

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

**WRIT PETITION NO. 3912 OF 2025
WITH
INTERIM APPLICATION (STAMP) NO. 11901 OF 2025**

Madhusudana Upparalalli ...Petitioner
Vs.
Radius Estates and Developers Pvt. Ltd. & Anr. ...Respondents

**AND
WRIT PETITION NO. 3913 OF 2025
WITH
INTERIM APPLICATION (STAMP) NO. 11912 OF 2025**

Akilesh Eswaran & Anr. ...Petitioners
Vs.
Radius Estates and Developers Pvt. Ltd. & Anr. ...Respondents

**AND
WRIT PETITION NO. 3914 OF 2025
WITH
INTERIM APPLICATION (STAMP) NO. 11909 OF 2025**

Abdul Abdulla Raoof & Anr. ...Petitioners
Vs.
Radius Estates and Developers Pvt. Ltd. & Anr. ...Respondents

**AND
WRIT PETITION NO. 3915 OF 2025
WITH
INTERIM APPLICATION (STAMP) NO. 11902 OF 2025**

Vaikuntam Srinivasan & Anr. ...Petitioners
Vs.
Radius Estates and Developers Pvt. Ltd. & Anr. ...Respondents

**AND
WRIT PETITION NO. 3916 OF 2025
WITH
INTERIM APPLICATION (STAMP) NO. 11899 OF 2025**

Gautam Bhargava & Anr. ...Petitioners
Vs.
Radius Estates and Developers Pvt. Ltd. & Anr. ...Respondents

AND
WRIT PETITION NO. 3917 OF 2025
WITH
INTERIM APPLICATION (STAMP) NO. 11900 OF 2025

Shivashish Misra ...Petitioner
Vs.
Radius Estates and Developers Pvt. Ltd. & Anr. ...Respondents

AND
WRIT PETITION NO. 3920 OF 2025
WITH
INTERIM APPLICATION (STAMP) NO. 11898 OF 2025

Sujit Sulaiman & Anr. ...Petitioners
Vs.
Radius Estates and Developers Pvt. Ltd. & Anr. ...Respondents

AND
WRIT PETITION NO. 3921 OF 2025
WITH
INTERIM APPLICATION (STAMP) NO. 11903 OF 2025

Satish Agrawal ...Petitioner
Vs.
Radius Estates and Developers Pvt. Ltd. & Anr. ...Respondents

AND
WRIT PETITION NO. 3922 OF 2025
WITH
INTERIM APPLICATION (STAMP) NO. 11904 OF 2025

Venkatakrishnan Neelakantan ...Petitioner
Vs.
Radius Estates and Developers Pvt. Ltd. & Anr. ...Respondents

AND
WRIT PETITION NO. 3923 OF 2025
WITH
INTERIM APPLICATION (STAMP) NO. 11906 OF 2025

Vipul Kant Mishra ...Petitioner
Vs.
Radius Estates and Developers Pvt. Ltd. & Anr. ...Respondents

AND
WRIT PETITION NO. 3924 OF 2025
WITH
INTERIM APPLICATION (STAMP) NO. 11911 OF 2025

Yadagiri Rao Jupally & Anr. ...Petitioners
Vs.
Radius Estates and Developers Pvt. Ltd. & Anr. ...Respondents

AND
WRIT PETITION NO. 3925 OF 2025
WITH
INTERIM APPLICATION (STAMP) NO. 11908 OF 2025

Ramnathan Elayaperumal & Anr. ...Petitioners
Vs.
Radius Estates and Developers Pvt. Ltd. & Anr. ...Respondents

AND
WRIT PETITION NO. 3926 OF 2025
WITH
INTERIM APPLICATION (STAMP) NO. 11910 OF 2025

Siddharth Ankathil & Anr. ...Petitioners
Vs.
Radius Estates and Developers Pvt. Ltd. & Anr. ...Respondents

AND
WRIT PETITION NO. 3933 OF 2025
WITH
INTERIM APPLICATION (STAMP) NO. 11907 OF 2025
(Not on Board. Taken on Board.)

Venkatesham Neela & Anr. ...Petitioners
Vs.
Radius Estates and Developers Pvt. Ltd. & Anr. ...Respondents

Mr. Mukesh Vashi, Senior Advocate with Mr. Vyom Shah with Foram Vora with Manasi Pawaskar i/b. Amicus Lex & Associates, for the Petitioners in Writ Petition.

Mr. Vikramjit Garewal with Mr. Munaf Virjee, Mr. Jesse Cornelious i/b. AMR Law, for Respondent No.2.

Mr. Ashish Kamat, Senior Advocate with Mr. Abir Patel with Mr. Protyusha Thanawala i/b. Wadia Ghandy & Co., for Respondent No.1 in WP 3912/2025. (Sr.No.8).

