# IN THE HIGH COURT OF JUDICATURE AT BOMBAY
## CIVIL APPELLATE JURISDICTION

## SECOND APPEAL (Stamp) NO. 21842 OF 2023

Wadhwa Group Housing
Private Ltd. ....APPELLANT

V/s.

1. Mr. Vijay Choksi
2. SSS Escatics Pvt. Ltd. ...RESPONDENTS

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**Mr. Naushad Engineer** *with Mr. Chirag Kamdar, Mr. Abir Patel and Ms. Lavina Bhargava i/by. M/s. Wadia Ghandy & Co., for the Appellant.*

**Mr. Ashish Kamat**, *Senior Advocate with Mr. Vikram Garewal, Mr. Sagar Deb, Mr. Amani i/by. Mr. Anmol Bastariva, for Respondent No.1.*

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CORAM : SANDEEP V. MARNE, J.

Judgment Resd. On : 16 February 2024.

Judgment Pron. On : 26 February 2024.

JUDGMENT :

1. This Appeal is filed by the Appellant challenging the Order dated 18 October 2022 passed by the Maharashtra Real Estate Appellate Tribunal, Mumbai (**Appellate Tribunal)** partly allowing the Appeal filed by Respondent No.1 and setting aside the Order dated 24 September 2021 passed by the Maharashtra Real Estate Regulatory Authority (**MahaRERA).** The Appellate Tribunal has directed refund of the entire

amount paid by the Respondent No.1 with interest from the dates of payments till actual realisation of the entire amount. Such refund is directed to be made by both respondents in the Appeal, which means the Appellant and Respondent No.2 herein. They are also directed to pay costs of Rs.20,000/- to the Respondent No.1. The Appellant is aggrieved by the Appellate Tribunal's Order to the extent of fastening the liability to refund the amount received by Respondent No. 2 from Respondent No. 1. It is Appellant's contention that since no amount is received by it, it cannot be made liable to refund any amount or pay any interest to Respondent No.1. That the entire amount is paid by Respondent No.1 to Respondent No.2, who alone can be directed to refund the amount with interest.

2. Briefly stated, facts of the case are that Respondent No. 2-SSS Escatics Pvt. Ltd launched a project named "The Nest" on land bearing C.T.S. No.196 (Part) situated at Ganesh Chowk, Bhavans Camp, D.N. Nagar, Andheri (West), Mumbai under the Slum Rehabilitation Scheme under the provisions of Regulation 33(10) of the Development Control Regulations, 1991. A Joint Development Agreement came to be executed between Respondent No. 2 and Appellant on 5 September 2012, under which, Respondent No.2 and Appellant agreed to jointly develop the project. It appears that under the said Joint Development Agreement, Appellant and Respondent No. 2 segregated the constructed area amongst themselves for being sold to customers.

3. On 19 July 2013, Respondent No.1 booked a 3BHK Flat admeasuring 2385 sq.ft in the said project for agreed consideration of

Rs.2,65,35,000/-. Respondent No.1 paid an amount of Rs.1,20,00,000/- towards part consideration. Respondent No.2 issued allotment letter dated 24 July 2013 to Respondent No.1. It is the case of Respondent No.1 that further amounts were paid by him from time to time in pursuance of the allotment letter. It appears that the project remained incomplete on the date of coming into force of the Real Estate (Regulation and Development) Act, 2016 (**RERA**). The project was accordingly registered as ongoing project under Section 3 of the RERA by Respondent No.2 in which the Appellant was declared as a Promoter (Investor). In the MahaRERA registration, the date of completion of the building was declared as 31 March 2019. It is the case of Respondent No.1 that the said date was unauthorisedly and unilaterally revised to 31 March 2020. Respondent No.1 noticed that the area of the Flat which was booked by him was shown on the MahaRERA Website as 976.82 sq.ft when infact the area booked by Respondent No.1 was 2385 sq.ft.

4. Respondent No.1 approached MahaRERA under the provisions of Sections 12 and 18 of the RERA and sought refund of amount of Rs.2,62,35,056/- alongwith interest as well as compensation and costs. Respondent No.2 appeared in the complaint and resisted the same by filing affidavit-in-reply, pleading various difficulties in completing the project such as non-vacation of the premises by the slum dwellers, delay in obtaining permissions, Covid-19 pandemic etc. Respondent No.2 did not dispute the factum of booking of flat by Respondent No.1 but contended that only an amount of Rs. 90 lakhs + 10 lakhs in cash was paid by Respondent No.1 who is merely an investor. That the area agreed in the allotment letter was a saleable area and not a

carpet area. That Respondent No.1 was not willing to pay stamp duty and registration charges for execution of the Agreement. That construction of B-Wing of the building is already complete and efforts were made to complete the rest of the building as well.

