IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 10195 OF 2025

Altaa Constructions ...Petitioner

Versus

1. Kokilaben Ajitbhai Dalal,
Aged about 76 years, Occu: Not known,
having an address at 103, Sham Nirmal
Heights, Narsing Lane, N.L. High School,
Off. S.V. Road, Malad (West), Mumbai – 64.

2. Viral Ajit Dalal,
Aged about 51 years, Occu: Not known,
having an address at 103, Sham Nirmal
Heights, Narsing Lane, N.L. High School,
Off. S.V. Road, Malad (West), Mumbai – 64.

3. Sadguru Construction,
Having an office at A/202, Sham Nirmal
Heights, Narsing Lane, N.L. High School,
Off. S.V. Road, Malad (West), Mumbai – 64.

4. Sham Nirmal Cooperative Housing
Society Limited, a Society registered under
the provisions of the Maharashtra
Cooperative Societies Act, 1960, and Rules
made therein, having an address at Narsing
Lane, N.L. High School, Off S.V. Road,
Malad (West), Mumbai – 400 064.

5. The Tehsildar and Executive Magistrate,
2nd Floor, Tehsildar Building,
S.V. Road, Natakwala Lane, Boriwali (W),
Mumbai – 400 092. ...Respondents

Mr. Rohan Savant, a/w Sandeep Nirban, i/b Rakesh Agrawal, for the Petitioner.
Ms. Savina Crasto, AGP for the State – Respondent No.5.
Mr. S. Parthasorthy, a/w Rupali Padgulekar, i/b One Point Legal Solutions, for Respondent Nos.1 and 2.

CORAM: N. J. JAMADAR, J.
RESERVED ON: 25th JULY, 2025
PRONOUNCED ON: 5th AUGUST, 2025

JUDGMENT:-

1. Rule. Rule made returnable forthwith and, with the consent of the learned Counsel for the parties, heard finally.

2. By this petition the petitioner – appellant in Appeal No. AT00600000052773 of 2020 before the Maharashtra Real Estate Appellate Tribunal ("the Appellate Tribunal") takes exception to an order dated 18th June, 2025 passed by the Appellate Tribunal in Misc. Application No.468 of 2025, whereby the said application for directions came to be rejected and, consequently, by a separate order of even date the appeal itself stood dismissed for non-compliance of the mandate of pre-deposit contained in the proviso to sub-section (5) of Section 43 of The Real Estate (Regulation and Development) Act, 2016 ("the RERA Act, 2016").

3. The background facts which are necessary for the determination of this petition can be stated in brief as under:

3.1 Respondent No.4 Society had executed a development agreement in favour of respondent No.3. On the strength thereof respondent No.3 started construction of a building, "Sham Nirmal Heights". Respondent No.3 executed an agreement for sale in favour of respondent Nos.1 and 2 – the complainants, dated 19th January, 2018, and thereby agreed to sell a flat alongwith stilt parking and amenities as specified in the said agreement. Eventually, respondent No.4 Society terminated the development agreement with respondent No.3, and appointed the petitioner as the new developer.

3.2 Alleging that despite parting with substantial consideration, the petitioner, respondent Nos.3 and 4 committed default in performance of their part of the obligations, the complainants lodged a complaint before the Maharashtra Real Estate Regulatory Authority ("the MahaRERA"). By an order dated 10th October, 2020, the adjudicating officer directed respondent No.3 to singularly pay interest on the sum of Rs.58,00,000/- to the complainants from 1st February, 2010 and also jointly and severally pay interest to the complainants alongwith the petitioner and the Society (R4) with effect from 17th September, 2016 at the rate of 10.40% p.a. till possession of the subject flat is delivered or intimation is given about the issue of occupation certificate.

3.3 Being aggrieved, the petitioner preferred an appeal before the Appellate Tribunal. By an order dated 23rd March, 2021, the Appellate Tribunal directed the petitioner to deposit the entire amount, as ordered to be paid by the adjudicating officer, in compliance of the proviso to Section 43(5) of the RERA Act, 2016. As the petitioner committed default in making the pre-deposit, the appeal stood dismissed.

3.4 The petitioner filed Misc. Application No.675 of 2023 seeking condonation of delay in seeking the restoration of the said appeal; for which a separate application i.e. Misc. Application No.193 of 2023 was taken out. By an order dated 11th September, 2024, the Appellate Tribunal directed the petitioner to first deposit the entire amount latest by 18th September, 2024 without prejudice to the rights and contentions of the parties. Since the petitioner did no comply with the said direction, by an order dated 19th September, 2024 the restoration application came to be rejected.

