IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.894 OF 2024

H. Rishabraj Developers]
through its partner Mr. Niraj]
Jagwani a partnership firm]
registered under the Indian]
Partnership Act, 1932 having its]
office at 103, Jai Tirth Road, No.10,]
Daulat Nagar, Borivali East,]
Mumbai – 400 066.] ….Petitioner

Versus

1. State of Maharashtra through]
the office of Government Pleader]
2. The Maharashtra Real Estate]
Regulatory Authority having its office]
at Housefin Bhavan, Plot No.C-21,]
E-Block Bandra Kurla Complex,]
Bandra (East),Mumbai – 400 051.]
3. Kinjal M. Karia,adult Indian,]
Residing at 302, Arvind Kamal]
Apartments, Shankar Lane, Kandivali]
(West),Mumbai – 400 067.]
4. Mahesh Karia, adult Indian]
residing at 302, Arvind Kamal]
Apartments Shankar Lane,]
Kandivali (West),]
Mumbai – 400 067.]
5. Jayant Mehta, sole proprietor of]
Bhakti Enterprises having its office at]
501, Samajdeep, Adukia Road,]
Kandivali West, Mumbai- 400067.]
6. Khambhati Modh Vanik Samaj]

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through its trustee Mr. Kaushik]
Chandawala a charitable trust duly]
registered under the provisions of]
the Bombay Public Trust Act, 1950]
having its registered address at]
Samaj Darshan, 1st floor, Parekh]
Lane, Near Jain Temple, Kandivali]
West, Mumbai – 400067] ...Respondents.

WITH
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.7618 OF 2022
WITH
INTERIM APPLICATION NO.10986 OF 2024
IN
WRIT PETITION NO.7618 OF 2022

H. Rishabraj Developers]
through its partner Mr. Niraj]
Jagwani a partnership firm]
registered under the Indian]
Partnership Act, 1932 having its]
office at 103, Jai Tirth Road, No.10,]
Daulat Nagar, Borivali East,]
Mumbai – 400 066.] ....Petitioner

Versus

1. State of Maharashtra through]
the Office of Government Pleader.]
2. Office of District Collector,]
Mumbai Suburban, 10th Floor,]
Administrative Building, Near Chetna]
College, Government Colony,]
Bandra (East), Mumbai – 400 051.]
3. The Office of the Tahsildar and]
Executive Magistrate, Borivali at S.V.]

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Natakwala Lane, Dr. N. R. Karode]
Marge, Road, Borivali West,]
Mumbai-400092.]
4. Kinjal M. Karia,adult Indian,]
Residing at 302, Arvind Kamal]
Apartments, Shankar Lane, Kandivali]
5. Mahesh Karia, adult Indian]
residing at 302, Arvind Kamal]
Apartments, Shankar Lane,]
Kandivali (West), Mumbai – 400 067.]
6. Jayant Mehta, sole proprietor of]
Bhakti Enterprises having its office at]
501, Samajdeep, Adukia Road,]
Kandivali West, Mumbai- 400067.]
7. Khambhati Modh Vanik Samaj]
through its trustee Mr. Kaushik]
Chandawala a charitable trust duly]
registered under the provisions of]
the Bombay Public Trust Act, 1950]
having its registered address at]
Samaj Darshan, 1st floor, Parekh]
Lane, Near Jain Temple, Kandivali]
West, Mumbai – 400067.]
8. Maharashtra Real Estate]
Regulatory Authority an authority]
incorporated under the provisions]
of the Real Estate (Regulation and]
Development) Act,]
2016 having its registered office at]
Housefin Bhavan, Plot No.C-21, E-]
Block, Bandra Kurla Complex,]
Bandra (East), Mumbai – 400051.]
9. The Cosmos Co-operative Bank]
Limited having its office at Off.]
Chandavarkar Road, Ramdas Sutrale]
Marg, Borivali West, Mumbai-400092.] .....Respondents.

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Mr. Mayur Khandeparkar with Mr. Bishwajeet Mukharjee, Ms. Naman Gupta, Mr. Humera Syed and Mr. Omkar Mendadkar, for the Petitioner in both the Writ Petitions.

Mr. A.K. Saxena with Mr. T.R. Yadav, Mr. P.B. Kadam, for the Respondent No.2 in WP No.894 of 2024 and for the Respondent No.8 in WP No.7618 of 2022.

Ms. Vinodini Srinivasan with Mr. Atmaram Patade, Ms. Shraddha Patil and Mr. Rahul R. Dubey i/b Mr. Atmaram Patade, for the Respondent Nos. 3 and 4 in both the Writ Petitions.

Mr. Himanshu Takke, AGP, for the Respondent-State in WP No.894 of 2024.

Mr. A.I. Patel, Addl. G.P. with Ms. R.A. Salunkhe, AGP, for the Respondent-State in WP No.7618 of 2022.

Mr. Vishal Kanade with Mr. Shashikant Chaudhari, Ms. Snehal S. Chaudhari, Ms. Tanaya Patankar and Mr. Atharv Nalawade and Mr. Pranot Pawar, for the Respondent No.6 in WP No.894 of 2024.

Mr. Vishal Kanade with Mr.Shashikant Chaudhari, Ms. Snehal S. Chaudhari, Ms. Tanaya Patankar and Mr. Atharv Nalawade, for the Respondent No.7 in WP No.7618 of 2022.

Ms. Nikita Jacob with Mr. Kinjal Khandelwal i/b K.P. Law Associate, for the Respondent No.6 in WP No.7618 of 2022 and for the Respondent No.5 in WP No.894 of 2024.

CORAM : SUMAN SHYAM &
GAUTAM A. ANKHAD, JJ.

Reserved on : 7th OCTOBER, 2026
Pronounced on : 5th NOVEMBER, 2026

JUDGMENT: (Per Gautam A. Ankhad, J.)

1. These two Writ Petitions raise a common question concerning the liability of an incoming developer for the financial obligations incurred by an erstwhile developer towards purchasers of flats in a redevelopment project.

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2. The Writ Petitioner in both the Petitions is the subsequent developer of a real estate redevelopment project known as 'Samaj Darshan'. It has filed Writ Petition No.894 of 2024 under Articles 226 and 227 of the Constitution of India, challenging the order dated 21st March 2022 ("**impugned order**") passed by Respondent No. 2–Maharashtra Real Estate Regulatory Authority ("**MahaRERA**"). By the impugned order, MahaRERA has allowed the Review-cum-Execution Application filed by Respondent Nos. 3 and 4, who claim to be the allottees of flats in the said project, and directed the Petitioner and Respondent No. 5-erstwhile developer, to pay interest on the principal amount of Rs. 37 lakhs paid by Respondent Nos. 3 and 4 to Respondent No. 5, from 17th May 2018 until actual realisation of the amount.

