IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 315 OF 2026
WITH
SECOND APPEAL NO. 332 OF 2026
WITH
INTERIM APPLICATION NO. 5906 OF 2026

M/s Neumec Developers And Builders ...Appellant

Versus

Chirag Jain and Anr ...Respondents

Mr. Rubin Vakil, a/w Chirag Sarawagi and Yash Sheth, i/b Tushar Goradia, for the Appellant.
Mr. Amrut Joshi, a/w Gaurav Jangle, Akshita Jain, Akshit Vats and Tharakesh Dharumaraj, i/b I. V. Merchant and Co, for Respondent Nos. 1 and 2.
Mr. Chirag Jain, Respondent No.1 present in person.

CORAM: N. J. JAMADAR, J.
DATED: 5th AUGUST, 2026

Order:-

1. Heard the learned Counsel for the parties.

2. These appeals are directed against two orders passed by the Maharashtra Real Estate Appellate Tribunal ("Appellate Tribunal") in M.A. No. 1195 of 2025 in Appeal No. AT06/10398/2025.

3. The Appellant is a promoter. The promoter developed a project at Wadala (East) under a Slum Rehabilitation Scheme. Upon the coming into force of the Real Estate (Regulation and

Development) Act, 2016 ("RERA 2016"), the promoter registered the project with the Maharashtra Real Estate Regulatory Authority ("MahaRERA") under the name of, "Shreeji Towers".

4. On 24th September 2021, the allottees booked a flat bearing Flat No. 2601 ("the subject flat") for a total consideration of Rs.2,13,41,430/-. The promoter had agreed to deliver possession of the subject flat to the allottees on or before 31st December 2021. The allottees claimed to have paid a sum of Rs.1,64,22,791/- (excluding statutory taxes, stamp duty and registration charges) towards consideration of the subject flat. Alleging that the promoter committed a breach of the terms of the contract and demanded huge amount, apart from the agreed consideration, the allottees filed a complaint before the Authority.

5. By an order dated 22nd July, 2026, the learned Member, MahaRERA was persuaded to allow the complaint and direct the promoter to handover possession of the subject flat to the allottees alongwith an Occupation Certificate, upon receipt of the balance consideration of Rs. 27,60,090/-, and pay simple interest on the amount of Rs. 1,64,22,791/- towards part consideration from 1st January, 2022 till the delivery of possession of the subject flat, at the specified rate.

6. Being aggrieved, the promoter professed to prefer an appeal before the Appellate Tribunal. Since there was a delay in filing the appeal, the promoter filed M.A. No. 1195 of 2025 seeking condonation of delay in preferring the appeal.

7. On 27th March 2026, when the application for condonation of delay (M.A. No. 1195/2025) was listed, the Tribunal directed the promoter to deposit the entire amount, as directed by the Authority in the order dated 22nd July, 2025 impugned before the Tribunal, alongwith the interest accrued thereon till the date of deposit, under the proviso to sub-section (5) of Section 43 of RERA 2016. The Tribunal did not accede to the submission on behalf of the promoter that, at the stage of hearing of the application for condonation of delay, the promoter was not obligated to make the pre-deposit in terms of the mandate contained in the proviso to sub-section (5) of Section 43 of RERA 2016. The said order is assailed in Second Appeal No. 315 of 2026.

8. By a further order dated 6th May 2026, noting non-compliance with the order of pre-deposit dated 27th March, 2026, the Appellate Tribunal rejected the application for condonation of delay (M.A. No. 1195/2025), and, consequently, the appeal also stood dismissed.

9. Being aggrieved by the second order, the promoter has preferred Second Appeal No. 332 of 2026.

10. Mr. Rubin Vakil, the learned Counsel for the promoter, submitted that, the Appellate Tribunal was clearly in error in passing the order of pre-deposit while considering the application for condonation of delay. The reliance by the Appellate Tribunal on its earlier order in ***Ekta Housing Private Limited vs. Kausalkumar Prahlad Patwa*** (M.A. No. 410/2026 in Appeal No. AT06/00627/2025) was wholly misplaced, as **Ekta Housing** had, in turn, placed reliance on a judgment of this Court in ***Deluxe Cotton Corporation and others vs. Bank of Baroda***[1], which was rendered in a completely different fact-situation arising out of the provisions contained in Recovery of Debts Due to Banks and Financial Institutions Act, 1993 ("RDB Act, 1993").

