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IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Reserved on: 02.12.2021 & 07.12.2021
Pronounced on: 13. 01.2022

1. **CWP Nos. 6688, 13639, 13831, 13839, 13841, 13844, 13846, 13848, 13850, 13851, 13854, 13856, 13862, 13865, 13869, 13875, 13878, 13883, 13887, 13889, 14445, 14448, 14449, 14452, 14453, 14455, 14456, 14459, 18011, 18012, 18014, 18016, 18019, 18022, 18025, 18028, 18032, 18033, 18111, 18115, 18120,18123, 18130, 18135, 18141, 18144, 18151, 18157, 18159, 18162, 18164, 18165, 18175, 18181 of 2021.**

RAMPRASTHA PROMOTERS AND DEVELOPERS PVT. LTD.

....Petitioner(s)

Versus

UNION OF INDIA AND ORS

...Respondents

2. **CWP Nos.5776, 5780, 14466, 14470, 14477, 14480, 14485, 14844, 14851, 14901, 14903 of 2021.**

ATHENA INFRASTRUCTURE LIMITED

....Petitioner(s)

Versus

STATE OF HARYANA AND OTHERS

...Respondents

3. **CWP Nos.4273 and 4278 of 2021.**

SELENE CONSTRUCTIONS LIMITED

....Petitioner(s)

Versus

STATE OF HARYANA AND OTHERS

...Respondents

4. **CWP Nos.15381, 16393, 19054, 19056, 17136, 17196 of 2021.**

M/S VIPUL LIMITED

....Petitioner(s)

Versus

UNION OF INDIA AND OTHERS

...Respondents

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5. CWP Nos.2425, 2426, 2427, 2428, 2429, 2430, 2431, 2647 and 2648 of 2021.

SS GROUP PRIVATE LIMITED

....Petitioner(s)

Versus

UNION OF INDIA AND OTHERS

...Respondents

6. CWP Nos.21908, 21909, 21910, 21919, 21966, 22001 and of 2020.

M/S ASSOTECH MOONSHINE

....Petitioner(s)

Versus

UNION OF INDIA AND OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA
HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

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Present : Mr. Arun Walia, Sr. Advocate with
Mr. Marinal Sharma, Advocate,
Mr. Ashish Chopra, Sr. Advocate with
Ms. Swati Dayalan and Ms. Nitika Sharma, Advocates,
Mr. Mukul Agarwal, Advocate,
Mr. Ajiteshwar Singh, Advocate
Mr. Vineet Sehgal, Advocate,
Mr. Sachin Mittal and Mr. Akshat Mittal, Advocates,
for the petitioners in their respective cases.

Mr. Satya Pal Jain, Additional Solicitor General of India with
Mr. Sobit Phutela, Advocate and
Ms. Tanvi Jain, Advocate for Union of India.

Mr.Ankur Mittal, Additional AG Haryana with
Mr. Saurabh Mago, Assistant AG Haryana.

Mr. Ankur Mittal, Advocate with
Ms. Kushaldeep K. Manchanda,
Mr. Shivam Garg, Advocate and
Ms. Varsha Sharma, Advocate for respondent-RERA.

Mr. Sandeep Singh, Advocate,
Mr. Neeraj Sheoran, Advocate,
Mr. Himanshu Jain, Mr. Abhay Jain and Mr. Rishab Jain, Advocates,
Mr. Anurag Jain and Ms. Preeti Taneja, Advocates,
Mr. Narender Kumar Sharma and Ms. Suman Sharma, Advocates,
Mr. Tanuj Aggarwal and Mr. Sunil Kumar Dhanda, Advocate,
Mr. Govind Rishi and Mr. Saurabh Gulia, Advocates,
Mr. Sanjeev Gupta, Advocate,
Mr. Manish Shukla, Mr.Nilotpal Shyam and Ms. Shivali, Advocates,
for private respondents.

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VINOD S. BHARDWAJ. J.

The two questions that arise for consideration in the present batch of petitions relates to the jurisdiction of Authority to direct refund of the amount with/without of interest and the power of High Court under Article 226 of the Constitution of India to relax the condition of pre-deposit under Section 43(5) of RERA Act, 2016.

2) By this common order, we intend to dispose of a batch of writ petitions involving common questions of law. To demonstrate the similarity of issues, reference to the prayers from lead case of each batch have been extracted. The said writ petitions have been filed by respective Companies against the orders passed by the Haryana Real Estate Regulatory Authority. Learned counsel appearing on behalf of the respective developers have submitted that the averments contained in the various writ petitions filed on behalf of the respective developers are identical to their lead cases and stands corroborated by learned counsel appearing for respondent-HSIIDC. The counsel appearing for the petitioners in all the matters also submitted that they have not raised any challenge to the vires of statutory provision under Section 43(5) of the Real Estate (Regulatory and Development) Act 2016 (hereinafter referred to as 'the Act of 2016') and instead seek to invoke the indulgence of the Writ Court since the condition of pre-deposit is onerous. The extra ordinary jurisdiction is being invoked to obviate the hardship faced by the petitioners.

FACTS

1st Batch (Ramprastha Promoters and Developers Pvt. Ltd.)

3) Reference to the facts of the case is made from ***CWP No.6688 of 2021***.

The petitioner herein has made the following prayers:-

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'a) issue a writ in the nature of MANDAMUS directing the Real Estate Regulatory Authority to not proceed with Execution Proceedings dated 01.12.2020 (Annexure P-9) as the same are being carried out in respect of an order dated 20.02.2020 (Annexure P-6), which itself had been passed illegally and without jurisdiction, more particularly in view of the orders dated 05.11.2020 (Annexure P-15) passed by the Hon'ble Supreme Court.

b) Issue a writ in the nature of MANDAMUS directing the Ld. Haryana Real Estate Appellate Tribunal, respondent No.3, to entertain the Appeal of the petitioner against order dated 20.02.2020 (Annexure P-6) passed by respondent No.4, without requiring the petitioner to first deposit with the Appellate Tribunal the amount to be paid to the Allottee, as per the aforementioned order of the Real Estate Regulatory Authority, Respondent No.4, thereby waiving the condition of pre-deposit as mandated by Section 43(5) of the Real Estate (Regulation and Development) Act 2016;

c) issue a writ in the nature of CERTIORARI, seeking quashing of order dated 20.02.2020 (Annexure P-6) passed by Real Estate Regulatory Authority, Respondent No.4, in Complaint No.2785; titled as "Geeta versus Ramprastha Developers and Promoter Pvt. Ltd., the same besides being, inter alia, illegal and arbitrary, is also without jurisdiction inasmuch as respondent No.4 has misdirected itself in entertaining and deciding the Complaint filed on behalf of Respondent Nos.5, especially when the same had been filed in such form/manner and/or seeking such relief, which as per the scheme of Real Estate (Regulation and Development) Act, 2016 could only be said to be maintainable before the Adjudicating Officer and not before the Real Estate Regulatory Authority;

d) issue a writ in the nature of CERTIORARI, seeking quashing of order dated 09.02.2021 (Annexure P-12) passed by the Ld. Execution Court;'

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3.1) That the petitioner-Company had allotted apartment/flatNo.903, 9th Floor, Tower-B in a Group Housing Project namely 'Rise' situated in Sector-37, District Gurugram having a super area of approximately 1765 sq. ft. in favour of respondent No.5. The flat buyer agreement was executed on 31.12.2012 whereby the sale price of the flat was agreed to be Rs. 82,42,680/-. The petitioner-developer had proposed to hand-over possession of the flat along with grace period of 120 days by or before 31.01.2016. The payment plan was constructed linked and that as against the sale consideration of Rs. 82,42,680/-, the allottee had deposited an amount of Rs. 67,48,977/-. In the event, developer would not be in a position to hand-over the possession to the allottee, compensation for delay @ Rs.5/- per sq. ft. per month of the super area till the handing over of the possession was to be made and that the allottee could not press any other claim from the developer. It is submitted that the allottee committed a default in the payments to be made and filed a complaint before the Real Estate Regulatory Authority in the year 2019. The Authority, without notice in the default on the part of the allottee has decided the complaint in favour of the allottee and against the petitioner.

2nd Batch (Athena Infrastructure Ltd & Selene Constructions Ltd).

4) The instant batch of petitions was filed on behalf of Athena Infrastructure Limited and Selene Constructions Limited on common grounds and identical issues in laws. Reference to the facts of the case is made from ***CWP-5776 of 2021*** since facts in both the set of petitions are stated to be identical.

4.1) Learned counsel appearing for the petitioners has drawn attention to the prayers made in the writ petition and the same are extracted as under:-

> *'i. Issue a writ, order or direction, in the nature of CERTIORARI, quashing the order dated December 19, 2019, as uploaded on January 17, 2020, Annexure P/8, passed by*

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Real Estate Regulatory Authority, respondent No.3, in complaint case No.4477 of 2019 titled as Vikrant Goyal Vs. Athena Infrastructure Ltd., being inter alia illegal, arbitrary, without jurisdiction inasmuch as Respondent No.3 has misdirected itself in entertaining and deciding the complaint filed on behalf of Respondent No.4 especially when it has been filed in such form/manner and sought such relief(s), which as per the scheme of the Real Estate (Regulation and Development) Act, 2016 could only be said to be maintainable before the Adjudicating Officer and not before respondent No.3 and further, Respondent No.3 has misdirected itself in acting as if it were a court of equity, directing the Petitioner to refund the amount paid by Respondent No.4, even though admittedly, the possession of the subject property stood offered to Respondent No.4, almost 11 months prior to the issuance of the impugned order;

ii. Issue a writ order or direction, in the nature of MANDAMUS directing Respondent No.2 to entertain the Petitioner's appeal, without requiring the petitioner to first deposit with the Appellate Tribunal the amount erroneously held to be due and payable to Respondent Nos.4 & 5, as stated condition under Section 43(5) of the 2016 Act is not only onerous and would ultimately harm/jeopardise the completion of the project, but also, in the facts and circumstances of the present case, there arises no occasion to pre-deposit the amount as the impugned order, apart from being wholly without jurisdiction, is also non-speaking and cryptic and as such, is liable to be set aisde.'

4.2.) The petitioner having been granted license to develop a Group Housing Colony, entered into a flat buyer agreement dated 10.10.2012 for area measuring 3400 sq. ft. and Unit No. C-033, 3rd Floor, Tower-C was allotted to the buyer for a total sale consideration of Rs. 1,82,25,000/- . The amount deposited by the buyer under the construction linked payment plan was Rs. 1,81,02.392/-

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against the sale consideration. The due date for delivery of possession including grace period of 6 months was 10.04.2016. The construction of the project could not be carried out on account of various orders passed by the NGT pertaining to construction works within the NCR. In the event of delay in handling over possession within the stipulated period, compensation @ Rs.5 per sq. ft. for the super area allotted was to given by the developer. A claim was made that the entire period during which a prohibition on construction activities was ordered, the same should be excluded from computing the period within which possession had to be offered to the allottee. The complaint in question was instituted in the year 2019 by the allottee and has been allowed without considering the contractual arrangement within the parties.

3rd Batch (M/s Vipul Limited)

5) Reference to the facts of the case is made from ***CWP-15381 of 2021.***

5.1) In this batch of petitions the following prayers have been made on behalf of the petitioner:-

> *'a) issue a writ in the nature of CERTIORARI, seeking quashing of order dated 13.02.2020 (Annexure P-5) passed by the Real Estate Regulatory Authority, Respondent No.4, in Complaint No.5481/2019; titled as 'Pankaj Gandhi & Anr. Versus M/s Vipul Ltd.' and order dated 02.07.2021 (Annexure P-7) passed in Execution Petition No.4299 of 2020 titled as 'Pankaj Gandhi & Another versus M/s Vipul Limited', whereby the respondent No.4 have wrong issued direction for attachment of the Bank Account maintained by the petitioner, the above said orders being, inter alia, illegal and arbitrary, is also without jurisdiction inasmuch as Respondent No.4 has misdirected itself in entertaining and deciding the Complaint filed on behalf of Respondent Nos.5 and 6, especially when the same had been filed in such form/manner and/or seeking such relief, which as per the scheme of Real Estate (Regulation and*

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Development) Act, 2016, could only be said to be maintainable before the Adjudicating Officer and not before the Real Estate Regulatory Authority;

b) issue a writ in the nature of MANDAMUS directing the Ld. Haryana Real Estate Appellate Tribunal, Respondent No.3 to entertain the Appeal of the Petitioner against order dated 13.02.2020, Annexure P-5 passed by Respondent No.4, without requiring the Petitioner to first deposit with the Appellate Tribunal the amount to be paid to the Allottees, as per the aforementioned order of the Real Estate Regulatory Authority, Respondent No.4, thereby waiving the condition of pre-deposit as mandated by Section 43(5) of the Real Estate (Regulation and Development) Act 2016;

c) issue a writ in the nature of MANDAMUS directing the Real Estate Regulatory Authority to not proceed with Execution proceedings as the same are being carried out without jurisdiction and that too in respect of an order dated 13.02.2020 (Annexure P-5), which itself had been passed illegally and without jurisdiction and also stay the operation of the impugned order dated 02.07.2021 (Annexure P-7) passed by Respondent No.4, whereby directions with regard to warrant of attachment of Bank Account of the petitioner has been wrongly issued.'

