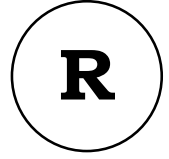


Reserved on : 20.08.2025
Pronounced on : 31.10.2025



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 31ST DAY OF OCTOBER, 2025

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

WRIT PETITION No. 17821 OF 2025 (GM-CPC)

C/W

WRIT PETITION No. 18348 OF 2025 (GM-CPC)

WRIT PETITION No. 19184 OF 2025 (GM-CPC)

IN WRIT PETITION No. 17821 OF 2025

BETWEEN:

MANTRI DEVELOPER PVT. LTD.,
REGISTERED UNDER COMPANIES ACT, 1956
OFFICE AT NO.41, VITTAL MALLYA ROAD
BENGALURU – 560 001
REP. BY ITS AUTHORISED SIGNATORY [CFO]
MR. GIRISH GUPTA H. S.,

... PETITIONER

(BY DR. VANDANA P. L., ADVOCATE)

AND:

MR. SNIL PATHIYAM VEETIL
MAJOR
R/AT ASWATHI KOTTELIL LANE

KANATTUKRA, KERALA
THRISSUR – 680 011.

... RESPONDENT

(BY SRI SRINIVAS V., ADVOCATE FOR C/R)

THIS WRIT PETITION IS FILED UNDER ARTICLE 227 OF THE
CONSTITUTION OF INDIA PRAYING TO QUASH THE IMPUGNED
ORDER DATED 17/04/2025 PASSED ON IA NO. V IN EX.P. NO.
227/2024 VIDE ANNEX-A PENDING ON THE FILE XVI ADDL. CITY
CIVIL AND SESSIONS JUDGE AT BANGALORE.

IN WRIT PETITION No. 18348 OF 2025

BETWEEN:

MANTRI DEVELOPER PVT. LTD.,
REGISTERED UNDER COMPANIES ACT
OFFICE AT C-5, NO.S/1, RICH HOMES
RICHMOND TOWN, RICHMOND ROAD
BENGALURU – 560 025
REP. BY ITS AUTHORISED SIGNATORY
MR. GIRISH GUPTA H. S.,

... PETITIONER

(BY DR. VANDANA P. L., ADVOCATE)

AND:

INDI VIVEKANANDA
MAJOR
OFFICE AT: IC UNIVERSAL LEGAL
5TH FLOOR, PHOENIX PINNACLE NO.46, ULSOOR ROAD
BENGALURU – 560 042.

... RESPONDENT

(BY SRI SRINIVAS V. ADVOCATE FOR C/R)

THIS WRIT PETITION IS FILED UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA PRAYING TO ISSUE A WRIT OR ORDER TO QUASH THE IMPUGNED ORDER DATED 17.04.2025 PASSED ON I.A. NO.V IN EX. P. NO. 228/2024 VIDE ANNEXURE-A PENDING ON THE FILE XVI ADDITIONAL CITY CIVIL AND SESSIONS JUDGE, BENGALURU.

IN WRIT PETITION No. 19184 OF 2025

BETWEEN:

MANTRI DEVELOPER PVT. LTD.,
REGISTERED UNDER COMPANIES ACT, 1956
OFFICE AT NO.41, VITTAL MALLYA ROAD
BENGALURU – 560 001
REP. BY ITS AUTHORISED SIGNATORY
MR. GIRISH GUPTA H. S.,
GENERAL MANAGER (OCCUPATION)

... PETITIONER

(BY DR. VANDANA P. L., ADVOCATE)

AND:

MR. MUDIT SAXENA
R/AT NO.308, 'C' BLOCK
SAROJ SYMPHONY APARTMENTS
NAGONDANAHALLI, WHITEFIELD
BENGALURU – 560 066.

... RESPONDENT

(BY SRI SRINIVAS V., ADVOCATE FOR C/R)

THIS WRIT PETITION IS FILED UNDER ARTICLES 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE IMPUGNED ORDER DATED 17.04.2025 PASSED ON I.A. NO.V IN EX.P. NO. 231/2024 VIDE ANNEXURE-A PENDING ON THE FILE OF XVI ADDITIONAL CITY CIVIL AND SESSIONS JUDGE, BENGALURU.