3.5 The petitioner challenged the aforesaid order before this Court in Second Appeal No.786 of 2024. By an order dated 10th December, 2024 this Court was persuaded to allow the appeal as the petitioner had then shown willingness to make the statutory deposit and also pay costs of Rs.25,000/- to the complainant.

3.6 The petitioner, however, deposited a sum of Rs.18,75,540/- only, towards the compliance of the proviso to

Section 43(5) of the RERA Act, 2016 on the premise that the deposit of 30% of the due amount was a sufficient compliance of the statutory requirement. The complainants raised objection.

3.7 Thus, by an order dated 23rd April, 2025, the Appellate Tribunal ruled that the deposit of Rs.18,75,540/- was not in conformity with the statutory requirement under the proviso to Section 43(5) of the RERA Act, 2016 and the petitioner was required to deposit the balance amount of Rs.42,16,260/-. The Appellate Bench granted four weeks time to the petitioner to make the said deposit lest the application for restoration of the appeal and the appeal would be disposed for want of compliance.

3.8 On 17th May, 2025, the petitioner took out the instant application asserting that, in the intervening period, at the behest of the complainants, the Tahsildar and Executive Magistrate had frozen the account of the petitioner, wherein a sum of Rs.38,03,000/- was to the petitioner's credit. The petitioner had arranged the said amount despite financial constraints. The petitioner was ready to deposit the balance amount of Rs.4,13,260/-. Therefore, the Tahsildar and Executive Magistrate (non-applicant to the said application) be directed to deposit the entire amount which stood to the credit of the account of the petitioner, and frozen by the said authority and, in the alternative, to direct the non-applicant to de-freeze the said account to facilitate the petitioner to deposit the said amount of Rs.38,03,000/- before the Appellate Tribunal.

3.9 After hearing the learned Counsel for the parties, by the impugned order, the Appellate Tribunal was persuaded to reject the application. Tracing the history of non-compliance of the directions to make the pre-deposit, the time which has elapsed and the travails of the complainants, the Appellate Tribunal held that the said application was part of a dilatory strategy and was also preferred *mala fide.* Consequently, the appeal itself stood dismissed by a separate order dated 18th June, 2025.

4. Being aggrieved, the petitioner has invoked the writ jurisdiction.

5. I have heard Mr. Rohan Savant, the learned Counsel for the petitioner, Mr. Parthasarthy, the learned Counsel for respondent Nos.1 and 2, and Ms. Savina Crasto, the learned Counsel for respondent No.5. The learned Counsel took the Court through the material on record including the orders passed by this Court and the Appellate Tribunal.

6. Mr. Savant, the learned Counsel for the petitioner, submitted that the prayer of the petitioner to direct respondent No.5, who had freezed the account of the petitioner, to the credit of which a sum of Rs.38,03,000/- stood, to deposit the said amount was, in effect, towards compliance of the order dated 23rd April, 2025 passed by the Appellate Tribunal to deposit the amount of Rs.42,16,260/- within the period of four weeks thereof. It was not controverted that the said sum of Rs.38,03,000/- stood to the credit of the said account which was freezed purportedly in execution of the order which was impugned in the appeal. As the petitioner had preferred the said application before the expiry of the stipulated period of four weeks and to show the *bona fide* annexed a pay order for the balance amount of Rs.4,13,260/-, the Appellate Tribunal could not have rejected the said application as a part of dilatory strategy, much less *mala fide.* The impugned order, according to Mr. Savant, caused grave prejudice to the petitioner as, on the one hand, the petitioner's funds were blocked by freezing his account and, on the other hand, the petitioner's statutory right of appeal was defeated. Therefore, the impugned orders deserve to be interfered with, submitted Mr. Savant.

7. In opposition to this, Mr. Parthasarthy, the learned Counsel for respondent Nos.1 and 2, stoutly resisted the submissions on behalf of the petitioner. A strenuous effort was made by Mr. Parthasarthy to demonstrate that the conduct of the petitioner has been dishonest since the inception of the transaction. For almost five years, the complainants were made to run from pillar to post despite the order passed by an adjudicating officer. As a part of the litigative strategy, the petitioner deposited only 30% of the due amount, despite an unequivocal undertaking before this Court in Second Appeal No.786 of 2024 that the petitioner would comply with the statutory requirement of pre-deposit under Section 43(5) RERA Act, 2016. An effort was made by the petitioner to buy time on one or the other pretext. In the face of such dishonest conduct of the petitioner, the Appellate Tribunal was wholly justified in declining to accede to the prayer of the petitioner. At any rate, the Appellate Tribunal could not have passed orders against the revenue authority. Since the application itself was wholly misconceived the Appellate Tribunal justifiably rejected the same.

