

Sarnobat

MAHARASHTRA REAL ESTATE APPELLATE TRIBUNAL

APPEAL NO. 00060000000159(Execution proceeding)

Manoj Votavat. ... Appellant/s (Allottee)
Vs.
Sea Princess Realty & Ors. ... Respondents.

APPEAL NO. 00060000000160(Execution proceeding)

Bhupendra Vira. ... Appellant/s (Allottee)
Vs.
Sea Princess Realty & Ors. ... Respondents.

APPEAL NO. 00060000000161(Execution proceeding)

Sheela Vira. ... Appellant/s (Allottee)
Vs.
Sea Princess Realty & Ors. ... Respondents.

APPEAL NO. 00060000000162(Execution proceeding)

Nitin Shah. ... Appellant/s (Allottee)
Vs.
Sea Princess Realty & Ors. ... Respondents.

Advocate Mr.Mustafa Saifuddin for the Appellant/s(Allottees).

Advocate Mr.Nilesh Gala for the Respondent/s (Promoter).

CORAM : SUMANT M. KOLHE,(Member J.)

DATE : FEBRUARY 14, 2019.

**Execution Proceedings Under Section 40 r.w. Section 57 and
Section 64 of RERA Act, 2016.**

COMMON ORAL JUDGMENT :

1. All the above mentioned four proceedings though registered as "Appeals" are in fact "execution proceedings" filed by the Allottees against promoters under Section 40 r.w. Section 57

and Section 64 of RERA Act, 2016 for execution of orders of appellate Tribunal, Procedure of "ON-LINE" filing of the Proceedings in Appellate Tribunal provides "Title" of Appeal" to every proceedings at present. Since "nature" of reliefs sought in proceedings is important to decide the "Title" of proceedings, present proceedings though Titled as "Appeal" are in fact "Execution proceedings".

2. Appellants are Allottees and Respondents are promoters before original complaints are filed by Allottees against promoters before MahaRERA Authority. Common order passed by MahaRERA Authority in said complaints was challenged by Allottees and also by promoters, by preferring separate appeals before Appellate Tribunal. Appeals filed by Allottees were allowed and Appeals filed by Promoters were dismissed by Appellate Tribunal as per common order dt. 04.04.2018. Now, Allottees have prayed for execution of said common order in present proceedings. Execution is sought of common order and so, proceedings are decided by common judgment. The common order dt. 04.04.2018 passed by Appellate Tribunal of which execution is sought is as under:

ORDER

1. Appeal No. AT00600000000078,
AT00600000000086, AT00600000000087,
AT00600000000088, AT00600000000089,
AT00600000000090, AT00600000000091 of
Promoter dismissed. No costs.

2. Appeal No. AT006000000000154,

AT00600000000000157, AT00600000000000158 ,
AT00600000000000159, AT00600000000000160,
AT00600000000000161, AT00600000000000162
allowed. The Promoter M/s. Sea Princess Realty
shall pay interest @ 10% p.a. as directed from 1st
January, 2017 till actual handing over the individual
flat to each of the allottees duly complete in all
respect with amenities as illustrated in para 5 of the
Agreement.

3. The promoter shall pay Rs. 10,000/- as costs
each, in the appeals preferred by the allottees

4. The promoter shall constitute Housing
Society of different allottees within a period of 4
months from today.

5. The Secretary MahaRERA is requested to
independently initiate action under the provisions
of RERA against Mr. Manoj Dubal for issuing
factually incorrect Certificate dated 01.11.2017.

3. The above mentioned "common order" passed by the
Ld. Chairperson of the Tribunal arises out of "common order"
passed by Chairperson of MahaRERA on 16.01.2018 in the group
of complaints between the same parties. That order is as under :

ORDER :

8. In view of the above facts, the Respondents
are liable to pay interest at the rate of 10% for a
period of six months, to the Complainants, on the
total consideration amounts paid by the

Complainants to the Respondent prior to December, 2016 as per the provisions of Section 18 of the said Act.