3. The contentions of the Writ Petitioner are that :-

(i) The Petitioner was not a party to the original order dated 17th May 2018 which required Respondent No.5-erstwhile developer to pay Rs. 37 lakhs to Respondent nos. 3 and 4. Yet in 2021, the Petitioner has been directed to pay interest for the period from 2018 onwards;

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(ii) Respondent No.5 had taken monies from Respondent nos. 3 and 4 and defaulted in its repayment obligation. However, the impugned order proceeds on an erroneous interpretation of Sections 15 and 18 of the Real Estate (Regulation and Development) Act, 2016 **("RERA Act")** and foists Respondent No.5's liability on the Petitioner; and

(iii) MahaRERA has no power to review its own orders.

4. The Petitioner has filed the second Petition, namely Writ Petition No. 7618 of 2022, challenging the consequential orders dated 23rd March 2022 and 30th May 2022 passed by the Tahsildar–Executive Magistrate. By these orders, the Petitioner's bank accounts bearing nos. 122100101069 and 122100101090, maintained with Respondent No. 9–Cosmos Co-operative Bank, have been attached and frozen in exercise of powers under Section 180 of the Maharashtra Land Revenue Code, 1966 ("**MLRC**"), and payments to persons other than Respondent Nos. 3 and 4 have been restricted. Since both the Petitions arise from the same controversy raising common questions of facts and law, they are being disposed of by this common judgment. As the array of respondents differ in both the Petitions, to avoid confusion in

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this judgment, the parties are referred to as arrayed in Writ Petition No. 894 of 2024.

5. These Petitions have a chequered history and we are referring only to the material facts that are necessary for adjudicating these Petitions:

(i) The Respondent No. 6 is a charitable Trust and the owner of a property comprising land and a tenanted building containing 44 tenements ("**said property**"). As the building was in a dilapidated condition, in 2011, the Respondent No.6-Trust had resolved to undertake redevelopment, jointly with Respondent No.5-erstwhile developer. In 2013-14, steps were initiated towards redevelopment by the Trust and Respondent No.5. These steps included obtaining consents of the tenants, execution of Memorandum of Understanding dated 2nd January 2014, obtaining permissions from the statutory authorities and taking steps towards demolition of the building. The MOU specifically stipulated that the development rights were subject to obtaining permission from the Charity Commissioner, Mumbai, and that Respondent No. 5 alone would be responsible for the claims made by any person against the Trust. It also recorded the proposed

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arrangement for distribution of the free-sale area, to which Respondent No. 5 would be entitled, after accommodating the tenants.

(ii) On 9th January 2014, Respondent No. 5 issued a Letter of Allotment in favour of Shri Sanjay Khandelwal in respect of Flat No. 902.

(iii) On 13th January 2014, on the basis of the MOU, the Trust applied to the Charity Commissioner under Section 36 of the Maharashtra Public Trusts Act, 1950, seeking permission for the sale and redevelopment of the said property.

(iv) On 22nd January 2015, the Respondent No. 5 issued a Letter of Allotment ("**LOA**") in favour of Respondent Nos. 3 and 4 for the same Flat No. 902 on the 9th floor of the proposed building.

(v) On 8th June 2015, the Charity Commissioner sanctioned the proposal for sale and development of the said property, under Section 36 of the Maharashtra Public Trusts Act, 1950 issued to the Trust. On 7th December 2015, the Trust executed a registered Development Agreement along with an irrevocable Power of Attorney in favour of the Respondent

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No.5, authorizing it to execute agreements for sale, allotment letters and other documents.

(vi) By 2017, Respondent No.5 could construct only seven floors in the project. Disputes arose between the Trust and Respondent No.5 on account of alleged breach of the Development Agreement. On 15th July 2017, the Trust terminated the Development Agreement and invoked the arbitration agreement for resolution of their *inter se* disputes. The dispute culminated in an arbitral Award dated 12th May 2025, directing Respondent No.5 to pay Rs. 5,39,50,173/- to the Trust, together with interest at the rate of 10% per annum, from the date of the award until payment. Respondent No.5 has challenged the Award under Section 34 of the Arbitration and Conciliation Act, 1996 and the same is pending before this Court[1]. However, no stay has been granted with regard to the enforcement of the Award.

(vii) Meanwhile, on 31st August 2017, the Respondent No.5 had unilaterally registered the project with MahaRERA, by projecting itself and the Trust as co-promoters of the project although the Development Agreement entered with the

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1 Commercial Arbitration Petition (L) No.29444 of 2025

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Respondent No.5 itself was terminated on 15th July 2017. According to the Trust, this was done without its knowledge and that it did not execute any document relating to the registration of the said project. Nevertheless, MahaRERA on its website had reflected the Trust as a co-promoter of the project with a specified area share.

(viii) On 6th March 2018, the Respondent Nos. 3 and 4, in their capacity as allottees of flat No.902, filed a complaint before MahaRERA against Respondent No.5 and the Trust, seeking refund of Rs. 37 lakhs paid towards the flat, together with interest and compensation. The Trust was impleaded as a party respondent in the said proceedings.

(ix) By an order dated 17th May 2018, MahaRERA disposed of the complaint after recording that Respondent Nos. 3 and 4 were seeking refund without interest and that Respondent No.5 had furnished an undertaking to refund Rs. 37 lakhs in accordance with an agreed schedule. The complaint was disposed of on the basis of an undertaking given by Respondent No.5. For the sake of convenience, the impugned order dated 17th May 2018 is quoted here-in-below for ready reference:-

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"ORDER
(17th May, 2018)

1. The complainants have filed this complaint seeking directions from this Authority to refund the amount paid by them to the respondent with interest and compensation in respect of the booking of the flat No.902 having carpet area of 478 sq.ft. In MahaRERA registered project bearing No.P51800010479 at Kandivali (West), Mumbai.

2. During the hearings, the complainants have stated that they are seeking refund of the money paid by them without interest.

3. The respondent filed a written undertaking on record of this Authority stating that he is ready and willing to refund the total amount paid by the complainants by way of pay orders as per the schedule mentioned in the said undertaking. The complainants have agreed to accept the payment dates as agreed mutually and accordingly, they also signed the said undertaking. The same is taken on record.