8. Mr. Parthasarthy further submitted that if such conduct is countenanced, the promoters and builders would disobey the orders of the authorities under the RERA Act, with impunity, and after harassing innocent homebuyers to no end, show the willingness to make the deposit at a belated stage. And thereby further protract the litigation and weaken the bargaining power of the homebuyers. Therefore, the impugned order does not warrant any interference, submitted Mr. Parthasarthy.

9. In any event, according to Mr. Parthasarthy, nothing survives in this petition, or for that matter the proceeding before the Appellate Tribunal, as the amount of Rs.38,03,000/-, which were freezed by respondent No.5, has been transferred to the account of the complainants. In view of this development, at this juncture, this Court may not entertain the petition, urged Mr. Parthasarthy.

10. I have carefully considered the material on record and given anxious consideration to the submissions canvassed across the bar. To start with, it is necessary to keep in view of the object of the legislature in insisting for the pre-deposit of the amount before an appeal is entertained by the Appellate Tribunal.

11. Sub-section (5) of Section 43 reads as under:

> "**Section 43 (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.
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> *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."

12. Under Sub-section (5) of Section 43 of the RERA Act, 2016 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. Sub-section (5) of Section 43, thus, confers a right of appeal against any direction or decision or order made by the Real Estate Authority or Adjudicating Officer. Evidently, under the main part of sub-section (5) of Section 43, the right to prefer an appeal is not qualified by conditions. The proviso to sub-section (5) of Section 43, however, incorporates the condition of pre-deposit.

13. The proviso to sub-section (5) of Section 43 contains an interdict against entertaining an appeal at the instance of the promoter unless the promoter first deposits with the Appellate Tribunal at least 30% 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.

14. Evidently, the object of the proviso to sub-section (5) of Section 43 is to secure the interest of the customers in whose favour the Authority or the Adjudicating Officer has passed an order which has monetary implications. In the case of ***Newtech Promoters and Developers Private Limited vs. State of Uttar Pradessh and others***[1]**,** a Three-Judge Bench of the Supreme Court *inter alia* tested constitutional validity of the condition of pre-deposit, and enunciated that the classification between the customers and promoters was based upon intelligible differentia between the rights, duties and obligations cast upon the allottees/home buyers and the promoters and is in furtherance of the object and purpose of the Act to protect the interest of the consumers viz-a-viz., the promoters in the real estate sector. The promoters and allottees are distinctly identifiable, separate class of persons having been

1 (2021) 18 SCC 1.

differently and separately dealt with under the various provisions of the Act. The intention of the legislature appeared to be to ensure that the interest of the customers is duly protected. The observations of the Supreme Court in paragraphs 134 to 136 are material and, hence, extracted below:

> "134. To be noticed, the intention of the instant legislation appears to be that the promoters ought to show their bona fides by depositing the amount so contemplated.
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> 135. It is indeed the right of appeal which is a creature of the statute, without a statutory provision, creating such a right the person aggrieved is not entitled to file the appeal. It is neither an absolute right nor an ingredient of natural justice, the principles of which must be followed in all judicial and quasi-judicial litigations and it is always be circumscribed with the conditions of grant. At the given time, it is open for the legislature in its wisdom to enact a law that no appeal shall lie or it may lie on fulfillment of precondition, if any, against the order passed by the Authority in question.
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> 136. In our considered view, the obligation cast upon the promoter of pre-deposit under Section 43(5) of the Act, being a class in itself, and the promoters who are in receipt of money which is being claimed by the homebuyers/allottees for refund and determined in the first place by the competent authority, if legislature in its wisdom intended to ensure that money once determined by the authority be saved if appeal is to be preferred at the instance of the promoter after due compliance of pre-deposit as envisaged under Section 43(5) of the Act, in no circumstance can be said to be onerous as prayed for or in violation of Articles 14 or 19(1)(g) of the Constitution of India.