9. Complainants are advised to take possession of the said apartments within 30 days from the date of this Order, since the Occupancy Certificate for the same has already been obtained by the Respondent While making payments of the balance amount to the Respondent at the time of taking possession the Complainants shall be entitled to adjust the amount as stipulated in para 8 above.

4. Now the Appellants have prayed for execution of order of this Tribunal dated 04.04.2018 which is passed by the Chairperson of this Tribunal. Execution of the said order is sought under Section 40 r.w. Section 57 and Section 64 of the RERA Act, 2016. Section 40 of the RERA Act 2016 reads as under :

Section 40 : Recovery of interest or penalty or compensation and enforcement of order etc.

(1) If a promoter or an allottee or a real estate agent, as the case may be, fails to pay any interest or penalty or compensation imposed on him, by the adjudicating officer or the Regulatory Authority or the Appellate Authority as the case may be, under this Act or the rules and regulations made thereunder, it shall be recoverable from such promoter or allottee or real

estate agent, in such manner as may be prescribed as an arrears of land revenue.

(2) If any adjudicating officer or the Regulatory Authority or the Appellate Tribunal, as the case may be, issues any order or directs any person to do any act, or refrain from doing any act, which it is empowered to do under this Act or the rules or regulations made thereunder, then in case of failure by any person to comply with such order or direction the same shall be enforced, in such manner as may be prescribed.

Section 57 reads as under :

Section 57 : Orders passed by Appellate Tribunal to be executable as a decree.

(1) Every order made by the Appellate Tribunal under this Act shall be executable by the Appellate Tribunal as a decree of civil court, and for this purpose, the Appellate Tribunal shall have all the powers of a civil court.

(2) Notwithstanding anything contained in sub-section (1), the Appellate Tribunal may transmit any order made by it to a civil court having local jurisdiction and such civil court shall execute the order as if it were a decree made by the Court.

Section 64 reads as under :

Section 64 : Penalty for failure to comply with orders of Appellate Tribunal by promoter

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(1) *If any promoter, who fails to comply with, or contravenes any of the orders, decisions or directions of the Appellate Tribunal, he shall be punishable with imprisonment for a term which may extend up to three years or with fine for every day during which such default continues, which may cumulatively extend up to ten per cent of the estimated cost of the real estate project, or with both.*

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5. Section 40 of RERA Act 2016 prescribes the manner of a recovery of the amount as per the order of MahaRERA or the Appellate Tribunal. As per this provision recovery of the amount can be made in such a manner as may be prescribed as an arrears of land revenue. Similarly, any direction or order to do any act or revert from doing any act passed by MahaRERA or Appellate Tribunal under this Act can be enforced in the manner prescribed under this Act. As per Section 57 of RERA Act, 2016, order passed by Appellate Tribunal is executable as a decree.

6. If promoter fails to comply the order of Appellate Tribunal then, punishment of imprisonment as well as fine for every day default is prescribed under Section 64 of RERA Act.

7. Appellants have sought the execution of order dated 04.04.2018 passed by this Appellate Tribunal. If we carefully read the said order, it is in respect of payment of interest on the part of the promoter to the Allottee for the period mentioned in the said order. It also consists of payment of costs by promoter to the Allottee. Moreover, promoter is also directed to constitute housing

Society of the different Allottees within a period of four months from the date of said order. Now let us turn to the prayers made by Appellants Allottees in the present execution proceedings:

Prayer clause 10(a) pertains to recovery of amount as arrears of land revenue.

Prayer clause 10(b) pertains to permitting the Appellants to take forcible possession of the flat duly completed with all amenities as per agreement for sale and also direction to the promoter to complete such formalities within 15 days.

Prayer clause 10(c) pertains to pass the order of punishment of imprisonment and fine against the promoter.

Prayer clause 10(d) pertains to direction to the promoter to make correction in respect of latest declaration made on Web page and to bring it in accordance with amenities mentioned in an agreement for sale.

8. Before considering the nature of common order of this Appellate Tribunal which is sought to be executed and the prayers which are made for execution of the said order as mentioned above, I would like to deal with objections raised by the promoter regarding maintainability of the execution proceedings and the grounds pleaded in the "Reply" for dismissal of the said execution proceedings.