THESE WRIT PETITIONS HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 20.08.2025, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

CORAM: **THE HON'BLE MR JUSTICE M.NAGAPRASANNA**

CAV ORDER

The petitioner, in the batch of these petitions, is common and the respondents are different. The issue that is projected in these petitions is also common. It is therefore these petitions are taken up together and are considered by this common order.

2. Facts adumbrated are as follows:

The petitioner is the judgment debtor before the Executing Court in different execution petitions pending before the concerned Court. The Execution Petition reaches the Executing Court on a

particular circumstance. The respondents, in all these cases, are homebuyers. They approach the Real Estate Regulatory Authority ('RERA' for short) seeking certain relief. The RERA passes an order granting certain benefits to the respondents on 30-06-2023 and 03-08-2023 respectively. In order to enforce the orders, the respondents would approach the Civil Court seeking execution of the said order by registering different execution petitions. Before the Executing Court, the petitioner files an application invoking Section 47 of the CPC to terminate the execution proceedings on the score of lack of jurisdiction to execute the decree or the order passed by RERA. The said applications comes to be rejected by the concerned Court, which has led the petitioner to this Court, in all these petitions.

3. Heard the learned senior counsel Sri M.S.Shyamsundar appearing for petitioner and Sri Srinivas V, learned counsel appearing for respondents in all these petitions.

4. The learned senior counsel Sri M.S.Shyamsundar appearing for the petitioner would vehemently contend that the trial

Court has **no jurisdiction** to execute an order that is passed by RERA through an execution petition preferred by the beneficiaries of the order who call themselves decree holders. It is his contention that Real Estate (Regulation and Development) Act, 2016 ('RERA Act' for short) is a **self contained code** and has within itself provisions for enforcement of an order. He would further contend that Section 79 of the RERA Act bars any civil Court to have jurisdiction to entertain any petition concerning RERA. The learned counsel would also rely on Rule 26 of the Karnataka Real Estate (Regulation and Development) Rules, 2017 ('RERA Rules' for short) to contend that manner of implementation is also depicted under the Rules and therefore, the civil Court did not have jurisdiction to entertain execution proceedings of an order of RERA. The learned senior counsel places reliance upon certain judgments of the Apex Court, which would all bear consideration *qua* their relevance in the course of the order.

5. Per-contra, the learned counsel representing the respondents, in all these cases, would vehemently refute the submissions of the learned senior counsel for the petitioner in

contending that the execution petition is undoubtedly maintainable, as an order passed by RERA is a decree and a decree can be executed by the competent civil Court of the jurisdiction. He would seek to place reliance upon certain judgments of the coordinate bench of this Court to buttress his submission that the execution petition is maintainable.

6. I have given my anxious consideration to the submissions made by the learned counsel for the respective parties and have perused the material on record.

7. The afore-narrated facts are not in dispute. The issue lies in a narrow compass of statutory interpretation. The issue is,

“Whether the order passed by the RERA or the RERA Appellate Tribunal can be executed by a competent Civil Court by filing an execution petition?”

8. To consider the said issue, it becomes necessary to notice certain statutory provisions of the Act. Section 40 of the RERA Act reads as follows:

"40. Recovery of interest or penalty or compensation and enforcement of order, etc.—(1) If a promoter or an allottee or a real estate agent, as the case may be, fails to pay any interest or penalty or compensation imposed on him, by the adjudicating officer or the Regulatory Authority or the Appellate Authority, as the case may be, under this Act or the rules and regulations made thereunder, it shall be recoverable from such promoter or allottee or real estate agent, in such manner as may be prescribed as an arrears of land revenue.

(2) If any adjudicating officer or the Regulatory Authority or the Appellate Tribunal, as the case may be, issues any order or directs any person to do any act, or refrain from doing any act, which it is empowered to do under this Act or the rules or regulations made thereunder, then in case of failure by any person to comply with such order or direction, the same shall be enforced, in such manner as may be prescribed."

(Emphasis supplied)

Section 40 deals with recovery of interest or penalty or compensation and enforcement of an order, *inter alia*. Section 40(1) clearly indicates that, it is recoverable from such promoter or an allottee or a real estate agent, in such manner as may be prescribed as arrears of land revenue. Section 79 of the RERA Act reads as follows:

"79. Bar of Jurisdiction.—No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Authority or the adjudicating officer or the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be

taken in pursuance of any power conferred by or under this Act.”

