

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

MISC. APPLICATION NO.759 OF 2024 (Stay)
MISC. APPLICATION NO.286 OF 2025 (Withdrawal of Amount)
IN
APPEAL NO. G-16/2024

Comunidade Of Serula Appellant.

Versus

Mr. Nikhil Dhumatkar Respondent.

ALONGWITH

MISC. APPLICATION NO.760 OF 2024 (Stay)
MISC. APPLICATION NO.287 OF 2025 (Withdrawal of Amount)
IN
APPEAL NO. G-17/2024

Comunidade Of Serula Appellant.

Versus

Mr. Marlon Darius Sequeira Respondent.

Adv. Mr. Yogesh Nadkarni for Appellant.

Adv. Mr. Gandhar Raikar for Respondent.

CORAM: SHRI. S. S. SHINDE J., CHAIRPERSON &
SHRI. SHRIKANT M. DESHPANDE, MEMBER (A)

RESERVED ON : 17th June, 2025

PRONOUNCED ON: 23rd June, 2025.

(THROUGH VIDEO CONFERENCING)

ORDER

1. The Appellant has filed the captioned appeals against the separate orders dated 13.08.2024 passed by the Goa Real

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Estate Regulatory Authority (for short "the Authority") in complaint No. F. No.: 3/RERA/Complaint (382)/2023/1086 and F. No.:3/RERA/Complaint (412)/2024/1087 respectively. By the said impugned orders, the Appellant is directed to pay penalty of Rs.5,00,000/- for the contravention of Section 3 of the Real Estate (Regulation and Development) Act, 2016 (for short "the RERA Act, 2016") in each of the complaints. Further, the Appellant is directed to deliver possession of the subject premises completed in all respects in terms of the respective agreements for sale and upon payment of balance consideration by the Respondents within 6 months from the date of the order. The Authority also directed to the Appellant to pay Respondents interest on the paid amounts on account of delay in handing over possession with effect from 01.01.2015 and 01.09.2015 respectively till handing over the possession of the subject premises to the Respondents.

2. The Appellant being promoter was directed by this Tribunal by its order dated 06.02.2025 to deposit amounts as ordered by the Authority by the impugned orders, wherein the appellant was directed to deposit 30% of the penalty amount and 100% amounts to be paid to the Respondents as per the said impugned orders in compliance with the proviso to sub section (5) of section 43 of the RERA Act, 2016. Vide order dated 20.03.2025 this Tribunal permitted the Appellant to deposit the demand drafts in the registry of this Tribunal in compliance with the proviso to sub section (5) of section 43 of the RERA Act, 2016. Accordingly, the Appellant has deposited the amount of Rs.7,14,026/- and Rs.13,45,931/- in the respective appeals on

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20.03.2025 in the registry of this Tribunal towards full compliance of the proviso to sub section (5) of section 43 of the RERA Act, 2016.

3. The Appellant has filed Misc. Application No.759 of 2024 and 760 of 2024 in the respective appeals for stay to execution, implementation, and operation of the impugned orders pending the adjudication and hearing till the final disposal of the appeals. The learned Advocate for the Appellant has submitted that the Appellant Comunidade is a body constituted and governed and regulated by the Code of Comunidades viz Legislative Diploma No.2070 dated 15.04.1961 and as such it cannot be said to be a promoter as defined in section 2(zk) of the RERA Act, 2016. Further, the subject project was not required to be registered under section 3 of the RERA Act, 2016 and the provisions of RERA Act, 2016 are not applicable to the project.
4. The learned Advocate submitted that the Code of Comunidade does not anywhere contemplate the sale by the Comunidade of any of its properties/premises to any person including its components by executing any agreements for sale or otherwise. Grant of properties belonging to the Comunidade are strictly governed by the provisions of the Code of Comunidades which do not envisage any sale of land of the Comunidade by executing such agreements for sale or otherwise. The learned Advocate submitted that the agreements for sale which have been relied upon by the Respondents in the complaint proceedings are contrary to and in violation of the Code of Comunidades, and are therefore a nullity in the eyes of law and Respondents cannot claim any right on the basis of such



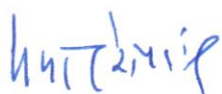
agreements. Further, there is no approval of the State Government for entering into any agreement for sale by the Comunidade disposing of its property by way of sale to any third party in the facts and circumstances mentioned above.