15. In the case at hand, the disillusionment of the Appellate Tribunal with the conduct of petitioner is appreciable. The appeal itself was initially dismissed for non-compliance of the condition of pre-deposit. Restoration application, alongwith an application for condonation of delay, was filed after a considerable period. Despite sufficient opportunity by the Appellate Tribunal the pre-deposit was not made, which constrained the Tribunal to dismiss the restoration application. Moreover, despite the order passed by this Court in second appeal, on an undertaking by the petitioner to comply with the statutory requirement of the pre-deposit, only 30% of the amount was deposited as if the order passed by the Adjudicating Officer was that of imposition of penalty, though the direction to deposit the amount of interest apparently fell in the later part of the proviso i.e. “the total amount to be paid to the allottee including, interest and compensation imposed on him”. Nonetheless, the Appellate Tribunal granted further time of four weeks to deposit the balance amount of Rs.42,16,260/-. Instead of making of said deposit, the petitioner sought directions to respondent No.5 to either deposit the amount which stood to the credit of the petitioner’s account which was freezed or de-freeze the said account so as to facilitate the petitioner to make the deposit the said amount of Rs.38,03,000/-.

16. Undoubtedly, the conduct of the petitioner throughout can hardly be said to be unblemished. However, two factors, in the considered view of this Court, deserved to be taken into account. First, the fact that the account of the petitioner was freezed in execution of the order passed by the Adjudicating Officer and a sum of Rs.38,03,000/- stood to the credit of the said account. Second, the application for deposit of the said amount with the Appellate Tribunal or de-freeze the said account was made before the expiry of the period of four weeks stipulated by the Appellate Tribunal to deposit the balance amount of Rs.42,16,260/-.

17. At that stage, since the period of four weeks stipulated by the Appellate Tribunal had not expired, the past conduct, acts and omissions on the part of the petitioner, in a sense, stood condoned and the prayers in the said application merited consideration uninfluenced by such past conduct, acts and omissions on the part of the petitioner. It is not the case that the said amount of Rs.38,03,000/- was freezed in execution of another order or there was a rival claim over the said amount. Moreover, in view of the submission on behalf of the complainants that the said amount was in fact transferred to the complainants, the necessary nexus between the said amount and the order impugned before the Appellate Tribunal stands established beyond cavil.

18. In the aforesaid view of the matter, the question that wrenches to the fore is, whether the statutory right of the petitioner stood defeated by not acceding to prayer of the petitioner. If considered through the prism of the object of pre-deposit, as noted above, in the view of this Court, the answer ought to be in the affirmative. The promoter is statutorily obligated to make the pre-deposit to secure the interest of the customer. In the case at hand, not only the account of the petitioner which contained the substantial amount of Rs.38,03,000/- was freezed, pursuant to the order of the Adjudicating Officer, but the amount also stood transferred to the complainants. In substance, the purpose of the pre-deposit fructified to the extent of the said amount.

19. In this view of the matter, the application to adjust the said amount by either seeking direction to respondent No.5 to deposit the said amount before the Appellate Tribunal or de-freeze the said account to facilitate the petitioner to deposit the said amount before the Appellate Tribunal could not have been rejected as a part of litigative stratagem, and *mala fide.* Since the application was made before the expiry of the period stipulated by the Appellate Tribunal and the said amount of Rs.38,03,000/- was indeed standing to the credit of the account of the petitioner, the impossibility of performance, in the given circumstances, was brought about by the action in pursuance of the impugned order. Therefore, the petitioner could not have been deprived of the opportunity to test the legality, propriety and correctness of the order passed by the Adjudication Officer.

20. Mr. Parthasarthy may be justified in canvassing the submission that the promoters may deliberately delay the pre-deposit so as to bring the customers to terms. However, each case would be required to be judged on its own merits. In the facts of the case at hand, since the stipulated period had not expired and the amount which stood to the credit of the account of the petitioner was freezed in execution of the order impugned before the the Appellate Tribunal, the said submission does not merit acceptance. I am, therefore, inclined to allow the petition.

21. Hence, the following order:

: O R D E R :

(i) The petition stands allowed in terms of prayer clauses (a) and (b) subject to the petitioner depositing the balance amount of Rs.4,13,260/- with the Appellate Tribunal within a period of one week from the date of uploading of this order.

(ii) Upon deposit of the said amount of Rs.4,13,260/- so as to make the aggregate deposit of Rs.60,91,800/- (including the amount of Rs.18,75,540/-, already deposited by the petitioner, and the amount transferred by respondent No.5 to the complainants) within the said period of one week, Appeal No.AT00600000052773 of 2020 shall stand restored to the file of the Appellate Tribunal.

(iii) Thereupon, the Appellate Tribunal is requested to hear and decide the appeal on its own merits and in accordance with law.

(iv) The petition stands disposed.

(v) Rule discharged.

[N. J. JAMADAR, J.]