Santosh

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 116 OF 2026
WITH
INTERIM APPLICATION NO. 1644 OF 2026

M/s. Drushti Developers and Ors. ...Appellants

Versus

Neha Swapnil Khamkar @ Neha Uttam Jamdade and Ors. ...Respondents

Ms. Kshema S. Mahuli, for Appellants-Applicants.

CORAM: N. J. JAMADAR, J.
DATED: 18th MARCH, 2026

Order:-

1. This appeal is directed against a judgment and order dated 13th November, 2025, passed by the Maharashtra Real Estate Appellate Tribunal ("the Appellate Tribunal") whereby the appeal, being Appeal No.53331/2021, preferred by respondent No.1 – allottee, came to be partly allowed by modifying the order dated 16th June, 2021, passed by the Maharashtra Real Estate Regulatory Authority ("the Authority") in the complaint filed by the allottee against the appellants – promoters, and others.

2. By the impugned order, the Appellate Tribunal has directed the appellants to pay a sum of Rs.15,00,000/-, alongwith interest at the rate of the State Bank of India's Marginal Cost of Lending Rate plus 2%, from 29th August, 2009 till the realization of the entire amount to the allottee and granted liberty to the allottee to file a complaint before the Adjudicating Officer for compensation, if the allottee desired to.

3. Appellant No.1 is a registered partnership firm. Appellant Nos.2 to 14 are the partners of Appellant No.1. The appellant No. 1 firm promoted a project known as "Gloria," situated on land bearing Survey No.29 situated at village Katraj, Taluka Haveli, District Pune.

4. In the year, 2009, Respondent No.1 allottee was induced to book a flat admeasuring 600 sq. ft. in the said project for a consideration of Rs.7,50,000. The allottee paid the said amount in cash to Babaji Jadhav (R2), the then partner of Appellant No.1 firm. A receipt dated 28th August, 2009 acknowledging the said payment was issued on behalf of the Appellants. In addition, an unregistered Agreement for Sale was executed by the firm in favour of the allottee on 28th August, 2009. It was, *inter alia,* agreed that the possession of the subject flat would be delivered to the allottee within a period of 18 months from the date of sanction of the plan. To secure the interest of the allottee, Appellant No.1 had delivered a cheque in the sum of Rs.15,00,000/- to the allottee, to address the situation that might arise if the Agreement for Sale was terminated.

5. The allottee approached MahaRERA as the Appellant No.1 and its partners did not execute a registered agreement and discharge their obligations.

6. After appraisal of the rival pleadings and the material on record, by an order dated 16th June, 2021, the Authority was persuaded to dispose the complaint, finding no merit in the claim raised by the complainant-allottee. Liberty was however granted to the allottee to take appropriate action against Babaji Jadhav (R2) for specific performance of the agreement dated 29th August, 2009. It was, *inter alia,* noted that the said unregistered Agreement for Sale was executed by Babaji Jadhav (R2), whose authority to execute the same was denied by Appellant No.1. It was further noted that no specific flat number was mentioned in the said Agreement for Sale and, thus, the allottee was not entitled to seek any relief pursuant to such vague allotment of the flat.

7. Being aggrieved, the allottee preferred an appeal, being Appeal No.53331/2021, before the Appellate Tribunal.

8. By the impugned order the Appellate Tribunal was persuaded to interfere with the order passed by the Authority recording that the Appellants had not specifically denied the factum of execution of the unregistered Agreement for Sale and the issuance of receipt by Babaji Jadhav (R2), on behalf of the partnership firm, and had instead claimed that Babaji Jadhav (R2) did not disclose the said transaction to the appellants. The Appellate Tribunal returned a finding that there was indeed an Agreement for Sale of the subject property by and between Appellant No.1 and Respondent No.1. Since the plans were yet not sanctioned by the concerned Planning Authority, the absence of a flat number in the Agreement for Sale did not detract materially from the claim of the allottee. Holding that Babaji Jadhav (R2) had the implied authority to bind Appellant No.1 firm, the Appellate Tribunal allowed the appeal and directed the Appellants to pay Rs.15,00,000/- with interest from 29th August, 2009, as Babaji Jadhav (R2) had drawn a cheque in the sum of Rs.15,00,000/- to the allottee to secure the interest of the allottee in the event of non-fulfillment of the obligation by the Appellants.

