

**BEFORE THE MAHARASHTRA REAL ESTATE
APPELLATE TRIBUNAL, MUMBAI**

**Misc. Application No. 314/2020 (Exemp)
In
Appeal No. AT006000000010492**

ALONGWITH

**Misc. Application No. 315/2020 (Exemp)
In
Appeal No. AT006000000010493**

ALONGWITH

**Misc. Application No. 316/2020 (Exemp)
In
Appeal No. AT006000000010494**

ALONGWITH

**Misc. Application No. 317/2020 (Exemp)
In
Appeal No. AT006000000010495**

Avaresekar Realty Pvt. Ltd.

... Appellants

Versus

L & T Financial Consultants Ltd.

... Respondents

*Adv. Vijay Purohit a/w Adv. Nikita Bangera i/b P & A Law Offices
for Appellants.*

*Adv. Dakshesh Vyas a/w Ms. Nirali Shah i/b Dua Associates AOR
Mumbai for Respondents.*

CORAM : SUMANT KOLHE, MEMBER (J)

S. S. SANDHU, MEMBER (A)

DATE : 2nd SEPTEMBER, 2020

COMMON ORAL ORDER

[PER SUMANT KOLHE, MEMBER (J)]

Common order dated 22.05.2018 passed by Adjudicating Officer MahaRERA, Mumbai in four complaints, whereby the Promoters are directed to pay in each complaint Rs. 5,28,00,000/- along with interest at the rate of 10.05% per annum from the date of filing of the complaint till actual realization is challenged in the four appeals.

2. Appellants are Promoters. Respondents are Allottees. We will refer the parties as Promoters and Allottees. Promoters have preferred four appeals by challenging the common order of refund along with interest.

3. As per Section 43 (5) of RERA Act, Appeal filed by the Promoter shall not be entertained without Promoter first having deposited the amount as per the order of the Tribunal in view of Proviso of Section 43 (5) of the RERA Act.

4. Section 43 (5) of RERA Act 2016 reads as under:

"43 (5) any person aggrieved by any direction or decision or order made by the Authority or by an Adjudicating Officer under this Act may prefer an appeal before the Appellate Tribunal having jurisdiction over the matter;

Provided that where a Promoter files an appeal with the Appellate Tribunal, it shall not be entertained without the Promoter first having deposited with the Appellate Tribunal at least 30% of the penalty or such higher percentage as may be determined by the Appellate Tribunal, or the total amount to be paid to the Allottee including interest and compensation imposed on him, if any, or with both, as the case may be before the said appeal is heard."

5. Promoters have made an application for exemption of compliance of Proviso of Section 43 (5) of RERA, Act in each appeal. Appellants have contended that Proviso of Section 43(5) of RERA, is discretionary in nature and not mandatory and Appellate Tribunal is vested with power to waive the said condition and exempt the Promoter from compliance of the same. Appellants have cited some case law. According to the Promoters, right of appeal cannot be deprived merely on the pretext of non-depositing of the amount. It is also contended that grave and undue hardship will be caused to the Appellants, if they are directed to comply the proviso of Section 43 (5) of RERA.

6. Heard learned Counsel for the Promoters. Perused the impugned order which is challenged. Read the case law referred by the Promoters. Heard learned Counsel for the Allottees.