IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 12121 OF 2024

Marvel Landmarks Pvt. Ltd. ...Petitioner

Versus

The State of Maharashtra & Ors ...Respondents

Mr. Amit Gharte, *for Petitioner.*

Mr. Abhishek Kothari *a/w Monish Jain & Gaurav Nashikkar, i/b M J Partners, for Respondent No.5.*

Mr. R.S. Pawar, AGP for *the Respondent-State.*

CORAM : SOMASEKHAR SUNDARESAN, J.
RESERVED ON : January 22, 2026
PRONOUNCED ON : April 7, 2026

Judgement:

1. Rule. Rule is made returnable forthwith. By consent of the parties, heard finally.

Context and Factual Background:

2. The Writ Petition raises an interesting question as to whether an order dated December 17, 2019 ("***Impugned Order***") passed by the Learned Adjudicating Officer of the Real Estate Regulatory Authority ("***Authority***"), is rendered *non est* by reason of the law declared by the Supreme Court in 2021, interpreting the provisions of the Real Estate

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(Regulation and Development) Act, 2016 ("***RERA Act***"). The prayer in this Writ Petition is to quash and set aside the Impugned Order and another order dated October 8, 2021 ("***Recovery Order***") passed in recovery proceedings, on the premise that they are in conflict with the law subsequently declared by the Supreme Court.

3. The relevant facts for purpose of adjudicating this Petition fall in a rather narrow compass and are summarized below:-

A] A Learned Adjudicating Officer of the Authority passed the Impugned Order directing refund of the amount of Rs.1,35,99,246/- along with interest @10.20% per annum paid to the Petitioner, Marvel Landmarks Pvt. Ltd. ("***Marvel***") by Respondent No.5, Mr. Siddharth Mohan Palesha, ("***Flat Purchaser***") until realisation;

B] The Impugned Order was not challenged within the statutory period available for an Appeal under Section 44 of the RERA Act;

C] On October 8, 2021, on account of non-compliance with the Impugned Order, an order was passed for issuance of recovery warrant ("***Recovery Order***"). Execution of RERA's order for

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refund of monies is to be effected as if the penalties were arrears of land revenue under the Maharashtra Land Revenue Code, 1966;

D] On November 11, 2021, the Supreme Court passed a judgment in the case of ***Newtech***[1] which, according to Marvel, renders the Impugned Order and the Recovery Order *non est*; and

E] According to Marvel, an Adjudicating Officer can only pass orders relating to compensation while an order of refund cannot be passed by the Adjudicating Officer, and towards this end, the law declared in ***Newtech*** is sought to be pressed into service.

Core Issue:

4. The short question to be considered for adjudicating in this Petition is whether pursuant to the law declared in ***Newtech***, Marvel would be entitled to immunity from compliance with the Impugned Order on the premise that the law as declared in ***Newtech***, has rendered the Impugned Order *non est* in the eyes of law. Put differently, the case of Marvel is that ***Newtech*** has rendered the Impugned Order, although passed in the past and having attained finality in the absence of a

1 *Newtech Promoters and Developers Pvt. Ltd. v. State of UP – (2021) 18 SCC 1*

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challenge under a statutory appeal, even now the Impugned Order can be quashed as being a product of exercise of power by an authority without jurisdiction.

Contentions of the Parties:

5. Against this backdrop, I have heard at length Mr. Amit Gharte, Learned Advocate for Marvel and Mr. Abhishek Kothari, Learned Advocate for the Flat Purchasers, and, with their assistance, examined the materials relied upon by them in furtherance of their submissions.

6. Mr. Gharte would submit that in view of the law declared in ***Newtech***, this Court should declare that the Learned Adjudicating Officer who passed the Impugned Order was wholly without jurisdiction. The jurisdiction to order a refund along with interest is unavailable under Section 71 of the RERA Act, he would submit, contending therefore, that any attempt to execute the Impugned Order would be illegal. Mr. Gharte would also rely upon a decision of a Learned Division Bench of this Court in the case of ***Marveledge***[2]. He

2 *Marveledge Realtors Pvt. Ltd. v. State of Maharashtra – judgement dated September 13, 2024 in Writ Petition No.10912 of 2022*

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would also draw my attention to other decisions of the same Learned Division Bench following the ruling in ***Marveledge***, and to a decision of a Learned Single Judge in a Petition filed by this very Petitioner[3], wherein a stay was granted on an order directing refund as also an order of proclamation issued in recovery proceedings. A final ruling the aforesaid Writ Petition regard did not transpire, since the parties settled the dispute and the Petition was withdrawn.