5.2) That the petitioner pleaded that the allottees/private respondents had been allotted unit No. 503, 5th Floor, Tower-2 in the Group Housing Project developed under the name of 'Lavanya Apartments' in Sector 81, Gurugram for an area measuring 1708 sq. ft. The flat buyer agreement was executed on 10.07.2012 and the total sale consideration was Rs.96,05,035.20/-. The possession of property along with the grace period was to be handed over on or before till 10.10.2015. It is also submitted that the allottee had paid only a sum of Rs. 88,56,942/- against the sale consideration and was thus in default in making payment at the time when complaint was filed before the authority. It has also

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been stated that the agreement contemplated compensation @ 5% per sq. ft. per month for the super area till the handing over of possession after the due date for delivery of possession. The order of the authority was challenged on various grounds including disregard to the terms and conditions of the flat buyer agreement.

4th Batch (S.S. Group Private Limited)

6) Reference to the facts of the case is made from ***CWP-2425 of 2021.***

6.1) In the said batch of petitions, reference has been made to the prayer made in the petition and the same is extracted as under:-

> *'a) issue a writ in the nature of CERTIORARI, seeking quashing of order dated August 21, 2019, Annexure P/10, passed by Real Estate Regulatory Authority, Respondent No.4, in complaint No.61 of 2019; Shyam Bihari Bansal and Another versus SS Group Private Limited, the same besides being, inter alia, illegal, arbitrary and unsustainable, is also without jurisdiction inasmuch as Respondent No.4 has misdirected itself in entertaining and deciding the Complaint filed on behalf of Respondent Nos.5 and 6, especially when the same had been filed in such form/manner and/or seeking such relief, which as per the scheme of Real Estate (Regulation and Development) Act, 2016 could not be, at best, said to be maintainable before the Adjudicating Officer and in any event not before the Real Estate Regulatory Authority; or in the alternate.*
>
> *b) issue a writ in the nature of MANDAMUS directing the Ld. Haryana Real Estate Appellate Tribunal, Respondent No.3 to entertain the Appeal that may be filed by the petitioner against order dated August 21, 2019, Annexure P/10, passed by respondent No.4, without requiring the Petitioner to first deposit with the Appellate Tribunal the amount to be paid to the Allottee, as per the aforementioned order of the Real Estate Regulatory Authority, Respondent No.4, thereby*

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waiving the condition of pre-deposit as mandated by Section 43(5) of the Real Estate (Regulatory and Development) Act, 2016;'

6.2**)** That the petitioner claims that the private respondent had been allotted a flat bearing No.C-803, 8th Floor, Tower-C having an area of approximately 1890 sq. ft. in the group housing complex namely 'Coralwood', situated in Sector 84, Tehsil Manesar, District Gurugram. The flat buyer agreement amongst the party was executed on 17.10.2013 and as per the said agreement, the possession of the property was to be handed-over on or before 17.01.2017. The total sale consideration for the property was Rs. 68,81,840/- against which the allottee had paid only a sum of Rs. 57,74,275/-. The possession was offered after a delay of 01 year and 11 months and that as per the penalty clause in the flat buyer agreement, the allottee is entitled to compensation @ Rs.5 sq. ft. per month for the super area. The complaint in question was instituted in the year 2019 i.e. after offer of possession and that the provisions of the contract had been ignored by the authority while allowing the complaint filed by the allottee.

5th Batch (M/s Assotech Moonshine)

7) Reference to the facts of the case is made from ***CWP-21908 of 2020.***

7.1) This batch of petitions came up for hearing on 07.12.2021. Substantive prayer made by the petitioner-Company is extracted as under:-

'i. Issue a writ in the nature of CERTIORARI, seeking quashing of impugned order dated 19.12.2019 (Annexure P-1), passed by Real Estate Regulatory Authority, Gurugram/Respondent No.4, in complaint No.102 of 2019 titled as Anuj Jindal & Another versus M/s Assotech Moonshine Urban Developers Pvt. Ltd., the same besides being, inter alia, illegal and arbitrary, is also without jurisdiction inasmuch as Respondent No.4 has misdirected

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itself in entertaining and directing the Complaint filed on behalf of private respondents, especially when same had been filed in such form/manner and/or seeking such relief while directing petitioner to pay interest for delay @ 18% p.a., as also litigation costs of Rs.50,000/- etc which as per scheme of Real Estate (Regulatory and Development) Act, 2016 could only be said to be maintainable before Adjudicating Officer and not before Real Estate Regulatory Authority.

ii) issue a writ in nature of mandamus directing Ld. Haryana Real Estate Appellate Tribunal, Respondent No.3, to entertain Appeal (Annexure P-2) filed by Petitioner against order dated 19.12.2019, passed by Respondent No.4, without requiring Petitioner to first deposit with the Appellate Tribunal the amount to be paid to Allottee, as per aforementioned order of Real Estate Regulatory Authority, Respondent No.4, thereby waiving condition of pre-deposit as mandated by Section 43(5) of Real Estate (Regulation and Development) Act, 2016 and hear same on merits.'

7.2) The petitioner was granted license to develop a group housing project under the name and style of 'ASSOTECH BLITH' situated in Sector 99, Gurugram for development of group housing project on an area measuring 12.062 acres. Pursuant to the request by the private respondent, unit No.A-1901 was allotted to the private respondent for an area measuring 1365 sq. ft. The agreement between the parties was executed on 25.11.2012 against a total sale consideration of Rs. 83,86,615/-. The possession was to be handed over on or before 25.11.2016 including the grace period and that the allottee committed a default in the payments and had remitted only a sum of Rs. 76,59,162/-. The complaint in question was filed in the year 2019 and has been allowed ignoring the clauses contained in the agreement and the paid investment made upto the date by the petitioner.

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8) That even though notices had been issued to the respondents in these cases, however, there was no necessity of a formal reply from the official respondents since the petition raised the issue of jurisdiction with the Authority in passing the orders. The factual aspects noted by the Authority in its order were not disputed. Counsel appearing on behalf of private respondents, though filed reply in some cases, however submitted that the issues being legal, no separate replies are required in these cases.

9) With the consent of the parties, arguments in the petitions were heard. The issues which emerge for determination in the present batch of petitions and set out as under:-

Issue No.1: Whether the Authority has jurisdiction to direct return/refund of the amount and/or interest to the allottee under Sections 12, 14, 18 and 19 of the Act of 2016?

Issue No.2: Whether the condition of pre-deposit under Section 43(5) of the Act of 2016 for entertaining an appeal can be waived/relaxed by the High Court under Article 226 of the Constitution of India for being onerous or on an established hardship?

10) ***Arguments in 1st Batch (Ramprastha Promoters and Developers Pvt. Ltd.)***

10.1) While advancing arguments on behalf of the petitioner, Mr. Mukul Aggarwal, Advocate has submitted that Real Estate Regulatory Authority passed the impugned order without any prayer for the relief awarded. The impugned order thus suffers from the vice of jurisdiction, illegality, arbitrariness and was opposed to the principles of natural justice, equity and fair-play.

10.2) It was submitted that even though the Act of 2016 contemplates a statutory remedy of appeal, however, Section 43(5) of the Act of 2016, mandates

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a pre-deposit before such an appeal at the instance of the promoter can be heard. The statutory provisions leave no room for any discretion with the Appellate Tribunal. The condition of pre-deposit is onerous and causes extreme hardship to the petitioner in availing the statutory remedy of appeal. It was further argued that the Authority noted the complaint in question to be filed under Section 31 of the Act of 2016, whereas, the complaint in question ought to have been filed under Rule 29 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred to as as '2017 Rules'), and the same could only lie before the Adjudicating Officer and not before the Authority. There was thus an usurpation of jurisdiction by the Authority in entertaining the said complaint.

10.3) It was also contended that the order being without jurisdiction was void *ab initio.* The petitioner-promoter should not be put to an undue hardship by seeking compliance of pre-deposit before entertaining the appeal. It renders the remedy of appeal meaningless and the petitioner-promoter remediless. Further, prayer was made that considering the totality of circumstances, the High Court should, in exercise of its power under Article 226 of the Constitution of India, waive the conditions of pre-deposit to facilitate the petitioner to avail of the statutory appellate remedy.

10.4) An additional submission was raised by the petitioner that ***CWP-38144 of 2018*** titled as ***Experion Developers Private Limited Vs. State of Haryana And Others*** decided by the Division Bench of this Court vide judgment dated 16.10.2020 has not attained finality and that the SLP arising out of the said judgment is still pending adjudication before the Supreme Court.

10.5) Mr. Arun Walia, Senior Advocate assisted by Mr. Marinal Sharma, Advocate also appeared on behalf of the petitioner-Ramprastha Promoters and Developers Private Limited in the connected matters of the petitioner and reiterated the submissions made on behalf of the petitioner in *CWP-6688-2021*.

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11) ***Arguments in 2nd Batch (Athena Infrastructure Ltd & Selene Constructions Ltd).***

11.1) Learned counsel has impugned the order passed by the Real Estate Regulatory Authority on the ground of the same being without jurisdiction since the order could have only been passed by the Adjudicating Officer. Attention of the Court was also drawn to the complaint filed on behalf of the private respondent to submit that the complaint was for seeking compensation and as such, only the Adjudicating Officer could have entertained the said complaint in terms of Rule 29 of the 2017 Rules.

11.2) Submission was advanced that the reliefs claimed, being compensatory, the jurisdiction was vested only with the Adjudicating Officer. Reference was also made to the decision of this Court in ***CWP-38144 of 2018*** titled as ***Experion Developers Private Limited Vs. State of Haryana And Others*** decided on 16th October, 2020 and pendency of SLP before the Supreme Court. Reliance was also placed on judgment of ***M/s Tecnimont Private Limited Vs. State of Punjab And Other,*** in Civil Appeal No.7538 of 2019 by the Supreme Court on September 18, 2019 and to submit that the High Court has inherent powers under Article 226 of the Constitution of India to waive the requirement of pre-deposit for furtherance of interest of justice and especially where the impugned order lacks jurisdiction and/or is without any authority. Insistence on pre-deposit renders the remedy of statutory appeal ineffective and unreal. Further reference was also made to the judgment of the Supreme Court in ***M/s NewTech Promoters and Developers Private Limited Vs. State of UP And Others etc*** passed in Civil Appeal Nos.6745-6749 of 2021 dated 11.11.2021 to argue that the powers of the High Court to waive the conditions of pre-deposit are not taken away by the Act of 2016.

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11.3) Learned counsel has also drawn attention to additional submissions made in *CWP-4273-2021* titled as *Selene Constructions Limited Vs. State State of Haryana* to raise an argument that the complaint in question was made specifically under Rule 29 read with Sections 31 and 71 of the 2016 Act to claim interest as compensation and that objection pertaining to maintainability of the complaint had been taken in the written statement. An argument was raised that when the question which arises is of relief towards compensation and interest thereupon under Sections 12, 14, 18 and 19 of the 2016 Act, the exclusive jurisdiction vests in the Adjudicating Officer as per the finding recorded by the Supreme Court in the matter of M/s Newtech Promoter *(supra)*.

11.4) It was also argued that the powers conferred upon the adjudicating Authority cannot be sub-delegated and must be exercised by the Adjudicating Officer alone. The Real Estate Regulatory Authority thus usurped the jurisdiction of the Adjudicating Officer rendering the impugned order to be perverse, illegal and without jurisdiction. It was further contended that the petitioner cannot be left remediless considering that the impugned judgment was without jurisdiction *per se* and the onerous condition of mandatory pre-deposit was extremely harsh against the promoter and defeats the remedy of appeal.

12) ***Arguments in 3rd Batch (M/s Vipul Limited)***

12.1) While reiterating the submissions made by the counsel representing the promoters in the matter of Ramprastha Promoters and Developers Pvt. Ltd., as well as Athena Infrastructure Limited, the learned counsel has further submitted that he had taken a specific objection about the proceedings being without jurisdiction and that only the Adjudicating Officer had the power to look into the complaint under Rule 29 of the 2017 Rules. It was thus argued that the orders in question passed by the RERA Authority were illegal and without jurisdiction.

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13) ***Arguments in 4th Batch (S.S. Group Private Limited)***

13.1) While reiterating the arguments advanced by the counsel representing the other promoters, learned Senior counsel has assailed the impugned orders on ground of jurisdiction and maintainability. Further prayer was made that the petitioner is in financial hardship and has already availed of financial assistance in order to complete one of its project i.e. *'The Leaf'*. Any diversion of funds to make the pre-deposit would invariably cause further financial hardship and delay the project to the detriment of other allottees. Learned Senior counsel appearing on behalf of the petitioner also pleaded that even though the requirement of pre-deposit may not seem onerous on an individual case-to-case basis, however, considering the large number of orders that have been suffered against the promoters, the requirement of pre-deposit renders the condition onerous in its cumulative impact.

14) ***Arguments in 5th Batch (M/s Assotech Moonshine)***

14.1) While reiterating the submissions already been made in other matters filed on behalf of other promoters, learned counsel appearing on behalf of the petitioner stated that the Company has invoked the liquidation proceedings due to financial hardships and directions of pre-deposit would cause further financial hardship to the petitioner.

15) Apart from raising the common grounds of challenge, an additional prayer was also made by all the petitioners that in the event the petitioners failed to succeed in their challenge, they may be granted some time to make good the pre-deposit since the time period prescribed by the Haryana Real Estate Regulatory Tribunal for the pre-deposit has already come to an end during the pendency of the writ petitions.

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16) ***Response by respondent***

16.1) The petitions in question have been opposed by the respondents. It has been vehemently argued that the petitions are an abuse of the process of law and the promoters are intentionally delaying the proceedings on some pretext and by multiplicity of litigation rather than settling the award. It has further been argued that the issues raised in the petitions stand decided by the Supreme Court against the promoters and thus the impugned orders have been validly passed by the Authority. There is no jurisdictional error or illegality committed by the RERA in passing the awards in favour of the allottees. Reference was also made to the findings recorded by the Supreme Court in the matter of Newtech Promoters *(supra)*. The said references are, however, not being extracted hereunder and the same would be referred to in the subsequent discussion.