5. The Appellant also appeared before the MahaRERA and filed a short reply questioning the maintainability of the complaint against it. The Appellant claimed that under the Agreement for Joint Development dated 5 September 2012, Respondent No.2 and Appellant agreed to jointly develop the project 'The Nest' in which both agreed for respective entitlements. That under the joint Development Agreement, flat bearing B-502 came to second Respondent's share who agreed to sell the same to Respondent No.1 and received part consideration. That the Appellant did not have any obligation qua the Complainant. That the letter of allotment was issued by Respondent No.2 who alone accepted the entire payment from the Complainant. That therefore Respondent No.2 alone is liable to refund the amount received by it. This is how Appellant denied any liability qua the Complainant before MahaRERA.

6. After hearing all parties, MahaRERA passed Order dated 24 September 2021 holding both Complainant as well as promoters responsible for violation of provisions of Section 4 of the MOFA and held that the complainant could not claim any equity under the provisions of RERA. Therefore, Complainant's prayer for refund was rejected. Instead, MahaRERA directed parties to execute registered agreement for sale within 30 days, failing which the entire amount was directed to be

refunded to the complainant within a period of next six months without taking into consideration any cash transaction.

7. Complainant got aggrieved by MahaRERA's Order dated 24 September 2021 and filed Appeal under the provisions of Section 43 of the RERA before the Appellate Tribunal. By its Judgment and Order dated 18 October 2022, the Appellate Tribunal has partly allowed the Complainant's Appeal by setting aside MahaRERA's Order dated 24 September 2021. The Tribunal has directed both Respondent No.2 as well as the Appellant to refund the entire amount paid by the Complainant with interest at the rate of SBI's Highest Marginal Cost of Lending rate plus 2% (simple interest) to the allottee with effect from the dates of payments till the date of actual realisation. Complainant has also been awarded cost of Rs.20,000/-. Only Appellant is aggrieved by the Order passed by the Appellate Tribunal and has filed the present Appeal.

8. When the Appeal came up for admission, this Court has admitted the Appeal by Order dated 16 February 2024 on following substantial questions of law:

> (i) Whether a Promoter who has not received any consideration from an allottee can be made liable for giving refund with interest under Section 18 of the Real Estate (Regulation and Development) Act, 2016 ?
>
> (ii) Whether on account of non-decision of point about the liability of the Appellant to refund the amount by the MahaRERA Appellate Tribunal, an order of remand is warranted ?

9. At the joint request of the learned counsel appearing for the Appellant and Respondent No.1, the Appeal was heard finally after formulating the substantial questions of law. The learned counsel appearing for the Appellant and Respondent No.1 have advanced extensive submissions in support of their rival contentions, which are captured briefly in the paragraphs to follow.

10. Mr. Engineer, the learned counsel appearing for the Appellant would submit that the order passed by the Appellate Tribunal is *ex-facie* erroneous as the Appellant cannot be held responsible for refund of any amount to the Complainant. That it is an admitted fact that the Complainant has not paid any amount to the Appellant and that therefore there is no question of Appellant refunding any amount to him. Inviting my attention to Section 18 of the RERA, he would submit that the refund can only be directed against such Promoter who has received the amount. That RERA recognises the concept of multiple promoters and considering the language employed in Section 18, only the Promoter who has actually received the amount can be directed to refund the same. That those promoters who do not receive any amount from the Complainant, cannot be forced to refund any amount, which is actually received by another promoter. That under the Joint Development Agreement between the Appellant and Respondent No.2, both the entities have identified their respective entitlements in respect of the constructed portion of the building. That the flat, in respect of which the allotment letter is allegedly issued to the Complainant, falls in the entitlement of Respondent No.2, which is the reason why the Respondent No.2 alone received the entire consideration from the

Complainant. Since the Appellant does not have any right qua flat booked by the Complainant, there is no question of Appellant being directed to refund any amount to him. He would invite my attention to specific admissions given in the complaint that no amount was paid to the Appellant. Mr. Engineer would rely upon the Circular dated 4 December 2017 issued by MahaRERA in support of the contention that the liabilities in respect of the Promoters and Investors are segregated. Therefore, the liability of one Promoter cannot be thrust upon the other Promoter.