7. Mr. Gharte would further rely on a decision of the Supreme Court in ***Kiran Singh***[4] and in particular, Paragraph 6 thereof, which reads thus:-

> *"6. The answer to these contentions must depend on* ***what the position in law is when a court entertains a suit or an appeal over which it has no jurisdiction****, and what the effect of Section 11 of the Suits Valuation Act is on that position.* ***It is a fundamental principle well established that a decree passed by a court without jurisdiction is a nullity, and that its invalidity could be set up whenever and wherever it is sought to be enforced or relied upon, even at the stage of execution and even in collateral proceedings. A defect of jurisdiction, whether it is pecuniary or territorial, or whether it is in respect of the subject-matter of the action, strikes at the very authority of the court to pass any decree, and such a defect cannot be cured even by consent of parties****. If the question now under consideration fell to be determined only*

3 Marvel Landmarks Pvt. Ltd. v. State of Maharashtra and Ors. – judgement dated July 24, 2024 in Writ Petition No.10088 of 2024

4 Kiran Singh & Ors v. Chaman Paswan & Ors. – (1954) 1 SCC 710

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on the application of general principles governing the matter, there can be no doubt that the District Court of Monghyr was coram non judice, and that its judgment and decree would be nullities. The question is what is the effect of Section 11 of the Suits Valuation Act on this position.

[Emphasis Supplied]

8. Based on the aforesaid reasoning, Mr. Gharte would also submit that, after the declaration of the law in ***Newtech***, there are instances where RERA itself has not been enforcing its refund orders on the premise that they are a nullity. Therefore, he desires that the Writ Court must endorse such a position and positively declare the Impugned Order and the Recovery Order are a nullity.

9. In sharp contrast, Mr. Abhishek Kothari, Learned Advocate on behalf of the Flat Purchaser, would submit that when the Impugned Order was passed, the Learned Adjudicating Officer was validly discharging the functions assigned to him by the Authority, and that he declared the refund to be due in exercise of such valid authority. Mr. Kothari would submit that under the provisions of the RERA Act, the Authority is to consist of a Chairperson and not less than two full-time members. Likewise, for the purposes of exercising jurisdiction under Section 71 of the Act, Adjudicating Officers are to be appointed by

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RERA. Regardless of whether it is an Adjudicating Officer or a Whole Time Member ("***WTM***") discharging the functions, it would be the Authority that is discharging the functions when they so act.

10. Mr. Kothari would point to Section 30(c) of the RERA Act, to indicate that no act or proceeding of the Authority shall become invalid, merely by a reason of any irregularity in the procedure of the Authority, not affecting the merits of the case. He would further submit that the Impugned Order was amenable to an Appeal in terms of Section 43(5) of the RERA Act. Any person aggrieved by any direction, decision or order made by RERA or by an Adjudicating Officer is entitled to file an Appeal before the Appellate Tribunal. Such Appeal is required to be filed within a period of 60 days with a further extension of 60 days, during which a delay in filing an Appeal may be condoned by the Appellate Tribunal. Since Marvel did not challenge the Impugned Order at all, the Impugned Order became final and is executable as if it were arrears of land revenue, and therefore, such crystallised rights cannot be undone by Marvel by a subsequent judgement. In any case, Marvel has come to Court with significant delay from date of the Impugned Order and the writ jurisdiction cannot be used to re-open closed matters that have attained finality. Once the Impugned Order became executable as a

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decree on the expiry of 120 days from when it was passed, having attained finality, it would follow that even if the law declared in ***Newtech*** were to be somehow adopted by Marvel, it cannot disturb positions that have already been crystallised and have attained finality.

11. Even while ***Newtech*** was decided on November 11, 2021, this Petition has been filed only on August 26, 2024. Therefore, Mr. Kothari would submit that there are two layers of delay and laches that visit this Petition – the first is the delay from the passing of the Impugned Order in December 2019, by which count the delay is of nearly five years; and second, even after the law was declared in ***Newtech***, Marvel has come nearly three years late. Therefore, Mr. Kothari would submit that this Court, in exercise of its discretionary extraordinary jurisdiction, ought not to entertain this Petition or grant any relief to a party that is taking a chance at disturbing crystallised rights that have already partaken the character of a decree.