(Emphasis supplied)

Section 79 bars jurisdiction of a civil Court to entertain any suit, in respect of any matter which concerns the Authority or the Adjudicating Officer or the Appellate Tribunal. In furtherance of the Act, the RERA Rules are promulgated. Rule 26 of the RERA Rules is germane to be noticed. It reads as follows:

“26. Manner of implementation of order, direction or decisions of the adjudicating officer, the Authority or the Appellate Tribunal.— For the purpose of sub-section (2) of Section 40, every order passed by the adjudicating officer, regulatory authority or Appellate Tribunal, as the case may be, under the Act or the rules and regulations made thereunder, shall be enforced by the adjudicating officer, regulatory authority or the Appellate Tribunal in the same manner as if it were a decree or order made by the principal civil court in a suit pending therein and it shall be lawful for the adjudicating officer, regulatory authority or Appellate Tribunal, as the case may be, in the event of its inability to execute the order, send such order to the principal civil court, to execute such order either within the local limits of whose jurisdiction the real estate project is located or in the principal civil court within the local limits of whose jurisdiction the person against whom the order is being issued, actually and voluntarily resides, or carries on business, or personally works for gain.”

(Emphasis supplied)

Rule 26 deals with manner of implementation of order, direction or decisions of the Adjudicating Officer, the Authority or the Appellate

Tribunal. Therefore, the RERA Act and the RERA Rules framed thereunder are undoubtedly a complete code by itself.

9.1. The Apex Court in the case of **NEWTECH PROMOTERS AND DEVELOPERS PRIVATE LIMITED v. STATE OF UTTAR PRADESH AND OTHERS**¹, has held as follows:

"116. The further submission made by the learned counsel for the appellants that Section 81 of the Act permits the Authority to delegate such powers and functions to any member of the Authority which are mainly administrative or clerical, and cannot possibly encompass any of the core functions which are to be discharged by the Authority, the judicial functions are non-delegable, as these are the core functions of the Authority. The submission may not hold good for the reason that **the power to be exercised by the Authority in deciding complaints under Section 31 of the Act is quasi-judicial in nature which is delegable provided there is a provision in the statute. As already observed, Section 81 of the Act empowers the Authority to delegate its power and functions to any of its members, by general or special order.**

117. In the instant case, by exercising its power under Section 81 of the Act, the Authority, by a special order dated 5-12-2018 has delegated its power to the Single Member of the Authority to exercise and decide complaints under Section 31 of the Act and that being permissible in law, cannot be said to be dehors the mandate of the Act. At the same time, the power to be exercised by the adjudicating officer who has been appointed by the Authority in consultation with the appropriate Government under Section 71 of the Act, such powers are non-

¹(2021)18 SCC 1

delegable to any of its members or officers in exercise of power under Section 81 of the Act.

118. That scheme of the Act, 2016 provides an in-built mechanism and any order passed on a complaint by the Authority under Section 31 is appealable before the Tribunal under Section 43(5) and further in appeal to the High Court under Section 58 of the Act on one or more ground specified under Section 100 of the Civil Procedure Code, 1908, if any manifest error is left by the Authority either in computation or in the amount refundable to the allottee/homebuyer, is open to be considered at the appellate stage on the complaint made by the person aggrieved.

119. In view of the remedial mechanism provided under the scheme of the 2016 Act, in our considered view, the power of delegation under Section 81 of the Act by the Authority to one of its member for deciding applications/complaints under Section 31 of the Act is not only well defined but expressly permissible and that cannot be said to be dehors the mandate of law.

....

Question 5 : Whether the Authority has the power to issue recovery certificates for recovery of the principal amount under Section 40(1) of the Act?

137. To examine this question, it will be apposite to take note of Section 40 that states regarding the recovery of interest or penalty or compensation to be recovered as arrears of land revenue, and reads as under:

“40. Recovery of interest or penalty or compensation and enforcement of order, etc.—(1) If a promoter or an allottee or a real estate agent, as the case may be, fails to pay any interest or penalty or compensation imposed on him, by the adjudicating officer or the Regulatory Authority or the Appellate Authority, as the case may be, under this Act or the rules and regulations made thereunder, it shall be recoverable from such promoter or allottee or real estate agent, in such manner as may be prescribed as an arrears of land revenue.