4. In view of the above, the complaint stands disposed of."

(x) Within two weeks of the aforesaid order, the Respondent No.5 breached its undertaking and defaulted in the first tranche in honouring the payment of Rs. 37 lakhs to

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Respondent Nos. 3 and 4. Consequently, on 12th June 2018, the Respondent Nos. 3 and 4 filed a Review-cum-Execution Application *inter alia* seeking review of the order dated 17th May 2018 and interest and compensation from Respondent No.5. For convenience, the Review-cum-Execution Application is quoted:

TYPED COPY OF REVIEW APPLICATION

12 – June – 2018

From,
Kinjal Mahesh Karia
Mahesh Karia

Ref.: Complaint No.: CC000000023601

पत्र प्राप्त झाले.
सही *[illegible]*
आवक क्रमांक .....
महारेरा
दिनांक 12/6/2018

Dear Sir,

We refer to Order dtd. 17/05/2018 for the above Complaint, we hereby apply for review of the order and consider the following:

1. Since we anticipate cancellation of development rights of the Respondent Mr. Jayant Mehta Bhakti Enterprieses. We request you to consider our prayer for safeguarding our rights for the said Property and correspondingly issue order to make Allotment Letter legally binding on all promotors, including any developer who may takeover development rights of project Reg. No. P51800010979.

2. We had agreed to seek refund of money without interest as mentioned in Order assuming no default but the payment schedule submitted by Respondent as a part of undertaking is not honoured

   so we seek interest and compensation.

3. As the respondent has defaulted in payment we also pray for registration of agreement with value

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[Page no. 12/23]

Earlier the order dtd. 17th May 2018 does not cover the above points we therefore request an interim order for protection of our rights and make allotment letter dtd. 22nd Jan. 2015 legally binding to all promotors.

5. We request for urgent interim order and prompt review of the order as there are legal proceedings in High Court against the Respondent on 13th and 14th June as per information available with us.

6.

[Signature]
Kinjal Mahesh Karia

[Signature]
Mahesh Karia 12 – May – 2018

6. We request for execution of order dtd. 17th May 2018 as the undertaking dtd. 17th May 2018 for payment of seven lakhs on 02-06-2018 is dishonoured.

[Signature]
Mahesh Karia

[Signature]
Kinjal Karia
12 – May – 2018

पत्र प्राप्त झाले.
सही *[illegible]*
आवक क्रमांक .....
महारेरा
दिनांक 12/6/2018

(xi) On 9th July 2018, during the hearing of the aforesaid Review-cum-Execution Application, the Respondent No.5 furnished a fresh undertaking to repay Rs. 37 lakhs on or before 27th July 2018. The Trust was not present at this hearing.

(xii) Notwithstanding the above undertaking, the Respondent

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No.5 once again defaulted on its undertaking and the payment obligations towards Respondent Nos. 3 and 4. As such, the MahaRERA heard the Review-cum-Execution Application and by its order dated 13th August 2018, rejected the request to review the order dated 17th May 2018. However, MahaRERA had partly allowed the Application by directing the Collector to issue a recovery warrant against Respondent No.5 to recover the amount of interest and pay the same to Respondent nos. 3 and 4. Pursuant to that order, on 9th July 2019, the Tahsildar caused a boja/ charge or encumbrance of Rs. 37 lakhs representing the principal amount due to Respondent Nos. 3 and 4 under the MahaRERA orders dated 17th May 2018 and 13th August 2018, to be recorded on the property card of the said land.

(xiii) Meanwhile, on 21st February 2019, the Trust and Respondent No.5 arrived at consent terms, which were placed before a single Judge of this Court hearing the arbitration matter. However, defaults of Respondent No.5 continued and it could not comply with its obligations under the said Consent Terms. Hence, the Trust filed Notice of Motion No. 99 of 2019 in arbitration proceedings, seeking appointment of a Court

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Receiver to take over the project with permission to appoint a new developer to complete the redevelopment. By the orders dated 26th November 2020 and 11th December 2020, this Court had directed the Court Receiver to take possession of the property and hand it over to Trust so as to appoint a new developer and proceed with the redevelopment. It is in this background that on 7th July 2021, the Petitioner came into the picture and executed a registered Development Agreement with the Trust with rights to develop and sell the property. The Petitioner has, since then, completed the redevelopment under this Development Agreement.

(xiv) In the meantime, Respondent Nos. 3 and 4 appealed against the MahaRERA order dated 13th August 2018 before the Appellate Tribunal. The said Respondents/allottees assailed the impugned order on the ground that the Respondent No.5 had repeatedly failed to pay the principal amount and therefore, the Respondent Nos. 3 and 4 are entitled to interest and compensation from Respondent No.5. The Writ Petitioner was not a party to this Appeal.

(xv) By an order dated 30th July 2021, the Appellate Tribunal had partly set aside the order dated 13th August 2018

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and remanded the matter to MahaRERA for fresh consideration of the Review-cum-Execution Application. Upon remand, MahaRERA scheduled a fresh hearing and on this occasion, called upon the Petitioner to attend the hearing, although the Petitioner was not impleaded in any of the proceedings either before MahaRERA or the Appellate Tribunal. The matter was heard on 16th December 2021 and written submissions were filed by the Petitioner as well as Respondent Nos. 3 and 4.

(xvi) In a separate matter, being Suo Motu Case No.215 of 2022, on 21st January 2022, MahaRERA passed an order permitting registration of the project in favour of the Petitioner. It recorded that since the change of promoter was taking place pursuant to the directions of this Court in the Section 9 proceedings, the need for obtaining consents for changing the developer was waived. The order expressly recorded that the Petitioner would not be liable for past liabilities or claims made by any person in respect of the project and the same would be the liability of the Trust. This order has not been challenged by any of the parties. On 19th December 2022, MahaRERA subsequently rectified its earlier

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order dated 21st January 2022 and recorded that the Trust would also not be responsible for the liabilities of Respondent No.5.

(xvii) On 7th February 2022, a certificate of registration under RERA Act was issued to the Petitioner as promoter of the Project.

(xviii) On 21st March 2022, the MahaRERA, by the impugned order, allowed the Review-cum-Execution Application (which was remanded on 30th July 2021) and *inter alia* directed the Respondent No.5 along with the Petitioner, described as the new promoter, to pay interest on Rs. 37 lakhs from 17th May 2018 until actual realisation. The claim for compensation was rejected for want of documentary proof. The operative portion of the order reads as follows:

BEFORE THE MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY, MUMBAI

Complaint No. CC006000000023601

Mrs. Kinjal Karia and Mr. Mahesh Karia ...Complainants
Versus
1. Mr. Jayant N. Mehta
2. Khambhati Modh Vanik Samaj ...Respondent

MahaRERA Project Registration No. P41800010479

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Coram: Dr. Vijay Satbir Singh, Hon'ble Member-I/MahaRERA

Ld. Adv. Avinash Pawar appeared for the Complainants.
Ld. Adv. Jayant Mehta appeared for the respondent no.1.
Ld. Adv. Shashikant Choudhary appeared for the Respondent no.2.
Ld. Adv. Neel Gala appeared for the new promoter.

ORDER
(Monday, 21 March 2022)
(Through Video Conferencing)

1……. to 20……..

"21. Considering these facts, the following order is passed:

(a) The review application filed by the complainants is allowed.