11. Mr. Engineer would further submit that the present project is launched prior to coming into force of RERA when the rights of respective parties were crystallised. That before the introduction of RERA, the Appellant had no liability on account of absence of privity of contract with the Complainant. That post RERA registration, name of the Appellant was required to be reflected in the registration under the statutory provisions. That in such circumstances, mere change in law requiring reflection of name of Appellant as Promoter does not create any new liability for Appellant, which did not exist prior to introduction of RERA.

12. Mr. Engineer would further submit that the issue of absence of liability of the Appellant was specifically raised before the MahaRERA and the same was argued in the form of written submissions before the Appellate Tribunal. That the Appellant's objection about absence of liability towards the Complainant is recorded by the Appellate Tribunal in its Order. However, the said objection is not decided in the entire

order. He would therefore submit that this is a perfect case for remand, if not setting aside the entire order of the Appellate Tribunal. In support of his contentions, Mr. Engineer would rely upon the judgment of the Apex Court in **Raghubir Singh V/s. State of Rajasthan and Ors.**[1], order of this Court in **TLG India Pvt. Ltd V/s. Deputy Commissioner of Income Tax (TDS)-2(3) and Ors.**[2] and of Andhra Pradesh High Court in **Kamisetty Pedda Venkata Subbamma and Anr. V/s. Chinna Kummagandla Venkataiah**.[3]

13. *Per-contra*, Mr. Kamat, the learned senior advocate appearing for Respondent No.1 would oppose the Appeal and submit that the Appellant is undoubtedly covered by definition of the term 'Promoter' within the meaning of Section 2(zk) of RERA. He would invite my attention to the registration details of the project in which the Appellant's name is reflected as a Promoter. That the definition of the term 'Promoter' under RERA is such that privity of the contract with the flat purchasers is not necessary. That the Explanation under the definition 2(zk) makes it clear that all promoters are jointly liable under the Act. He would rely upon the Preamble of the Act in support of the contention that the Act is essentially to protect the interests of flat purchasers. That a promoter cannot be permitted to defeat the rights of the flat purchasers by making internal arrangements with investors, land owners, etc. That this is merely a facet of indoor management and so far as the complainant is concerned, all are required to be treated as promoters carrying responsibility to refund the amount received for purchase of flat alongwith interest.

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1 (2019)17 SCC 408

2 WP No. 2575 of 2019 decided on 18.11. 2019

3 2004 SCC Online AP 1009

14. Mr. Kamat, would submit that the Circular dated 4 December 2017 relied upon by the Appellant actually assists the case of the Complainant as the Circular again specifies joint liability of different promoters. That the Appellant choose not to argue the Appeal before the Appellate Tribunal. That mere filing of written submissions without presentation of oral arguments did not mean that the Tribunal was under obligation to deal with each and every point raised in the written submissions. That it is well settled law that non-consideration of a point which is not actually argued, cannot be a ground for Appeal. In support of his contentions, Mr. Kamat would rely upon the judgment of the Apex Court in **Mohd. Akram Ansari V/s. Chief Election Officer and Ors.**[4] and of Gujarat High Court in **ICICI Lombard General Insurance Co. Ltd. Vs. Thakore Gajiben Javanji & Ors.**[5]. Mr. Kamat would pray for dismissal of the Appeal.

15. Rival contentions of the parties now fall for my consideration.

16. The point that is sought to be urged in the present Appeal is about the liability of the Appellant to refund the amounts paid by Respondent No.1 to Respondent No.2 for purchase of flat in the project 'The Nest' jointly developed by Appellant and Respondent No.2. It is Appellant's contention that under the Joint Development Agreement executed between the Appellant and Respondent No.2, the shares in the constructed portions have clearly been demarcated and that Flat No.B-

4 (2008) 2 SCC 95

5 2009 SCC Online Guj 2343

502 which is allegedly agreed to be purchased by the Complainant falls in the share of the second Respondent. That this is why the second Respondent alone issued letter of allotment to the Complainant and pocketed the entire amount of consideration. There appears to be no serious dispute to the fact that the payments from time to time were apparently made by the Complainant to the second Respondent. My attention is invited to the written submissions of the Complainant before the Appellate Tribunal in which it has been contended that the amount of Rs.1,20,00,000/- was paid at the time of issuance of allotment letter on 24 July 2013 and that further amounts of Rs.42,35,036/-, Rs.90,00,000/- and Rs.10,00,000/- were paid to the second Respondent on 5 August 2013, 26 September 2013 and 27 September 2013. There is some dispute about the exact amount paid, in which I need not go in the present Appeal. The Appellate Tribunal has directed refund of amount by ignoring any cash payments. What is relevant is the fact that the payments are apparently made to the second respondent alone. It is on account of admission by Respondent No. 1 about payments being made to Respondent No. 2 that the Appellant claims immunity from refunding any amount to the Complainant on a specious plea that the Appellant has not received any amount from the Complainant.

