications, references and petitions including petitions for exercise of powers under Articles 226 and 227 of the Constitution of India, **arising in the 1 [Judicial Districts of Bombay** (except the cases falling under the Original Side jurisdiction of the Bombay High Court), Kolhapur, Nashik, Pune,

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Raigad, Ratnagiri, Satara, Sangli, Sindhudurg, Solapur, Thane, as well as the Union Territory of Dadra and Nagar Haveli and Daman and Diu] which lie to the High Court at Bombay, shall be presented to the 1 [***] Registrar (Judicial), High Court of Judicature, 1 [***] at Bombay and shall be disposed of by the Judges sitting on the Appellate Side.”

These Second Appeals are filed under Section 58 of the RERA Act. The expression appearing in above Rule 4 i.e. “Appeals arising in the judicial district of Bombay” is to be understood from the point of view of explanation to Section 58 of the RERA Act, which clearly provides that the expression “High Court” means “the High Court of a State or Union territory where the real estate project is situated”. Admittedly, the concerned real estate project is situated at Goa and therefore, it cannot be held that appeal is arising out of the judicial district of Bombay.

31. Mr. Preetam Talaulikar, learned counsel appearing for the Respondent has heavily relied on **Ambica Industries vs. Commissioner of Central Excise** (supra). In that case, the question before the Supreme Court was regarding the

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determination of the situs of the High Court in which the Appeals would lie under Section 35-G(1) of the Central Excise Act. Although, in that case the Appellant was carrying on business at Lucknow and was assessed at the said place, the matter ultimately came up before the Central Excise and Service Tax Appellate Tribunal (CESTAT), New Delhi. The said Tribunal exercises jurisdiction in respect of cases arising within the territorial limits of the State of Uttar Pradesh, National Capital Territory of New Delhi and the State of Maharashtra. The observations of the Supreme Court in paragraph 13 to 18 are very relevant and reads as under:-

“13. The Tribunal, as noticed hereinbefore, exercises jurisdiction over all the three States. In all the three States there are High Courts. In the event, the aggrieved person is treated to be the dominus litus, as a result whereof, he elects to file the appeal before one or the other High Court, the decision of the High Court shall be binding only on the authorities which are within its jurisdiction. It will only be of persuasive value on the authorities functioning under a different jurisdiction. If the binding authority of a High Court does not extend beyond its territorial jurisdiction and the decision of

one High Court would not be a binding precedent for other High Courts or Courts or Tribunals outside its territorial jurisdiction, some sort of judicial anarchy shall come into play. An assessee, affected by an order of assessment made at Bombay, may invoke the jurisdiction of the Allahabad High Court to take advantage of the law laid down by it and which might suit him and thus he would be able to successfully evade the law laid down by the High Court at Bombay.

14. Furthermore, when an appeal is provided under a statute, Parliament must have thought of one High Court. It is a different matter that by way of necessity, a Tribunal may have to exercise jurisdiction over several States but it does not appeal to any reason that Parliament intended, despite providing for an appeal before the High Court, that appeals may be filed before different High Courts at the sweet will of the party aggrieved by the decision of the Tribunal.

15. In a case of this nature, therefore, the cause of action doctrine may not be invoked.

16. Sub-section 9 of Section 35G, whereupon Mr. C. Hari Shankar, learned counsel places strong

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reliance, in our opinion, does not answer the question placed before us. **Learned counsel contends that in terms of sub-section 1 of Section 100 of the Code of Civil Procedure, the order of the First Appellate Court being a decree, a Second Appeal shall lie before the High Court subordinate thereto.**

17. There cannot be any doubt whatsoever that in terms of Article 227 of the Constitution of India as also Clause (2) of Article 226 thereof, the High Court would exercise its discretionary jurisdiction as also power to issue writ of certiorari in respect of the orders passed by the Subordinate Courts within its territorial jurisdiction or if any cause of action has arisen therewithin but **the same tests cannot be applied when the appellate court exercises a jurisdiction over Tribunal situated in more than one State. In such a situation, in our opinion, the High Court situated in the State where the first court is located should be considered to be the appropriate appellate authority. Code of Civil Procedure did not contemplate such a situation. It provides for jurisdiction of each court. Even a District Judge must exercise its jurisdiction only within the territorial limits of a State. It is inconceivable under the Code of Civil Procedure that the jurisdiction of**

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the District Court would be exercisable beyond the territorial jurisdiction of the District, save and except in such matters where the law specifically provides therefor.