(b) The MahaRERA hereby directs the respondent no.1 and the new promoter viz M/s. H. Rishabraj Developers to pay interest on the actual amount paid by the complainants i.e. Rs. 37,00,000/- from the date of order dated 17-05-2018 till the actual realisation of the said amount to the complainants.

(c) With regard to the payment of interest to the complainants, the MahaRERA further directs that the respondent no.1 and the new promoter are entitled to claim the benefit of "moratorium period" as mentioned in the Notifications/Orders nos. 13 and 14 dated 2nd April, 2020 and 18th May, 2020 issued by the MahaRERA and the Notification/Order which may be issued in this regard from time to time.

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> (d) As far as the claim of compensation sought by the complainants, no documentary proofs submitted on record of MahaRERA to prove the mental agony. Hence, the said claim stands rejected."

(xix) The Petitioner has challenged the impugned order by filing a Review Petition before MahaRERA, an appeal before the Appellate Tribunal and Writ Petition No.894 of 2024 before this Court. At paragraph 3(p) of the present Petition, the Petitioner has undertaken to withdraw those proceedings in view of the present challenge. Subsequently, the review application and the appeal have been withdrawn by the Petitioner.

(xx) In the meantime, Distraint Orders dated 23rd March 2022 and 30th May 2022 were passed by the Respondent No.3-Tahsildar under Section 180 of the MLRC in execution of the impugned order. The attachment imposed by these Distraint orders is the subject matter of challenge in the subsequent Writ Petition No. 7618 of 2022. On 29th June 2022, this Court ordered that no further steps shall be taken against the Petitioner in pursuance of the impugned Distraint Orders. Notwithstanding the stay order, on 26th November 2024, the

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Adjudicating Officer of MahaRERA issued a recovery warrant against the Petitioner and the Respondent No.5 for the principal and interest accrued till date. This order has also been stayed by this Court on 10th January 2025 *qua* the Petitioner.

6. It is in the above factual background that the Petitioner has approached this Court challenging the impugned order of MahaRERA dated 21st March, 2022 and the consequential attachment orders dated 23rd March 2022 and 30th May 2022 under Section 180 of the MLRC.

Submissions of the Petitioner (new developer):

7. Mr. Khandeparkar, learned counsel appearing for the Petitioner in both the Writ Petitions, submits that MahaRERA has no power to review its own orders. He submits that Section 53(4)(e) of the RERA Act confers power of review only upon the Appellate Tribunal. The RERA Act does not expressly confer power of review upon MahaRERA and such power cannot be derived from Regulation 36 of the Maharashtra Real Estate Regulatory Authority (General) Regulations, 2017 ("**RERA Regulations**"). According to the

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learned counsel, although the said Regulations are framed under Sections 85(2)(i) and (ii) of RERA Act, yet, the rule-making power conferred under the said provisions does not permit the MahaRERA to make Rules which travels beyond the scope of the enabling Act. Thus, the impugned order by which the MahaRERA has reviewed its order ought to be set aside as illegal and without jurisdiction.

8. On merits, Mr. Khandeparkar submits that the Petitioner was not impleaded as a party to the original proceedings or the appeal or the remanded proceedings. The Petitioner attended the MahaRERA hearing on remand pursuant to a notice issued by MahaRERA. In the absence of the Petitioner's impleadment to the proceedings, no orders could have been passed, much less an order fastening financial liability on the Petitioner.

9. Mr. Khandeparkar then contends that since 2018, the liability to refund Rs. 37 lakhs is of Respondent No.5 alone, who has also repeatedly undertaken before several authorities to repay the amounts to Respondent Nos. 3 and 4. The Development Agreement of Respondent No.5 is terminated

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which termination has been upheld by an arbitral Award. The Petitioner executed the project pursuant to orders passed by this Court in 2021 on a 'clean-slate basis'. The exclusion of past liabilities of Respondent No.5 is expressly recognised in MahaRERA's registration order dated 21st January 2022. Despite that, a few months later, the impugned order is passed by another Member of MahaRERA foisting Respondent No.5's liability on the Petitioner. He submits that the impugned order enlarges the relief granted in the original proceedings inasmuch as any liability arising from the alleged default of the Respondent No.5 must be pursued against the Respondent No. 5 alone. The Petitioner is not liable to pay any dues of the Respondent No.5 either under the contract or the provisions of the RERA Act. Even assuming that the MahaRERA has the powers to review its own order, the review jurisdiction is limited and the original order cannot be modified substantially by the authority so as to grant a new relief.

10. Mr. Khandeparkar contends that at the time when Respondent No.5 issued the LOA in favour of Respondent Nos. 3 and 4, the Commencement Certificate for the project covered construction only up to the 8th floor, whereas, the Flat

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No.902 purportedly allotted to Respondent Nos. 3 and 4 was on the 9th floor. He contends that a valid Commencement Certificate is a prerequisite for registration under Sections 3 and 4 of the RERA Act. Consequently, the registration granted to Respondent No.5 under the RERA Act cannot extend to floors for which no valid Commencement Certificate has been issued. The LOA, when issued, was beyond the portion of the building covered by such certificate. As such, Respondent Nos. 3 and 4 are not allottees and hence, cannot claim any rights under the LOA.

11. Lastly, the learned counsel submits that the Petitioner cannot be held liable for the acts or omissions of Respondent No.5. Hence, the impugned order deserves to be quashed and set aside. Consequently, the Distraint Orders attaching and freezing the Petitioner's bank accounts in execution of the impugned order are also liable to be quashed and set aside. In support of his submissions, Mr. Khandeparkar relied upon the following judgments viz (i) ***Kapra Mazdoor Ekta Union vs. Birla Cotton Spinning and Weaving Mills Ltd. & Another***[2], (ii)

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2 (2005) 13 SCC 777

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Deepak Prabhakar Thakoor v. MHADA & Ors[3]; (iii) *Mohammed Zain Khan v. Emnoy Properties India*[4]; and (iv) *Tuvin Construction LLP v. State of Maharashtra.*[5]

Submissions on behalf of Respondent No. 7 – Trust

12. Mr. Vishal Kanade, learned counsel appearing for the Trust in both the Writ Petitions, supports the Petitioner and also contends that the MahaRERA lacks jurisdiction to review its own orders under the RERA Regulations and pass the impugned order.

13. On merits, Mr. Kanade submits that Respondent No.5 issued the LOA to Respondent Nos. 3 and 4 before the Charity Commissioner had granted its sanction under Section 36 of the Maharashtra Public Trusts Act, 1950 and before the execution of the Development Agreement with Respondent No.5. The Trust had not signed the LOA. Therefore, any unilateral commitment of the Respondent No.5 made prior to the signing of LOA is not binding on the Trust. He has further

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3 WP(L) No.1776 of 2023 decided on 12/10/2023

4 2024 SCC Online Bom 1151

5 Writ Petition No. 1673 of 2025 decided on 9th September 2025 by Division Bench of Bombay High Court.

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argued that prior to the statutory sanction, the Respondent No.5 could not have created any right, title and interest in the said property. The Trust, therefore, could not be regarded as a promoter under Section 2(c) of the Maharashtra Ownership Flats Act, 1963 when the purported allotment letters were issued.