16.2) Learned counsel for the respondent has also made a reference to the prayer made in the complaint before the Authority and/or the relief granted by the Haryana Real Estate Regulatory Authority vide its orders impugned in the respective petitions. The prayer noticed and the relief granted by the Authority in the respective petitions is extracted hereinbelow:-

Lead Case No.	***Prayer***	***Relief graned***
CWP No. 6688 of 2021	I. To direct the respondent to immediately deliver the possession. II. Direct the respondent to make the conveyance deed in favour of the complainant. III. Direct the respondent to pay interest for delayed possession.	I. The respondent is directed to pay interest accrued so far at the prescribed rate of 10.20% p.a., for delay in handing over the possession from the due date of possession i.e. 31.01.2016 till the order of actual physical possession of the allotted unit after receipt of occupation certificate within 90 days from the date of decision and subsequent interest to be paid by the 10th of each subsequent month till the offer of actual physical possession. II. The complainant is directed to pay outstanding dues, if any, after

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		adjustment of interest for the delayed period. III. The respondent shall not charge anything which is not part of the agreement.
CWP No.5776 of 2021	I. To direct the respondent to pay the prescribed interest on the entire amount paid by the complainants from the date of respective deposits till the date of possession. II. Direct the respondent to deliver immediate possession of the unit.	I. The respondent is directed to pay the interest at the prescribed rate i.e. 10.20% per annum for every month of delay on the amount paid by the complainant from due date of possession i.e. 10.04.2016 till the offer of possession. The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order and thereafter monthly payment of interest till offer of possession shall be paid before 10th of subsequent month. II. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period. III. The respondent shall not charge anything from the complainant which is not part of the buyer's agreement. IV. Interest on the due payments from the complainant shall be charged at the prescribed rate @10.20% by the promoter which is the same as is being granted to the complainants in case of delayed possession charges.
CWP No. 15381 of 2021	I. Direct the respondent to deliver possession of the subject property. II. Direct the respondent to pay interest at the rate as deemed fit by this Hon'ble Authority.	I. The respondent shall pay the interest at the prescribed rate i.e.10.20% per annum for every month of delay on the amount paid by the complainants from due date of possession i.e. 10.10.2015 till the physical offer of possession of the allotted unit after receipt of occupation certificate within a period of 90 days from the date of this order and thereafter monthly payment of interest till the offer of

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		possession shall be paid before 10th of every subsequent month. II. The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period. III. The respondent shall not charge anything from the complainants which is not part of the flat buyer's agreement.
CWP-2425 of 2021	I. Pass an order for delay interest on paid amount of Rs.61,32,842/- from May, 2015 to along with pendent lite thereon @ 15%.	I. The respondent is directed to pay the interest at the prescribed rate i.e.10.45% per annum for every month of delay on the amount paid by the complainant from due date of possession i.e. 17.01.2017 till the offer of possession i.e.16.12.2018. II. Complainant is directed to pay outstanding dues, if any, after adjustment of interest awarded for the delayed period. III. The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order. IV. The promoter shall not charge anything from the complainant which is not a part of the flat buyer's agreement. V. Interest on the due payments from the complainant shall be charged at the prescribed rate of interest i.e.10.60% by the promoter which is the same as is being granted to the complainant in case of delayed possession.
CWP-21908 of 2020	I. Direct the respondent to award delay interest @18% p.a., for every month of delay till the handing over of possession of the apartment complete in all respects to the complainants.	I. The respondent is directed to pay the interest at the prescribed rate i.e.10.20% per annum for every month of delay on the amount paid by the complainants from due date of possession i.e.25.11.2016 till the offer of possession. The arrears of interest accrued till date of decision shall be paid to the complainants within a period of 90 days from the

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	II. Direct the respondent to provide the schedule of construction and likely time period to be taken by the respondent in completing the project in all respect.	date of this order and thereafter monthly payment of interest till the offer of possession shall be paid before 10th of every subsequent month. II. The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period. III. The respondent shall not charge anything from the complainants which is not part of the allotment letter. IV. Interest on the due payments from the complainants shall be charged at the prescribed rate of interest @10.20 % by the promoter which is the same as is being granted to the complainants in case of delayed possession charges.

16.3) By making a reference to the specific prayers made before the Real Estate Regulatory Authority and the relief ultimately granted, learned counsel has submitted that the relief is not compensatory in nature and that the relief granted by the Authority is within the domain of its powers under Section 34(f), and/or Section 37 of the Act. Since, the legality and validity of the order is impugned by the promoters/developers, the same has to be tested on the anvil of the power exercised by the Authority. It is not the case of the petitioners that the directions issued by the Authority in exercising the powers under Section 34 and/or Section 37 of the Act of 2016, was without jurisdiction or beyond its powers. It was thus prayed that the writ petitions filed by the petitioners deserve to be dismissed in view of efficacious alternative remedy available to the petitioners.

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Discussion

17) For determining above issues, it is necessary to make a reference to the relevant statutory provisions of the Real Estate (Regulation and Development) Act, 2016 and Real Estate (Regulation and Development) Rules, 2017:-

> ***Section 2(a)*** *"adjudicating officer" means the adjudicating officer appointed under sub-section (1) of section 71;*
>
> ***Section 2(i)*** *"Authority" means the Real Estate Regulatory Authority established under sub-section (1) of section 20;*
>
> ***Section 12: Obligations of promoter regarding veracity of the advertisement or prospectus****.—*
>
> *Where any person makes an advance or a deposit on the basis of the information contained in the notice, advertisement or prospectus, or on the basis of any model apartment, plot or building, as the case may be, and sustains any loss or damage by reason of any incorrect, false statement included therein, he shall be compensated by the promoter in the manner as provided under this Act:*
>
> *Provided that if the person affected by such incorrect, false statement contained in the notice, advertisement or prospectus, or the model apartment, plot or building as the case may be, intends to withdraw from the proposed project, he shall be returned his entire investment along with interest at such rate as may be prescribed and the compensation in the manner provided under this Act.*
>
> ***Section 14: Adherence to sanctioned plans and project specifications by the promoter****.—*
>
> *(1) The proposed project shall be developed and completed by the promoter in accordance with the sanctioned plans, layout plans and specifications as approved by the competent*

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authorities.

(2) Notwithstanding anything contained in any law, contract or agreement, after the sanctioned plans, layout plans and specifications and the nature of the fixtures, fittings, amenities and common areas, of the apartment, plot or building, as the case may be, as approved by the competent Authority, are disclosed or furnished to the person who agree to take one or more of the said apartment, plot or building, as the case may be, the promoter shall not make—

(i) any additions and alterations in the sanctioned plans, layout plans and specifications and the nature of fixtures, fittings and amenities described therein in respect of the apartment, plot or building, as the case may be, which are agreed to be taken, without the previous consent of that person:

Provided that the promoter may make such minor additions or alterations as may be required by the allottee, or such minor changes or alterations as may be necessary due to architectural and structural reasons duly recommended and verified by an authorised Architect or Engineer after proper declaration and intimation to the allottee.

***Explanation**.—For the purpose of this clause, "minor additions or alterations" excludes structural change including an addition to the area or change in height, or the removal of part of a building, or any change to the structure, such as the construction or removal or cutting into of any wall or a part of a wall, partition, column, beam, joist, floor including a mezzanine floor or other support, or a change to or closing of any required means of access ingress or egress or a change to the fixtures or equipment, etc.*

(ii) any other alterations or additions in the sanctioned plans, layout plans and specifications of the buildings or the common areas within the project without the previous written consent of at least two-thirds of the allottees, other than the promoter,

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who have agreed to take apartments in such building.

***Explanation.**—For the purpose of this clause, the allottee, irrespective of the number of apartments or plots, as the case may be, booked by him or booked in the name of his family, or in the case of other persons such as companies or firms or any association of individuals, etc., by whatever name called, booked in its name or booked in the name of its associated entities or related enterprises, shall be considered as one allottee only.*

(3) In case any structural defect or any other defect in workmanship, quality or provision of services or any other obligations of the promoter as per the agreement for sale relating to such development is brought to the notice of the promoter within a period of five years by the allottee from the date of handing over possession, it shall be the duty of the promoter to rectify such defects without further charge, within thirty days, and in the event of promoter's failure to rectify such defects within such time, the aggrieved allottees shall be entitled to receive appropriate compensation in the manner as provided under this Act.

***Section 18- Return of amount and compensation**.—*

(1) If the promoter fails to complete or is unable to give possession of an apartment, plot or building,—

(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or

(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,

he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this

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behalf including compensation in the manner as provided under this Act:

Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed.

(2) The promoter shall compensate the allottees in case of any loss caused to him due to defective title of the land, on which the project is being developed or has been developed, in the manner as provided 18 under this Act, and the claim for compensation under this subsection shall not be barred by limitation provided under any law for the time being in force.

(3) If the promoter fails to discharge any other obligations imposed on him under this Act or the rules or regulations made thereunder or in accordance with the terms and conditions of the agreement for sale, he shall be liable to pay such compensation to the allottees, in the manner as provided under this Act.

***Section 19: Rights and duties of allottees**.—*

(1) The allottee shall be entitled to obtain the information relating to sanctioned plans, layout plans along with the specifications, approved by the competent Authority and such other information as provided in this Act or the rules and regulations made thereunder or the agreement for sale signed with the promoter.

(2) The allottee shall be entitled to know stage-wise time schedule of completion of the project, including the provisions for water, sanitation, electricity and other amenities and services as agreed to between the promoter and the allottee in accordance with the terms and conditions of the agreement for sale.

(3) The allottee shall be entitled to claim the possession of apartment, plot or building, as the case may be, and the association of allottees shall be entitled to claim the

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possession of the common areas, as per the declaration given by the promoter under sub-clause (C) of clause (l) of sub-section (2) of section 4.

(4) The allottee shall be entitled to claim the refund of amount paid along with interest at such rate as may be prescribed and compensation in the manner as provided under this Act, from the promoter, if the promoter fails to comply or is unable to give possession of the apartment, plot or building, as the case may be, in accordance with the terms of agreement for sale or due to discontinuance of his business as a developer on account of suspension or revocation of his registration under the provisions of this Act or the rules or regulations made thereunder.

(5) The allottee shall be entitled to have the necessary documents and plans, including that of common areas, after handing over the physical possession of the apartment or plot or building as the case may be, by the promoter.

(6) Every allottee, who has entered into an agreement for sale to take an apartment, plot or building as the case may be, under section 13, shall be responsible to make necessary payments in the manner and within the time as specified in the said agreement for sale and shall pay at the proper time and place, the share of the registration charges, municipal taxes, water and electricity charges, maintenance charges, ground rent, and other charges, if any.

(7) The allottee shall be liable to pay interest, at such rate as may be prescribed, for any delay in payment towards any amount or charges to be paid under sub-section (6).

(8) The obligations of the allottee under sub-section (6) and the liability towards interest under sub-section (7) may be reduced when mutually agreed to between the promoter and such allottee.

(9) Every allottee of the apartment, plot or building as the case may be, shall participate towards the formation of an

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association or society or cooperative society of the allottees, or a federation of the same.

(10) Every allottee shall take physical possession of the apartment, plot or building as the case may be, within a period of two months of the occupancy certificate issued for the said apartment, plot or building, as the case may be.

(11) Every allottee shall participate towards registration of the conveyance deed of the apartment, plot or building, as the case may be, as provided under sub-section (1) of section 17 of this Act.

Section 31: Filing of complaints with the Authority or the adjudicating officer.—

(1) Any aggrieved person may file a complaint with the Authority or the adjudicating officer, as the case may be, for any violation or contravention of the provisions of this Act or the rules and regulations made thereunder, against any promoter, allottee or real estate agent, as the case may be.

***Explanation**.—For the purpose of this sub-section "person" shall include the association of allottees or any voluntary consumer association registered under any law for the time being in force.*

(2) The form, manner and fees for filing complaint under sub-section (1) shall be such as may be.

***Section 34: Functions of Authority**.—*

The functions of the Authority shall include—

(a) to register and regulate real estate projects and real estate agents registered under this Act;

(b) to publish and maintain a website of records, for public viewing, of all real estate projects for which registration has been given, with such details as may be prescribed, including information provided in the application for which registration has been granted;

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(c) to maintain a database, on its website, for public viewing, and enter the names and photographs of promoters as defaulters including the project details, registration for which has been revoked or have been penalised under this Act, with reasons therefor, for access to the general public;

(d) to maintain a database, on its website, for public viewing, and enter the names and photographs of real estate agents who have applied and registered under this Act, with such details as may be prescribed, including those whose registration has been rejected or revoked;

(e) to fix through regulations for each areas under its jurisdiction the standard fees to be levied on the allottees or the promoter or the real estate agent, as the case may be;

(f) to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder;

(g) to ensure compliance of its regulations or orders or directions made in exercise of its powers under this Act;

(h) to perform such other functions as may be entrusted to the Authority by the appropriate Government as may be necessary to carry out the provisions of this Act.

Section 37: Powers of Authority to issue directions.—

The Authority may, for the purpose of discharging its functions under the provisions of this Act or rules or regulations made thereunder, issue such directions from time to time, to the promoters or allottees or real estate agents, as the case may be, as it may consider necessary and such directions shall be binding on all concerned.

