

**BEFORE MAHARASHTRA REAL ESTATE APPELLATE TRIBUNAL
MUMBAI**

**(31) M.A. No. 567/23 (Stay)
IN
APPEAL NO. AT006000000174635/23**

Godrej Landmark Redevelopers Pvt. Ltd. ... Appellant

-VS-

Punam Nitin Nikam & Anr. ... Respondents

**(32) M.A. No. 566/23 (Stay)
IN
APPEAL NO. AT006000000174636/23**

Godrej Landmark Redevelopers Pvt. Ltd. ... Appellant

-VS-

Kala Madhukar Tikle & 2 Ors. ... Respondents

**(33) M.A. No. 565/23 (Stay)
IN
APPEAL NO. AT006000000174637/23**

Godrej Landmark Redevelopers Pvt. Ltd. ... Appellant

-VS-

Anisha Bhandari & 2 Ors. ... Respondents

Mr. H. Narvekar, Advocate for Appellant.

Mr. Shreyas Mohari, Advocate for Respondents.

**CORAM : SHRI SHRIRAM. R. JAGTAP, MEMBER (J), &
DR. K. SHIVAJI, MEMBER (A)**

DATE : 31st OCTOBER, 2023

(THROUGH VIDEO CONFERENCE)

ORAL ORDER

Adv. H. Narvekar seeks time to intimate remaining Respondents the



next date of hearing in writing and file tangible supporting documents on record within three weeks.

- 2) Appellant being Promoter in these appeals, it is mandatory for Appellant to comply with the proviso to Section 43(5) of the Act, 2016 by pre-depositing the entire amount as per the impugned order.
- 3) Heard learned counsel for Appellant *in extenso* in relation to the compliance of the proviso.
- 4) Learned counsel for Appellant submits that there is no dispute in paid amounts, prescribed interest rate as per MCLR rate of SBI, is available on the website of SBI. The period for calculation for the total amount to be deposited as per the impugned order is from 1st Jan. 2019 till the date of the pre-deposit to be made before the Tribunal. Therefore, pre-deposit amount will be calculated.
- 5) Accordingly, Appellant is directed to pre-deposit the entire amount as per the impugned order dated 30th Jun. 2023 along with interest at prescribed rate thereon till the date of pre-deposit.
- 6) Adv. H. Narvekar further submits that one more Promoter is mentioned in the impugned order. Therefore, Appellant herein is required to pre-deposit only 50% of the total amount payable to Allottees.



- 7) Perused record.
- 8) Bare perusal of proviso to the Section 43(5) clearly reveals that only one condition is required to be fulfilled for compliance of the proviso to the Section 43(5) i.e. 'provided that where a Promoter files an appeal with the Appellate Tribunal...'. Accordingly, the provision in Section 43(5) is very clear that if the Appellant is a Promoter, then the party, who is challenging the order will have to pre-deposit the entire amount as per the impugned order.
- 9) Moreover, as per the para 127 judgment of the Hon'ble Supreme Court in the case of M/s. Newtech Promoters and Developers Pvt. Ltd., [Civil Appeal No.(s). 6745 6749 of 2021], the "entire amount to be paid to Allottees" is required to be secured to avoid the miseries to Allottees, in case the outcome of appeal is in favor of Allottees.
- 10) Careful perusal of Section 43(5) and the judicial pronouncement of the Hon'ble Supreme Court, it is clear that the entire amount as per the impugned order is required to be pre-deposited irrespective of whether the appeal is filed by one party or by more. Appellant is mandatorily and statutorily required to pre-deposit the entire amount towards the compliance of the proviso.
- 11) Accordingly, Appellant in all the cases is directed to pre-deposit the



entire amount as per the impugned order, which is easily quantifiable by simple arithmetic by the multiplication of the paid amounts, interest rate and the period starting from 1st Jan. 2019 till the date of the pre-deposit.

- 12) Adv. H. Narvekar seeks four weeks' time for compliance of proviso to Section 43(5), failing which the appropriate order will be passed on the next date of hearing.
- 13) Adv. Shreyas Moharir seeks time to file vakalatnama and reply.
- 14) Stand over to 5th Jan. 2024 for compliance and affidavit of service of all remaining Respondents.



(DR. K. SHIVAJI)



(SHRIRAM. R. JAGTAP)

MS/-