14. Mr. Kanade also relies upon the several orders passed by this Court in the Section 9 proceedings and the MahaRERA order dated 21st January 2022 to contend that the appointment of a new developer was a fresh appointment and not a transfer of Respondent No.5's rights and liabilities under Section 15 of the RERA Act. The Trust terminated its Development Agreement with the Respondent No. 5, which has been upheld by the arbitral Award dated 12th May 2025. Under the said Award, amounts in excess Rs. 5.40 crores are due and payable by Respondent No.5 to the Trust. Finally, the learned counsel submits that Respondent No. 5 had repeatedly undertaken before the Authorities to refund Rs. 37 lakhs, whereas the Trust had made no such promise to repay the Respondent Nos. 3 and 4. In any case, Shri Jayant Mehta representing the Respondent No.5 has filed affidavits dated

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10th April 2018 and 23rd April 2018 before this Court in the Anticipatory Bail Application[6] to repay the amounts to the investors including the Respondent Nos. 3 and 4 as per the repayment schedule mentioned therein. As such, Trust is not liable for any of the defaults of Respondent No. 5.

Submissions of Respondent Nos. 3 and 4 (Allottees)

15. Ms. Vinodini Srinivasan, learned counsel for Respondent Nos. 3 and 4, opposes the Petitions on several grounds including on the ground that the Writ Petitions are not maintainable. She submits that the Petitioner had challenged the impugned order dated 21st March 2022 by filing a Review Application before MahaRERA and an Appeal before the Appellate Tribunal. The Petitioner unconditionally withdrew the Appeal on 25th April 2023 and the Review Application on 8th November 2023. Having withdrawn these proceedings, the Petitioner cannot now re-agitate the same issues before this Court by invoking its writ jurisdiction. Reliance is placed on ***Sarguja Transport Service & Ors. v. State Transport Appellate Tribunal***[7] to contend that when a party withdraws proceedings without obtaining liberty to institute

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6 Anticipatory Bail Application No. 476 of 2018

7 (1987) 1 SCC 5

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fresh proceedings, it results in an abandonment of proceedings and the said party cannot subsequently pursue the same cause of action, seeking the same reliefs before another Court. Hence, the Writ Petitions are not maintainable and deserve to be dismissed.

16. As regards the question of powers of MahaRERA to review its orders under the RERA Regulations, Ms. Srinivasan submits that the Petitioner has not sought a declaration that the said Regulations are *ultra vires* the RERA Act. There is no pleading challenging the validity of the RERA Regulations nor is there a prayer to strike down the RERA Regulations. Hence no such case can be entertained. She has placed reliance on ***Union of India & Ors. v. Manjurani Routray & Ors***[8] in support of the above submissions. The learned counsel further submits that in any case, the Review-cum-Execution Application filed by Respondent Nos. 3 and 4 falls within the scope of Regulation 36 of the RERA Regulations. By its order dated 17th May 2018, the MahaRERA had kept open the allottees' rights, until the Respondent No. 5 honoured its undertaking to make payment. The Respondent No. 5's breach of undertaking

8 (2023) 9 SCC 144

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constitutes a 'subsequent event' warranting review of the original order under the settled principles of Order 47 of the Code of Civil Procedure, 1908.

17. Ms. Srinivasan refutes the contention that the impugned order is vitiated because the Petitioner was not impleaded as a party to the original complaint. She submits that the Petitioner, in its capacity as a co-promoter, was notified by MahaRERA of the proceedings. The Petitioner appeared at the hearing through an advocate and also filed written submissions to oppose the Review-cum-Execution Application. Having been unsucessful before the said forum, the Petitioner cannot now allege non-joinder of party or that the impugned order is unenforceable against the Petitioner.

18. Ms. Srinivasan further points out that the Appellate Tribunal, by its order dated 30th July 2021, remanded the matter to MahaRERA for reconsideration of the entitlement of Respondent Nos. 3 and 4 to realise interest and compensation. The order of the Appellate Tribunal has not been challenged by any party. According to her, the impugned order passed on remand does not enlarge the scope of the original order dated

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17th May 2018 but merely determines the issue of interest based on subsequent events as per the directions of the Appellate Tribunal. Ms. Srinivasan submits that the Trust was a co-promoter along with Respondent No.5, under the Development Agreement, which provided for an area-sharing arrangement. The Trust transferred the project from one developer to another i.e. the Petitioner within the framework of Section 15 of the RERA Act. Hence, the Trust and the Petitioner are liable as co-promoters and are answerable to the allottees for all obligations arising from the project. She further submits that the right to interest on the amounts due is statutory in nature and flows from Section 18(1) of the RERA Act, which obliges a promoter to refund the amount received, together with interest. The Petitioner took over the project with full knowledge of the existing liabilities and encumbrances affecting the property. Hence, the Petitioner cannot avoid the obligations attached to the project. Ms. Srinivasan has relied upon the judgment of this Court in *Wadhwa Group Housing Pvt. Ltd vs. Vijay Choksi and Another*[9] in support of the above submissions.

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9 2024 SCC OnLine Bom 660

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19. Lastly, Ms. Srinivasan contends that the registration order dated 21st January 2022 cannot be construed as exempting the Petitioner from liabilities arising under the RERA Act, as the same is only an administrative and regulatory order permitting the change of promoter, whereas the impugned order is an adjudicatory order deteriming financial liabilities of a co-promoter under several provisions of the RERA Act. On this basis, she submits that the attachment orders issued by the Revenue Authorities amounts to a statutory charge on the land and ought to be enforced against the Petitioner. Accordingly, both the petitions ought to be dismissed by this Court.

Submissions on behalf of Respondent No. 5 (Erstwhile Developer)

20. Ms. Nikita Jacob, learned counsel appearing for Respondent No. 5, supports the submissions advanced on behalf of Respondent Nos. 3 and 4 to the extent that the liability to repay interest is that of the Petitioner. Ms. Jacob submits that Respondent Nos. 3 and 4 are *bona fide* allottees who ought not to be prejudiced by disputes between the Trust and her client. Setting aside the impugned order would cause

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serious prejudice to Respondent Nos. 3 and 4 and permit the Petitioner and the Trust to be unjustly enriched out of the development works undertaken by Respondent No. 5. She submits that the Petitioner cannot retain the benefit of the construction costs of approximately Rs 32 crores incurred by Respondent No.5 and disclaim the liabilities associated with the project. Reliance is placed on Sections 2(zk) and 15 of the RERA Act to contend that the Petitioner and the Trust are jointly liable for all obligations arising from the project, including payment of the amounts directed by MahaRERA.