5. The learned Advocate submitted that the Authority erred in not appreciating that the purported complaints filed in respect of such an agreement for sale, which is a nullity in law, deserved to be dismissed. The learned Advocate submitted that clause 36 of the agreements for sale stipulates that possession of the said premises shall be handed over to the purchasers i.e Respondents on the date of execution of the Deed of Sale, which shall be executed within a period of 24 months from the date of execution of the agreement for sale dated 10.12.2014. The complaints have been filed on 03.01.2024 after almost 9 years which are hopelessly barred by limitation. The learned Advocate submitted that the impugned orders passed by the Authority are in total disregard to the statutory provisions and settled principles of law. Therefore, *prima-facie* the operation, execution and implementation of the impugned order would be required to be stayed pending the adjudication, hearing and final disposal of the appeals.
6. The learned Advocate submitted that the balance of convenience is entirely in favour of the Appellant, as non-grant of status-quo by this Tribunal would result in grave prejudice qua the rights of the Appellant. Further, no inconvenience or prejudice would be caused to the Respondents if the stay as prayed for by the Appellant is granted. The learned Advocate submitted that grant of stay by this Tribunal would mean the

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continuation of the status-quo which was already existing even during the pendency of the complaint proceedings, which is required to be continued in the interest of justice till final disposal of appeals on merits. The learned Advocate submitted that irreparable loss and prejudice would be caused to the Appellant if the stay as prayed for is not granted which will render the appeals infructuous. With these submissions, the learned Advocate for the Appellant prayed to allow the said Misc. Application for stay the execution, implementation, and operation of the impugned orders till the pending adjudication, hearing and final disposal of the appeals.

7. The learned Advocate for the Respondents remonstrated these applications contending that the mandatory compliance with the proviso to sub section (5) of Section 43 of the RERA Act, 2016 is not full compliance as the Appellant has not deposited the principal amounts in the registry of this Tribunal and has deposited only interest amounts on account of delay in handing over possession as ordered by the Authority in the impugned orders. Therefore, the learned Advocate for the Respondents prayed that this Tribunal may reject the applications for stay.
8. We have given careful consideration to the averments made in the application and the contentions of both the parties. After considering the contentions of both the parties, the only point that arises for our consideration is whether the applicant has made out a case in favour of granting stay by allowing the said Misc. Applications.
9. The Respondents have also filed Misc. Application No.286 of 2025 and 287 of 2025 in the respective appeals for withdrawal



of the amounts deposited by the Appellant towards compliance of proviso to sub section (5) of Section 43 of the RERA Act, 2016.

10. The learned Advocate for the Respondents has submitted that the Respondents have paid the principal amounts and booked subject premises in the subject project. However, the Appellant has failed to deliver the possession of the subject premises. Despite the orders having passed by the Authority, the Appellant has failed to pay interest, refund the principal amounts, and hand over possession. The Respondents are thus deprived of the fruits of the impugned orders and are thus entitled to the amounts along with accrued interest deposited by the Appellant in the registry of this Tribunal. With these submissions, the learned Advocate for the Respondents has submitted that the Respondents may be permitted to withdraw the amounts on the terms and conditions as this Tribunal may deem fit, just and proper without prejudice to the rights of the Respondents to contest the matter on merits and registry be directed to hand over the amounts with accrued interest to the Respondents.
11. The Appellant remonstrated the applications for withdrawal of the amount deposited by the Appellant. The learned Advocate for Appellant submitted that the Respondents should not be permitted to withdraw the said amounts deposited by the Appellant in the registry of this Tribunal as the Appellant has prima-facie strong case to succeed in these appeals. The learned Advocate further submitted that in the event the Appellant succeeds in the present appeals, the Respondents would not be

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entitled to any of the amounts deposited in the registry of this Tribunal and the Appellant would be entitled to withdraw the amount deposited in the registry of this Tribunal with accrued interest thereupon. The learned Advocate submitted that it would be just and proper that the said deposited amount in the captioned appeals towards compliance of the proviso to sub section (5) of Section 43 of the RERA Act, 2016 continuous to be deposited with this Tribunal till the final disposal of the present appeal. In the event, if the Tribunal is of the view to allow these applications for withdrawal of the amounts, the Tribunal may seek bank guarantees by the Respondents which can be encashed in case the Appellant succeeds in these appeals. Withdrawal of the deposited amounts during the pendency of the appeals would cause serious prejudice to the Appellant.