9. Ld. Advocate for the promoter mainly argued that the original impugned order is passed by the Chairperson of the MahaRERA Authority. The original impugned order passed by Chairperson of MahaRERA Authority is without jurisdiction and

hence, it is nullity and it cannot be executed. He strongly submitted that this Appellate Tribunal can consider and determine the issue regarding nullity of order passed by Chairperson of MahaRERA Authority in the complaints of Allottees in respect of the present matters. He referred Section 18, Section 71 and Section 72 of RERA Act 2016 and argued that the original complaints ought to have been decided by adjudicating officer which is all together different forum than the forum of MahaRERA Authority including Chairperson and members of the Authority. He further argued that provisions of RERA Act 2016 cannot be made applicable retrospectively and the Allottees cannot claim the interest on the amount paid by them to the promoters on the ground of default in handing over the possession of the flats as per the dates mentioned in an agreements. He further submitted that promoter had offered the possession of the flats in September, 2018 but the Allottees had not accordingly taken the possession and hence, Allottees are not entitled to claim interest from September 2018 onwards. According to him promoters have already deposited 60% amount as per the order of Appellate Tribunal with MahaRERA and Allottees had withdrawn the said amount. He also argued that all the prayers made by the Allottees as revealed from present execution proceedings are not as per the order of Appellate Tribunal and Allottees have prayed for some reliefs which are not at all granted by Appellate Tribunal. On the other hand the Ld. Advocate for the Allottees argued that the order of the Appellate Tribunal is quite legal and correct. According to him promoter had challenged the said order in Second Appeal before the Hon'ble Bombay High Court. Second Appeal was dismissed and the order of the Appellate

Tribunal was confirmed. He further argued that promoters thereafter, preferred review Petition in respect of the order of Hon'ble Bombay High Court. But review Petition of the promoter was also dismissed. He argued that the grounds of objections raised by promoter are not sound enough to reject execution proceeding. He relied on ratio laid down in "Neelkamal Case" by Hon'ble Bombay High Court on 6th December, 2017 to substantiate his submissions.

10. In view of rival contentions of both the sides, the following points arise for my determination.

POINTS :

- 1) Whether Common order passed by Chairperson of MahaRERA Authority in complaints of Allottees is passed without jurisdiction and it is nullity ?
- 2) Whether provisions of RERA Act 2016 for recovery of interest for a period of delayed possession can be made applicable retrospectively from dates mentioned in agreement for sale ?
- 3) Whether Allottees failed to take possession of flats in September, 2018 and are not entitled for interest from September, 2018 onwards ?
- 4) Whether reliefs sought by Allottees in execution proceedings are beyond the scope of execution of order of RERA Appellate Tribunal?
- 5) To what reliefs, Allottees are entitled for execution ?
- 6) What Order ?

11. My findings on above points for reasons stated below are as under :

FINDINGS :

- 1) Negative.
- 2) Affirmative.
- 3) Negative.
- 4) Negative to extend of prayer clause (b),(c) and (d).
- 5) Partly affirmative to the extend of prayer clause (a).
- 6) As per final order.

REASONS:

POINT NO. 1 :

12. The Ld. Advocate for the promoter has raised objection about jurisdiction of Chairperson of MahaRERA Authority in passing the impugned order in the complaints of allottees. According to him Chairperson is not judicial officer and the complaints filed by the allottees ought to have been decided by adjudicating officer who is retired District Judge as per the provisions laid down under Section 31 and 71 of RERA Act, 2016. It cannot be ignored that the impugned orders passed by Chairperson of MahaRERA authority was further challenged in Appeal before MahaRERA Appellate Tribunal by promoters as well as Allottees. Admittedly, Appeals filed by promoters are dismissed whereas Appeals filed by Allottes were allowed. Being dis-satisfied with the decision of MahaRERA Appellate Tribunal, promoters

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preferred second Appeal before Hon'ble Bombay High Court. Second appeal was dismissed. Thereafter, promoter filed Review Petition before Hon'ble Bombay High Court. Review Petition was also dismissed. Copy of order of Hon'ble Bombay High Court dismissing the Review Petition clearly shows that issue about jurisdiction of Chairperson of MahaRERA Authority in deciding the original complainants was raised and argued. However, a Review Petition was dismissed after considering the above mentioned objection regarding jurisdiction also. The objection which is raised before Hon'ble Bombay High Court and already decided in Review Petition before Bombay High Court, now cannot be raised in execution proceedings before MahaRERA Tribunal.