11. In the process, Mr. Vakil would urge, the Appellate Tribunal lost sight of the plain language of the proviso to sub-section (5) of Section 43 of RERA 2016. Mr. Vakil made a strenuous effort to drive home the point that the word, "entertain" has a definite juridical connotation which signifies the adjudication or consideration of the matter on merits, and it

1 2016 SCC OnLine Bom 2629.

cannot be equated with mere filing or institution of the appeal. To lend support to this submission, Mr. Vakil placed reliance on the judgments of the Supreme Court in the cases of ***Lakshmi Rattan Engineering Works Ltd. v. Asst. Commissioner, Sales Tax***[2]***,*** and ***Hindustan Commercial Bank Ltd. v. Punnu Sahu (Dead) through LRs.***[3].

12. Mr. Vakil further submitted that, entertaining of an application for condonation of delay can never amount to entertaining the appeal. If the Tribunal condones the delay and decides to hear the appeal, then undoubtedly the proviso to Section 43(5) of RERA 2016 would be attracted. On the contrary, if the application for condonation of delay itself is rejected, the promoter does not get any opportunity to agitate the grounds of challenge to the order impugned before the Tribunal. It would be iniquitous and extremely onerous to compel the promoter to make a pre-deposit when it is not certain that the promoter would get an opportunity to question the legality, propriety and correctness of the order against which the appeal is preferred.

13. In opposition to this, Mr. Amrut Joshi, the learned Counsel for the Respondents-allottees, submitted that the question sought to be raised by the promoter is no longer *res*

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2 1967 SCC OnLine SC 140.

3 1971 (3) SCC 124.

integra. The Division Bench judgment of this Court in the case of ***Deluxe Cotton Corporation*** (supra) is a complete answer to the controversy sought to be fashioned by Mr. Vakil, in slightly different terms. The very issue as to whether an appeal against an order passed by the DRT could be entertained when filed alongwith an application for condonation of delay, without the pre-deposit mandated under Section 21 of the RDB Act, 1993 was considered by the Division Bench in the case of ***Deluxe Cotton Corporation*** (supra). Mr. Joshi would urge that the real issue is whether an appeal alongwith application for condonation of delay in preferring the appeal constitutes, “an appeal” and that question has been authoritatively answered by a catena of judgments in the affirmative.

14. Placing reliance on the decision in the case of ***M/s. Newtech Promoters and Developers Private Limited vs. State of Uttar Pradesh and others***[4], wherein the Supreme Court has, in terms, observed that the promoter is under an obligation to deposit with the Appellate Tribunal the amount to be paid to the allottees which includes the interest and compensation imposed on him, before the appeal is to be instituted, Mr. Joshi submitted that, no substantial question of law arises for

4 (2021) 18 SCC 1.

consideration.

15. The controversy sought to be raised by Mr. Vakil lies in a narrow compass. It essentially turns upon the correct construction of the text of the proviso to Section 43(5) of RERA 2016, which reads as under:

> "**Section 43(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, 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.
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> 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."

16. Mr. Vakil laid emphasis on the fact that the proviso, while mandating the pre-deposit by employing the phrase “it shall not be entertained”, in the first part, makes the legislative intent clear that the pre-deposit is mandatory only at the stage of hearing of the appeal as in the second part, the proviso ends with the expression, “before the said appeal is heard”.

17. Mr. Vakil submitted that the Appellate Tribunal, thus, can compel the promoter to make the pre-deposit only at the stage when the appeal is heard and not before. In an application for condonation of delay, merits of the case are not required to be delved into. Thus, hearing on the application for condonation of delay can, by no stretch of imagination, amount to hearing of the appeal. It was submitted that this latter expression, “before the said appeal is heard”, is conspicuous by its absence in Section 21 of the RDB Act, 1993, and, therefore, the decision in the case of ***Deluxe Cotton Corporation*** (supra) does not govern the proceedings before the Appellate Tribunal.

18. The key words in the proviso are “entertain” and “before the said appeal is heard”. The word “entertain” does not imply the filing or institution of the proceeding. The word “entertain” has reference to the judicial/quasi-judicial act of application of mind by the Court/Tribunal, in contradistinction to the filing or institution, which is a ministerial act.