Section 71: Power to adjudicate.—

(1) For the purpose of adjudging compensation under sections 12, 14, 18 and section 19, the Authority shall appoint, in consultation with the appropriate Government, one or more judicial officer as deemed necessary, who is or has been a

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District Judge to be an adjudicating officer for holding an inquiry in the prescribed manner, after giving any person concerned a reasonable opportunity of being heard:

Provided that any person whose complaint in respect of matters covered under sections 12, 14, 18 and section 19 is pending before the Consumer Disputes Redressal Forum or the Consumer Disputes Redressal Commission or the National Consumer Redressal Commission, established under section 9 of the Consumer Protection Act, 1986 (68 of 1986), on or before the commencement of this Act, he may, with the permission of such Forum or Commission, as the case may be, withdraw the complaint pending before it and file an application before the adjudicating officer under this Act.

(2) The application for adjudging compensation under sub-section (1), shall be dealt with by the adjudicating officer as expeditiously as possible and dispose of the same within a period of sixty days from the date of receipt of the application:

Provided that where any such application could not be disposed of within the said period of sixty days, the adjudicating officer shall record his reasons in writing for not disposing of the application within that period.

(3) While holding an inquiry the adjudicating officer shall have power to summon and enforce the attendance of any person acquainted with the facts and circumstances of the case to give evidence or to produce any document which in the opinion of the adjudicating officer, may be useful for or relevant to the subject matter of the inquiry and if, on such inquiry, he is satisfied that the person has failed to comply with the provisions of any of the sections specified in sub-section (1), he may direct to pay such compensation or interest, as the case any be, as he thinks fit in accordance with the provisions of any of those sections.

Section 81: Delegation.—

The Authority may, by general or special order in writing, delegate to any member, officer of the Authority or any other

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person subject to such conditions, if any, as may be specified in the order, such of its powers and functions under this Act (except the power to make regulations under section 85), as it may deem necessary.

Rule 28: Filing of complaint with the Authority. Section 31

(1) Any aggrieved person may file a complaint with the Authority for any violation of the provisions of the Act or the rules and regulations made thereunder, save as those provided to be adjudicated by the adjudicating officer, in Form 'CRA', in triplicate, which shall be accompanied by a fees as prescribed in Schedule III in the form of a demand draft or a bankers cheque drawn on a Scheduled bank in favour of "Haryana Real Estate Regulatory 19 Authority".

(2) The Authority shall for the purposes of deciding any complaint as specified under sub-rule (1), follow summary procedure for inquiry in the following manner, namely:-

(a) upon receipt of the complaint, the Authority shall issue a notice alongwith particulars of the alleged contravention and the relevant documents to the respondent specifying date and time of hearing;

(b) the respondent against whom such notice is issued under clause (a) of sub-rule (2), shall file his reply in respect of the complaint within the period as specified in the notice;

(c) the notice shall specify a date and time for further hearing and the date and time for the hearing shall also be communicated to the complainant;

(d) on the date so fixed, the Authority shall explain to the respondent about the contravention alleged to have been committed in relation to any of the provisions of the Act or the rules and regulations made thereunder and if the respondent.

(i) pleads guilty, the Authority shall record the plea, and pass such orders including imposition of penalty as it deems fit in accordance with the provisions of the Act or the rules and regulations, made thereunder;

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(ii) does not plead guilty and contests the complaint, the Authority shall demand an explanation from the respondent;

(e) in case the Authority is satisfied on the basis of the submissions made that the complaint does not require any further inquiry, it may dismiss the complaint with reasons to be recorded in writing;

(f) in case the Authority is satisfied on the basis of the submissions made that there is a need for further hearing into the complaint, it may order production of documents or other evidence(s) on a date and time fixed by it;

(g) the Authority shall have the power to carry out an inquiry into the complaint on the basis of documents and submissions;

(h) the Authority shall have the power to summon and enforce the attendance of any person acquainted with the facts and circumstances of the case to give evidence or to produce any documents which in the opinion of the adjudicating officer, may be useful for or relevant to thesubject matter of the inquiry, and in taking such evidence, the Authority shall not be bound to observe the provisions of the Indian Evidence Act, 1872 (11 of 1872);

(i) on the date so fixed, the Authority upon consideration of the evidence produced before it and other records and submissions, is satisfied that,

(i) the respondent is in contravention of the provisions of the Act or the rules and regulations made thereunder, it shall pass such order 20 including imposition of penalty as it thinks fit in accordance with the provisions of the Act or the rules and regulations made thereunder;

(ii) the respondent is not in contravention of the provisions of the Act or the rules and regulations made thereunder, the Authority may, by order in writing, dismiss the complaint, with reasons to be recorded in writing;

(j) if any person fails, neglects or refuses to appear, or present himself as required before the Authority, the Authority shall have the power to proceed with the inquiry in the absence of

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such person or persons after recording the reasons for doing so.

(3) The procedure for day to day functioning of the Authority, which have not been provided by the Act or the rules made thereunder, shall be as specified by regulations made by the Authority.

(4) Where a party to the complaint is represented by an authorised person, as provided under section 56, a copy of the authorisation to act as such and the written consent thereto by such authorised person, both in original, shall be appended to the complaint or the reply to the notice of the complaint, as the case may be.

Rule 29: Filing of complaint and inquiry by Adjudicating Officer, Section 12, 14, 18 and 19.

(1) Any aggrieved person may file a complaint with the adjudicating officer for interest and compensation as provided under sections 12, 14, 18 and 19 in Form 'CAO', in triplicate, which shall be accompanied by a fee as mentioned in Schedule III in the form of a demand draft or a bankers cheque drawn on a Scheduled bank in favour of "Haryana Real Estate Regulatory Authority" and payable at the branch of that bank at the station where the seat of the said Authority is situated.

(2) The adjudicating officer shall for the purposes of adjudging interest and compensation follow summary procedure for inquiry in the following manner, namely:-

(a) upon receipt of the complaint, the adjudicating officer shall issue a notice along with particulars of the alleged contravention and the relevant documents to the respondent;

(b) the respondent against whom such notice is issued under clause (a) of sub-rule (2) may file his reply in respect of the complaint within the period as specified in the notice;

(c) the notice may specify a date and time for further hearing and the date and time for the hearing shall also be communicated to the complainant;

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(d) on the date so fixed, the adjudicating officer shall explain to the respondent about the contravention alleged to have been committed in relation to any of the provisions of the Act or the rules and regulations made thereunder and if the respondent,
(i) pleads guilty, the adjudicating officer shall record the plea, and by order in writing, order payment of interest as specified in rule 15 and such compensation as he deems fit, as the case may be, in accordance with the provisions of the Act or the rules and regulations, made thereunder;
(ii) does not plead guilty and contests the complaint, the adjudicating officer shall demand and explanation from the respondent;
(e) in case the adjudicating officer is satisfied on the basis of the submissions made that the complaint does not require any further inquiry, he may dismiss the complaint;
(f) in case the adjudicating officer is satisfied on the basis of the submissions made that the there is a need for further hearing into the complaint, he may order production of documents or other evidence on a date and time fixed by him;
(g) the adjudicating officer shall have the power to carry out an inquiry into the complaint on the basis of documents and submissions;
(h) the adjudicating officer shall have the power to summon and enforce the attendance of any person acquainted with the facts and circumstances of the case to give evidence or to produce any documents which in the opinion of the adjudicating officer, may be useful for or relevant to the subject matter of the inquiry, and in taking such evidence.
(i) on the date so fixed, the adjudicating officer upon consideration of the evidence produced before him and other records and submissions is satisfied that the respondent is,-
(i) liable to pay interest and compensation, as the case may be, the adjudicating officer may, by order in writing, order payment of interest as specified in rule 14 and such compensation as he deems fit.

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> *(ii) not liable to any interest or compensation, as the case may be, the adjudicating officer may, by order in writing, dismiss the complaint, with reasons to be recorded in writing;*
> *(j) if any person fails, neglects or refuses to appear, or present himself as required before the adjudicating officer, the adjudicating officer shall have the power to proceed with the inquiry in the absence of such person or persons after recording the reasons for doing so.*
> *(3) The procedure for day to day functioning of the adjudicating officer, which have not been provided by the Act or the rules made thereunder, shall be as specified by regulations made by the Authority.*
> *(4) Where a party to the complaint is represented by an authorised person, a copy of the authorisation to act as such and the written consent thereto by such authorised person, both in original, shall be appended to the complaint or the reply to the notice of the complaint, as the case may be.*

18) A bare perusal of the same shows that the scheme of the Act entitles an allottee to seek return of the amount along with interest and compensation. Section 12 of the Act relates to the obligation of the promoter to furnish correct facts in the advertisement and casts a liability **to return the investment along with interest** *and* **to pay compensation** in the manner as provided. Similarly, Section 14 of the Act mandates that the project in question has to be developed by the promoter in accordance with sanctioned plan/layout plan as well as the specification approved by the competent Authority. In the event of the project not being completed as per sanctioned plan/layout plan and the specifications prescribed, the allottee may seek rectification of the defects and to receive appropriate **compensation**. Section 18 entitles an allottee to either withdraw from the project and **seek return of the amount along with interest** *including* **entitlement to seek compensation** or in the alternative, the allotee may not

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withdraw from the project, in which case, the promoter is bound by the statute to pay interest for every month of delay, till the handing over of the possession. Section 18(2) and 18(3) of the Act contemplate compensation to be paid to the allottee in the event of defective title and/or failure on the part of the promoter to discharge obligations as per the Act/ Rules or Regulations framed thereunder. Similarly, Section 19 of the 2016 Act entitles an allottee to **claim the refund of the amount along with interest at prescribed rates** *and* **compensation**, when the promoter is unable to hand over possession in accordance with the agreement for sale.

19) Hence, the legislature uses the word 'interest on deposit/refund' distinct from the use of word 'compensation'. Thus, the award of prescribed rate of interest on the deposit/refund due to delay on the part of the promoter is not the same as adjudging compensation and award of interest thereupon by the Adjudicating Officer.

20) Thus, the compensatory relief under the scheme of the Act has been kept separate and distinct and accrues in the event of occurrence of certain pre-requisites and for which the determination is to be done by the Adjudicating Officer. *Per contra,* the entitlement of the allottee to claim interest on the payment made in the event of his withdrawal from the project or for the period of delay in handing over the possession, is a part of the statutory scheme and is not part of interest by way of compensation.

21) Part IX of the Rules of 2017 deals with the **filing of the complaint with the Authority or the Adjudicating Officer, inquiry and disposal or adjudging quantum of compensation.** Rule 28 provides filing of the complaint with the Authority and inquiry into allegations of contravention or violations and disposal of the complaints. The said Rule contemplates that in the event Authority determines violation of the provisions of the Act or rules and regulations by the

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promoter, the complaint for adjudging the quantum of compensation as contained in Sections 12, 14, 18 and 19 of the Act of 2016 shall be referred to the Adjudicating Officer by the Authority. Similarly, as per Rule 29, any aggrieved person may also file a complaint before the Adjudicating Officer for seeking compensation, in cases of established violation by the promoter. The said provisions in the Rules were amended with effect from 12.09.2019. The effect of amendment in the Rules was considered by the Division Bench of this Court in ***CWP No.38144 of 2018*** titled as ***Experion Developers Private Limited Vs. State of Haryana And Others,*** decided along with a batch of writ petitions vide a common judgment dated 16.10.2020 wherein a challenge to the amended Rules 28 and 29 of the Haryana Real Estate (Regulation and Development) Rules 2017 along with proviso to Section 43(5) of the Act was raised. The Division Bench of this Court examined the scheme of the Act and the Rules and observed as under:-

> *'69. In light of the settled legal position, this Court rejects the submission advanced by the counsel for the Petitioners that the provisions of the Act concerning the respective adjudicatory powers of the Authority and the AO, as they presently stand, are irreconcilable and that it is the AO alone that can exercise those powers to the exclusion of the Authority. Rules 28 and 29 of the Haryana Rules as amended seek to give effect to the harmonized construction of the provisions of the Act concerning the powers of the Authority and of the AO. The amended Rule 28 (1) of the Rules, in so far as it requires the Authority to first determine violations of the Act and then if it finds the existence of such violations to refer the matter to the AO only where there is prayer for compensation and interest by way of compensation, is consistent with above interpretation. It is in other words based on the correct understanding of the clear delineation of the powers of the Authority on one hand and the AO on the other. Rule 29 of the Rules is also consistent with this clear delineation of the*

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adjudicatory powers of the Authority and the AO respectively. Therefore, the Court does not find the amended Rules 28 and 29 of the Rules, or the amendments to Forms CRA and CAO to be ultra vires the Act.

70. The decision of the Appellate Tribunal rendered on 2nd May, 2019 in Sameer Mahawar (supra) to the effect that the Authority lacks the power to examine a complaint seeking refund or the interest can no longer hold good, particularly since it was rendered prior to the notification of the amended Rules 28 and 29 of the Haryana Rules.

71. The further issue that arises is regarding the prospective application of the amended Rules 28 and 29 of the Haryana Rules. Here, the settled legal proposition is that a change of forum would be 'procedural'. It was explained by the Supreme Court in Securities and Exchange Board of India v. Classic Credit Limited (2018) 13 SCC 1, as under:

"34.....In our considered view, the legal position expounded by this Court in a large number of judgments including New India Insurance Co. Ltd. v. Shanti Misra, (1975) 2 SCC 840; Securities and Exchange Board of India v. Ajay Agarwal, (2010) 3 SCC 765; and Ramesh Kumar Soni v. State of Madhya Pradesh, (2013) 4 SCC 696, is clear and unambiguous, namely, that procedural amendments are presumed to be retrospective in nature, unless the amending statute expressly or impliedly provides otherwise. And also, that generally change of 'forum' of trial is procedural, and normally following the above proposition, it is presumed to be retrospective in nature, unless the amending statute provides otherwise.....