18. The submission of Mr. C. Hari Shankar, learned counsel, as noticed hereinbefore, is inconsistent and contradictory. The doctrine of dominus litus or doctrine of situs of the Appellate Tribunal do not go together. Dominus litus indicates that the suitor has more than one option, whereas the situs of an Appellate Tribunal refers to only one High Court wherein the appeal can be preferred. We may consider two hypothetical cases in order to enable us to find out an answer. A Tribunal may hear out a matter either at Allahabad or at Bombay and pass a judgment at that place. Only because the head office is situated at Delhi, would it mean that a judgment delivered at Allahabad or at Bombay would not attain its finality then and there?"

(emphasis added)

32. Thus, it has been held that when an appeal is provided under a statute, Parliament must have thought of one High Court. It is a different matter that by way of necessity, a tribunal may have to exercise jurisdiction over several States

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but it does not appeal to any reason that Parliament intended, despite providing for an appeal before the High Court, that appeals may be filed before different High Courts at the sweet will of the party aggrieved by the decision of the tribunal.

33. The above observations of the Supreme Court are squarely applicable to the present case. The only difference in the present case is that in the States of Maharashtra and Goa, there is common High Court i.e. High Court of Bombay. However, if it is assumed that some other State Government designates the Maharashtra Real Estate Appellate Tribunal to be the Appellate Tribunal for deciding the cases in that particular State and the said State is not within the territorial jurisdiction of High Court of Bombay then, whether the High Court of Bombay will have the jurisdiction to deal with that case merely because the Maharashtra Real Estate Appellate Tribunal has passed the order. Section 58 of the RERA Act is very clear and provides that High Court means the High Court of a State or Union territory where the real estate project is situated. Thus, it is very clear that the High Court contemplated under Section 58 of the RERA Act is the High

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Court where real estate project is situated. Thus, what is significant is the place or State where the real estate project is situated. It is only because for the States of Maharashtra and Goa, there is a common High Court i.e. High Court of Bombay and therefore, the Appellant has tried to contend that even the Principal Seat of High Court of Bombay also has the jurisdiction to deal with the present Second Appeals. However, there is no substance in the said contention. Rule 3 of Chapter XXXI is inter alia regarding appeals arising in the State of Goa. Rule 4 of Chapter XXXI is inter alia regarding appeals arising in Bombay (Mumbai). In the present case, the undisputed factual position on record shows that in this case, the real estate project is situated in State of Goa, complaint was filed under Section 31 of the RERA Act before the Adjudicating Officer/Member of the Goa Real Estate Regulatory Authority i.e. Goa, RERA respectively. By the Judgment and order dated 28th April 2022/29th October 2021, respectively, the said complaint was decided by the learned Adjudicating Officer, Goa RERA/Member, Goa RERA and the impugned order in these Second Appeals as explained hereinabove in effect are passed

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by the Goa Real Estate Appellate Tribunal. Therefore, it is clear that the present Second Appeals are arising in the State of Goa and not in the judicial district of Bombay i.e. Mumbai.

34. Mr. Wadikar, learned counsel appearing for the Appellant has relied very heavily on the decision of Madras High Court in **Orj Electronics Oxides Ltd.** (supra). He relied on paragraphs 6,7,8 and 12 of the said decision. The said paragraphs read as follows:-

“6. In *Nasiruddin v. State Transport Appellate Tribunal, AIR 1979 Supreme Court 331: (1975) 2 SCC 671*, the Supreme Court dealt with a similar provision contained in Clause-14 of the Allahabad High Court (Amalgamation) Order 1948, in the following words:

“The meaning of the expression "in respect of cases arising in such areas in Oudh" in the first proviso to paragraph 14 of the Order was answered by the High Court that with regard to applications under Article 226 of the same will be "a case arising within the areas in Oudh" only if the right of the petitioner in such an application arose

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first at a place within an area in Oudh. The implication according to the High Court is that if the right of the petitioner arose first at any place outside any area in Oudh and if the subsequent orders in the revisional or appellate stage were passed by an authority within an area in Oudh then in such cases the Lucknow Bench would not have any jurisdiction. The factor which weighed heavily with the High Court is that in most cases where an appeal or revision would lie to the State Government the impugned order would be made at Lucknow and on that view practically all writ petitions would arise at Lucknow.