19. The submission canvassed by Mr. Vakil with regard to the connotation of the word “entertain” is legally impeccable. In the case of ***Hindustan Commercial Bank*** (supra) after following the previous pronouncement in the case of ***Lakshmi Rattan Engineering Works Ltd.*** (supra), the Supreme Court observed that the expression “entertain” means, “adjudicate upon or proceed to consider on merits”. In the case of ***Lakshmi Rattan***

Engineering Works Ltd. (supra) after a survey of authorities, the Supreme Court has enunciated that the word "entertain" means "admit to consideration".

20. The pivotal issue is of the import of the term "appeal". It is on the construction of the term "appeal", the question of applicability of the proviso to Section 43(5) of RERA 2016 turns. In the case of ***Deluxe Cotton Corporation***, (supra) the Division Bench of this Court examined the aspect as to what constitutes an appeal. In that case, the Division Bench considered the following question:

> "Whether an appeal accompanied by an application for condonation of delay in filing the appeal is nevertheless an appeal in the eyes of law?"

21. The Division Bench adverted to the decisions of the Supreme Court in the cases of ***Shyam Sundar Sarma vs. Pannalal Jaiswal and ors.***[5]***, Mela Ram and Sons Vs. CIT***[6], and ***Sheodan Singh Vs. Daryo Kunwar***[7]***,*** a decision of the Privy Council in the case of ***Nagendra Nath Dey vs. Suresh Chandra Dey***[8], and the Full Bench decision of the Kerala High Court in the case of ***Thambi v. Mathew***[9], and enunciated the law as

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5 (2005) 1 SCC 436.
6 AIR 1956 SC 367.
7 AIR 1966 SC 1332.
8 AIR 1932 PC 165.
9 1987 (2) KLT 848 (FB).

under:

> "16. Thus, the position that emerges upon a survey of the authorities is that an appeal filed along with an application for condonation of delay in filing that appeal, is nevertheless an appeal in the eyes of law. Accordingly, such appeal, when dismissed upon refusal to condone the delay, is nevertheless, a dismissal of the appeal itself. Such dismissal, confirms the order appealed against and therefore, amounts to disposal of the entire appeal itself. As a corollary therefore, the appeal court, at the stage when it is considering the application for condonation of delay in institution of the appeal, is also, 'entertaining the appeal' itself. The bar under section 21 of the said Act will therefore, apply even at the stage of consideration of the application for condonation of delay accompanying an appeal under section 20 of the said Act.
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> 17. We therefore hold that an appeal accompanied by an application for condonation of delay in filing the appeal, is nevertheless, an appeal in the eyes of law and the order, dismissing the application for condonation of delay in filing the appeal, is nevertheless, a decision in the appeal itself. Section 21 of the said Act, as noted earlier, in peremptory terms provides that an appeal instituted by a person from whom the amount of debt is due to a bank shall not be entertained by the Appellate Tribunal unless such person has deposited with the Appellate Tribunal 75% per cent. of the amount of debt so due from him as determined by the Tribunal under section 19 of the said Act. No doubt, the proviso to section 21 empowers the Appellate Tribunal, for reasons to be recorded in writing, to waive or reduce the amount to be deposited under section 21 of the said Act. Therefore, until such person deposits the amount prescribed or secures a waiver or reduction under the proviso, there is no question of Appellate Tribunal entertaining the appeal under section 21. In view of the legal position discussed earlier, an appeal accompanied by an application for condoning the delay in filing the appeal, is itself an application in the appeal for the purposes of section 20 of the said Act. Accordingly, unless the predicates on section 21 of the said Act were complied with, there was no question of DRAT even entertaining the appeal or application for condonation of delay in filing the appeal."
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> (emphasis supplied)

22. The Division Bench has, thus, postulated in clear and explicit terms that an appeal accompanied by an application for condonation of delay, is nevertheless an appeal in the eyes of law and the order dismissing the application for condonation of delay in filing the appeal is nevertheless, a decision in appeal itself. In view of the aforesaid clear and explicit statement of law, based on authoritative pronouncements of the Supreme Court, it is too late in the day to urge that an application for condonation of delay in filing the appeal has a distinct and separate existence apart from the appeal. In a sense, an application for condonation of delay and the appeal constitute a composite proceeding of appeal. Consequently, the rejection of an application for condonation of delay entails the dismissal of the appeal and is subject to the same rules as are applicable to the dismissal of the appeal on merits in the matter of further appeal.