12. Mr. Kothari would further submit that even in the execution proceedings, not once did Marvel raise any issue about purportedly benefiting from the law declared in ***Newtech***. In fact, it is when the Collector (Respondent No.3 and 4, the District Collector Pune and the Tehsildar, Taluka Haveli) abdicated their duties that the Flat Purchaser

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was constrained to file Writ Petition No.2271 of 2024 ("***WP 2271***") seeking a mandamus and a direction to the Collector to deal with the matter. It is in that petition that the contention of ***Newtech*** having denuded the Impugned Order of enforceability has been taken by this Petitioner. As a backlash to the filing of WP 2271, the present Petition has been filed in August 2024.

13. Mr. Kothari would also point to Marvel having been admitted to a Corporate Insolvency Resolution Process ("***CIRP***") under the Insolvency and Bankruptcy Code, 2016 ("***IBC***") on June 13, 2025 which came to be withdrawn in view of a settlement being arrived at in those proceedings recorded before the Adjudicating Authority under the IBC. Yet, an Interim Application No.10471 of 2025 was filed in the WP 2271 on July 19, 2025, claiming that Marvel was a protectee of the moratorium under the IBC. Even in this application, Marvel did not employ the stance raised in this Writ Petition, namely, that the Impugned Order is *non est.* Therefore, he would submit that this Court ought not to exercise its discretionary in favour of such a party.

14. Mr. Kothari would rely on the decision of the Supreme Court in ***Saurashtra Kutch Stock Exchange***[5], to submit that a judicial decision,

5 Assistant Commissioner, Income Tax, Rajkot v. Saurashtra Kutch Stock Exchange Ltd. – 2008 (14) SCC 171

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while retrospective, would not disturb matters that are *res judicata* or where accounts have been settled in the meantime. He would rely on the following extracts:-

> *35.* ***In our judgment, it is also well settled that a judicial decision acts retrospectively. According to Blackstonian theory, it is not the function of the court to pronounce a "new rule" but to maintain and expound the "old one". In other words, Judges do not make law, they only discover or find the correct law. The law has always been the same.*** *If a subsequent decision alters the earlier one, it (the later decision) does not make new law.* ***It only discovers the correct principle of law which has to be applied retrospectively. To put it differently, even where an earlier decision of the court operated for quite some time, the decision rendered later on would have retrospective effect clarifying the legal position which was earlier not correctly understood****.*
>
> *36. Salmond in his well known work states:*
>
> *"[T]he theory of case law is that a judge does not make law; he merely declares it; and the overruling of a previous decision is a declaration that the supposed rule never was law. Hence any intermediate transactions made on the strength of the supposed rule are governed by the law established in the overruling decision.* ***The overruling is retrospective, except as regards matters that are res judicatae or accounts that have been settled in the meantime****."*
>
> ***[Emphasis Supplied]***

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15. Further reliance is placed on ***UP Jal Nigam***[6] to indicate that delay in approaching the Writ Court would be a material factor for not granting relief, even if relief had been granted in earlier timely writs invoking the same principles of law. Various employees of the Uttar Pradesh Jal Nigam had been retired on superannuation at the age of 58 years. Some of them challenged the retirement and were allowed to continue up to the age of 60 years. This led to Appeals in the Supreme Court in the case of ***Harwindra Kumar***[7], which ruled that superannuation would occur at the age of 60. During the pendency of such proceedings, a set of Writ Petitions came to be filed in the High Court by employees who had retired long back at the age of 58. Some of the petitioners who were yet to retire got relief with interim orders allowing them to continue in service. All the writs came to be disposed of in the light of the ruling in ***Harwindra Kumar***.

16. In appeal, the Supreme Court was faced with the question as to whether relief should be granted to other similarly placed persons who were not vigilant and did not stay alert to challenge their retirement and had gone on to accept the same, but much later filed Writ Petitions invoking the judgement in ***Harwindra Kumar***. This was

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6 U.P. Jal Nigam v. Jaswant Singh – (2006) 11 SCC 464

7 Harwindra Kumar v. Chief Engineer, Karmik & Ors. – (2005) 13 SCC 300

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considered by the Supreme Court as a serious question and was answered in ***UP Jal Nigam***, essentially holding that those who are not alert and do not come to Court in time have acquiesced in accepting their retirement without challenge in time. If they had been vigilant and had come to Court along with the others who eventually succeeded, they could have been given the same treatment but the Court should be very slow in granting reliefs to those who did not come in time. Therefore, the Court refused to come to the aid of the employees who did not contemporaneously approach the Writ Court on the premise that the discretionary power to issue a writ would not be exercised in their favour.