21. Ms. Jacob further submits that, although the Charity Commissioner granted sanction under Section 36 of the Maharashtra Public Trusts Act on 8th June 2015, yet, the Trust and Respondent No. 5 had treated the sanction as a mere formality. In support thereof, it is contended that much prior to the said sanction, several affirmative steps were taken by the Trust and Respondent No.5, such as securing approval of the building plans, demolishing of the old building, permanent alternative accommodation agreements executed and a Memorandum of Understanding was signed between the Trust and Respondent No.5 earmarking their respective shares in the

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free-sale area. On this basis, she contends that the LOA dated 22nd January 2015 was a valid basis to issue allotment letters to the allottees and such allotgment is valid, binding and enforceable against the Petitioner.

22. Ms. Jacob has disputed the legality of the termination of Development Agreement. She submits that the termination has not attained finality, as Respondent No. 5 has challenged the arbitral Award dated 12th May 2025 which is pending before this Court[10]. Until then, the Petitioner cannot rely on the termination to disclaim its obligations arising from the project. She accordingly submits that the Petitions be dismissed with costs.

Reasons and conclusion:

23. We have perused the record and have considered arguments advanced by the learned counsel for the parties. Although several points have been urged by both the sides, the main issue in this matter is whether the MahaRERA could have passed orders directing the Petitioner to discharge the interest burden of Respondent No.5, when the Petitioner was

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10 Arbitration Petition (L) No. 29444 of 2025

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not even impleaded as a party to the original complaint or to review proceedings. For the reasons to follow, we hold that MahaRERA could not have done so. Considering the overall circumstances of the case, the Petitioner is entitled to reliefs that it has sought in both the petitions. However, since arguments have been advanced on several issues, we shall deal with the same, as hereunder.

Question of maintainability of the Writ Petitions:-

24. Ms. Srinivasan has questioned the maintainability of Writ Petition No. 894 of 2024 on ground that the Petitioner had availed of the remedies of review and appeal against the impugned order and thereafter unconditionally withdrew the Appeal and the review without obtaining liberty to pursue any other remedy. We find that this objection is misconceived.

25. At paragraph 3(p) of Writ Petition No. 894 of 2024, the Petitioner had disclosed about the pendency of the appeal and the review, and had undertaken to withdraw them. Therefore the subsequent withdrawal of appeal and review proceedings must be considered to be without prejudice to its rights and contentions in the Writ Petition. The availability of an

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alternate remedy is a self-imposed restraint and is a matter of discretion of the Writ Court. The same is not a bar to the jurisdiction of this Court under Article 226 of the Constitution of India. The principle underlying ***Sarguja Transport Service*** (supra) is that a litigant who withdraws a writ petition without permission to institute fresh proceedings on the same subject matter cannot be permitted to institute another writ petition on the same cause of action. The principle is directed against repeated invocation of the same jurisdiction after abandonment of the claim under the earlier proceeding. As such, the principle laid down in the said decision does not apply to the facts of this case. Here, the Petitioner has not invoked the writ jurisdiction twice. It withdrew the statutory remedies from other forums to pursue this Writ Petition. Hence, the withdrawal before other forums cannot be treated as an abandonment of its claim in the present proceedings. Availability of alternative remedy is not a bar to a Writ Petition but the same is merely a rule of prudence where the Writ Court is expected to exercise its discretion depending on the facts and circumstances of each case. Writ Petition No. 894 of 2024 is, therefore, held to be maintainable. We may also add that Writ Petition No. 7618 of 2022, which challenges the

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consequential Distraint Orders arising as a consequence of the same impugned order, has been pending since 2022 with interim protection granted on 29th June 2022. Rule has been issued in both Petitions by order dated 16th October 2025 and they have been heard finally. Situated thus, relegating the Petitioner to a statutory remedy at this stage would serve no practical purpose.

Issue of vires of the RERA Regulation No.36 cannot be decided in the absence of pleadings

26. The Petitioner, supported by the Trust, has contended that MahaRERA lacks the power to review its own orders. Section 53(4)(e) of the RERA Act confers power to review only to the Appellate Tribunal. The allottees, on the other hand, rely upon Regulation 36 of the Maharashtra Real Estate Regulatory Authority (General) Regulations, 2017, and contend that the subsequent default of Respondent No. 5 justified reconsideration of the earlier order on principles underlying Order 47 of the Code of Civil Procedure, 1908.

27. In our view, it is unnecessary in the present case to consider the Petitioner's challenge to the validity of Regulation 36 in the abstract. There are no pleadings laying the

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foundation for such a challenge to Regulation 36 and no prayer is made to declare it *ultra vires* the RERA Act. The prayers are confined to a writ of Certiorari to quash the impugned order and the Distraint Order. In ***Union of India & Ors. v. Manjurani Routray & Ors.*** (supra), relied upon by Ms. Srinivasan, the Hon'ble Supreme Court has held that a party seeking to challenge the validity of a statutory provision, must set out grounds in the pleadings and seek reliefs to declare the provision as *ultra vires*.. In the present case, there is no such plea or prayer. Hence, Regulation 36 framed under Section 85 of the RERA Act, is treated as operative in these proceedings. We accept the submission of Ms. Srinivasan to this limited extent. Therefore, it is not necessary for us to go into the question as to whether MahaRERA has an inherent power of review. For the same reason, the decision in ***Kapra Mazdoor Ekta Union*** (supra), relied upon by Mr. Khandeparkar for the proposition that a quasi-judicial authority has no power of review unless the statute confers it will not have any application to this case. We also note that the order of the Appellate Tribunal dated 30th July 2021, remanding the Review-cum-Execution Application to MahaRERA, has not been challenged by any party. MahaRERA was, therefore,

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bound to take up and decide the remanded application.

MahaRERA could not fasten liability on the Petitioner without impleading it as a party respondent to the Review-cum-Execution Application.

28. Admittedly, the Petitioner was not a party to the original complaint of Respondent Nos. 3 and 4 dated 6th March 2018, the Review-cum-Execution Application dated 12th June 2018, the appeal before the Appellate Tribunal or the proceedings on remand. The cause title of the impugned order itself names only Respondent No. 5 and the Trust as respondents and refers to the Petitioner merely as the 'new promoter' whose advocate had appeared. No application was made to implead the Petitioner, and the Review-cum-Execution Application was never amended to seek any relief against the Petitioner. On remand by the Appellate Tribunal, MahaRERA only issued a notice calling upon the Petitioner to attend the hearing. In our view, this is not enough. A judgment or order of a court or quasi-judicial authority, rendered in adversarial proceedings, binds only the parties to those proceedings. An adjudicating authority cannot pass orders against a person who is not a party to the proceeding. Merely because the Petitioner

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appeared through an advocate and filed written submissions does not change this position. There is no pleading setting out any case against the Petitioner, including its alleged liability under Section 2(zk), Section 15 or Section 18 of the RERA Act. The Petitioner could not effectively respond in a proceeding between other parties, without knowing as to what is the nature of liability that would be imposed on it. In our view, the non-joinder of the Petitioner is fatal and the impugned order *qua* the Petitioner is unsustainable on this ground alone.