23. To put it in other words, an application for condonation of delay cannot be construed as a proceeding which is independent of the appeal, and though the hearing of such application does not amount to hearing of the appeal on the merits in the strict sense of examining the legality and correctness of the impugned order, nonetheless such an application is an appeal in the eyes of law.

24. In fairness to Mr. Vakil, it may be apposite to extract the provisions contained in Section 21 of the RDB Act as the thrust of the submission of Mr. Vakil was that the expression "before the said appeal is heard" is absent in Section 21 and that makes a significant difference. Section 21 reads as under:

> "21. Deposit of amount of debt due, on filing appeal.
>
> Where an appeal is preferred by any person from whom the amount of debt is due to a bank or a financial institution or a consortium of banks or financial institutions, such appeal shall not be entertained by the Appellate Tribunal unless such person has deposited with the Appellate Tribunal [fifty per cent.] [Substituted by Act No. 44 of 2016.] of the amount of debt so due from him as determined by the Tribunal under section 19:Provided that the Appellate Tribunal may, for reasons to be recorded in writing, [reduce the amount to be deposited by such amount which shall not be less than twenty-five per cent. of the amount of such debt so due] [Substituted by Act No. 44 of 2016.] to be deposited under this section."

25. I am afraid, the difference in the phraseology of Section 21 and the proviso to Section 43(5) of RERA 2016 makes a significant difference. The very expression "before the said appeal is heard" answers the arguments sought to be canvassed by Mr. Vakil. As noted above, the expression "appeal" subsumes in its fold an application for condonation of delay and, thus, the hearing of the application for condonation of delay in preferring the appeal also cannot be proceeded with unless the promoter makes the pre-deposit.

26. The submission canvassed by Mr. Vakil on the premise of iniquitous and onerous nature of the provision need not detain the Court. On the contrary, if a promoter who files an appeal within the prescribed period of limitation can be compelled to make the pre-deposit, a fortiori, the promoter who belatedly invokes the jurisdiction of the Appellate Tribunal must also make the pre-deposit.

27. Reliance placed by Mr. Joshi on the judgment in the case of ***Newtech Promoters and Developers*** (supra), is well founded. The observations in paragraphs 121, 126 and 127 are instructive and hence extracted below:

> "121. 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. <u>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.</u>
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> ....
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> 126, 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, <u>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</u>

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.

127. At the same time, it will avoid unscrupulous and uncalled for litigation at the appellate stage and restrict the promoter if feels that there is some manifest material irregularity being committed or his defence has not been properly appreciated at the first stage, would prefer an appeal for reappraisal of the evidence on record provided substantive compliance of the condition of pre-deposit is made over, the rights of the parties inter se could easily be saved for adjudication at the appellate stage."

(emphasis supplied)

28. The Supreme Court has indeed construed provisions contained in Section 43(5) as a pre-condition for entertaining the appeal though the observations are to the effect that the promoter is under obligation to deposit the amount before the appeal is instituted.

29. The object of the pre-deposit, as highlighted in paragraph 126, cannot be lost sight of. The mischief of filing an appeal and keeping the matter subjudice before the appellate forum, to the grave prejudice of the successful allottee, has the propensity to cause even more disastrous consequences if the promoter is allowed to take advantage of the delay in filing the appeal and have the hearing of the application for condonation of delay in filing the same without making the pre-deposit. Such an interpretation would not only defeat the object of RERA 2016 but would also lead to absurd consequences.

30. Resultantly, as the question, sought to be raised by Mr. Vakil, has been conclusively answered by the Division Bench in the case of ***Deluxe Cotton Corporation***, (supra), the instant appeals do not deserve to be entertained.

31. Resultantly, the appeals stand dismissed.

32. In view of the dismissal of the appeal, IA/5906/2026 in SA/332/2026 also stands disposed of.

33. At this stage, Mr. Vakil submitted that, liberty be granted to the Appellant to make the deposit and seek revival of the Application for condonation of delay. Suffice to note, if the said course is available in law and resorted to by the Appellant, the same may be considered by the Appellate Tribunal in accordance with law.

[N. J. JAMADAR, J.]