LD Advocate for the promoter relied on **AIR 1965 Supreme Court 1325** and submitted that pure question of law not depending on facts can be allowed for the first time in ground of appeal for even as an additional ground at the later stage and it is the discretion of the Appellate Court. This principle is further laid down in **2015 AIR SCW 6504 Supreme Court**. So, pure question of law not dependent on determination of any question of fact can be raised for first time at the appellate or even the final stage, even though no reference to it had been made in the Courts below. He also argued that it is settled legal proposition that conferment of jurisdiction is a legislative function and it can neither be conferred with the consent of the parties nor by superior Court. If the Court passes order or decree having no jurisdiction over the matter, it would amount to nullity. On this backdrop of settled position of law let us refer some relevant provisions of RERA Act 2016.

13. It is pertinent to note that after considering Section 12, 14, 18 and 19 of RERA Act, 2016 read together with Section 31 and Section 71 as well as Section 72 of RERA Act 2016 it is revealed that the adjudicating officer who is retired District Judge is entrusted with the jurisdiction to decide the point of dispute of compensation between promoter and allottee under the provisions of RERA Act 2016. So besides the determination of compensation, MahaRERA authority including Chairperson and Members are having jurisdiction over all other types of disputes between promoter and allottee as per the provisions of RERA Act, 2016. In original complaints Allottees have made following prayers.

1) As per Section 18(1), payment of interest by the promoters to the allottee at the rate of 18 percent per annum (as per clause 35 on page 30 of the Agreement for sale and as per the principle of parity).

2) Compensation of Rs.5,00,000/- (Rupees Five Lakhs only) as per Section 18(3) of RERA Act for violation of Section 11(4)(a) for breach of his obligation to give possession of the flat on or before the date promised by him as per the agreement for sale and unlawful loss suffered by the allottee.

3) Order for speedy completion of the project and to deliver the possession quickly along with amenities as per agreement.

4) Order for costs.

5) Any suitable order to meet the ends of justice.

So prayer (2) is for compensation of Rs.5,00,000/- as per Section 18(3) for violation of Section 11(4)(a) for breach of obligation to give

possession of flat as per promised date in agreement. However, main relief claimed is as per prayer (1) for interest on every month default for giving possession and as per prayer (3) for speedy completion of project and early possession. If we perused common order passed by Chairperson MahaRERA on 16.01.2018 is only in respect of interest amount as per Section 18(1) and for taking possession of flat. In entire common order dt. 16.01.2018 there is no whisper or remote reference on the point of determination of compensation as per prayer (3) of Complaints and as per Section 18(3) of RERA Act, 2016.

14. The Ld. Chairperson of MahaRERA Authority did not touch to the said point as the point of compensation was to be decided by adjudicating officer only. So the impugned order passed by Ld. Chairperson of MahaRERA Authority is not in respect of determination of compensation as contemplated under Section 12,14,18 and 19 r/w Section 71 and 72 of MahaRERA Act, 2016. So it is very difficult to accept the submission made on behalf of promoter that the Ld. Chairperson of MahaRERA Authority passed the impugned order in the complaints of allottees without jurisdiction and the impugned orders are nullity. So I answer point No.1 in negative.

POINT NO. 2 :

15. The Ld. Advocate for the Respondent raised objection about retrospective applicability of the provisions of RERA Act, 2016. According to him provisions of RERA Act 2016 were made applicable with effect from 01.05.2017. He further argued that the provisions of RERA Act, 2016 cannot be made applicable to

agreements between promoters and allottees which took place prior to 01.05.2017. According to him recovery of interest for period of delayed possession as per the date mentioned in an agreement for sale cannot be made on the basis of Section 18 of RERA Act, 2016 as it will amount to application of the said Act retrospectively. Their Lordships of Hon'ble Bombay High Court have already considered the issue regarding retrospective applicability of RERA Act, 2016 in Para 119 of their order passed on 06.12.2017. It is specifically laid down by their Lordships that contractual obligations entered between parties are not required to be re-written after coming into force of RERA Act, 2016. Moreover, their Lordships have clearly laid down the difference between "retrospective" applicability of any act and the concept of "retroactive". I would like to refer para No. 121 and 122 of the order of Hon'ble Bombay High Court dated 06.12.2017.