9. Being aggrieved, the appellants-promoters have preferred this appeal.

10. I have heard Ms. Kshema Mahuli, the learned Counsel for the appellants.

11. It was submitted that the transaction was between the allottee and Babaji Jadhav (R2) in the latter's individual capacity. The amount allegedly paid in cash by the allottee to Babaji Jadhav (R2) was never credited to the account of Appellant No.1 firm. Thus, Appellate No.1 firm and its partners could not have been fastened with the liability to refund the amount. In any event, Ms. Mahuli would urge, the transaction was allegedly in cash. There was no independent proof of credit of the said amount to the account of firm. Even, the Agreement for Sale was as vague as it could be. The basic particulars, including even the flat number, were not mentioned in the said Agreement for Sale. In such circumstances, the Authority was justified in dismissing the complaint filed by the allottee. The Appellate Tribunal, according to Ms. Mahuli, committed a jurisdictional error in overturning the findings of the Authority and granting the relief which was not prayed for by Respondent No.1. The Appellant had sought the relief of specific performance of the said agreement. There was no prayer for refund of the amount. Yet, the Appellate Tribunal, directed refund of the said amount alongwith interest.

12. None of the aforesaid submissions carry any substance. The execution of the Agreement for Sale and passing of the receipt by Babaji Jadhav (R2) are rather incontestable. Incontrovertibly Babaji Jadhav (R2) was the partner of Appellant

No.1 firm at the time of the transaction. At best, the defence of the appellant is that Babaji Jadhav (R2) had not disclosed the said transaction between the appellant and respondent No.2. Therefore, the appellants cannot be fastened with the liability to refund the amount.

13. I find it difficult to accede to the aforesaid submission. Once, the relationship between Appellant No.1 firm and Babaji Jadhav (R2) is admitted, the authority of Babaji Jadhav (R2) to bind the firm can hardly put in contest. It is not the case that, on the basis of only one document, the allottee had claimed the reliefs under the RERA 2016. Babaji Jadhav (R2) had passed receipt in acknowledgment of cash of Rs. 7,50,000/- from the allottee. Secondly, an Agreement for Sale was executed which also vouches for the said transaction. Thirdly, and most importantly, Babaji Jadhav (R2) had issued a post-dated cheque in favour of the allottee in the sum of Rs.15,00,000/- to secure the interest of the allottee in the event of delay and default on the part of the Appellant No. 1 to deliver the possession of the subject flat. Pertinently, the said cheque was drawn in the capacity of partner of the Appellant No. 1 firm and on an account maintained by Appellant No.1 firm. Cumulatively, as rightly held by the Appellate Tribunal, there was adequate material to hold that the Appellant No. 1 had entered into an Agreement for Sale of the subject flat in favour of Respondent No.1.

14. The learned Member, Regulatory Authority, was clearly in error in non-suiting Respondent No.1-complainant on the ground that the Agreement for Sale did not contain the number and description of the subject flat. The Appellate Tribunal was well within its right in holding that the absence of flat number in the Agreement of Sale did not detract materially from the claim of the allottee. Since the plans were yet to be sanctioned by the Planning Authority, the stipulations in the Agreement for Sale were adequate to describe the property agreed to be sold by the Appellant No. 1 to Respondent No.1. As the project was completed and completion certificate was obtained and all the co-buyers were put in possession of the respective flats, the relief of execution of Deed of Conveyance in favour of the allottee -Respondent No. 1 could not have been granted. Thus, by resorting to the provisions contained in Order XLI Rule 33 of the Code of Civil Procedure, 1908, the Appellate Tribunal has rightly moulded the relief to direct the refund of the amount of Rs.15,00,000/- alongwith interest.

15. Having completed the project and sold all the units therein, the appellants cannot be heard to urge that a direction for refund of amount of Rs.15,00,000/- alongwith interest, operates onerously qua the appellants especially in the face of the material on record to show that Babaji Jadhav (R2) had, in fact, acknowledged the consideration and issued a cheque in favour of the allottee for and on behalf of Appellant No.1 firm.

16. In the totality of the circumstances, this Court does not find any jurisdictional error, patent illegality or legal infirmity in the impugned order so as to give rise to any substantial question of law. Neither the evidence and the documents were misconstrued nor the Appellate Tribunal has committed any error in passing the impugned order. Resultantly, the appeal deserves to be dismissed.

17. Hence, the following order:

: O R D E R :

(i) The appeal stands dismissed.

(ii) In view of the dismissal of the appeal IA/1644/2026 also stands disposed.

[N. J. JAMADAR, J.]