The conclusion as well as the reasoning of the High Court is incorrect: It is unsound because the expression "cause of action" in an application under Article 226 would be as the expression is understood and if the cause of action arose because of the appellate order or the revisional order which came to be passed at Lucknow then Lucknow would have jurisdiction though the

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original order was passed at a place outside the areas in Oudh. It may be that the original order was in favour of the person applying for a writ. In such case an adverse appellate order might be the cause of action. **The expression "cause of action" is well-known. If the cause of action arises wholly or in part at a place within the specified Oudh areas, the Lucknow Bench will have jurisdiction.** If the cause of action arises wholly within the specified Oudh areas, it is indisputable that the Lucknow Bench would have exclusive jurisdiction in such a matter. If the cause of action arises in part within the specified areas in Oudh it would be open to the litigant who is the dominus litis to have his forum conveniens. **The litigant has the right to go to a Court where part of his cause of action arises.** In such cases, it is incorrect to say that the litigant chooses any particular Court. **The choice is by reason of the jurisdiction of the Court being attracted by part of cause of action arising within the jurisdiction of the Court. Similarly,**

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the cause of action can be said to have arisen partly within specified areas in Oudh and partly outside the specified Oudh areas, the litigant will have the choice to institute proceedings either at Allahabad or Lucknow. The Court will find out in each case whether the jurisdiction of the Court is rightly attracted by the alleged cause of action.”

7. In *U.P.R.C Mill Adhikari Parishad v. State of U.P.*, 1999 (109) E.L.T. 5(S.C.)= AIR 1995 Supreme Court 2148: (1995) 4 SCC 738, writ petitions were filed before the Lucknow Bench of the High Court challenging a notification/order issued by the Uttar Pradesh Government at Lucknow, whereunder it was decided to sell six sugar factories. One of the sugar mills was situated within the Oudh area, whereas the remaining mills were situated outside the Oudh area. The contention raised before the High Court was that the sale in terms of the notification, if finalised, would be given effect at the places where the mills are situated and since five out of the six mills

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were situated outside the Oudh area, the Lucknow Bench had no jurisdiction to take cognizance, entertain and decide the writ petition in respect of the five mills in terms of Clause 14 of the Allahabad High Court (Amalgamation) Order. 1948. Allowing the appeal, the Supreme Court held as follows at p.96 of MLJ:

“14. ...The territorial jurisdiction of a Court and the 'cause of action' are interlinked. To decide the question of territorial jurisdiction, it is necessary to find out the place where the 'cause of action' arose. We, with respect, reiterate that the law laid down by a Four-Judge Bench of this Court in Nasiruddin's case AIR 1976 S.C. 331 holds good even today despite the incorporation of an Explanation to Section 141 to the Code of Civil Procedure.

15. There is no dispute that the Amalgamation Order is a special law which must prevail over the general law. This Court interpreted the relevant expression in Clause 14 and

did not take any support from any general law. The discussion by the Division Bench of the High Court by evolving the so called theory of 'exercise of jurisdiction revolving on the place of sitting' as compared to the theory of 'cause of action' is wholly misconceived and has no legal basis whatsoever. This part of the High Court judgment is mentioned to be rejected.

16. Mr. Satish Chandra, learned senior advocate appearing for the appellant has contended that even on the reasoning of the Division Bench judgment itself, the conclusions reached by the Bench are erroneous. We see force in the contention. The Division Bench of the High Court relying upon the judgment of the Rajasthan High Court in *Ram Rakh Vyas v. Union of India*, (supra) (the judgment delivered by A.P. Sen, J. as the learned Judge then was), came to the conclusion that the words 'arising in' in the context, mean 'pertaining to the districts of' or 'arising from'. It is not disputed that in the present case,

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the order/notification and the advertisement were issued by the State Government at Lucknow. Without there being an order/notification by the Government, there could be no cause of action at all. The petitioner got aggrieved only from the order/notification which 'arose' from Lucknow. The grievance of the petitioner 'arose' at Lucknow which is within the Oudh area and as such, on the plain reading of the relevant provisions of Clause 14 of the Amalgamation Order, the Bench at Lucknow had the jurisdiction to deal with the matter”.