Mr. Mayur Khandeparkar with Mr. Abir Patel with Mr. Protyusha Thanawala i/b. Wadia Ghandy & Co., for Respondent No.1 in WP 3923/2025 (Sr.No.17).

Mr. Abir Patel with Mr. Protyusha Thanawala i/b. Wadia Ghandy & Co., for Respondent No.1 in all other matters.

**CORAM: G. S. KULKARNI &
ADVAIT M. SETHNA, JJ.**
DATE: 02 APRIL 2025.

P.C.

1. This batch of petitions raises a similar challenge, namely, to the orders passed by the Adjudicating Officer, Maharashtra Real Estate Regulatory Authority, Mumbai (for short, “**Maha RERA**”) on the execution proceedings filed by the petitioners seeking to execute a common order dated 30 April 2021 passed on the complaint as made by the petitioners. By the impugned order, the adjudicating officer has directed that the petitioners need to pursue their claim as to the execution of clauses (a), (b) and (c) of the order passed by the Member, Maha RERA dated 30 April 2021, before the appropriate forum i.e. National Company Law Tribunal and accordingly has granted liberty to take further steps. The operative order which is common in all the proceedings illustratively we note the operative order passed in the proceedings before the Maha RERA in the first writ petition i.e. Writ Petition No. 3912 of 2025, which reads thus:-

“

ORDER

1. The present execution proceeding is hereby disposed of with following directions:

- a. The complainant to pursue their claim as to the execution of clause (a), (b) and (c) of the order of Hon'ble Member-1 dated 30.04.2021 before Appropriate forum i.e. National Company Law Tribunal.
- b. The complainant is also at liberty to take steps against the Respondent no.1 in case the order dated 30.04.2021 is not fully satisfied before that forum.
- c. No order as to costs.”

2. Mr. Kamat, learned counsel for respondent no.1 in Writ Petition No. 3912 of 2025 as also Mr. Khandeparkar, learned counsel for respondent no.1 in Writ Petition No. 3923 of 2025 have raised an objection to the maintainability of these petitions on the ground that the petitioners have an alternate remedy to approach the Appellate Tribunal under the provisions of Section 43(5) of the Real Estate (Regulation and Development) Act, 2016 (for short, “the **Act**”). Section 43(5) provides that any person aggrieved by any direction or decision or order made by the Authority or by an adjudicating officer under the said Act may prefer an appeal before the Appellate Tribunal having jurisdiction over the matter. Our attention is also drawn to Sections 44 and 45 of the Act. Section 44 provides for ‘application for settlement of disputes and appeals to Appellate Tribunal’ and Section 45 provides for ‘Composition of Appellate Tribunal’. For convenience, we note these provisions which read thus:-

“43. Establishment of Real Estate Appellate Tribunal.—(1) The appropriate Government shall, within a period of one year from

the date of coming into force of this Act, by notification, establish an Appellate Tribunal to be known as the — (name of the State/Union territory) Real Estate Appellate Tribunal.

(2) The appropriate Government may, if it deems necessary, establish one or more benches of the Appellate Tribunal, for various jurisdictions, in the State or Union territory, as the case may be.

(3) Every bench of the Appellate Tribunal shall consist of at least one Judicial Member and one Administrative or Technical Member.

(4) The appropriate Government of two or more States or Union territories may, if it deems fit, establish one single Appellate Tribunal:

Provided that, until the establishment of an Appellate Tribunal under this section, the appropriate Government shall designate, by order, any Appellate Tribunal functioning under any law for the time being in force, to be the Appellate Tribunal to hear appeals under the Act:

Provided further that after the Appellate Tribunal under this section is established, all matters pending with the Appellate Tribunal designated to hear appeals, shall stand transferred to the Appellate Tribunal so established and shall be heard from the stage such appeal is transferred.

(5) Any person aggrieved by any direction or decision or order made by the Authority or by an adjudicating officer under this Act may prefer an appeal before the Appellate Tribunal having jurisdiction over the matter:

Provided that where a promoter files an appeal with the Appellate Tribunal, it shall not be entertained, without the promoter first having deposited with the Appellate Tribunal at least thirty per cent of the penalty, or such higher percentage as may be determined by the Appellate Tribunal, or the total amount to be paid to the allottee including interest and compensation imposed on him, if any, or with both, as the case may be, before the said appeal is heard.

Explanation.—For the purpose of this sub-section “person” shall include the association of allottees or any voluntary consumer association registered under any law for the time being in force.

44. Application for settlement of disputes and appeals to Appellate Tribunal.—(1) 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.