The liability to refund and pay interest is that of Respondent No. 5 alone.

29. The original order dated 17th May 2018 is clear and unambiguous. Respondent Nos. 3 and 4 had sought refund from Respondent No.5 for the amount purportedly paid towards allotment of the flat. During the hearing before MahaRERA, based on the promises of Respondent No.5, the Respondent Nos.3 and 4 had agreed to accept only the principal amount, perhaps to put a quietus to the matter. Respondent No.5 furnished a written undertaking to repay the amount and the application was disposed of by MahaRERA on

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that basis. The order dated 17th May 2018 did not direct the Trust to refund any amount. Although the Respondent No.5 was the defaulter, the Respondent Nos. 3 and 4 had filed the Review-cum-Execution Application claiming additional reliefs including interest and compensation, registration of an agreement and an order making the allotment letter binding on all promoters, including any developer who may takeover development rights. The claim for interest and compensation was founded only on the fact that the payment schedule submitted by 'the Respondent', i.e, Respondent No. 5, had not been honoured. On a careful consideration of the impugned order, we find the direction to the Petitioner to pay interest is wholly unsustainable in law for the following reasons:-

(i) As per the order dated 17th May 2018, the liability to pay interest can only be fastened on the party which has the liability to pay principal sum of Rs 37 lakhs, which was of the Respondent No.5 alone. If a default is committed by the Respondent No.5, it cannot be retrospectively transferred to a third party, who has entered the field three years after the said order was passed.

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(ii) At the hearing of 9th July 2018 before MahaRERA, Respondent No.5 furnished a second undertaking to repay Rs. 37 lakhs. Thus, Respondent No.5 unequivocally accepted its liability to repay Respondent nos.3 and 4.

(iii) Shri Jayant Mehta of Respondent No. 5 has also filed affidavits dated 10th April 2018 and 23rd April 2018 before this Court in the Anticipatory Bail Application, undertaking to repay the amounts to Respondent Nos. 3 and 4. As such, the Respondent No. 5 admitted and accepted its liability to repay the Responedent Nos. 3 and 4 on at least three occasions, which has not been considered in the impugned order.

30. There is a further important circumstance. By its order dated 21st January 2022, the MahaRERA had permitted the project to be registered in favour of the Petitioner. It recorded that the change of promoter was taking place pursuant to the orders passed by this Court in Section 9 proceedings and (as corrected by its subsequent order dated 21st December 2022, *qua* the Trust) expressly stated that neither the Trust nor the Petitioner would not be liable for past liabilities or claims in

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respect of the project. These orders have not been challenged by any one including Respondent Nos. 3 and 4. The impugned order, passed shortly thereafter, by another member of MahaRERA takes a diametrically opposite view without recording the basis for foisting Respondent No.5's liability on the Petitioner. This also demonstrates complete non-application of mind, thus vitiating the impugned order dated 21st March 2022. We cannot accept Ms. Srinivasan's submission that a distinction is required to be drawn in this regard on the ground that the registration order of 21st January 2022 was an administrative order, whereas the impugned order was adjudicatory. During both hearings, the parties were represented through advocates and the orders were passed after a contest.

The Petitioner is not liable for interest even under Sections 2(zk), 15 and 18 of the RERA Act

31. The next question is whether the Petitioner is independently liable under the RERA Act to pay interest in discharge of the liability of the Respondent No.5. The impugned order principally relies upon the proposition that the Petitioner stepped into the shoes of the erstwhile promoter

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and that the erstwhile promoter's liabilities stood transferred to the landowner and the new promoter. In our view, the statutory provisions do not support such a conclusion.

32. The definition of a "promoter" under Section 2(zk) of RERA, is undoubtedly wide. As per the Explanation to the definition, where the person who constructs and the person who sells are different persons, both are deemed to be promoters and are jointly liable as such for the functions and responsibilities specified under the Act, the rules and the regulations. The object of the provision is to ensure that a person who performs the substantive functions of a promoter does not evade statutory responsibility merely because another person undertakes a different part of the same transaction. The principle recognised in ***Wadhwa Group Housing Pvt. Ltd.*** (supra) must be understood in that context. The said judgment is distiguishable on facts as it deals with the aspect of liabilities of promoter *qua* the allottees of the other co-promoter. It does not deal with the present fact situation where one development agreement is terminated and another developer is appointed through a court process on a 'clean-slate' basis. The issue in this matter is not whether the Trust

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and Respondent No. 5 were co-promoters. There is no claim against the Trust. The issue is whether the Petitioner, who was appointed pursuant to orders of this Court, is liable for a refund obligation that was already crystallised against Respondent No. 5. In our view, the definition of co-promoter under Section 2(zk) of RERA Act cannot be read as if every finacial liability of one promoter is automatically transferred to a subsequent promoter undertaking development of the same property.

33. Section 15(1) of the RERA Act provides that a promoter shall not transfer or assign its majority rights and liabilities in respect of a real estate project to a third party without the prior written consent of two-thirds of the allottees, excluding the promoter, and the prior written approval of the Authority. Section 15(2) provides that, upon a transfer or assignment permitted under sub-section (1), the intending promoter is required independently to comply with the pending obligations under the Act, the rules and regulations made thereunder, and the pending obligations under the agreements for sale entered into by the erstwhile promoter with the allottees. The object of Section 15 is that a promoter cannot

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unilaterally transfer the project and divest itself of its responsibilities *qua* the allottees. In our view, Section 15 is not attracted in the present case for the following reasons:-

(i) Respondent No. 5 has not transferred or assigned its rights and liabilities in the project to the Petitioner in the manner contemplated by Section 15. The Development Agreement between the Trust and Respondent No. 5 was terminated on 15th July 2017. This Court by its order dated 26th June 2020 and 26th November 2020 passed in the Section 9 proceedings directed the Court Receiver to take possession of the property and hand it over to the Trust so that a new developer could be appointed and the redevelopment can be completed. The Trust thereafter executed a fresh Development Agreement in favour of the Petitioner on 7th July 2021. The Petitioner derives its right through a court-sanctioned process and not from Respondent No.5. There is no privity of contract between the Petitioner and Respondent No.5. MahaRERA waived the requirement of consents of

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allottees for appointing a new developer precisely for this reason; and

(ii) Even where Section 15(2) applies, it refers to 'pending obligations' under the Act and under the agreements for sale entered into by the erstwhile promoter. In this case, a refund order, already passed against Respondent No. 5 on the basis of its own undertaking, is not a 'pending obligation' of the project which passes to whoever completes the building. It is the debt of Respondent No. 5 only. Hence we cannot accept Ms. Srinivasan's argument that the Petitioner is liable under Section 15 of the RERA Act to refund the amount to the allottees.