17. The project 'The Nest' has been registered as an ongoing project under Section 3 of RERA Act. To decide liability of Appellant to refund amount paid for purchase of flat in the real estate project, it would be necessary to determine whether Appellant falls in the definition of the term 'promoter'.Section 2(zk) of RERA defines the term "Promoter" thus:

(zk) “promoter" means,-

(i) a person who constructs or causes to be constructed an independent building or a building consisting of apartments, or converts an existing building or a part thereof into apartments, for the purpose of selling all or some of the apartments to other persons and includes his assignees; or

(ii)a person who develops land into a project, whether or not the person also constructs structures or any of the plots, for the purpose of selling to other persons all or some of the plots in the said project, whether with or without structures thereon; or

(iii) any development authority or any other public body in respect of allottees of-

(a) buildings or apartments, as the case may be, constructed by such authority or body on lands owned by them or placed at their disposal by the Government; or

(b) plots owned by such authority or body or placed at their disposal by the Government;

(c) for the purpose of selling all or some of the apartments or plots,

or

(iv) an apex State level co-operative housing finance society and a primary co-operative housing society which constructs apartments or buildings for its Members or in respect of the allottees of such apartments or buildings; or

(v) any other person who acts himself as a builder, coloniser, contractor, developer, estate developer or by any other name or claims to be acting as the holder of a power of attorney from the owner of the land on which the building or apartment is constructed or plot is developed for sale; or

(vi) such other person who constructs any building or apartment for sale to the general public.

**Explanation.- For the purposes of this clause, where the person who constructs or converts a building into apartments or develops a plot for sale and the person who sells apartments or plots are different persons, both of them shall be deemed to be the promoters and shall be jointly liable as such for the functions and responsibilities specified, under this Act or the rules and regulations made thereunder;**

(emphasis supplied)

Thus, definition of the term "Promoter" under Section 2(zk) of RERA is wide enough to include every person who is associated with construction of the building such as builder, coloniser, contractor, developer, estate developer or by any other name or even the one who claims to be acting as the holder of a power of attorney from the owner of the land. One of the principal objectives of RERA is to bring transparency in real estate sector and to protect the interests of the consumers in the real estate project. The term 'Promoter' has been so widely defined that it virtually includes every person associated with construction of the building. Thus, even a person who is merely an investor in the project alongwith the Promoter and who is entitled to benefit in the real estate project is also covered by definition of the term 'Promoter'. In the present case, I need not delve deeper into the enquiry as to whether Appellant is covered by the expression 'Promoter' or not. While registering the project as ongoing project under Section 3 of the RERA, Appellant's name has been included in the list of Promoters. Therefore, Appellant cannot run away from the fact that it is the promoter in respect of the project 'The Nest'. Explanation to Section 2(zk) makes all persons who construct or convert building into apartments or develop a plot for sale, as well as a person who sells apartments or plots to be promoters making them jointly liable as such for the functions and responsibilities specified under the Act, or the Rules and Regulations made thereunder. Thus, a person who does not actually construct or causes to be constructed a building but merely takes part in the joint venture and sells flats, becomes a Promoter. Appellant admits that it is entitled to a share in the joint venture in the constructed area,

which it is entitled to sell. Thus, the Appellant is entitled to sell flats in the project and accept consideration for such sale. There is therefore no doubt to the position that, both Appellant as well as the second Respondent are Promoters and are jointly liable in respect of the responsibilities under the RERA and Rules and Regulations made thereunder.

18. In my view therefore, mere falling of flat in the share of the second Respondent under the Joint Development Agreement, would not excuse the Appellant from the responsibilities and liabilities under the RERA, Rules and Regulations made thereunder *qua* that flat. RERA does not demarcate or restrict liabilities of different promoters in different areas. The liability is joint for all purposes under the Act, Rules and Regulations.