35. We have also no doubt, that alteration of 'forum' has been considered to be procedural, and that, we have no hesitation in accepting the contention advanced on behalf of the SEBI, that change of 'forum' being procedural, the amendment of the 'forum' would operate retrospectively, irrespective of whether

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the offence allegedly committed by the accused, was committed prior to the amendment."

72. In view of the settled legal position, the position that emerges is this. As long as the complaint is yet to be decided as on the date of the notification publishing the Haryana Amendment Rules 2019, that will now be decided consistent with the procedure outlined under the amended Rules 28 and 29 of the Haryana Rules. In other words, if the pending or future complaint seeks only compensation or interest by way of compensation, and no other relief, it will be examined only by the AO. If the pending or future complaint seeks other reliefs i.e. other than compensation or interest by way of compensation, the complaint will have to be examined by the Authority and not the AO. If the pending or future complaint seeks a combination of reliefs, the complaint will have to be examined first by the Authority. If the Authority finds there to be a violation of Sections 12, 14, 18 and 19 of the Act by the promoter, and the complaint is by the allottee, then for determining the quantum of compensation such complaint will be referred by the Authority to the AO in terms of the amended Rule 28 of the Haryana Rules. A complaint that has already been adjudicated prior to the coming into force of the amended Rules 28 and 29 of the Haryana, and the decision has attained finality, will not stand reopened.'

22) It has gone uncontroverted that the complaints in question were either pending as on the date when the Notification was published amending the provisions of the Rules or they were instituted after the amended Rules were notified. The Supreme Court has decided on the question of jurisdiction of the Authority and/or the adjudicating of the direct return/refund of the amount to the allottees under Sections 12, 14, 18 and 19 of the Act of 2016 in Civil Appeal Nos.6745-6749 of 2021 titled as ***M/s NewTech Promoters and Developers Private Limited Vs. State of UP And Others etc***. While dealing with the said

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question, the Supreme Court has examined the statutory provisions and has decided as under:-

> *'86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory Authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like 'refund', 'interest', 'penalty' and 'compensation', a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory Authority which has the power to examine and determine the outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act. If the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and functions of the adjudicating officer under Section 71 and that would be against the mandate of the Act 2016.'*

23) The Supreme Court has already decided on the issue pertaining to the competence/power of the Authority to direct refund of the amount, interest on the refund amount and/or directing payment of interest for delayed delivery of possession or penalty and interest thereupon being within the jurisdiction of the Authority under Section 31 of the 2016 Act. Hence any provision to the contrary under the Rules would be inconsequential. The Supreme Court having ruled on the competence of the Authority and maintainability of the complaint before the Authority under Section 31 of the Act, there is, thus, no occasion to enter into the

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scope of submission of the complaint under Rule 28 and/or Rule 29 of the Rules of 2017.

24) The substantive provision of the Act having been interpreted by the Supreme Court, the Rules have to be in tandem with the substantive Act.

25) In light of the pronouncement of the Supreme Court in the matter of M/s Newtech Promoters *(supra),* the submission of the petitioner to await outcome of the SLP filed against the judgment in *CWP No.38144 of 2018,* passed by this Court, fails to impress upon us. The counsel representing the parties very fairly concede that the issue in question has already been decided by the Supreme Court. The prayer made in the complaint as extracted in the impugned orders by the Real Estate Regulatory Authority fall within the relief pertaining to refund of the amount; interest on the refund amount, or directing payment of interest for delayed delivery of possession. The power of adjudication and determination for the said relief is conferred upon the Regulatory Authority itself and not upon the Adjudicating Officer.

26) Hence, in view of the authoritative pronouncement of the Supreme Court in the matter of ***M/s NewTech Promoters and Developers Private Limited Vs. State of UP And Others etc***, as recorded in Para 86 thereof, the Authority would have the jurisdiction to entertain a complaint seeking refund of the amount and interest on the refund amount as well as for payment of interest on delayed delivery of possession and/or penalty and interest thereon. The jurisdiction in such matters would not be with the Adjudicating Officer.

Issue No.2.

27) Before proceedings with the said issue, the relevant statutory provision as enshrined under Section 43 of the 2016 Act is extracted as under:-

"***43. Establishment of Real Estate Appellate Tribunal.-***

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(1) The appropriate Government shall, within a period of one year from the date of coming into force of this Act, by notification, establish an Appellate Tribunal to be known as the - (name of the State/Union territory) Real Estate Appellate Tribunal.

(2) The appropriate Government may, if it deems necessary, establish one or more benches of the Appellate Tribunal, for various jurisdictions, in the State or Union territory, as the case may be.

(3) Every bench of the Appellate Tribunal shall consist of at least one Judicial Member and one Administrative or Technical Member.

(4) The appropriate Government of two or more States or Union territories may, if it deems fit, establish one single Appellate Tribunal:
Provided that, until the establishment of an Appellate Tribunal under this section, the appropriate Government shall designate, by order, any Appellate Tribunal functioning under any law for the time being in force, to be the Appellate Tribunal to hear appeals under the Act:
Provided further that after the Appellate Tribunal under this section is established, all matters pending with the Appellate Tribunal designated to hear appeals, shall stand transferred to the Appellate Tribunal so established and shall be heard from the stage such appeal is transferred.
(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 atleast thirty per cent. of the penalty, or such higher percentage as may be determined by the Appellate Tribunal,

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> *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.*
>
> ***Explanation.**-For the purpose of this sub-section "person" shall include the association of allottees or any voluntary consumer association registered under any law for the time being in force.*

28) A perusal of the same shows that the proviso mandates the promoter to deposit at least 30% of the penalty or such percentage as may be determined by the Tribunal or the total amount of the refund to be paid to the allottee including interest and compensation imposed on him.

29) An argument has been advanced on behalf of learned counsel representing the petitioners that the Tribunal being a creation of the statute cannot travel beyond the terms of the statute. Hence, no power of relaxation or waiver of pre-deposit as prescribed under proviso to Section 43(5) of the Act is vested with the Appellate Tribunal.

30) Reference was also made to the judgment of the Supreme Court in the matter of '***Technimont Private Ltd. Vs. State of Punjab And Ors***' in Civil Appeal No.7358 of 2019 reported as 2019 SCC Online SC 1228 to contend that the High Court has the power, in exercise of the writ jurisdiction, to waive and/or to relax the condition of pre-deposit in cases of extreme hardship. Reference was made to the following paragraphs of the above judgment:-

> "*While dealing with the submission that in terms of said proviso, no relief could be granted even in cases where the requirement of pre-deposit may result in great prejudice, this Court went on to observe:-*
>
> *"28. We may, however, consider a hypothetical case. Supposing the correct value of a property is Rs. 10 lakhs and that is the value stated in the sale deed, but the registering*

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officer erroneously determines it to be, say, Rs. 2 crores. In that case while making a reference to the Collector under Section 47-A, the registering officer will demand duty on 50% of Rs. 2 crores i.e. duty on L 1 crore instead of demanding duty on Rs. 10 lakhs. A party may not be able to pay this exorbitant duty demanded under the proviso to Section 47-A by the registering officer in such a case. What can be done in this situation?

29. In our opinion in this situation it is always open to a party to file a writ petition challenging the exorbitant demand made by the registering officer under the proviso to Section 47-A alleging that the determination made is arbitrary and/or based on extraneous considerations, and in that case it is always open to the High Court, if it is satisfied that the allegation is correct, to set aside such exorbitant demand under the proviso to Section 47-A of the Stamp Act by declaring the demand arbitrary. It is well settled that arbitrariness violates Article 14 of the Constitution vide Maneka Gandhi v. Union of India(1978) 1 SCC 248 AIR 1978 SC 597. Hence, the party is not remediless in this situation."

15. In Har Devi Asnani the validity of proviso to Section 65(1) of the Rajasthan Stamp Act, 1998came up for consideration in terms of which no revision application could be entertained unless it was accompanied by a satisfactory proof of the payment of 50% of the recoverable amount. Relying on the earlier decisions of this Court including in P. Laxmi Devi, the challenge was rejected and the thought expressed in P. Laxmi Devi was repeated in Har Devi Asnani as under:-

"27. In Govt. of A.P. v. P. Laxmi Devi this Court, while upholding the proviso to sub-section (1) of Section 47-A of the Stamp Act introduced by Andhra Pradesh Amendment Act 8 of 1998, observed: (SCC p. 737, para 29)

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"29. In our opinion in this situation it is always open to a party to file a writ petition challenging the exorbitant demand made by the registering officer under the proviso to Section 47-A alleging that the determination made is arbitrary and/or based on extraneous considerations, and in that case it is always open to the High Court, if it is satisfied that the allegation is correct, to set aside such exorbitant demand under the proviso to Section 47-A of the Stamp Act by declaring the demand arbitrary. It is well settled that arbitrariness violates Article 14 of the Constitution (vide Maneka Gandhi v. Union of India). Hence, the party is not remediless in this situation."

28. In our view, therefore, the learned Single Judge should have examined the facts of the present case to find out whether the determination of the value of the property purchased by the appellant and the demand of additional stamp duty made from the appellant by the Additional Collector were exorbitant so as to call for interference under Article 226 of the Constitution. 16. These decisions show that the following statements of law in The Anant Mills Co. Ltd. have guided subsequent decisions of this Court:

".The right of appeal is the creature of a statute. Without a statutory provision creating such a right the person aggrieved is not entitled to file an appeal. It is permissible to enact a law that no appeal shall lie against an order relating to an assessment of tax unless the tax had been paid.

...It is open to the Legislature to impose an accompanying liability upon a party upon whom legal right is conferred or to prescribe conditions for the exercise of the right. Any requirement for the discharge of that liability or the fulfilment of that condition in case the party concerned seeks to avail of the said right is a valid piece of legislation."

17. In the light of these principles, the High Court rightly held Section 62(5) of the PVAT Act to be legal and valid and the

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condition of 25% of pre-deposit not to be onerous, harsh, unreasonable and violative of Article 14 of the Constitution of India. Now we turn to question (c) as framed by the High Court and consider whether the conclusions drawn by the High Court while answering said question were correct or not.

18. It is true that in cases falling in second category as set out in paragraph 11 hereinabove, where no discretion was conferred by the Statute upon the Appellate Authority to grant relief against requirement of pre-deposit, the challenge to the validity of the concerned provision in each of those cases was rejected. But the decision of the Constitution Bench of this Court in Seth Nand Lal was in the backdrop of what this Court considered to be meagre rate of the annual land-tax payable. The decision in Shyam Kishore attempted to find a solution and provide some succour in cases involving extreme hardship but was well aware of the limitation. Same awareness was expressed in P. Laxmi Devi10 and in Har Devi Asnani and it was stated that in cases of extreme hardship a writ petition could be an appropriate remedy. But in the present case the High Court has gone a step further and found that the Appellate Authority would have implied power to grant such solace and for arriving at such conclusion reliance is placed on the decision of this Court in Kunhi."

31) Reference was also placed upon the finding of the Division Bench of this Court in the matter of ***Experion Developers Private Limited Vs. State of Haryana And Others*** (Supra) decided on 16.10.2020, the relevant extract of the said judgment reads as under:-

"*Exercise of the discretionary jurisdiction under Article 226*

17. On the second issue whether in exercise of its jurisdiction under Article 226 of the Constitution, this Court should, in the facts and circumstances of the individual cases, waive the requirement of pre-deposit, this Court notes that even in M/s Technimont Pvt. Ltd. (supra), the Supreme Court had noted

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> *that the power of a High Court under Article 226 of the Constitution, in rare cases of genuine hardship, to waive the requirement of pre-deposit either wholly or in part, continued. It was held that while there is no discretion conferred by the statute in question upon the Appellate Authority to grant a waiver of pre- deposit, as explained in Shyam Kishore v. Municipal Corporation of Delhi (1993) 1 SCC 22, in cases of extreme hardship, the High Court could, in exercise of its power under Article 226 of the Constitution, grant appropriate relief in that regard. This legal position that in genuine cases of hardship a writ petition could be a remedy was reiterated in the subsequent decisions of the Supreme Court in Government of Andhra Pradesh v. P. Laxmi Devi (2008) 4 SCC 720 and Har Devi Asnani v. State of Rajasthan, (2011) 14 SCC 160"*

32) By placing reliance upon the said judgments, it was submitted on behalf of the petitioners that the High Court is vested with power under writ jurisdiction to waive/relax the mandate of a pre-deposit in an event of genuine hardship and that the constitutional power of the High Court cannot be curtailed by a statute.

33) *Per contra,* learned counsel appearing on behalf of respondent has placed reliance upon the judgment of the Supreme Court of India in Civil Appeal No.538-2021 decided on 16.02.2021 titled as ***Kotak Mahindra Bank Pvt. Ltd. Vs. Ambuj A. Kaiswal & Ors***, the extract whereof is as under:-

> "*14. Therefore, in the facts and circumstances arising herein, when further amount is due and payable in discharge of the decree/recovery certificate issued by the DRT in favour of the appellant/Bank, the High Court does not have the power to waive the pre-deposit in its entirety, nor can it exercise discretion which is against the mandatory requirement of the statutory provision as contained in Section 21, which is extracted above. In all cases fifty per cent of the decretal amount i.e. the debt due is to be deposited before the DRAT as*

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a mandatory requirement, but in appropriate cases for reasons to be recorded the deposit of at least twenty-five per cent of the debt due would be permissible, but not entire waiver. Therefore, any waiver of pre-deposit to the entire extent would be against the statutory provisions and, therefore, not sustainable in law. The order of the High Court is, therefore, liable to be set aside.