34. We also find that reliance by Respondent Nos. 3 and 4 on Section 18 of RERA Act is equally misplaced. The scope of Section 18(1) is wide and *inter alia* provides that where a promoter fails to complete or is unable to give possession of an apartment in accordance with the agreement for sale or due to discontinuance of its business as a developer for the reasons specified therein, the allottee who wishes to withdraw from the project is entitled, on demand, to return of the

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amount received by the promoter in respect of the apartment, together with the prescribed interest and compensation as provided under the Act. Thus, Section 18, compensates the allottee for the use of its money by the promoter who held it. Here, the money is admittedly retained by Respondent No.5, despite its promises to repay back the same to Respondent Nos. 3 and 4. The Petitioner received nothing therefrom. The impugned order erroneously directs interest from 17th May 2018, which includes more than three years before the Petitioner had any connection with the project. In our view, in the facts of this case, Section 18 cannot be applied against the Petitioner.

The remaining submissions:

35. The submission that the Petitioner took over the project with full knowledge of the existing liabilities and encumbrances does not also advance the case of Respondent Nos. 3 and 4. Knowledge of another person's liability does not amount to taking over of that liability. There is no contract, statutory provision or order of a competent authority under which the Petitioner undertook, or was made liable for, the refund obligations of Respondent No. 5.

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36. We are also unable to accept the submission of Ms. Jacob to the effect that the Respondent No. 5 spent about Rs. 32 crores on construction and that the Petitioner and the Trust cannot keep the benefit of that construction while disclaiming its liabilities. That claim, if any, lies between Respondent No. 5 and the Trust, and is the subject of the arbitral Award dated 12th May 2025 and the pending challenge to it. It cannot be used to foist a refund obligation owed by Respondent No. 5 to Respondent Nos. 3 and 4 upon the Petitioner. Moreover, the party that received and kept Rs. 37 lakhs since 2015 is Respondent No. 5 itself. Having repeatedly undertaken before MahaRERA and before this Court to refund the amount, Respondent No. 5 cannot now argue that someone else should pay either the principal amount or the interest that has accrued because of its own defaults.

37. Ms. Jacob has submitted that the termination of the Development Agreement has not attained finality, since Respondent No. 5's challenge to the arbitral Award is pending before this Court. Our conclusion does not depend upon the correctness of the termination. As noted above, the Petitioner

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was appointed after this Court, by its orders dated 26th November 2020 and 11th December 2020, directed the Court Receiver to take possession of the property and hand it over to the Trust to appoint a new developer. Whatever be the outcome of the challenge to the arbitral Award, it will govern the *inter se* rights of the Trust and Respondent No. 5. Therefore, viewed from any angle, the pending arbitration proceedings does not make the Petitioner liable for the refund obligation of Respondent No. 5 towards Respondent Nos. 3 and 4.

38. In view of the above discussion, it is not necessary for us to deal with (i) Mr. Khandeparkar's contention that the Letter of Allotment for a flat on the 9th floor was invalid because the Commencement Certificate covered construction only up to the 8th floor; (ii) the Trust's contention that the Letter of Allotment, having been issued before the sanction of the Charity Commissioner under Section 36 of the Maharashtra Public Trusts Act, 1950, does not bind it; (iii) Ms. Jacob's contrary contention that the Section 36 sanction was a mere formality; or (iv) whether the Trust is a co-promoter *qua* the allottees of Respondent No. 5. These questions concern the

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rights of Respondent Nos. 3 and 4 against Respondent No. 5 and the Trust. The impugned order does not decide them against the Trust. Therefore, these questions are left open to be decided in an appropriate proceedings.

The Distraint order and the recovery warrant under Section 180 of the MLRC against the Petitioner's properties cannot be sustained.

39. Writ Petition No. 7618 of 2022 challenges the Distraint Orders dated 23rd March 2022 and 30th May 2022 passed under Section 180 of the MLRC, pursuant to which the Petitioner's bank accounts were attached and frozen. There is no doubt about the powers of the revenue authorities to recover an amount as arrears of land revenue, or to adopt measures under Section 180 of the MLRC. However, as has been held above, the impugned order foisting liability upon the Petitioner is held to be unsustainable. Therefore, the attachment and freezing orders cannot independently survive when the impugned order is set aside.

Conclusion:

40. For all the above reasons, the Writ Petitions are allowed and the following reliefs are granted:

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WP 894 of 2024

"**15.a**. That this Hon'ble Court be pleased to issue a writ of certiorari or any other appropriate writ, order or direction calling for the records pertaining to the Impugned Order dated 21st March 2022 passed by Respondent No. 2 and after perusing the legality, veracity and/or constitutionality of the same, this Hon'ble Court be pleased to quash and set aside the Impugned Order passed by Respondent No. 2;

15(a) (i) That this Hon'ble Court be pleased to issue set aside the order dated 26th November 2024 passed by the Hon'ble Adjudicating Officer in the execution proceedings."

WP 7618 of 2022

"**a.** That this Hon'ble Court be pleased to issue a writ of certiorari or any other appropriate writ, Order or direction calling for the records of pertaining to the Impugned Orders and after perusing the legality, veracity and/or constitutionality of the same. this Hon'ble Court be pleased to quash and set aside the Impugned Orders passed by the Respondent Nos. 2 and 3;

b. That this Hon'ble Court be pleased to direct Respondent No. 9 to remove attachment and other consequent actions of the Respondents Nos. 2 and 3 with respect to the Petitioner's Bank Account bearing no. 122100101069 and 122100101090."

41. It is clarified that the impugned order dated 21st March 2022 and the recovery warrants are quashed only in sofar as they seek recovery from the Petitioner. This judgment does not absolve Respondent No. 5 of its obligations under the undertakings to repay Respondent Nos. 3 and 4 recorded by MahaRERA and by this Court in the Anticipatory Bail Application and it is open for Respondent

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Nos. 3 and 4 to pursue their remedies against Respondent No. 5 (and/or the Trust, if maintainable), for recovery of all their dues, including interest, in accordance with law. All rights and contentions of Respondent Nos. 3, 4 and 5 are kept open in this regard.

42. Rule is made absolute in the above terms. In view of the disposal of the Writ Petitions, pending Interim Applications, if any, also stand disposed of.

(GAUTAM A. ANKHAD, J.) (SUMAN SHYAM, J.)

BHARAT DASHARATH PANDIT

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