17. Mr. Kothari would also rely upon the judgement in ***Bhailal Bhai***[8] whereby 31 appeals filed by State of Madhya Pradesh challenging disposal of petitions filed by tobacco dealers on the sales tax on tobacco was considered. The Supreme Court considered that a tax applicable before independence in the State of Madhya Bharat would have been saved within the saving provisions of Article 304(a) of the Constitution of India. It was held that the tax was in contravention of the provisions of Article 301 of the Constitution and had been rightly held to be invalid

8 *State of Madhya Pradesh & Ors. v. Bhailal Bhai & Ors.* – *1964 SCC OnLine SC 10*

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and those assessments were invalid in law. At the same time, the Supreme Court held (in para 17) that Article 226 is not intended to supersede all the modes of relief that are available to the parties and that the power to give relief under Article 226 must necessarily factor in the delay on the part of the aggrieved party in seeking a special extraordinary remedy and the excuse presented for seeking such remedy. Therefore, the following extracts are noteworthy.

> *At the same time we cannot lose sight of the fact that the special remedy provided in Article 226 is not intended to supersede completely the modes of obtaining relief by an action in a Civil Court or to deny defences legitimately open in such actions. It has been made clear more than once that the power to give relief under Article 226 is a discretionary power. This is specially true in the case of power to issue writs in the nature of mandamus. Among the several matters which the High Courts rightly take into consideration in the exercise of that discretion is the delay made by the aggrieved party in seeking this special remedy and what excuse there is for it. Another is the nature of controversy of facts and law that may have to be decided as regards the availability of consequential relief. Thus, where, as in these cases, a person comes to the court for relief under Article 226 on the allegation that he has been assessed to tax under a void legislation and having paid it under a mistake is entitled to get it back, the court, if it finds that the assessment was void, being made under a void provision of law, and the payment was made by mistake, is still not bound to exercise its discretion directing repayment. Whether repayment should be ordered in the exercise of this discretion will depend in each case on its own facts and circumstances. It is not easy nor is it desirable to lay down any Rule for universal application. It may however be*

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stated as a general Rule that if there has been unreasonable delay the court ought not ordinarily to lend its aid to a party by this extraordinary remedy of mandamus. *Again, where even if there is no such delay the Government or the statutory authority against whom the consequential relief is prayed for raises a prima facie triable issue as regards the availability of such relief on the merits on the grounds like limitation the court should ordinarily refuse to issue the writ of mandamus for such payment. In both these kinds of cases it will be sound use of discretion to leave the party to seek his remedy by the ordinary mode of action in a Civil Court and to refuse to exercise in his favour the extraordinary remedy under Article 226 of the Constitution.*

[Emphasis Supplied]

18. In support of his contention, under Section 30 of the RERA Act, namely, that irregularity in procedure not affecting the merits of the case would not invalidate the decision, Mr. Kothari would rely upon ***BK Srinivasan***[9] and in particular paragraph 11 which is extracted below:-

11. ***The only other provision of the Act to which reference is necessary is, what we may call, the "Ganga" clause [According to Hindu tradition the waters of the Ganga purify, cleanse the sins and remedy all insufficiencies.]****. Section 76-J which provides for "Validation of acts and proceedings". It is as follows:*

> *"76-J. Validation of acts and proceedings.—No act done or proceeding taken under this Act shall be questioned on the ground merely of,*

9 B. K. Srinivasan & Ors. v. State of Karnataka – (1987) 1 SCC 658

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(a) the existence of any vacancy in, or any defect in the constitution of the Board or any Planning Authority;

(b) any person having ceased to be a member;

(c) any person associated with the Board or any Planning Authority under Section 4-F having voted in contravention of the said section; or

(d) the failure to serve a notice on any person, where no substantial injustice has resulted from such failure; or

(e) any omission, defect or irregularity not affecting the merits of the case.