15. It is noticed that this Court while considering an analogous provision contained in Section 18 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ('SARFAESI' for short) relating to predeposit in order to avail the remedy of appeal has expressed a similar opinion in the case of Narayan Chandra Ghosh vs. UCO Bank and Others (2011) 4 SCC 548, which reads as hereunder:-

7. Section 18(1) of the Act confers a statutory right on a person aggrieved by any order made by the Debts Recovery Tribunal under Section 17 of the Act to prefer an appeal to the Appellate Tribunal. However, the right conferred under Section 18(1) is subject to the condition laid down in the second proviso thereto. The second proviso postulates that no appeal shall be entertained unless the borrower has deposited with the Appellate Tribunal fifty per cent of the amount of debt due from him, as claimed by the secured creditors or determined by the Debts Recovery Tribunal, whichever is less. However, under the third proviso to the sub-section, the Appellate Tribunal has the power to reduce the amount, for the reasons to be recorded in writing, to not less than twenty-five per cent of the debt, referred to in the second proviso. Thus, there is an absolute bar to entertainment of an appeal under Section 18 of the Act unless the condition precedent, as stipulated, is fulfilled. Unless the borrower makes, with the Appellate Tribunal, a pre deposit of fifty per cent of the debt due from him or determined, an appeal under the said provision cannot be entertained by the Appellate Tribunal. The

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language of the said proviso is clear and admits of no ambiguity.

8. It is well-settled that when a Statute confers a right of appeal, while granting the right, the Legislature can impose conditions for the exercise of such right, so long as the conditions are not so onerous as to amount to unreasonable restrictions, rendering the right almost illusory. Bearing in mind the object of the Act, the conditions hedged in the said proviso cannot be said to be onerous. Thus, we hold that the requirement of pre-deposit under sub-section (1) of Section 18 of the Act is mandatory and there is no reason whatsoever for not giving full effect to the provisions contained in Section 18 of the Act. In that view of the matter, no court, much less the Appellate Tribunal, a creature of the Act itself, can refuse to give full effect to the provisions of the Statute. We have no hesitation in holding that deposit under the second proviso to Section 18(1) of the Act being a condition precedent for preferring an appeal under the said Section, the Appellate Tribunal had erred in law in entertaining the appeal without directing the appellant to comply with the said mandatory requirement.

9. The argument of learned counsel for the appellant that as the amount of debt due had not been determined by the Debts Recovery Tribunal, appeal could be entertained by the Appellate Tribunal without insisting on pre-deposit, is equally fallacious. Under the second proviso to sub-section (1) of Section 18 of the Act the amount of fifty per cent, which is required to be deposited by the borrower, is computed either with reference to the debt due from him as claimed by the secured creditors or as determined by the Debts Recovery Tribunal, whichever is less. Obviously, where the amount of debt is yet to be determined by the Debts Recovery Tribunal, the borrower, while preferring appeal, would be liable to deposit fifty per cent of the debt due from him as claimed by the secured creditors. Therefore, the condition of pre-deposit

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> *being mandatory, a complete waiver of deposit by the appellant with the Appellate Tribunal, was beyond the provisions of the Act, as is evident from the second and third provisos to the said Section. At best, the Appellate Tribunal could have, after recording the reasons, reduced the amount of deposit of fifty per cent to an amount not less than twenty-five per cent of the debt referred to in the second proviso. We are convinced that the order of the Appellate Tribunal, entertaining appellant's appeal without insisting on pre-deposit was clearly unsustainable and, therefore, the decision of the High Court in setting aside the same cannot be flawed." (emphasis supplied)*".

34) It was argued that in view of the authoritative pronouncement of the Supreme Court in matter of Kotak Mahindra (supra), the requirement of a pre-deposit could not be waived by the High Court in its writ jurisdiction.

35) We have considered the submissions made by the respective parties on the issue in hand and do not find ourselves in agreement with the respondents. The powers vested in a High Court under Article 226 of the Constitution of India can be exercised by the High Court to ensure complete justice. The statutory provision contained in the Real Estate (Regulatory and Development) Act, 2016 cannot curtail the constitutional powers conferred upon the Writ Court. It was held by the Supreme Court in the judgment of ***L.Chandra Kumar Vs. Union of India & Others, (1997) 3 SCC 261*** that the power of the High Court under Article 226/227 is a part of basic structure of the Constitution of India and cannot be taken away even by means of constitutional amendment. The relevant extract of the aforesaid Constitutional Bench judgment of Supreme Court is being extracted as under:-

> *'73. We may now analyse certain other authorities for the proposition that the jurisdiction conferred upon the High Courts and the Supreme-Court under Article 226 and 32 of the*

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Constitution respectively, is part of the basic structure of the Constitution. While expressing his views on the significance of draft Article 25, which corresponds to the present Article 32 of the Constitution, Dr. B.R. Ambedkar, the Chairman of the Drafting Committee of the Constituent Assembly stated as follows (CAD, Vol. VII, p. 953)

"If I was asked to name any particular Article in this Constitution as the most important - an Article without which this Constitution would be a nullity--I could not refer to any other Article except this one. It is the very soul of the Constitution and the very heart of it and I am glad that the House has realised its importance."

74. This statement of Dr. Ambedkar has been specifically reiterated in several judgments of this Court to emphasise the unique significance attributed to Article 32 in our constitutional scheme. [See for instance, Khanna, J. in Kesavananda Bharati's case (p. 818), Bhagwati, J. in Minerva Mills (p. 678), Chandrachud, CJ Fertiliser Kamgar (para 11), R. Misra, J. in Sampath Kumar (p. 137)].

75. In Keshav Singh, while addressing this issue Gajendragadhkar, CJ stated as follows (supra at pp. 493-494):

"If the power of the High Courts under Article 226 and the Authority of this Court under Article 32 are not subject to any exceptions, then it would be futile to contend that a citizen cannot move the High Courts or this Court to invoke their jurisdiction even in cases where his fundamental rights have been violated. The existence of judicial power in that behalf must necessarily and inevitably postulate the existence of a right in the citizen to move the Court in that behalf; otherwise the power conferred on the High Courts and this Court would be rendered virtually meaningless. Let it not be forgotten that the judicial power conferred on the High Courts and this

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Court is meant for the protection of the citizens' fundamental rights, and so, in the existence of the said judicial power itself is necessarily involved the right of the citizen to appeal to the said power in a proper case." (Emphasis added)

76. To express our opinion on the issue whether the power of judicial review vested in the High Courts and into the Supreme Court under Articles 226/227 and 32 is part of the basic structure of the Constitution, we must first attempt to understand what constitutes the basic structure of the Constitution. The Doctrine of basic structure was evolved in Kesvananda Bharati's case. However, as already mentioned, that case did not lay down that the specific and particular features mentioned in that judgment alone would constitute the basic structure of our Constitution. Indeed, in the judgments of Shelat & Grover, JJ., Hegde & Mukherjee, JJ. and Jaganmohan Reddy, J., there are specific observations to the effect that their list of essential features comprising the basic structure of the Constitution are illustrative and are not intended to be exhaustive. In Indira Gandhi's case, Chandrachud, J. held that the proper approach for a Judge who is confronted with the question whether a particular facet of the Constitution is part of the basic structure, is to examine, in each individual case, the place of the particular feature in the scheme of our Constitution, its object and purpose, and the consequences of its denial on the integrity of our Constitution as a fundamental instrument for the governance of the country, (supra at pp. 751-752). This approach was specifically adopted by Bhagwati, J. in Minerva Mill's case (supra at pp. 671-672) and is not regarded as the definitive test in this field of Constitutional Law.

77. We find that the various factors mentioned in the test evolved by Chandrachud, J. have already been considered by decisions of various Benches of this Court that have been referred to in the course of our analysis. From their

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conclusions, many of which have been extracted by us in toto, it appears that this Court has always considered the power of judicial review vested in the High Courts and in this Court under Articles 226 and 32 respectively, enabling legislative action to be subjected to the scrutiny of superior courts, to be integral to our constitutional scheme. While several judgments have made specific references to this aspect [Gajendragadhkar, CJ in Special Reference case, Beg, J. and Khanna, J. in Kesavananda Bharti's case, Chandrachud, CJ and Bhagwati, J. in Minerva Mills, Chandrachud, CJ in Fertiliser Kamgar, K.N. Singh, J. in Delhi Judicial Service Association, etc.] the rest have made general observations highlighting the significance of this feature.

78. The legitimacy of the power of Courts within constitutional democracies to review legislative action has been questioned since the time it was first conceived. The Constitution of India, being alive to such criticism, has, while conferring such power upon the higher judiciary, incorporated important safeguards. An analysis of the manner in which the Framers of our Constitution incorporated provisions relating to the judiciary would indicate that they were very greatly concerned with securing the independence of the judiciary. These attempts were directed at ensuring that the judiciary would be capable of effectively discharging its wide powers of judicial review. While the Constitution confers the power to strike down laws upon the High Courts and the Supreme Court, it also contains elaborate provisions dealing with the tenure, salaries, allowances, retirement age of Judges as well as the mechanism for selecting Judges to the superior courts. The inclusion of such elaborate provisions appears to have been occasioned by the belief that, armed by such provisions, the superior courts would be insulated from any executive or legislative attempts to interfere with the making of their decisions. The Judges of the superior courts have been entrusted with the task of upholding the Constitution and to

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this end, have been conferred the power to interpret it. It is they who have to ensure that the balance of power envisaged by the Constitution is maintained and that the legislature and the executive do not, in the discharge of their functions, transgress constitutional limitations. It is equally their duty to oversee that the judicial decisions rendered by those who man the subordinate courts and tribunals do not fall foul of strict standards of legal correctness and judicial independence. The constitutional safeguards which ensure the independence of the Judges of the superior judiciary, are not available to the Judges of the subordinate judiciary or to those who man Tribunals created by ordinary legislations. Consequently, Judges of the latter category can never be considered full and effective substitutes for the superior judiciary in discharging the function of constitutional interpretation. We, therefore, hold that the power of judicial review over legislative action vested in the High Courts under Articles 226 and in this Court under Article 32 of the Constitution is an integral and essential feature of the Constitution, constituting part of its basic structure. Ordinarily, therefore, the power of High Courts and the Supreme Court to test the constitutional validity of legislations can never be ousted or excluded.

79. We also hold that the power vested in the High Courts to exercise judicial superintendence over the decisions of all Courts and Tribunals within their respective jurisdictions is also part of the basic structure of the Constitution. This is because a situation where the High Courts are divested of all other judicial functions apart from that of constitutional interpretation, is equally to be avoided. '

36) The power conferred in the High Court under Article 226 of the Constitution of India has thus been recognized as a basic structure of the Constitution. A statutory provision or enactment cannot thus oust the jurisdiction conferred upon a High Court by the Constitution of India. However, as a part of

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the fulfillment of the statutory object, it is only desirable that the High Court exercises judicial restraint while invoking its powers and to satisfy itself about existence of sufficient reasons/valid cause; equality before law, removal of arbitrariness or discrimination; furtherance of interest of justice; fairness in procedure and/or balancing of equities before invoking its powers under writ jurisdiction.

37) The judgment in the case of Kotak Mahinder's case *(supra*) does not apply in the facts of the instant case for the reasons that the Supreme Court was not seized of the issue relating to the power vested in a Writ Court *viz-a-viz*, the restrictions imposed in a statutory enactment. Hence, the issue in question was not being examined by the Supreme Court and thus the judgment of the Supreme Court in the matter of Kotak Mahindra's case *(supra)* would not get attracted to the facts of the instant case. It is well settled in law that a precedent has to be read in light of the issues raised and decided. A finding is not to be read bereft of the facts involved and dispute raised in the case.

38) We are thus of the view that Section 43(5) of the Real Estate (Regulatory and Development) Act 2016 does not over-ride the powers of the High Court under Article 226 of the Constitution of India and there is no prohibition against the High Court in exercising its jurisdiction in an appropriate case and to alter/modify/waive the requirement of mandatory pre-deposit.

39) Having held so, it now falls upon this Court to ascertain as to whether sufficient grounds exist as would establish that the compliance of the condition of pre-deposit by the petitioners, as contemplated under Section 43(5) of the Act of 2016, is harsh and/or onerous.

40) While dealing with the said issue, the Supreme Court in matter of ***M/s NewTech Promoters and Developers Private Limited Vs. State of UP And Others etc***. has held as under:-

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' Question no. 4:- Whether the condition of pre-deposit under proviso to Section 43(5) of the Act for entertaining substantive right of appeal is sustainable in law?

122. It may straightaway be noticed that Section 43(5) of the Act envisages the filing of an appeal before the appellate tribunal against the order of an Authority or the adjudicating officer by any person aggrieved and where the promoter intends to appeal against an order of Authority or adjudicating officer against imposition of penalty, the promoter has to deposit at least 30 per cent of the penalty amount or such higher amount as may be directed by the appellate tribunal. Where the appeal is against any other order which involves the return of the amount to the allottee, the promoter is under obligation to deposit with the appellate tribunal the total amount to be paid to the allottee which includes interest and compensation imposed on him, if any, or with both, as the case may be, before the appeal is to be instituted.

123. The plea advanced by the learned counsel for the appellants is that substantive right of appeal against an order of Authority/adjudicating officer cannot remain dependent on fulfilment of pre-deposit which is otherwise onerous on the builders alone and only the builders/promoters who are in appeal are required to make the pre-deposit to get the appeal entertained by the Appellate Tribunal is discriminatory amongst the stakeholders as defined under the provisions of the Act.