(2) If any adjudicating officer or the Regulatory Authority or the Appellate Tribunal, as the case may be, issues any order or directs any

person to do any act, or refrain from doing any act, which it is empowered to do under this Act or the rules or regulations made thereunder, then in case of failure by any person to comply with such order or direction, the same shall be enforced, in such manner as may be prescribed."

138. The submission of the appellants/promoters is that under Section 40(1) of the Act only the interest or penalty imposed by the Authority can be recovered as arrears of land revenue and no recovery certificate for the principal amount as determined by the Authority can be issued. If we examine the scheme of the Act, the power of Authority to direct the refund of the principal amount is explicit in Section 18 and the interest that is payable is on the principal amount in other words, there is no interest in the absence of a principal amount being determined by the competent authority. Further, the statute as such is read to mean that the principal sum with interest has become a composite amount quantified upon to be recovered as arrears of land revenue under Section 40(1) of the Act.

139. It is settled principle of law that if the plain interpretation does not fulfil the mandate and object of the Act, this Court has to interpret the law in consonance with the spirit and purpose of the statute. There is indeed a visible inconsistency in the powers of the Authority regarding refund of the amount received by the promoter and the provision of law in Section 18 and the text of the provision by which such refund can be referred under Section 40(1). While harmonising the construction of the scheme of the Act with the right of recovery as mandated in Section 40(1) of the Act keeping in mind the intention of the legislature to provide for a speedy recovery of the amount invested by the allottee along with the interest incurred thereon is self-explanatory. However, if Section 40(1) is strictly construed and it is understood to mean that only penalty and interest on the principal amount are recoverable as arrears of land revenue, it would defeat the basic purpose of the Act.

140. Taking into consideration the scheme of the Act what is to be returned to the allottee is his own life savings with interest on computed/quantified by the Authority becomes recoverable and such arrear becomes enforceable in law. There appears some ambiguity in Section

40(1) of the Act that in our view, by harmonising the provision with the purpose of the Act, is given effect to the provisions is allowed to operate rather running either of them redundant, noticing purport of the legislature and the abovestated principle into consideration, we make it clear that **the amount which has been determined and refundable to the allottees/homebuyers either by the Authority or the adjudicating officer in terms of the order is recoverable within the ambit of Section 40(1) of the Act."**

(Emphasis supplied)

The Apex Court holds that the scheme of the RERA Act **provides an in-built mechanism** for appealing any order passed on a complaint by the Authority under Section 31 of the Act and **orders passed by the Authority or the Adjudicating Officer for payment of certain amounts are enforceable and recoverable under Section 40(1) of the Act.**

9.2. Further, the High Court of Calcutta in the judgment rendered in the case of **DEEPAK MAWANDIA V. SHREE RSH PROJECTS PVT LTD.**,² has held as follows:

"The cumulative effect of the aforementioned provisions lead to an inescapable conclusion that the said Act is a self-contained code containing an exhaustive provision relating to a real estate project and the obligations and liabilities of the promoter, allottee and the real estate agent as well as their respective

² FMAT 97 OF 2024 and connected cases decided on 07-02-2025

obligations. A complete mechanism is provided for redressal of the grievances of the dispute not only to the allottee but also of the promoter and the real estate agent and therefore, equilibrium is created amongst the respective rights of the parties. By virtue of Section 11(4)(f) it is obligatory on the part of the promoter to execute a registered conveyance deed of the apartment, plot and building in favour of the allottee along with the undivided proportionate title in the common areas to the association of the allottees or the competent authority which is further reiterated under Section 17 in the following:.....”

(Emphasis supplied)

The Division Bench of the Calcutta High Court observes that the **RERA Act is a self contained code** containing exhaustive provisions for redressal of the grievances of disputes not only with respect to the allottee, but also with respect to the promoter and real estate agents.