121. *The thrust of the argument of the learned counsel for the petitioners was that provisions of Sections 3(L), 6, B, 18 are retrospective /retroactive in its application. In the case of State Bank,s Staff Union vs. Union of India and ors.6 the Apex Court observed in paras 20 and 21 as under:*

20. *Judicial Dictionary (13th Edn.) K.J. Aiyar, Bumerworrrh. p. 857, states that the word "retrospective" when used with reference to an enactment may mean (i) affecting an existing contract; or (ii) reopening up of past, closed and completed transaction; or (iii) affecting accrued rights and remedies; or (iv) affecting procedure. Words and Phrases, Permanent Edn., Vol.37-A, pp.224-25, defines a "retrospective or retroactive law" as one which takes away or impairs vested or accrued rights acquired under existing laws. A retroactive law takes away or impairs vested rights acquired under existing laws, or creates a new obligation, imposes a new duty,*

or attaches a new disability, in respect to transaction or considerations already past.

21. In *Advanced Law Lexicon* by P. Ramanath Aiyar (3rd Edition, 2005) the expressions "retroactive" and "retrospective" have been defined as follows at page 4L24 Vol.4:

"Retroactive- Acting backward; affecting what is past. (Of a statute, ruling, etc.) extending in scope or effect to matters that have occurred in the past. - Also termed retrospective. (Blacks Law Dictionary 7th Edn. 1999)

WS
'Retroactivity' is a term often used by lawyers but rarely defined. On analysis it soon becomes apparent, moreover, that it is used to cover at least two distinct concepts. The first, which may be called 'true retroactivity', consists in the application of a new rule of law to an act or transaction which was completed before the rule was promulgated. The second concept, which will be referred to as 'quasi-retroactivity', occurs when a new rule of law is applied to an act or transaction in the process of completion.....The foundation of these concepts is the distinction between completed and pending transactions...." (T.C. Hartley, *The Foundations of European Community Law* 12e (1e81).

'Retrospective- Looking back; contemplating what is past.

Having operation from a past time.

'Retrospective' is somewhat ambiguous and that good deal of confusion has been caused by the fact that it is used in more senses than one. In general however the Courts regard as retrospective any statute which operates on cases or facts coming into existence before its commencement in the sense that it affects even if for the future only the character or consequences of transactions previously entered into or of other past conduct. Thus, a statute is not retrospective merely because it affects existing rights; nor is it retrospective

merely because a part of the requisite for its action is drawn from a time and antecedents to its passing. (Vol.44 Halsbury's Laws of England, Fourth Edition, Page 1 of 10 page 570 para 921)."

122. We have already discussed that above stated provisions of the RERA are not retrospective in nature. They may to some extent be having a retroactive or quasi retroactive effect but then on that ground the validity of the provisions of RERA cannot be challenged. The Parliament is competent enough to legislate law having retrospective or retroactive effect. A law can be even framed to affect subsisting/existing contractual rights between the parties in the larger public interest. We do not have any doubt in our mind that the RERA has been framed in the larger public interest after a thorough study and discussion made at the highest level by the standing Committee and Select Committee, which submitted its detailed reports. As regards Article 19(1)(g) it is settled principles that the right conferred by sub-clause (g) of Article 19 is expressed in general language and if there had been no qualifying provisions like clause (6) the right so conferred would have an absolute one.

16. In view of above observations of their Lordships of Hon'ble Bombay High Court it is evident that provisions of RERA Act 2016 can be made applicable retrospectively from the date mentioned in an agreement for sale for recovery of interest for period of delayed possession from the promoter. So I answer issue No. 2 in the affirmative.