124. Learned counsel further submits that if the entire sum as has been computed either by the Authority or adjudicating officer, is to be deposited including 30 per cent of the penalty in the first place, the remedy of appeal provided by one hand is being taken away by the other since the promoter is financially under distress and incapable to deposit the full computed amount by the Authority/adjudicating officer. The right of appreciation of his defence at appellate stage which is made available to him under the statute became nugatory because of the onerous mandatory requirement of pre-deposit in entertaining the appeal only on the promoter who intends to prefer under Section 43(5) of the Act which according to him is in the given facts and circumstances of this case is unconstitutional and violative of Article 14 of the Constitution of India.

125. The submission in the first blush appears to be attractive but is not sustainable in law for the reason that a perusal of scheme of the Act makes it clear that the limited rights and duties are provided on the shoulders of the allottees under Section 19 of the Act at a given time, several onerous duties and obligations have been imposed on the promoters i.e. registration, duties of promoters, obligations of promoters,

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> *adherence to sanctioned plans, insurance of real estate, payment of penalty, interest and compensation, etc. under Chapters III and VIII of the Act 2016. This classification between consumers and promoters is based upon the intelligible differentia between the rights, duties and obligations cast upon the allottees/home buyers and the promoters and is in furtherance of the object and purpose of the Act to protect the interest of the consumers vis-a-viz., the promoters in the real estate sector. The promoters and allottees are distinctly identifiable, separate class of persons having been differently and separately dealt with under the various provisions of the Act.*
>
> *126. Therefore, the question of discrimination in the first place does not arise which has been alleged as they fall under distinct and different categories/classes.*
>
> *127. It may further be noticed that under the present real estate sector which is now being regulated under the provisions of the Act 2016, the complaint for refund of the amount of payment which the allottee/consumer has deposited with the promoter and at a later stage, when the promoter is unable to hand over possession in breach of the conditions of the agreement between the parties, are being instituted at the instance of the consumer/allotee demanding for refund of the amount deposited by them and after the scrutiny of facts being made based on the contemporaneous documentary evidence on record made available by the respective parties, the legislature in its wisdom has intended to ensure that the money which has been computed by the Authority at least must be safeguarded if the promoter intends to prefer an appeal before the tribunal and in case, the appeal fails at a later stage, it becomes difficult for the consumer/allottee to get the amount recovered which has been determined by the Authority and to avoid the consumer/allottee to go from pillar to post for recovery of the amount that has been determined by the Authority in fact, belongs to the allottee at a later stage could be saved from all the miseries which come forward against him.'*

41) Hence, a simpliciter argument that the condition of pre-deposit is onerous would not be sufficient for invoking the writ jurisdiction of the High Court. It would be imperative that the petitioner(s) establish their plea and prove how such a condition is onerous to an extent that in compliance of the same, it is not in a position at all to take recourse to its statutory remedy of appeal. The circumstances supporting the said plea have to be established by admissible documents to corroborate the said plea. To examine the plea of hardship,

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reference is made to the respective averment raised in the present batch of petitions, if any, and the same read as under:-

Averment in 1st Batch (Ramprastha Promoters and Developers Pvt. Ltd.)

> *'16) That the Petitioner humbly submits that under the provisions of 2016 Act no discretion seems to have been left to the Ld. Appellate Tribunal to either waive or reduce the amount of pre-deposit and any waive and/or reduction of the amount of pre-deposit as mandated by 2016 Act could not be done by Ld. Appellate Tribunal in the absence of such discretion, keeping in view the law as settled by the Hon'ble Supreme Court. However, the Ld. Appellate Tribunal, through an order dated May 03, 2019 passed in Appeal No.60 of 2019; Ansal Housing Ltd. Vs. Sushil Kumar Batra, alsong with another connected case, allowed the applications filed by the Appellant in the said appeals seeking waiver of the condition of pre-deposit. Even though the Ld. Appellate Tribunal noted the fact that there was no provision in the 2016 Act whereby the Tribunal could waive completely or partially the condition of pre-deposit, proceeded to exercise the power to waive the condition of pre-deposit, seemingly by placing reliance on judgments rendered by this Hon'ble Court in the matter of Punjab State Power Corporation Ltd. Vs. State of Punjab and Others, reported as 2016(2) RCR (Civil) 559; Maruti Suzuki India Ltd. Versus Union of India and Others being CWP No. 12922 of 2014; and M/s. Mahesh Kumar Singla and Others versus Union of India and Others being CWP No. 23368 of 2015 decided on March 27, 2017. Since the Petitioner was given to understand, especially from perusal of order dated May 03, 2019 passed in Ansal Housing's case (Supra), that one could seek a waiver of the condition of pre- deposit from the Ld. Appellate Tribunal itself, the Petitioner preferred an Appeal along with the Application seeking waiver, more so when the case of the Petitioner was similar to the case where the waiver had been allowed. 17. That meanwhile, the Ld.*

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Supreme Court in M/s Tecnimont Pvt. Ltd. (Formerly known as Tecnimont ICB Private Limited) Versus State of Punjab and Others, Civil Appeal No. 7358 of 2019 categorically held that the Appellate Authority has no inherent powers to waive the condition of pre-deposit and in view of the ratio laid down in the aforementioned case, the Ld. Appellate Tribunal is likely to dismiss the application for waiver of pre-deposit filed alongwith the appeal.

18. That as the Government of India on 24.03.2020 called for a Nationwide Lockdown in the wake of COVID-19/Pandemic, which resulted in total halting of al the business/ commercials activities and temporary closures of commercial units including the government offices and public hearing in courts.

19. That later on around Aug 2020, the office of the Petitioner was opened; post government issuing lifting of partial lockdown, with strict adherence to the Standard Operating Procedures (SOP's), which restricted the number of physical attendance. As such, the office was started with minimal staff.

22. That in the month of January, 2021, the main objection which remained with the filing registry of the Ld. Appellate Tribunal, was with respect to the compliance of the pre-deposit condition under Section 43(5) of the Act, 2016, although, an application seeking waiver has been filed, however, there is likelihood that the same will be dismissed in terms of the Supreme Court judgement, supra.

44. That the Authority had also proceeded with an execution qua order dated 20.02.2020 (Annexure P-6), without jurisdiction, that too in respect of the impugned order which in itself has been passed without jurisdiction. The Authority vide its order dated 09.02.2021 was pleased to issue warrants of attachments, thereby attaching the Bank Accounts of the Petitioner. The said order has severely prejudiced the rights of the Petitioner and has also caused financial hardship. A Copy

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of the Execution Petition No. 4363 of 2020 is attached herewith as Annexure-P-9, copy of application filed against petitioner and copy of Reply filed by the Petitioner to the execution is attached herewith as Annexure P-10 & P-11. Copy of Order dated 09.02.2021 as Annexure-P-12.'

Averment in 2nd Batch (Athena Infrastructure Ltd & Selene Constructions Ltd)

'33. It is submitted that through the order of January 18, 2021, the Hon'ble Supreme Court has been pleased to stay not only the operation of the judgment of this Hon'ble Court of October 16, 2020 wherein similar grounds of challenge had been raised, but also, the execution proceedings arising there from. In the present case, similar questions of law and fact are involved, moreover, Petitioner's appeal before the Hon'ble Supreme Court is awaiting adjudicating, during the pendency of which, it has been afforded interim protection. As such, in the present case as well, the Petitioner is liable to be protected against any and all consequences of the execution proceedings instituted against it by Respondent Nos. 4 and 5, before Respondent No. 3 as the seminal issue involved in the present case also goes to the very root of the matter, i.e., whether at the time of passing of the impugned decision, did Respondent No. 3 exercise powers not vested within it.

34. Still further, it is submitted that in the event the Petitioner is made to pre-deposit the entire amount as has erroneously been held to be due and payable by Respondent No. 3, then the execution of the project itself would suffer and as such, not only is the condition prescribed under Section 43(5) of the 2016 Act onerous and not liable to be complied in the facts of the present ease, but also, it would meet the ends of justice if the Petitioner is granted waiver from depositing the amount to the extent required under Section 43(5) of the 2016 Act.

35. It is submitted that the Hon'ble Supreme Court in Tecnimont (Supra) was examining whether the requirement of

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25% of total amount of additional demand created under the Punjab Value Added Tax Act, 2005, whereas in the present case, there is seemingly a requirement of a pre-deposit of 100% /complete amount, Still further, even if it is stated that the principles stated therein would apply to the provisions of the 2016 Act, it is seen that per paragraph nos. 14 and 15 of therein, the Hon'ble Supreme Court has clearly indicated that in cases such as one at present, it is always open to a party to assail/challenge the exorbitant demand made pursuant to a statutory provision by way of writ petition, which has sought to be done by virtue of the present petition.'

Averment in 3rd Batch (M/s Vipul Limited)

'45. That it may be mentioned that against impugned orders dated 13.02.2020 and 02.07.2021, though the remedy of an Appeal as provided under Section 44 of the 2016 Act has been availed of the same cannot be said to be efficacious and effective keeping in view the proviso to Section 43(5) of 2016 Act, which imposes an onerous and unreasonable condition/restriction for entertaining the Appeal to be filed by the promoter such like the petitioner.

46. That without prejudice to the aforementioned and in the alternative, the Petitioner requests this Hon'ble Court to set aside order dated 13.02.2020 passed by the Ld. Authority, RERA and direct the Ld. Appellate Tribunal to entertain the Appeal of the Petitioner without requiring the Petitioner to pre-deposit the amount that it may be liable to in terms of the decision rendered by the Authority and thereby, allowing waiver of the condition of pre-deposit.'

Averment in 4th Batch (S.S. Group Private Limited)

51. That it may be mentioned that against the impugned order, though a remedy of an Appeal has been provided under Section 44 of the 2016 Act, the same cannot be said to be

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efficacious and effective keeping in view the proviso to Section 43(5) of 2016 Act, which imposes an onerous and unreasonable condition/restriction for entertaining the Appeal to be filed by the promoter such like the Petitioner. Keeping in view the directions issued in the impugned order, which are ex facie without jurisdiction, the Petitioner would be required to pre-deposit an exorbitant amount before any Appeal before the Ld. Appellate Tribunal could be entertained. Though, from the perusal of the impugned order, it is evident that not only the same is wholly without jurisdiction, but the same has been passed in violation of principles of natural justice and as such, the Petitioner beseeches this Hon'ble Court to not treat the alternative remedy of Appeal as a bar in filing and maintaining the present petition.

52. That without prejudice to the aforementioned and in the alternative, the Petitioner beseeches this Hon ble Court to allow the Petitioner to file an Appeal under Section 44 of the 2016 Act and direct the Ld. Appellate Tribunal to entertain the said Appeal without requiring the Petitioner to pre-deposit the amount that it may be liable to in terms of the decision rendered by the Authority and thereby, allowing waiver of the condition of pre-deposit.

Averment in 5th Batch (M/s Assotech Moonshine)

'l) Because proviso to Section 43/51 is not same as condition prescribed under Section 62(5) of Punjab Value Added Tax Act, 2005 which was considered by Hon'ble Supreme Court in case of M/s Tecnimont Pvt, Ltd. Vs. State of Punjab relied upon by the Tribunal in its impugned order. Firstly, amount of pre-deposit under Section 62(5) of PVAT Act, 2005 is 25% of additional demand whereas under proviso to Section 43(5) there is pre-deposit upto 100% of the amount ordered. Secondly, in Section 62(5) of PVAT Act, 2005 there is no discretion of the Act to waive the condition of pre-deposit

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whereas in provision of Section 43(5) of the Act, Ld. Tribunal has been conferred jurisdiction to waive pre- deposit in certain cases.

m) Because it may be mentioned that against impugned order, though a remedy of an Appeal has been provided under Section 44 of the R.E. (R & D) Act 2016, same cannot be said to be efficacious and effective keeping in view the proviso to Section 43(5) of 2016 Act, which imposes an onerous and unreasonable condition/restriction for entertaining Appeal to be filed by promoter such like Petitioner. Though, as already mentioned, Petitioner, being aggrieved of order impugned in present petition, had preferred an appeal, before the Ld. Appellate Tribunal along with application seeking waiver of condition of pre-deposit as mandated by provision of Section 43(5) of the R.E. (R & D) Act 2016, the same is likely to be the fact that the matter pertaining to the constitutionality of the provisions enumerated under section 43(5) of the Act are under challenge and are thus pending adjudication before the Hon'ble Apex Court, and that stay has also been granted by the Hon'ble Apex Court, it is only in equity and in furtherance of the principles of natural justice that the petitioner be granted waiver from the requirement of pre-deposit.

n) Moreover, the said condition requiring pre-deposit of the amount would cause severe and undue financial hardship upon the Petitioner, which would have a cascading effect on the construction activities, which would ultimately be prejudicial to numerous allottees of petitioner, that too under compulsion to comply an order passed by Authority which is without jurisdiction and nullity in eyes of law.

o) That it may also be pertinent to mention that the petitioner is in a severe financial crunch and clearly not in a position to make any pre-deposit in compliance of Section 43(5).'

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42) It is thus, required to be ascertained as to what would tantamount to 'onerous' or 'hardship'. A plain meaning of 'Onerous' is a task or responsibility involving a great deal of effort, trouble or difficulty, Black's Law Dictionary; (9th edition) defines 'Onerous' to means as:-

"1. Excessively burdensome or troublesome; causing hardship.