19. Circular dated 4 December 2017, on which reliance is placed on behalf of the Appellant, far from assisting it, actually mitilates against the Appellant. The Circular is issued with a view to tackle a situation where several developers had entered into agreements with individuals/organisations like land owners or investors by which such individuals/organisations were also entitled to share in the total revenue generated out of sale of apartments. It was observed that such individuals/ organisations were not included in the online registration with MahaRERA. With a view to ensure their inclusion in the online registration with MahaRERA, the Circular dated 4 December 2017 is issued. Relevant part of the Circular reads thus:

Whereas, during the online registration process, especially for on-going projects, it was observed that several developers (who actually obtain building permissions and construct) of the real estate project, have entered into arrangement with individuals/organizations like land owners or investors, by which the said Individuals/organizations are entitled to a share of the total revenue generated from sale of apartments or share of the total area developed for sale which are also marketed and / or sold by such individuals/organizations.

Whereas, a careful consideration of the aforesaid definition in the light of the true object and purpose of the said Act leaves no manner of doubt that such individuals/organizations are also covered and clearly fall within the aforesaid definition of the term 'Promoter' and as such are Promotors within the meaning of the said terms for the purpose and for the implementation of the said Act and all the rules framed thereunder. They are therefore jointly liable for the functions and responsibilities specified in the Act in the same manner as the Promoter who actually obtains building permissions and carries out construction.

Whereas, for the ease of filing online registration application and for the benefit of the consumers it is necessary to distinguish and / or identify whether such Promoter is the land owner, investor or is actually obtaining the building permissions for carrying out the construction and is in fact carrying out construction.

Therefore, it is directed that

(1) Such individuals/ organizations who fall within the aforesaid definition of the term 'Promoter' on account of being landowners or investors, shall be specified as such, at the time of online registration with MahaRERA.

(2) Though liabilities of such land owner Promoter or investor Promoter shall be as co-terminus with the written agreement / arrangement governing their rights in the real estate project, for the purpose of withdrawal from the designated bank account of a real estate project, the obligations and liabilities of all such Promoters shall be at par with each other.

(3) A copy of the written agreement or arrangement between Promoters (whether landowner or investor) which clearly specifies and details the rights and shares of each Promoter, should be uploaded on the MahaRERA website, along with other details for public viewing.

> (4) Such landowner Promoter and investor Promoter should also submit declaration in Form B of Maharashtra Real Estate (Regulation and Development) (Registration of Real Estate Projects, Registration of Real Estate Agents, rates of Interest and Disclosures on website) Rules, 2017.
>
> (5) Further each such landowner Promoter or investor Promoter, who is entitled to a share of the total area developed, shold also open seperate bank account for deposit of 70% of the sale proceeds realized from the allottees of their share.

20. Thus, the Circular dated 4 December 2017 also makes it abundantly clear that even the entities who are entitled to share in the revenue generated from sale of flats are jointly responsible/liable for functions and responsibilities specified under the Act as if they are Promoters themselves.

21. It is sought to be urged on behalf of the Appellant that this is not a fresh project after coming into force of RERA and that the Joint Development Agreement was executed between the Appellant and the Respondent No.2 way back in the year 2012. In my view, mere registration of the project as an ongoing project would not make any difference so far as the joint liability of several promoters is concerned. Infact, the Circular dated 4 December 2017 was issued particularly with reference to the ongoing project. Therefore, before registering the project, the land owners/investors have to make up their mind as to whether they desire to continue in the Joint Venture or not. If they decide to continue with the joint venture after coming into force of RERA, they must accept the responsibility as a Promoter. If they want to avoid any responsibility as Promoter, the only way for them is to make an exit from the joint venture before the project is registered. Thus, an investor like the Appellant

makes an informed choice to continue to participate in the joint venture and is accordingly registered as a promoter of the project with MahaRERA. By doing so, it then accepts all the liabilities alongwith its joint venture partner. Once the joint liability is accepted, it cannot thereafter be said that the joint venture would exist only for profit sharing and not for sharing of the liabilities. In the present case, by continuing the joint venture with the second Respondent at the time of registration of the project, the Appellant has accepted all the liabilities of a Promoter under the Act and he cannot seek to escape the liability on a specious plea that the payments were made to the second Respondent alone.

22. Reliance of Mr. Engineer on the provisions of Section 18 of the RERA does not cut any ice. Section 18 reads thus :

> **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 he 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 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

> under this Act, and the claim for compensation under this sub-section 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.