8. In *Kusum Ingots and Alloys Ltd. v. Union of India -2004 (168) E.L.T. 3(S.C.) :AIR 2004 Supreme Court 2321: (2004) 6 SCC 254: 2004 (3) CTC 365*, the words "cause of action" were dealt with in detail and the Court also considered Article 226(2) of the Constitution. The relevant paragraph of the judgment is as follows:

“Keeping in view the expressions used

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in Clause (2) of Article 226 of the Constitution of India, **indisputably even if a small fraction of cause of action accrues within the jurisdiction of the Court, the Court will have jurisdiction in the matter.**

Situs of office of the respondents - whether relevant

23. A writ petition, however, questioning the constitutionality of a parliamentary Act shall not be maintainable in the High Court of Delhi only because the seat of the Union of India is in Delhi. (See ***Abdul Kafi Khan v. Union of India, AIR 1979 Calcutta 354.***).

24. Learned Counsel for the appellant in support of his argument would contend that the situs of framing law or rule would give jurisdiction to the Delhi High Court and in support of the said contention relied upon the decisions of this Court in ***Nasiruddin v. STAT, AIR 1976 Supreme Court 331:(1975) 2 SCC 671 and U. P. Rashtriya Chini Mill Adhikari Parishad v. State of U.P.,***

(1995) 4 SCC 738. So far as the decision of this Court in *Nasiruddin v. STAT* (supra) is concerned, it is not an authority for the proposition that the situs of legislature of a State or the authority in power to make subordinate legislation or issue a notification would confer power or jurisdiction on the High Court or a Bench of the High Court to entertain a petition under Article 226 of the Constitution. In fact this Court while construing the provisions of the United Provinces High Courts (Amalgamation) Order, 1948 stated the law thus:

“37. The conclusion as well as the reasoning of the High Court is incorrect. It is unsound because the expression 'cause of action' in an application under Article 226 would be as the expression is understood and if the cause of action arose because of the appellate order or the revisional order which came to be passed at Lucknow then Lucknow would have jurisdiction though the original order was passed at a place outside the areas in Oudh. It

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may be that the original order was in favour of the person applying for a writ. In such case an adverse appellate order might be the cause of action. The expression 'cause of action' is well known. If the cause of action arises wholly or in part at a place within the specified Oudh areas, the Lucknow Bench will have jurisdiction. If the cause of action arises wholly within the specified Oudh areas, it is indisputable that the Lucknow Bench would have exclusive jurisdiction in such a matter. If the cause of action arises in part within the specified areas in Oudh it would be open to the litigant who is the dominus litis to have his forum conveniens . The litigant has the right to go to a court where part of his cause of action arises. In such cases, it is incorrect to say that the litigant chooses any particular court. The choice is by reason of the jurisdiction of the court being attracted by part of cause of action arising within the jurisdiction of the court. Similarly, if the cause of action can be said to have

arisen part within specified areas in Oudh and part outside the specified Oudh areas, the litigant will have the choice to institute proceedings either at Allahabad or Lucknow. The court will find out in each case whether the jurisdiction of the court is rightly attracted by the alleged cause of action.”

25. The said decision is an authority for the proposition that the place from where an appellate order or a revisional order is passed may give rise to a part of cause of action although the original order was at a place outside the said area. When a part of the cause of action arises within one or the other High Court, it will be for the petitioner to choose his forum.

.....

27. When an order, however, is passed by a Court or Tribunal or an Executive Authority whether under provisions of a statute or otherwise, a part of cause of action arises at that place. Even in a given case, when the original authority

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is constituted at one place and the Appellate Authority is constituted at another, a Writ Petition would be maintainable at both the places. In other words, as order of the Appellate Authority constitutes a part of cause of action, a Writ Petition would be maintainable in the High Court within whose jurisdiction it is situate having regard to the fact that the order of the Appellate Authority is also required to be set aside and as the order of the original authority merges with that of the Appellate Authority”.