12. We have given careful consideration to the submissions of both the parties. The only point that arises for our consideration is whether the Misc. Applications for withdrawal of amount filed by the non-applicants be allowed?
13. We answer both the points in the Misc. Applications for stay and Misc. Applications for withdrawal of amount as below.

REASONS

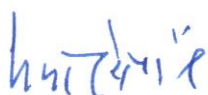
14. It is not in dispute that the Authority by the impugned orders directed the Appellant herein to pay penalty of Rs.5,00,000/- for contravention of section 3 of the RERA Act, 2016 in both the appeals. As directed by this Tribunal, the Appellant has deposited the 30% amount of penalty in each of the appeals in the registry of this Tribunal towards compliance of the proviso to sub section (5) of Section 43 of the RERA Act, 2016. The

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Authority also directed the Appellant to pay to the Respondents interest on the paid amounts on account of delay in handing over of the possession of the subject premises. The Appellant has also deposited the entire amount of interest as ordered by the Authority in the impugned orders in the registry of this Tribunal towards the compliance with the proviso to sub section (5) of Section 43 of the RERA Act, 2016.

15. The Respondents have contended that the said deposited amounts is short of full compliance as the Appellant has not deposited the principal amounts in the registry of this Tribunal. The Respondents have continued to remain in this project, seeking relief of possession of the subject premises and interest on account of delay in possession. Therefore, the Authority has ordered to pay interest on account of delay in possession and not the refund of principal amounts paid by the Respondents. Therefore, there is no question for the Appellant to deposit in the registry of this Tribunal the principal amounts paid by the Respondents to the Appellant towards consideration value of subject premises towards compliance. Therefore, we are of the view that the Appellant has made full compliance to the proviso to sub section (5) of Section 43 of the RERA Act, 2016.

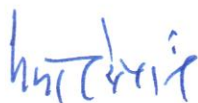
16. Thus, the interests of the Respondents have been fully protected by the Appellant depositing the said amount towards the compliance with the proviso to sub section (5) of Section 43 of the RERA Act, 2016. In the event Appellant fails to succeed in the appeals, the Respondents would be entitled to withdraw the deposited amounts with accrued interest thereon. We are therefore of the view that there is no impediment in staying the



execution, implementation, and operation of the impugned orders till the adjudication, hearing and final disposal of the appeals. All the contentions raised by the Appellant particularly the Code of Comunidades does not allow the Comunidade to sale any of its property/premises to any person by execution of agreement for sale and that too without the approval of the State Government, which is mandatory thereby rendering the sale transactions nullity in the eyes of law are subject matter to be considered during the final disposal of the present appeals. With these observations, we are of the view that the Misc. Applications filed by the Appellant for stay of execution, implementation, and operation of the impugned orders passed by the Authority can be allowed.

17. With regard to the Misc. Applications filed by the Respondents for withdrawal of the amounts deposited by the Appellant towards compliance with the proviso to sub section (5) of Section 43 of the RERA Act, 2016, we are of the view that the appeals are still pending for final disposal. The amounts deposited by the Appellant towards compliance of the said proviso to sub section (5) of Section 43 of the RERA Act, 2016 is primarily to safeguard the interests of the Respondents. As observed above, the interests of the Respondents have been fully protected by depositing the amounts as ordered by the Authority in the impugned orders in the registry of this Tribunal. The Respondents are entitled to withdraw these amounts in the event the Appellant fails to succeed in these appeals.

18. In view of the aforesaid observations, we are of the considered view that the said amounts may not be allowed to be withdrawn



by the Respondents at this stage since the appeals are not finally heard on merits and disposed of. In view of this, we are not inclined to allow the said applications for withdrawal of the amount by the Respondents.

19. Accordingly, we proceed to pass the following order.

ORDER

- i) The Miscellaneous Application Nos.759 of 2024 and 760 of 2024 for stay are allowed and the execution, implementation, and operation of the impugned orders dated 13.08.2024 are stayed pending the adjudication, hearing, and final disposal of the present appeals.
- ii) Misc. Application Nos.286 of 2025 and 287 of 2025 for withdrawal of amounts are rejected.
- iii) Accordingly, the Misc. Applications are disposed of.
- iv) List the matter on 06.08.2025. In the meanwhile, the parties to complete the pleadings.

(SHRIKANT M. DESHPANDE)

(S. S. SHINDE, J.)

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