

# HC: Co-promoter too liable to pay refund if flat delayed

Swati.Deshpande  
@timesgroup.com

**Mumbai:** Bombay HC has held that the term 'promoter' covers a co-promoter even if he hasn't got money from flat buyers and is jointly liable under Real Estate (Regulatory and Development) Act (Rera) to refund the amount, with interest, for delays.

It said under the 2016 Act, which came into effect in 2017, 'promoter' has "been so widely defined that it virtually includes every person associated with construction of the building", and that it is not necessary that there has to be an agreement between every promoter and a flat buyer: "Thus, even a person who is merely an investor (along with promoter) in the project" and benefits from it falls within the ambit of 'promoter', it said while hearing an appeal by Wadhwa Group Housing Pvt Ltd against an Oct 2022 order of Rera appellate tribunal that had fastened it with the refund liability.

HC's Feb 26 order has stirred the real estate industry, said lawyers, as it answers a substantial question of law

## 'RERA COVERS VIRTUALLY ALL'

### WHAT LAW SAYS |

Section 18 of Rera provides for refund and compensation to a buyer if the developer

fails to complete the project or is unable to give possession of the premises as mentioned in the agreement

**WHAT HC HELD |** Rera does not demarcate or restrict liabilities of different promoters in different areas. The liability is joint for all purposes under the Act, and rules and regulations



that many were tracking. It has ramifications for the many redevelopment projects in the city, said legal experts.

Justice S V Marne focused on a legal issue—whether a promoter who has not received any payment from an allottee can be made liable for giving refund with interest under Section 18 of Rera.

Wadhwa Group Housing had challenged the joint liability on it as a co-promoter for having joined in as co-developer in an SRA project in Andheri. In 2012, the two

builders, in a joint development agreement, split among themselves the constructed area to be sold.

A flat buyer, Vijay Choksi, had complained to MahaRera and sought a refund of the Rs 1.2 crore part payment he made to the co-developer, SSS Escatics, which failed to meet the project deadline of 2019, said the appeal before HC.

Wadhwa Group Housing, through counsel Naushad Engineer, said the entire amount was paid by Choksi to Escatics, which alone can

be directed to refund it with interest. Engineer argued that for monies received in a pre-Rera situation sans contract between a builder and a buyer, it would not stand to reason that the builder should be made liable post Rera. HC, which also heard Choksi's counsel Ashish Kamat, held that "the account in which monies are received by promoters is irrelevant for the purpose of determining joint liability of promoters under Section 18 of Rera".

It said the flat merely falling in the co-developer's share under the joint development agreement would not excuse Wadhwa Group Housing from responsibilities and liabilities under Rera. A buyer is not supposed to know the intricacies of arrangements made among the joint developers, it said. "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," Justice Marne said.

Wadhwa Group Housing sought an eight-week stay on execution proceedings to go to SC. HC didn't grant it.