IN THE HIGH COURT OF JUDICATURE AT BOMBAY NAGPUR BENCH : NAGPUR

SECOND APPEAL NO.186 OF 2025

Chourangi Builders & Developers Pvt. Ltd. **Vs.** Kishor N. Shah and ors

WITH

SECOND APPEAL NO.261 OF 2025

WITH

SECOND APPEAL NO.262 OF 2025

Nagpur Integrated Township Pvt. Ltd., Hyderabad **Vs.** Maharashtra Real Estate Regulatory Authority, Mumbai and ors.

WITH

SECOND APPEAL NO.185 OF 2025

Chourangi Builders & Developers Pvt. Ltd. **Vs.** Hansa Kishor Shah and another

Office Notes, Office Memoranda of Coram, appearances, Court's Orders or directions and Registrar's order	*Court's or Judge's Order*

S. A. No. 185 of 2025 and 186 of 2025
Mr. Atul Pande, Advocate for appellant
Mr. M. R. Joharapurkar, Advocate for respondent No.1 and 2.
Mr. W. T. Mathew, Advocate for respondent No.3
S.A. No. 262 of 2025 and 261 of 2025
Mr. W. T. Mathew, Advocate for Appellant
Mr. Atul Pande, Advocate for respondent No. 3
Mr. M. R. Joharapurkar, Advocate for Respondent No.2

CORAM : ROHIT W. JOSHI, J.
DATE : 07.10.2025.

. These group of appeals take exception to the order dated 25.11.2020, passed by the Appellate Tribunal constituted under the Real Estate Regulation and Development Act, 2016. The Maharashtra Airport Development Company (MADC) had floated a township project somewhere around the year 2005-2006. The work of development was assigned to Chourangi Builders and Developers Pvt., Ltd. (CBDPL), (appellant in the

Second Appeal Nos.185 of 2025 and 186 of 2025.) For reasons not relevant to mention, the development agreement in favour of CBDPL, came to be terminated vide order dated 16.07.2012 and 14.05.2012. Thereafter, the development work was assigned in favour of Nagpur Integrated Township Pvt., Ltd., (NITPL) (appellant in Second Appeal Nos.261 of 2025 and 262 of 2025.) Respondent Nos.1 and 2 in Second Appeal No.185 of 2025 and 186 of 2025 and respondent No.2 in appeal Nos.261 of 2025 and 262 of 2025 had booked one apartment each in the aforesaid project.

2. After the development rights were assigned in favour of NITPL, CBDPL had offered an option to the prospective purchasers either to receive the amount of consideration deposited by them with CBDPL or to continue with the agreement and opt for purchasing the apartment from the new developer, namely, NITPL. The prospective purchasers exercised the option to retain the apartment initially. However, subsequently, the prospective purchasers opted for refund of the amount. Since the amount was not refunded, these prospective purchasers filed a proceeding under Section 18 of the Real Estate (Regulation and Development) Act, 2016, before the Maharashtra Real Estate Regulatory Authority. The said proceedings were allowed in favour of the prospective purchasers vide order dated 25.11.2020. Both the developers, namely CBDPL and NITPL, were directed to refund the amount deposited by the

prospective purchasers along with interest at the rate of Rs.10.75% per annum.

3. Both the developers namely CBDPL and NITPL filed separate appeals challenging the said order. The proviso to Section 43(5) of the RERA Act contemplates that where an appeal is filed by the Developer, the same shall not be entertained by the Appellate Tribunal without the promoter first depositing at least 30% of the amount of penalty or such higher amount as may be determined by the Appellate Tribunal. Perusal of the provision will indicate that, in the case of an appeal filed by a promoter deposit of minimum 30% amount is a statutory pre-requistie. Both developers have filed applications for waiver of the deposit under Section 43(5) of the Act. These applications have been rejected by the learned Appellate Authority vide impugned orders dated 25.11.2020. The Tribunal has directed the developers to deposit 30% of the amount as per the orders passed by the RERA Authority, which was impugned before the learned Tribunal.

4. The contention of Mr. Atul Pande, the learned Advocate for the CBDPL, is that the RERA Act has come into force w.e.f. 01.05.2016. He contends that before the Act had come into force, its contract was terminated by the MADC and as such CBDPL does not fall within the definition of the term promoter as defined under Section 2(zk) of the Act. He, therefore, contends that, proviso to

Section 43(5) will not be attracted in the appeal filed by him and therefore the order passed against CBDPL needs to be quashed and set aside.

5. Mr. Mathew, learned Advocate for NITPL, contends that the amount of which refund is ordered was received by CBDPL. He contends that after the project was taken over by NITPL, no amount is deposited by the prospective purchasers. He therefore contends that NITPL cannot be fastened with the liability to refund the amount and therefore although in view of the mandate of proviso to Section 43(5), NITPL will have to deposit the amount, in order to safeguard the interest of NITPL, CBDPL should also be directed to deposit the amount as is directed by the learned Appellate Tribunal.

6. It is well settled that right to file appeal is a statutory right. It is not a matter of procedure, but a substantial right. Any fetter on such a right to file appeal has to be strictly interpreted and if the appellant does not fall within the four corners of the proviso, direction to deposit the amount as contemplated therein cannot be issued against him.

7. It is undisputed that the contract of development awarded to CBDPL was terminated prior to commencement of the RERA Act. In that view of the matter, the appellant (CBDPL), *prima facie,* does not fall within the definition of promoter under Section 2 (zk) of

the Act. The order of pre-deposit against CBDPL is, therefore, unsustainable and deserves to be quashed.

8. However, this Court is also in *prima facie* agreement with the contention of Mr. Mathew that NITPL has not received the consideration and therefore, in order to balance equities it will be appropriate to direct CBDPL to secure the amount. However, it cannot be disputed that NITPL falls within the definition of the term promoter as defined under Section 2(zk) of the Act. It will also be appropriate to refer to Section 3 of the Act, which provides that the provisions of the Act will also be applicable to ongoing schemes.

9. In that view of the matter, in order to balance the equities, in the considered opinion of this Court, although a direction to deposit the amount as a pre-condition for entertaining the appeal filed by CBDPL cannot be imposed, CBDPL must furnish a bank guarantee in favour of NITPL for the amount to be deposited by NITPL. The bank guarantee shall remain in force for a period of three months beyond the adjudication of the appeal.

10. Subject to the outcome of the appeal, it will be open for NITPL to take appropriate measures for recovery of amount against CBDPL, if the occasion arises. The second appeals are **disposed of** accordingly.

11. Mr. Joharapurkar, the learned Advocate for the prospective purchasers, states that the agreement was

entered into in the year 2013. The amount of the prospective purchasers is held that for a period of over 12 years. He states that the appeal is filed in the year 2020, which is pending for a period of around 5 years now.

12. He therefore makes a request for directions to the Appellate Tribunal to decide the appeal within a stipulated time frame. The request made by him is fair and reasonable.

13. The parties are directed to appear before the Appellate Authority on **10.11.2025.** The Appellate Authority is requested to decide the appeal as expeditiously as possible and, in any case, before **30.04.2026.**

(ROHIT W. JOSHI, J.)

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