10. **The pivotal question now would be, whether an order rendered by RERA or its Appellate Tribunal may, in the contemplation of law, be regarded as a decree** within the meaning ascribed to the expression under the CPC. Sub-section (2) **section 2 of the CPC defines a decree as a formal expression of an adjudication made by a competent Civil Court**, conclusively determining the rights of the parties to

the *lis*. Order XXI of the code in turn, delineates the procedure for execution of such decree. An order passed by RERA however, cannot by any stretch of legal interpretation be equated with a decree, so as to invite execution created under the machinery of Order XXI. The Act itself prescribes a distinct and self contained mode of enforcement – the recovery be effected as, arrears of land revenue from the defaulting promoter or allottee. It is **settled principle of procedure that recovery of land revenue cannot be pursued through an execution petition before a civil Court, it lies within the province of the jurisdictional Revenue Authority, ordinarily the Tahsildar.**

11. Jurisprudence is replete with various High Courts across the country, which have examined this very question, *albeit*, often in the context of orders issued by the Appellate Tribunal under the Act. Those Authorities illuminate the settled position that the machinery of civil execution has no application to orders passed by the Tribunal, as the Act itself has its own efficacious remedy. It is **only when there is complete failure after all the efforts taken by the**

aggrieved party to get it executed before the Tahsildar as arrears of land revenue, the aggrieved can knock at the doors of the executing Courts, but those would be only on exceptional circumstances.

JUDICIAL INTERPRETATION:

11.1. The Allahabad High Court in the case of **SUPERTECH LIMITED v. SUBRAT SEN³**, has held as follows:

"...."

21. The 'decree' has been defined under Section 2(2) C.P.C. to mean a formal expression of an adjudication which conclusively determines the rights of the parties with regard to all or of any of the matters in controversy in the suit.

Section 2(2) of the C.P.C. is as under:

"decree" means the formal expression of an adjudication which, so far as regards the Court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final. **It shall be deemed to include the rejection of a plaint and the determination of any question within section 144, but shall not include-**

- (a) any adjudication from which an appeal lies as an appeal from an order, or

³ 2018 SCC OnLine All 5629

- (b) any order of dismissal for default.

Explanation-A decree is preliminary when further proceedings have to be taken before the suit can be completely disposed of. It is final when such adjudication completely disposes of the suit. It may be partly preliminary and partly final;

22. In the definition of the 'decree' three words are important namely adjudication, court and suit. The use of the said words conclusively show that adjudication by the court in a suit only results in a decree. It is also necessary to note that the suit commences with a plaint and ends when a judgement and order is pronounced which culminates into a decree. The decision or the order of the Appellate Tribunal or that of R.E.R.A. do not conform to any of the above requirements of a decree as defined in Section 2(2) C.P.C.

23. The definition of a 'decree' contained in the above provision brings-forth the three essential conditions viz.

- (i) the adjudication must be in a suit;
- (ii) the suit must start with a plaint and end in a decree; and
- (iii) the adjudication must be formal and final by the court.

24. The proceedings before the R.E.R.A. are not in the nature of a suit instituted by filing a plaint rather on a complaint. Accordingly, proceedings before the R.E.R.A. cannot be termed as a suit. Thus the decision or order of R.E.R.A. or by the Appellate Tribunal on an appeal arising out of such proceedings would not be a decree within the meaning of Section 2(2) C.P.C."

(Emphasis supplied)

The Allahabad High Court enunciates that the order passed by RERA **whether emanating from the Adjudicating Officer or the Appellate Tribunal, does not partake the character of a decree, within the meaning of Section 2(2) of the CPC and therefore, cannot be executed through the procedural avenue of Order XXI of the CPC.** The reasoning in the said judgment has accorded persuasive value in subsequent cases before different High Courts.

11.2. The High Court of Madhya Pradesh in the case of **KHILLA COLONIZERS v. SUBHASH JAIN**⁴, has held as follows:

"..... .."