19. Mr. Kothari would submit that the provisions of Section 76-J extracted in the aforesaid case were a "*Ganga Clause*" which is meant to cleanse and purify any insufficiency and that is precisely what is codified in Section 30(c) of the RERA Act. Towards this end, he would submit that at the relevant time RERA had issued Circular No.7 of 2017 dated July 24, 2017 stipulating the Standard Operating Procedure for dealing with complaints by Flat Purchasers. The said circular provides that once a complaint is received online, it is automatically assigned by the software to the Chairperson and the two WTMs, and where a person seeks compensation, the case would then be transferred by them to an Adjudicating Officer. He would submit that this Standard Operating Procedure was essentially based on the law as it then stood and was then understood. In any case, the declaration of the law in ***Newtech*** came

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much later. Therefore, Mr. Kothari would contend, even if it were to be declared that the process adopted by the Authority was declared to be in conflict with the requirement of law, such a procedural outcome would be saved by the codified position obtaining from Section 30(c) of the RERA Act. Mr. Kothari would also point out that in accordance with the rules made under the RERA Act, namely, the Maharashtra Real Estate (Regulation and Development) Rules, 2016, a specific Form-M is stipulated for complaints to be made to the Authority. The Flat Purchaser had made a complaint in Form-M. This complaint was therefore processed by the Authority and since it had prayers for compensation as well as for refund, the Authority was entitled to validly assign the case to an Adjudicating Officer. If that process is considered improper by a reading of the law in ***Newtech***, he would submit that the Impugned Order which is on merits, stands protected by Section 30(c).

ANALYSIS AND FINDINGS:

Scheme of RERA Act:

20. Before dealing with the aforesaid contentions, a broad understanding of the scheme of the RERA Act would be in order. The following provisions of the RERA Act are noteworthy.

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21. Section 18 stipulates the substantial rights of an allottee of a unit upon non-performance by the promoter of a project, including the return of amounts paid to the promoter of a project :

> *18. **Return of amount and compensation**.—(1) **If the promoter fails to complete or is unable to give possession of an apartment, plot or building**,—*
>
> *(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or*
>
> *(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,*
>
> ***he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act**:*
>
> *Provided that **where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed**.*
>
> *(2) The promoter shall compensate the allottees in case of any loss caused to him due to defective title of the land, on which the project is being developed or has been developed, in the manner as provided under this Act, and the claim for compensation under this subsection shall not be barred by limitation provided under any law for the time being in force.*

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> *(3)* ***If the promoter fails to discharge any other obligations imposed on him under this Act or the rules or regulations made thereunder or in accordance with the terms and conditions of the agreement for sale, he shall be liable to pay such compensation to the allottees, in the manner as provided under this Act.***
>
> ***[Emphasis Supplied]***

22. It is clear that Section 18 is the substantive statutory right to protections when the allottee of premises is a victim of non-performance. The protections include a full refund and termination of contract; specific relief of the contract with statutory interest for the delayed performance; compensation due to defect in title without being impeded by limitation; and compensation in terms of other provisions of the RERA Act.

23. Section 21 deals with the composition of RERA (the phrase used for it is "Authority") while Section 25 provides for administrative powers of the Chairperson. Essentially, RERA comprises a Chairperson and at least two WTMs, with the Chairperson being the chief executive and administrative head of RERA. These provisions read thus:

> *21. Composition of Authority.—The* ***Authority shall consist of a Chairperson and not less than two whole time Members to be appointed by the appropriate Government****.*

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> *25. Administrative powers of Chairperson.—The Chairperson shall have powers of general superintendence and directions in the conduct of the affairs of Authority and he shall, in addition to presiding over the meetings of the Authority, exercise and discharge such administrative powers and functions of the Authority as may be prescribed.*
>
> *[Emphasis Supplied]*

24. Section 28 envisages the role of other officers and employees of RERA. When read with Section 71, which provides for appointment of a judicial officer for purposes of adjudicating claims for compensation. The Adjudicating Officer appointed by RERA under Section 71, when read with Section 28(2) would inexorably point to the Adjudicating Officer being an employee of RERA. These provisions read thus:

> *28. Officers and other employees of Authority.—(1) The appropriate Government may, in consultation with the Authority appoint such officers and employees as it considers necessary for the efficient discharge of their functions under this Act who would discharge their functions under the general superintendence of the Chairperson.*
>
> *(2) The salary and allowances payable to, and the other terms and conditions of service of, the officers and of the employees of the Authority appointed under sub-section (1) shall be such as may be prescribed.*
>
> *71. Power to adjudicate.—(1) For the purpose of adjudging compensation under sections 12, 14, 18 and section 19, the Authority shall appoint, in consultation with the appropriate Government, one or more judicial officer*