2. Having or involving obligations that outweigh the advantages."

43) The obligation thus is cast upon the petitioner to establish that the discharge of statutory obligation would be 'Onerous' and that the writ Court must come to the rescue of the petitioner out of statutory mandate and intent.

44) A perusal of the pleading raised in the respective petitions by the petitioners fails to highlight any evidence in relation to the condition being onerous. The petitioners have failed to demonstrate as to how and under what circumstance is the condition onerous and have even failed to demonstrate that the petitioner(s) is/are not in a condition to make good the pre-deposit by any means and to take recourse to the statutory remedy of appeal. It is not for the Court to presume existence of circumstances that are onerous. The burden lies on the petitioner to plead and to establish the circumstances under which the mandate of pre-deposit can be said to be onerous to an extent of defeating its statutory right of appeal. No such statement of account and/or financials have been placed before the Court to even *prima facie* examine the correctness of the pleading made.

45) As a parting submission, an effort was made by the learned counsel that even though individually the case may not project a hardship, however, on collective impact, the condition certainly is onerous. However, the pleadings on record are bereft of any such document to establish even the said submissions. Besides, a collective cause of action cannot form the basis of examining the statutory mandate. The petitioners have failed to demonstrate how even the

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collective amount would make it onerous to the petitioners to avail the statutory remedy of appeal. In any case, the doctrine of '*casus omissus'* would always be applicable to the interpretation of statutory provisions in exercise of power of judicial review. The Court cannot add something to the statutory provisions which is not deducible from its plain reading. No such interpretation can be attributed to the statutory provision, which may bring absurd results and defeat the very object of the statute.

46) The Supreme Court had summed up the principles of interpretation of statutes in the judgment of ***State of Jharkhand Vs. Govind Singh,*** Civil Appeal Nos.1405 of 2004 decided on 03.12.2004. The principles as summed up by the Supreme Court for interpretation of statutes are as under:-

> *1) Courts cannot aid the Legislature's defective phrasing of an Act- Court cannot add, or mend and, by construction make up deficiencies which are left there.*
>
> *2) Where, however, the words were clear, there is no obscurity, there is no ambiguity and the intention of the legislature is clearly conveyed, there is no scope for the Court to innovate or take upon itself the task of amending or altering the statutory provisions.*
>
> *3) Judges should not proclaim that they are playing the role of a law-maker merely for an exhibition of judicial valour.*
>
> *4) A construction which requires, for its support, addition or substitution of words or which results in rejection of words, has to be avoided, unless it is covered by the rule of exception, including that of necessity.*
>
> *5) Court cannot reframe the legislation as it has no power to legislate.*

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> *6) "Statutes should be construed not as theorems of Euclid", Judge Learned Hand said, "but words must be construed with some imagination of the purposes which lie behind them"*
>
> *7) While interpreting a provision the Court only interprets the law and cannot legislate it – If a provision of law is misused and subjected to the abuse of process of law, it is for the legislature to amend, modify or repeal it, if deemed necessary.*
>
> *8) Two principles of constructions – One relating to casus omissus and the other in regard to reading the statute as a whole – appear to be well settled – Under the first principle a casus omissus cannot be supplied by the Court except in the case of clear necessity and when reason for it is found in the four corners of the statutes itself but at the same time a casus omissus should not be readily inferred and for that purpose all the parts of a statute of section must be construed together and every clause of a section should be construed with reference to the context and other clauses thereof so that the construction to be put on a particular provision makes a consistent enactment of the whole statute.'*

47) It would also be essential to refer to the judgment of Supreme Court in the matter of ***State of Kerala And Another Vs. P.V. Neelakandan Nair And Others,*** Civil Appeal Nos.3603-3605 of 2005 decided on 11.07.2005. The relevant observations of the Supreme Court are extracted as under:-

> *'7. It is well settled principle in law that the Court cannot read anything into a statutory provision which is plain and unambiguous. A statute is an edict of the Legislature. The language employed in a statute is the determinative factor of legislative intent.*
>
> *8. Words and phrases are symbols that stimulate mental references to referents. The object of interpreting a statute is to ascertain the intention of the Legislature enacting it. (See*

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Institute of Chartered Accountants of India v. M/s Price Waterhouse and Anr., AIR (1998) SC 74). The intention of the Legislature is primarily to be gathered from the language used, which means that attention should be paid to what has been said as also to what has not been said. As a consequence, a construction which requires for its support, addition or substitution of words or which results in rejection of words as meaningless has to be avoided. As observed in Crawford v. Spooner, (1846) 6 Moore PC 1, Courts, cannot aid the Legislatures' defective phrasing of an Act, we cannot add or mend, and by construction make up deficiencies which are left there. (See The State of Gujarat and Ors. v. Dilipbhai Nathjibhai Patel and Anr., JT (1998) 2 SC 253). It is contrary to all rules of construction to read words into an Act unless it is absolutely necessary to do so. (See Stock v. Frank Jones (Tiptan) Ltd., (1978) 1 All ER 948 HL). Rules of interpretation do not permit Courts to do so, unless the provision as it stands is meaningless or of doubtful meaning. Courts are not entitled to read words into an Act or Parliament unless clear reason for it is to be found within the four corners of the Act itself. Per Lord Loreburn L.C. in Vickers Sons and Maxim Ltd. v. Evans, (1910) AC 445 (HL), quoted in Jamma Masjid, Mercara v. Kodimaniandra Deviah and Ors., AIR (1962) SC 847).

9. The question is not what may be supposed and has been intended but what has been said, ``Statutes should be construed not as theorems of Euclid''. Judge Learned Hand said, ``but words must be construed with some imagination of the purposes which lie behind them''. (See Lenigh Valley Coal Co. v. Yensavage, 218 FR 547). The view was re-iterated in Union of India and Ors. v. Filip Tiago De Gama of Vedem Vasco De Gama, AIR (1990) SC 981)

10. In D.R. Venkatachalam and Ors. etc. v. Dy. Transport Commissioner and Ors. etc., AIR (1977) SC 842, it was

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observed that Courts must avoid the danger of a priori determination of the meaning of a provision based on their own pre-conceived notions of ideological structure or scheme into which the provision to be interpreted is somewhat fitted. They are not entitled to usurp legislative function under the disguise of interpretation.

11. While interpreting a provision the Court only interprets the law and cannot legislate it. If a provision of law is misused and subjected to the abuse of process of law, it is for the legislature to amend, modify or repeal it, if deemed necessary. (See Commissioner of Sales Tax, M.P. v. Popular Trading Company, Ujjain, [2000] 5 SCC 511). The legislative casus omissus cannot be supplied by judicial interpretative process.

12. Two principles of construction - one relating to casus omissus and the other in regard to reading the statute as a whole- appear to be well settled. Under the first principle a casus omissus cannot be supplied by the Court except in the case of clear necessity and when reason for it is found in the four corners of the statute itself but at the same time a casus omissus should not be readily inferred and for that purpose all the parts of a statute or section must be construed together and every clause of a section should be construed with reference to the context and other clauses thereof so that the construction to be put on a particular provision makes a consistent enactment of the whole statute. This would be more so if literal construction of a particular clause leads to manifestly absurd or anomalous results which could not have been intended by the Legislature. ``An intention to produce an unreasonable result", said Danackwerts, L.J. in Artemiou v. Procopiou, (1966) 1 QB 878, `` is not to be imputed to a statute if there is some other construction available". Where to apply words literally would `` defeat the obvious intention of the legislature and produce a wholly unreasonable result" we must `` do some violence to the words" and so achieve that obvious

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intention and produce a rational construction. Per Lord Reid in Luke v. IRC, (1963) AC 557 where at p. 577 he also observed: ``this is not a new problem, though our standard of drafting is such that it rarely emerges"

13. It is then true that, `` when the words of a law extend not to an inconvenience rarely happening, but due to those which often happen, it is good reason not to strain the words further than they reach, by saying it is casus omissus, and that the law intended quae frequentius accidunt." ``But," on the other hand, `` it is no reason, when the words of a law do enough extend to an inconvenience seldom happening, that they should not extend to it as well as if it happened more frequently, because it happens but seldom" (See Fenton v. Hampton, (1858) XI Moore, P.C. 347). A casus omissus ought not to be created by interpretation, save in some case of strong necessity. Where, however, a casus omissus does really occur, either through the inadvertence of the legislature, or on the principle quod semel aut bis existit proetereunt legislators, the rule is that the particular case, thus left unprovided for, must be disposed of according to the law as it existed before such statute-Casus omissus et oblivioni datus dispositioni communis juris relinquitur; ``a casus omissus," observed Buller, J. in Jones v. Smart, 1 T.R. 52, ``can in no case be supplied by a court of law, for that would be to make laws."

14. The golden rule for construing wills, statutes, and, in fact, all written instruments has been thus stated: ``The grammatical and ordinary sense of the words is to be adhered to unless that would lead to some absurdity or some repugnance or inconsistency with the rest of the instrument, in which case the grammatical and ordinary sense of the words may be modified, so as to avoid that absurdity and inconsistency, but no further" (See Grey v. Pearson, (1857) 6 H.L. Cas. 61). The latter part of this ``golden rule" must, however, be applied with much caution. ``if," remarked Jervis,

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> *C.J., ``the precise words used are plain and unambiguous in our judgment, we are bound to construe them in their ordinary sense, even though it lead, in our view of the case, to an absurdity or manifest injustice. Words may be modified or varied where their import is doubtful or obscure. But we assume the functions of legislators when we depart from the ordinary meaning of the precise words used, merely because we see, or fancy we see, an absurdity or manifest injustice from an adherence to their literal meaning" (See Abley v. Dale, 11, C.B. 378).'*

48) In view of the above judicial pronouncements and the affirmation of Section 43 (5) by the Supreme Court in the matter of M/s Newtech Promoters and Developers Pvt. Ltd. Versus State of U.P and others (supra), we would first prefer the plain reading of the statute and the requirement prescribed by it. The plain reading mandates a pre-deposit for preferring an appeal. A petitioner seeking indulgence of Writ Court to seek exemption from statutory mandate must establish strong reasons and to establish deprivation of its statutory remedy of appeal by demonstrating to the satisfaction of Court, its inability to arrange for pre-deposit despite all reasonable efforts. Acceptance of such an argument that cumulative impact of all orders directing refund/interest or compensation shall be onerous is more likely to prompt the developer to commit multiple defaults and then to plead commuted hardship. Such an interpretation if accepted, is likely to run contrary to the intent behind Section 43(5) of RERA Act, 2016 which is otherwise aimed to protect interest of the allottees. We have no reason to assume that the legislature has committed an oversight or was not aware of the same. The legislature has consciously provided for a mandatory pre-deposit without exceptions in order to ensure due completion of projects to avoid undue appeals. The parting argument of the petitioner thus lacks merit and its acceptance is more likely to perpetuate a mischief than remedy a wrong.

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49) The attempt made by the petitioners to plead obligation of pre-deposit to be onerous is thus not established. A mere inconvenience or some hardship in diverting funds cannot be construed as a circumstance which is onerous necessitating waiver/relaxation of a statutory mandate. No such circumstance has been *prima facie* brought on record and the pleading falls short of demonstrating any difficulty in making a pre-deposit, leave apart the same being onerous for the petitioners to comply.

50) We are thus of the view that the petitioners have not been able to demonstrate existence of any extreme hardship in complying with the statutory mandate or to perceive the condition of pre-deposit to be onerous in a way to effectively defeat the statutory remedy of appeal. The contentions of the petitioners are thus devoid of merit and writ petitions deserve to be dismissed on the said scope.

51) The counsel appearing on behalf of the petitioners had also made a submission in the alternative that they may be granted some additional time to make good the pre-deposit, as the time prescribed by the Appellate Tribunal for pre-deposit has already come to an end. In the event such time frame is not granted to them, the appeal would also stand dismissed for want of pre-deposit, which would effectively deprive them of their right to statutory appeal.

52) The aforesaid prayer of the petitioners was opposed by the respondent on the ground that the petitioners have been using the process of law to delay the proceedings and to defeat the rights of the allottees. The orders were passed by the Authority in the year 2020 and the petitioners were called upon to make good the deposit by granting them reasonable time. However, for reasons best known, the petitioners chose not to make good the deposit. A prayer was made that the petitioners should be called upon to make an appropriate application before the Appellate Tribunal for seeking extension of time to make

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good the pre-deposit, if so advised, and to take recourse to the remedies that may arise in the event of order that may be so passed in such application.

53) We have considered that submission of the parties on the said issue. It is not in dispute that the petitioners have not made good the pre-deposit within the prescribed time by the Appellate Authority. Instead of raising a challenge to any such order by way of the appellate remedy available to them, the petitioners challenged the said orders by means of writ petitions. It may not be appropriate at this stage to direct the petitioners to move an appropriate application before the Appellate Tribunal and to seek extension of time to make good the pre-deposit. The same, in our view, would only cause a further delay in the proceedings. In order to expedite the process and to balance the equities, we deem it appropriate to grant further period of four weeks, from the date of passing of this order, to the petitioner to make good a pre-deposit and further direct that in the event of the petitioners making the pre-deposit within a period of four weeks from the date of passing of this order, the respective appeals filed by the petitioners may be listed and decided on merit by the Tribunal.

54) The further extension of four weeks is however subject to the petitioners depositing a sum of **Rs.5,000/- per case** with the **Poor Patient Weflare Fund, PGIMER Chandigarh.**

The petitions are accordingly dismissed.

(TEJINDER SINGH DHINDSA)
JUDGE

(VINOD S. BHARDWAJ)
JUDGE

13.01.2022
Vishal sharma
S.Sharma(syr)

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No

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