3. The learned counsel for the appellant submits that the Registry of this High Court has wrongly pointed out the objection regarding maintainability of this appeal. **The proceedings of RERA are of a summary nature to which the provisions of Code of Civil Procedure are not applicable. The order of Appellate Tribunal may not be termed as a 'decree' under Section 2(2) of the CPC and therefore, the instant appeal would be maintainable against the order passed by the Appellate Tribunal.** He also read the provision of Section 58 of RERA and submits that it provides for an appeal against the decision or order of the Appellate Tribunal but here does not use the word 'Second Appeal' as used in Section 100 of the CPC. It only provides that the appeal can be preferred on any of the grounds mentioned in Section 100 of the CPC. but it does not mean that only Second

⁴ **2021 SCC OnLine MP 6044**

Appeal would lie. It is further argued by the counsel that for filing a Second Appeal, the condition precedent is the decree passed in appeal and that too by any Court Sub-ordinate to the High Court. The Appellate Tribunal of RERA is not a Sub-ordinate Court to the High Court and order passed by Appellate Tribunal is not a decree, therefore, Second Appeal would not lie against the said order. In support of his contention, he relied upon the order passed by Bench of Allahabad High Court in the case of *Supertech Ltd. v. Subrat Sen*, reported in 2018 SCC OnLine All 5629 : AIR 2019 All 19. He prays for maintainability of this appeal.

....

10. As above noted, the learned counsel for the appellant raised the argument that the order passed by the Appellate Tribunal is not a decree, moreover he argued that the Appellant Tribunal is not a Sub-ordinate Court to the High Court. He has also produced the copy of order passed by Allahabad High Court in the case of *Supertech Ltd.* (supra) wherein the Bench of Allahabad High Court has considered the relevant provisions of Court Fees Act, RERA as well as Code of Civil Procedure. **The Bench found that the order passed by the Appellate Tribunal is not a 'decree' for the purposes of filing an appeal under Section 58 of the RERA before the High Court. Before reaching this conclusion, the Bench of Allahabad High Court has also discussed the applicability and scope of Section 57 of RERA wherein it is prescribed that the order passed by the Appellate Tribunal shall be executable as a 'decree'.** After quoting the relevant provision, the Bench has held as under:—

"26. A reading of the aforesaid provision itself makes it clear that by creating a legal fiction, the order of the Appellate Tribunal has been recognised to be a decree only for limited purpose of execution but not for the purposes of filing an appeal against it. It is settled law that in applying legal fiction one should not travel beyond the limits for which it has been created. In *Paramjeet Singh Patheja v. ICDS Ltd.*, (2006) 13 SCC 322 : JT (2006) 10 SC 41 : AIR 2007 SC 168 the Supreme Court in paragraph 36 of the above decision observed that a legal fiction must be limited to the purpose for which it was created. Therefore, for the

purposes of appeal under Section 58 of the R.E.R.A. the decision or order of the Appellate Tribunal would remain to be an order simpliciter and would not be a decree within the meaning of Section 2(2) of the CPC."

11. The Allahabad High Court further relied upon the judgment passed by the Hon'ble Supreme Court in the case of *Diwan Brothers v. Central Bank of India, Bombay*, reported in (1976) 3 SCC 800 : AIR 1976 SC 1503, and has held as under:—

"40. In *Diwan Brothers v. Central Bank of India, Bombay*, (1976) 3 SCC 800 : AIR 1976 SC 1503 the court was seized with a matter of payment of court fees in an appeal before the High Court arising from the order of the Tribunal appointed under the Displaced Persons (Debts Adjustment) Act, 1951. In the said case also the question that fell for consideration was whether or not the decision given by the Tribunal under the aforesaid Act could be said to be a decree within the meaning of Article 11 of Schedule II to the Act for the purposes of payment of court fee.

41. The court observed that the Tribunal under the Act cannot be called a court as there is clear distinction between a Tribunal and the Court. The proceedings before the Tribunal do not start with a plaint and as such would not culminate into a decree.

42. The mere description of the decision of the Tribunal to be a decree for the limited purpose would not make the decision a decree within the meaning of Section 2(2) of the CPC."

12. Now, it becomes undisputed that the order passed by the Appellate Tribunal under RERA cannot be termed as a 'decree' under Section 2(2) of the CPC even though Section 57 of said Act makes the order passed by the Appellate Tribunal executable as a 'decree'. The order passed by the Bench of Allahabad of High Court is in consonance with the law."

