

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

**Misc. Application No. 2/2020
In
Appeal No. AT005000000021283**

M/s Mahanagar Reality & Ors. ... Applicants

Versus

Ajit Jain & Anr. ... Non-applicants

AND

**Misc. Application No. 3/2020
In
Appeal No. AT005000000021282**

M/s Mahanagar Reality & Ors. ... Applicants

Versus

Vidyut Jain & Anr. ... Non-applicants

AND

**Misc. Application No. 4/2020
In
Appeal No. AT005000000021284**

M/s Mahanagar Reality & Ors. ... Applicants

Versus

Mitesh Jain & Anr. ... Non-applicants

AND

Misc. Application No. 5/2020
In
Appeal No. AT00500000021285

M/s Mahanagar Reality & Ors. ... Applicants

Versus

Rikhavdas Shah & Anr. ... Non-applicants

Mr. Rahul Gandhi Advocate for Applicants.

Mr. Nilesh Borate, Advocate for Non-applicants, Mr. Kartikeya Bahadur Advocate for Non-applicants in M.A. No. 4/20 in Appeal No. AT00500000021284.

CORAM : SUMANT KOLHE, MEMBER (J)
S. S. SANDHU, MEMBER (A)

DATE : 2nd NOVEMBER, 2020

COMMON ORDER

[PER: SUMANT KOLHE, MEMBER (J)]

Applicants are Promoters. Non-applicants are Allottees.

2. In the Appeals preferred by the Promoters, applications have been filed for waiver of pre-deposit mandated as per proviso of Section 43(5) of Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as RERA).

3. Applications for waiver of pre-deposit are similar

and identical. Promoters are same though Allottees are different. Project is same. Common arguments of both sides are heard. So, we decide all Misc. Applications by this common order.

4. Heard the Learned Counsel for the Promoters. He strongly argued that impugned order is a nullity and non-est in law as it is passed by Adjudicating Officer lacking subject matter jurisdiction to determine validity of termination of agreement for sale. According to him, mandate of compliance of pre-deposit as contemplated under Section 43(5) of RERA is not binding on the Promoters since impugned order challenged in the Appeal is nullity. He relied on some case law to which I will refer in due course.

W/S

5. Learned Counsel for Allottees argued that Promoters never raised challenge regarding jurisdiction of Adjudicating Officer at any time before MahaRERA. According to him, Promoters may challenge impugned order by initiating action under Writ jurisdiction. He further argued that the case law referred by the Promoters are not applicable to this matter.

6. Perused the impugned order and Proviso of Section 43(5) of RERA.

7. Following points arise for my determination:

POINTS

- i) Whether the Promoters are entitled for exemption to make compliance of Proviso of Section 43 sub-Section 5 of RERA?
- ii) What order?

8. My findings of the above points are as under:

FINDINGS

- i) Negative
- ii) As per final order

REASONS

9. Proviso of Section 43(5) of RERA is as under.

"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 Promoters files an Appeal with the Appellate Tribunal, it shall not be entertained, without the Promoters first having deposited with the Appellate Tribunal at least thirty per cent 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