(2) Every appeal made under sub-section (1) shall be preferred

within a period of sixty days from the date on which a copy of the direction or order or decision made by the Authority or the adjudicating officer is received by the appropriate Government or the competent authority or the aggrieved person and it shall be in such form and accompanied by such fee, as may be prescribed:

Provided that the Appellate Tribunal may entertain any appeal after the expiry of sixty days if it is satisfied that there was sufficient cause for not filing it within that period.

(3) On receipt of an appeal under sub-section (1), the Appellate Tribunal may after giving the parties an opportunity of being heard, pass such orders, including interim orders, as it thinks fit.

(4) The Appellate Tribunal shall send a copy of every order made by it to the parties and to the Authority or the adjudicating officer, as the case may be.

(5) The appeal preferred under sub-section (1), shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose of the appeal within a period of sixty days from the date of receipt of appeal:

Provided that where any such appeal could not be disposed of within the said period of sixty days, the Appellate Tribunal shall record its reasons in writing for not disposing of the appeal within that period.

(6) The Appellate Tribunal may, for the purpose of examining the legality or propriety or correctness of any order or decision of the Authority or the adjudicating officer, on its own motion or otherwise, call for the records relevant to deposing of such appeal and make such orders as it thinks fit.

45. Composition of Appellate Tribunal.— The Appellate Tribunal shall consist of a Chairperson and not less than two whole time Members of which one shall be a Judicial member and other shall be a Technical or Administrative Member, to be appointed by the appropriate Government.

Explanation.—For the purposes of this Chapter,—

(i) “Judicial Member” means a Member of the Appellate Tribunal appointed as such under clause (b) of sub-section (1) of section 46;

(ii) “Technical or Administrative Member” means a Member of the Appellate Tribunal appointed as such under clause (c) of sub-section (1) of section 46.”

(emphasis supplied)

3. Mr. Vashi, learned senior counsel for the petitioners would not dispute that an alternate remedy is provided for, however, his contention is that the Court needs to exercise its discretion in the present proceedings and entertain the petitions. In supporting such contention, Mr. Vashi has placed reliance on the decision of the Division Bench of this Court in **Macrotech Developers Limited vs. State of Maharashtra & Others**¹. We have perused the said decision. In our opinion, this judgment would not assist the petitioners as the Division Bench had made an exception to entertain such petition, despite an alternate remedy, considering the peculiar questions which had come before the Court as recorded in paragraph 47 of the said judgment which reads thus:-

“47. We have considered the rival submissions. A preliminary issue on the maintainability of this Petition has been raised by the learned Counsel for the Respondents / Complainants. We have noticed that this Petition has raised a fundamental challenge to the exercise of jurisdiction by the Adjudicating Officer and two main issues arise which are as under:-

(a) whether the Adjudicating Officer had no jurisdiction to entertain the complaint as the subject project did not require registration in terms of Section (3) of the Act?

(b) whether it was not within the powers of the Adjudicating Officer to pass orders and / or directions pertaining to aspects of registration in terms of Section 3 read with Section 31 of the Act and whether it was solely within the Authority's sphere of powers to pass the necessary orders and / or directions regarding the registration of the project in terms of Section 3 read with Section 31 of the Act?”

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4. Insofar as the present petitions are concerned, the orders are passed on the execution proceedings. The petitioners have certain contentions which can be conveniently and more effectively addressed by the appellate tribunal, considering the fact that the petitioners have succeeded in their complaints and now the issues which have arisen are in execution. The petitioners are thus intending to take the benefits of the adjudication by the Maha Rera in their complaints which have entitled the petitioners to the amounts as directed by the Maha RERA and now subject matter of the execution proceedings.

5. In this view of the matter, we are of the opinion that it would be appropriate for the petitioners to take recourse to the alternate remedy as provided for under Section 43(5) of the Act. We accordingly dispose of the petition by the following order:-

ORDER

- i. The writ petitions are disposed of with liberty to the petitioners to take recourse to the Appellate Tribunal under the provisions of Section 43(5) of the Act.
- ii. Appeals be filed within a period of three weeks from today.
- iii. If the appeals accordingly are filed, the same be disposed of on merits and without an objection as to the limitation for the reason that the petitioners were bonafide pursuing the petitions.
- iv. All contentions of the parties are expressly kept open.

v. The appeals if so filed, the same be adjudicated as expeditiously as possible and in any event within a period of three months from the date of filing of the appeals.

vi. Mr. Kamat and Mr. Khandeparkar, learned counsel have fairly stated that the respondents would co-operate in the early disposal of the said appeals.

6. All the petitions stand disposed of in the aforesaid terms. No costs.

7. The fourteen (14) Interim Applications would also not survive. The same stand disposed of accordingly.

(ADVAIT M. SETHNA, J.)

(G. S. KULKARNI, J.)