(Emphasis supplied)

11.3. The High Court of Allahabad again in the case of **PSA IMPEX PRIVATE LIMITED v. REAL ESTATE APPELLATE TRIBUNAL LKO.**⁵ has held as follows:

"....

78. In *Messers Supertek Ltd. v. Subrata Sen*, Second Appeal (Def) 341 of 2018, decided on 01.10.2018 by a Co-ordinate Bench of this Court was deciding a Reference under Section 5 of the Court Fee Act.

79. The Court has observed that the proceedings before the Real Estate Regulatory Authority are summary in nature to which the Code of Civil Procedure is not applicable. The order of the Appellate Tribunal is not a "decree" under Section 2(2) of the C.P.C. This court considered the objects of Real Estate (Development and Regulation) Act and observed that it is a special Legislation which provides for the regulation and promotion of Real Estate by promoting sale of Real Estate in an efficient and transparent manner. It proposes to protect the interest of the purchaser of the real estate and to provide a speedy adjudicating mechanism of the disputes in matters connected therewith. In substance while promoting real estate, it endeavours to protect and safeguard the interest of the investors in real estate. It is, therefore, a kind of beneficial Legislation for the protection of the investor/purchaser of the real estate. **The Appellate Tribunal is not a Court subordinate to the High Court and the order of the Appellate Tribunals is not a "decree" as defined under Section 2(2) of the C.P.C. which means "a formal expression of an adjudication which conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit".**

80. The Court observed that in the definition of decree as given under the C.P.C., three words are

⁵ 2021 SCC OnLine All 215

important namely; adjudication, court and suit. The suit commences with the plaint and ends when the judgement or order is pronounced which culminates into a decree, the order of the Tribunal does not conform to any of the above requirements of a decree **as it is rendered on a complaint and is not the result of adjudication in a suit.** The proceeding before Real Estate Regulatory Authority is not in the nature of a suit instituted by filing a plaint. Real Estate Regulatory Authority derives jurisdiction on the complaint. Proceedings before it are not governed by strict Rules of Evidence as in a civil Suit. The order passed by Real Estate Regulatory Authority or by the Appellate Tribunal on Appeal arising out of such proceedings maybe executable as a decree of a civil court but the Appellate Tribunal will have all the powers of the civil court only in respect of execution of its orders. Sometimes, it may also send its orders to a civil court having local jurisdiction for execution in case the person or the property of the Promoter or builder or real estate agent is situated within the local jurisdiction of that Civil Court.

81. The Supreme Court has observed in *Paramjit Singh Patheja v. I.C.D.S. Ltd.*, JT (2006) 10 SC 41, in paragraph 36 that a legal fiction must be limited to the purpose for which it was created. In applying a legal fiction, one should not travel beyond the limits for which it has been created. Therefore the order of the Tribunal can only be considered to be a decree to facilitate its execution. It is otherwise similar to Income Tax Appeals filed under Section 260 of the Income Tax Act, which are not to be characterised as Second Appeal even if they are arising out of an Appellate order.

82. This Court in *Messers Supertek Ltd.* (supra), was considering whether orders passed by the Tribunal could be said to be a "decree" and found that unlike regular Civil Court's adjudicating civil suits, the decision on a complaint by an allottee against a Promoter or a real estate agent cannot be said to be arising out of a plaint in a Suit, wherefore the order of the Tribunal cannot be termed to be a "decree".

(Emphasis supplied)

The said judgment is affirmed by the Apex Court in a judgment in the case of **PSA IMPEX PRIVATE LIMITED v. REAL ESTATE REGULATORY AUTHORITY AND ANOTHER** reported in **2024 SCC OnLine SC 4664**.

11.4. The High Court of Rajasthan in the case of **TREHAN APNA GHAR BUILDWELL PRIVATE LIMITED V. MUNISH RANJAN SAHAY⁶**, has held as follows:

"....

8. The RERA Act, 2016 has been promulgated by legislatures to establish Real Estate Regulatory Authority for regulation in promotion of real estate sector and to ensure sale of plot, apartment or building, as the case may be, or sale of real estate project, in an efficient and transparent manner and to protect the interest of consumers in real estate sector and to establish an adjudicating mechanism for speedy dispute redressal and also to establish the Appellate Tribunal to hear appeals from the decisions, directions or orders of the Real Estate Regulatory Authority and the adjudicating officer and for matters connected therewith or incidental thereto.