POINT NO. 3 :

17. It is also argued by Ld. Advocate for the Respondent that possession of the flats was offered in the month of September, 2018 to the Allottees but, they did not take the possession and so they are not entitled for interest from September, 2018 onwards. It cannot be ignored that the promoters have made out a case that

they received occupancy certificate in respect of this project. In fact the Ld. Chairperson of MahaRERA Authority has also made reference regarding issuance of occupancy certificate in respect of this project in the impugned order passed in the complaints. However, this Appellate Tribunal while considering the Appeals filed by both the sides against impugned order of Ld. Chairperson of MahaRERA Authority has observed that the said occupation certificate was issued on the basis of incorrect certificate issued by Architect of promoter issued incorrect certificate on 01.11.2017 that building is complete. This Tribunal has requested the Secretary of MahaRERA to independently initiate action under the provisions of RERA Act against Mr. Manoj Dubal for issuing factual incorrect certificate dated 01.11.2017. So, genuineness of the alleged occupation certificate was not accepted by this Appellate Tribunal as it was issued on the basis of incorrect certificate of Architect Mr. Manoj Dubal regarding completion of project. Now the promoters are asking the Allottees to take the possession of the flats on the basis of alleged occupancy certificate of which genuineness is doubtful. Allottees were not expected to accept possession of the flats as offered by promoters in the month of September, 2018 on the basis of doubtful occupancy certificate. Offer of promoter for taking possession of flats cannot be said to be bonafide. Thus, it cannot be said that Allottees have failed to take possession of the flats in September, 2018. In such circumstances, the case made out by promoters that Allottees are not entitled for interest from September, 2018 onwards is not acceptable. So I answer point No.3 in negative.

POINT NO.4 :

18. If we compare the order dated 04.04.2018 passed by this Appellate Tribunal in the Appeals filed by both the sides, with the prayer clause 10(a) . 10(b), 10(c) and 10(d) of this execution proceeding, it is revealed that the prayer clause 10(b) pertaining to take forcible possession of the flat duly completed with all amenities as per an agreement for sale by Allottee and direction to the promoter to complete such formalities within 15 days is beyond the scope of order dated 04.04.2018 passed by this Appellate Tribunal. Similarly, prayer clause 10(c) pertains to passing the order of punishment of imprisonment and fine against the promoter as per Section 64 of RERA Act 2016. If any promoter, who fails to comply with, or contravenes any of the orders, decisions or directions of the Appellate Tribunal, he shall be punishable with imprisonment for a term which may extend up to three years or with fine for every day during which such default continues, which may cumulatively extend up to ten per cent of the estimated cost of the real estate project, or with both.

19. "Punishment" is contemplated under Section 64 of RERA Act 2016. For passing the order of punishment as per Section 64 it is necessary to prosecute the promoter with independent criminal proceedings like complaint which is to be filed in the Court of Judicial Magistrate First Class or in the Court of Metropolitan Magistrate as provided under Section 80 of RERA Act, 2016 Section 80 of RERA Act, 2016 reads as under :

Section 80 : Cognizance of offences

(1) No court shall take cognizance of any offence punishable under this Act or the rules or regulations

made thereunder save on a complaint in writing made by the Authority or by any officer of the authority duly authorized by it for this purpose.

(2) No court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under this Act.

20. MahaRERA Authority is having jurisdiction to initiate such criminal action against the promoter by authorizing its officer for that purpose. Thus, unless the criminal proceeding is separately and independently initiated in the Court of judicial Magistrate First Class or in Metropolitan Magistrate Court, as per the directions of MahaRERA Authority as contemplated under Section of RERA Act 2016, the prayer of allottee for passing order of imprisonment or fine as per Section 64 of RERA Act 2016 in this execution proceedings cannot be granted. Similarly Allottees have prayed for giving direction to the promoter to make necessary change in declaration on Web-page regarding amenities of the project. This prayer is out of scope of order dt. 04.04.2018 of this appellate Tribunal which is sought to be executed by Allottee. So I answer point No.4 in the negative in respect of prayer clause 10(b), prayer clause 10(c) and prayer clause 10(d) in this execution proceedings.