23. Thus, under Section 18(1)(b), the liability to return the amount received from the flat purchaser is on the Promoter. Since the Appellant is covered by definition of the term 'Promoter', it is also jointly liable to refund the amount alongwith the other promoter, being the second Respondent. Section 18 cannot be narrowly interpreted as sought to be suggested by Mr. Engineer, to include only that promoter who actually received the amount. The objective behind enactment of RERA must be borne in mind. If such narrow interpretation of Section 18 is accepted, it would give a license to developers to deliberately accept payments in the accounts of one of the promoters and then escape the liability to refund or to pay interest by taking a specious plea that the other promoters are not liable in respect of those payments. Mr. Engineer has sought to draw distinction between projects launched before and after coming into force of RERA by submitting that now the monies must be received in the registered account, which was not the case before registration under RERA. To my mind, this distinction sought to be made cannot be a ruse to escape the liabilities as promoter under RERA. The Act applies even to ongoing projects and therefore the account in which monies are received by promoters is irrelevant for the purpose of determining joint liability of promoters under Section 18.

24. The Appellant's contention about absence of privity of contract between it and the Complainant is totally misplaced. Definition of the term 'promoter' under Section 2(zk) of the RERA would indicate that even persons/entities with whom a flat purchaser does not enter into contract are also covered by definition of the term 'promoter'. Therefore, it is not necessary that there has to be an agreement between every Promoter and the flat purchaser. As observed above, it is a matter of indoor management between the Promoters and the flat purchaser who is not supposed to know the intricacies of the arrangements made between several promoters amongst themselves. When a claim is raised in respect of a real estate project by a flat purchaser, all promoters become jointly liable qua that flat purchasers, irrespective of whether there is privity of contract with each of the promoter or not. This is the scheme of RERA and mere absence of privity of contract with a particular promoter does not relieve such promoter in respect of the liabilities under RERA.

25. I am therefore of the view that Appellant cannot escape the liability to refund the amount received towards sale of flat to Respondent No. 1.

26. Having decided the Appellant's liability as a promoter to refund the amounts received towards sale of flat to Respondent No. 1, the issue of Appellate Tribunal's failure to decide the objection raised by the Appellant before it has been rendered academic. It appears that the Appellant did not argue the Appeal when the same was heard and the oral arguments were apparently presented only by Respondent Nos. 1 and 2. It appears that that the Appellant chose to tender only written

submissions. The Appellate Tribunal has taken note of Appellant's written submissions in para-20 of its Order. However, it appears that the Appellate Tribunal has not decided the issue of liability of the Appellant to refund the amount to the Complainant. It appears that the Appellate Tribunal did not go into that issue possibly because the Appellant is also covered under the definition of the term 'Promoter' and is jointly liable in respect of the duties and responsibilities under the RERA. True it is that the Appellate Tribunal ought to have recorded some findings on the points sought to be raised by the Appellant about the plea raised by Appellant. However, the issue is being decided in the present Appeal, it is not necessary to remand the Appeal due to technical reason of Appellate Tribunal's failure to record findings on the issue sought to be raised by the Appellant in the written submissions filed before it. Therefore, effect of judgment of the Apex Court in **Raghubir Singh** (supra), of this Court in **TLG India Pvt. Ltd.** (supra) and of Andhra Pradesh High Court in **Kamisetty Pedda Venkata Subbamma** (supra) need not be considered. Same is the position with regard to the point urged by Mr. Kamat that mere tendering of written submissions is not sufficient and the Court is bound to consider those points which are actually argued before it. Since I have already gone into the merits of points that are urged by the Appellant, effect of judgments of the Apex Court in **Mohd. Akram Ansari** (*supra)* and of Gujarat High Court in **ICICI Lombard General Insurance Co. Ltd.** (supra) on the issue of requirement of dealing with points not actually argued, need not be considered.

27. The questions of law formulated are accordingly answered holding that even a Promoter who has not received any consideration

from an allottee is also liable to give refund with interest under Section 18 of the RERA. So far as the second issue of remand is concerned, the same is rendered academic in view of the findings recorded above.

28. I accordingly do not find any merit in the Appeal filed by the Appellant. The Second Appeal is accordingly **dismissed** with costs.

29. After the Judgment is pronounced, request is made for stay of execution proceedings for a period of 8 weeks in order to enable the Appellant to test the Judgment before the Supreme Court. The request is opposed by the learned counsel appearing for Respondent No.1. Considering the findings recorded for dismissing the Second Appeal, the request for stay of execution proceedings is rejected.

SANDEEP V. MARNE, J.