12. In the light of decided cases, it is clear that the territorial jurisdiction of the Court and the 'cause of action' are inter-linked. To decide the question of territorial jurisdiction, it is necessary to find out the place where the 'cause of action' arose. It is not disputed that in the present case, the order impugned was issued by the Tribunal at Chennai. The appellant is aggrieved by the order, which has been passed in Chennai. The grievance of the appellant arose at Chennai, and as such the

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**Principal Bench has the jurisdiction to deal
with the matter.”**

(emphasis added)

35. A perusal of the above paragraphs of the said decision of **Orj Electronics Oxides Ltd.** (supra) clearly shows that the Division Bench of Madras High Court was dealing with Writ Petition filed under Article 226 of the Constitution of India and in that context, discussed the scope of cause of action in Writ Petition filed under Article 226 of the Constitution of India. Article 226(2) of the Constitution of India inter alia provides that the power conferred by clause (1) of Article 226 can be exercised by any High Court exercising jurisdiction in relation to the territories within which the **cause of action, wholly or partly arises**. It is settled legal position that cause of action is wide term. However, we are concerned with the Appeal which is filed in the High Court under Section 58 of the RERA Act. Section 58 of the RERA Act is very clear and it provides that “High Court” means the “High Court of a State where the concerned real estate project is situated”. As per Rule 3 of Chapter XXXI of the Appellate Side Rules, all Appeals arising in

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the State of Goa, which lie to the High Court at Bombay will have to be presented to the Registrar, High Court of Bombay at Goa and shall be disposed of by the Judges sitting at High Court of Bombay at Goa. Reliance of Mr. Wadikar on **Orj Electronics Oxides Ltd.**(supra) is not applicable to the present case as the said principles are applicable to the Writ Petitions filed under Article 226 of the Constitution of India and not to the Second Appeals filed under Section 58 of the RERA Act. In **Ambica Industries** (supra), Supreme Court has clarified that in a case of this nature, cause of action doctrine will not apply. It is clear that tests which are applicable while determining the jurisdiction of High Court while exercising jurisdiction under Article 226 of the Constitution of India will not apply to the present case. In **Ambica Industries** (supra), it has been held that the doctrine of dominus litus or doctrine of situs of the Appellate Tribunal do not go together. Dominus litus indicates that the suitor has more than one option, whereas the situs of an Appellate Tribunal refers to only one High Court wherein the appeal can be preferred. The said observations are squarely applicable to the present case.

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36. For the reasons set out hereinabove, there is no substance in the contention raised by Mr. Wadikar that the Second Appeals will lie to the Principal Seat of Bombay High Court as well as the High Court of Bombay at Goa.

37. It is very clear that in terms of Section 58 of the RERA Act and Rule 3 of Chapter XXXI of the Appellate Side Rules, the above Second Appeals are arising in the State of Goa and are required to be presented to the Registrar, High Court of Bombay at Goa and are required to be disposed of by the Judges sitting at High Court of Bombay at Goa and therefore, the present Second Appeals at the Principal Seat of the High Court of Bombay are not maintainable and cannot be entertained.

38. Mr. Nikhil Wadikar a/w. Mr. Pradip Zende, learned counsel appearing for the Appellant at this stage, states that fresh Second Appeals will be presented before the High Court of Bombay at Goa within a period of 60 days from today.

39. Mr. Preetam Talaulikar, learned counsel appearing for the Respondent states that in both the Second Appeals the Respondent will not raise any objection regarding limitation if the Appeals are filed within a period of 60 days from today. In

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view of above, the learned Appellate Tribunal is requested to defer the hearing of Appeals beyond **15th March 2023**.

40. These Second Appeals are disposed of in above terms with no order as to costs. However, it is clarified that this Court has not examined the merits of the case and all the contentions on the merits are expressly kept open.

41. In view of the disposal of the Second Appeals, nothing survives in the Interim Applications and the same are disposed of as such.

[MADHAV J. JAMDAR, J.]