POINT NO. 5 :

21. As per Section 57(2) of RERA Act, notwithstanding anything contained in sub-Section (1), appellate Tribunal may transmit any order made by it to a Civil Court having local jurisdiction and such Civil Court shall execute the order as if it were a decree made by the Court. RERA Act 2016 is social and beneficial legislation.

Speedy mechanism such as authority and Tribunal for redressal of grievances are separately provided under RERA Act 2016. Authority and Tribunal expected to decide dispute in timebound period as per provisions of RERA Act. Aggrieved person gets satisfaction and object of an enactment is achieved only if aggrieved person gets fruits of order or decree within reasonable time. Justice must be seen to be done. So, unless order or decree is implemented in reasonable time, object of RERA Act will not be completely achieved. So Section 57 is main provision made under RERA Act 2016 for treating order as decree of Civil Court and giving powers of Civil Courts to execute such order even by Authority or Appellate Tribunal. In Civil Courts, special team of Bailiffs is provided amongst the staff for exclusively helping Civil Courts in execution of orders and decrees by discharging the duty of serving summons, notice, distress warrant, arrest warrant etc. on the parties. So, in order to expediate the necessary formalities for execution of orders under RERA Act 2016, Appellate Tribunal is empowered to transmit the order or decree to the Civil Court having jurisdiction over the subject matter as per Section 57(2) of RERA Act 2016. As per Rule 4 of Maharashtra Real Estate (Regulation & Development) (Registration of Real Estate Project, Registration of Real Estate Agents, Rates of Interests and Disclosures on Websites) Rules 2017, Common order dt. 04.04.2018 of Appellate Tribunal can be executed by sending copy of such order to Principal Civil Court to execute such order either within the local limits of whose jurisdiction the project is located or within the local limits of whose jurisdiction the person against whom order is issued resides or carries on business or personally works for gain. So for carrying

out execution of order of Appellate Tribunal passed on 04.04.2018, I think it just and proper to transmit the order to Civil Court having jurisdiction as per Section 57(2) of RERA Act, 2016. Subject matter of all Execution Proceedings are flats of four allottees Wing 'C' of "Gundecha Trillum" off Western Express Highway, Magathane, Borivali (East), Mumbai 400 101.

In the result I pass the following order.

ORDER

1) All the four Appeals (Execution Proceedings) are partly allowed as under :-

- i) Order dated 04.04.2018 passed by MahaRERA Appellate Tribunal is transmitted to the Principal Judge of City Civil & Sessions Court with a request to transfer the said order to the Civil Court having local jurisdiction over the Revenue Village Magathane, Borivali (East) Mumbai 400 101 for execution to the extent of recovery of amount of interest and costs as the subject matter of four flats is situated in the project namely, "Gundecha Trillum", Off Western Express Highway, Magathane, Borivali(East), Mumbai-400 101, 400 101.
- ii) Allottees are directed to submit certified copy of order dated 04.04.2018 passed by MahaRERA Appellate Tribunal and the certificate regarding the total amount due from the promoters till today in each matter.

- iii) Registrar of Maharashtra Real Estate Appellate Tribunal to complete the necessary formalities of transmitting the order along with above mentioned documents including certificate of the Court regarding non-execution of the said order by this Appellate Tribunal.
- iv) Promoter shall pay Rs.2,000/- towards costs of each execution proceedings to the Allottee and bear his own costs.
- v) Order is transmitted for execution as per Section 57 sub-section 2 of Real Estate (Regulation and Development) Act 2016 and Rule 4 of Maharashtra Real Estate (Regulation and Development) Recovery of Interest, Penalty, Compensation, Fine payable, Forms of complaints and Appeal, Etc.) Rules, 2017.
- vi) Original order is kept in Appeal No. 00060000000159(Execution proceeding) and copy is kept in other three appeals (Execution Proceeding).

WSS

W Kolhe 14-02-19,
[SUMANT M. KOLHE,]
JUDICIAL MEMBER,
Maharashtra Real Estate
Appellate Tribunal,(MahaRERA)
Mumbai.