9. The Appellate Tribunal established under the RERA Act, 2016 is judicial form and creature of a special statute. It is well known principle of law that the Tribunal established under any special Act cannot be called a Court like Civil Court as* there is a clear distinction between the Tribunal and the Court.

⁶ 2022 SCC OnLine Raj 3257

10. The term decree” is not defined under the of the Act of 2016 and nor it is defined under any other statute including General Clauses Act, 1897 and for that the Court has to consider definition of decree as defined under Section 2(2) of the Act of 1908. As per Section 2(2) of the Act of 1908, the decree means a formal expression of an adjudication which, so far as regards the Court expressing it, conclusively determines rights of parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final. Though, the definition also includes rejection of plaint and order passed under Section 144 but here this Court is not concerned with that aspects of decree.

11. According to procedure prescribed under the RERA Act, provision of the Civil Procedure Code, 1908 are not strictly applicable. Further proceedings under the RERA Act are initiated either suo moto or on complaint/representation. Such proceedings under the RERA Act may not be treated in the nature of civil suit instituted before Civil Court by way of filing a plaint which ultimately after adjudication on merits culminates into passing a decree. Further it may be notices that adjudicating officer, the RERA Authority or the Appellate Tribunal may pass any order or decision on the dispute or appeal brought before them which may be either may be of an interim or final nature. Although under Section 58 of the RERA Act, the order or decision of Appellate Tribunal has not been termed as decree, however, by virtue of section 57 of the RERA Act, the order or decision passed under the RERA Act is executable and enforceable as a decree of Civil Court. Even if, it is assumed for a moment that final order or decision either passed by the adjudicating officer, RERA Authority or Appellate Tribunal under the RERA Act, if determines the rights of parties and partake a character of decree then also, the issue before this Court for consideration is about to consider the category and nature of appeal preferred before the High Court against the order or decision of Appellate Tribunal under the RERA Act, hence, a elaborate discussion about the aspect that the final order or decision under RERA Act falls within category of decree or not, is not required to be made, to decide the issue involved herein.

....

21. This Court finds support from the judgment passed by Allahabad High Court in case of *Supertech Ltd. v. Subrat Sen* [AIR 2019 All 191, which has been followed and affirmed by Madhya Pradesh High Court in case of *Khilla Colonizers Pvt. Ltd. v. Subhash Jain*, [AIR 2021 MP 165]."

(Emphasis supplied)

All the judgments of different High Courts in one singular voice holds that the order of the Adjudicating Officer, the Authority or the Appellate Tribunal under the Act is not a decree, as obtaining 2(2) of the CPC.

12. **On a coalesce of the judgments noted above, what would unmistakably emerge is, the order of the Adjudicating Officer or the order of the Appellate Tribunal, constituted under the Act, does not assume the mantle of a decree, within the contemplation of Section 2(2) of the CPC. Therefore, such an order/orders cannot traverse the path of execution delineated under Order XXI of the CPC. The Courts have, in the afore-quoted judgments have illuminated that the proceedings before the RERA are not conceived in**

the mould of a civil suit, though the Act provides the procedure to be followed, as if it is a civil Court and therefore, cannot culminate in a decree in the classical sense. In that light, the applications so filed by the petitioner invoking Section 47 of the CPC to hold that the concerned Executing Court did not have jurisdiction was in tune with law. The order rejecting those applications and holding that the Court has jurisdiction to entertain the execution petition runs foul of law, therefore requires appropriate interference, which would lead to the obliteration of the proceedings, leaving open all the remedies available in law.

13. For the aforesaid reasons, the following:

ORDER

- (i) Writ Petitions are allowed.
- (ii) Impugned order dated 17-04-2025 passed on I.A.No.V in Execution Petition Nos.227 of 2024, 228 of 2024 and 231 of 2024 pending on the file of XVI Addl. City Civil and Sessions Judge, Bangalore stands quashed.

- (iii) It is needless to observe that the respondents would be at liberty to avail of such remedy as is available in law.

**Sd/-
(M.NAGAPRASANNA)
JUDGE**

bkp
CT:SS