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as deemed necessary, who is or has been a District Judge to be an adjudicating officer for holding an inquiry in the prescribed manner, after giving any person concerned a reasonable opportunity of being heard:

Provided that any person whose complaint in respect of matters covered under sections 12, 14, 18 and section 19 is pending before the Consumer Disputes Redressal Forum or the Consumer Disputes Redressal Commission or the National Consumer Redressal Commission, established under section 9 of the Consumer Protection Act, 1986 (68 of 1986), on or before the commencement of this Act, he may, with the permission of such Forum or Commission, as the case may be, withdraw the complaint pending before it and file an application before the adjudicating officer under this Act.

(2) The application for adjudging compensation under sub-section (1), shall be dealt with by the adjudicating officer as expeditiously as possible and dispose of the same within a period of sixty days from the date of receipt of the application:

Provided that where any such application could not be disposed of within the said period of sixty days, the adjudicating officer shall record his reasons in writing for not disposing of the application within that period.

(3) While holding an inquiry the adjudicating officer shall have power to summon and enforce the attendance of any person acquainted with the facts and circumstances of the case to give evidence or to produce any document which in the opinion of the adjudicating officer, may be useful for or relevant to the subject matter of the inquiry and if, on such inquiry, he is satisfied that the person has failed to comply with the provisions of any of the sections specified in sub-section (1), he may direct to pay such compensation or interest, as the case any be, as he thinks fit in accordance with the provisions of any of those sections.

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[Emphasis Supplied]

25. Section 81 of the RERA Act provides for RERA delegating authority to any officer, by general or special order to carry out its functions under the Act, except for the power to make regulations under the Act. This provision reads as follows:

> *81. Delegation.—The* ***Authority may, by general or special order in writing, delegate to any member, officer of the Authority or any other person subject to such conditions, if any, as may be specified in the order, such of its powers and functions under this Act*** *(except the power to make regulations under section 85), as it may deem necessary.*

[Emphasis Supplied]

26. The scheme of the aforesaid provisions is clear – the RERA is essentially a regulatory authority established under the RERA Act. The design of RERA as a regulator is quite akin to the design of many regulators, where the three pillars of State are rolled into one body corporate. RERA has law-making powers under Section 85, and therefore, Section 81 makes it clear that such legislative function has to be carried out without any delegation of such power to any officer of RERA. The quasi-judicial powers includes the power to award compensation, where an adjudicatory role has to be played – for this purpose, to maintain separation of powers and judicial independence,

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the Adjudicating Officers who are appointed are meant to have judicial experience and are appointed to play such adjudicatory function.

27. Administrative oversight over them would still be with RERA, with the Chairperson at the helm of affairs, but the Adjudicating Officers need to discharge a quasi-judicial role independently, and therefore the separation of powers is evident from Section 71 of the Act. All the rest of the functions, which include registration and regulation of a nature of prudential regulation and enforcement are executive functions, which are to be run under the overall superintendence of RERA (namely, the Chairperson and at least two WTMs) with such functions being carried out by officials and employees of RERA.

28. What becomes clear is that the adjudication of compensation is something that an Adjudicating Officer alone can deal with while other powers, save and except the power to make subordinate legislation, may be exercised by any officer to whom such power is assigned by RERA. The matter in hand involves the Impugned Order having been passed for issuance of a refund, and such power having been exercised by an Adjudicating Officer. This is not a case of an officer who is not a judicial Adjudicating Officer having granted

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compensation – something directly contrary to the statutory scheme of the RERA Act.

Analysis of Newtech:

29. Against this backdrop, the contention about ***Newtech*** having implications for this Petition needs to be examined to answer whether the exercise of power of directing a refund can ever be effected by an Adjudicating Officer. In ***Newtech***, complaints were instituted by home buyers for refund of the investments made by them in the units developed by the promoters of the project in question. An order of refund was passed by a WTM. The promoter of the project challenged the direction in the Allahabad High Court on the ground that the WTM had no jurisdiction to issue orders of refund and only the Adjudicating Officer could issue such an order. The High Court rejected the writ petitions and the matter reached the Supreme Court, which dismissed the appeals challenging the High Court judgement. When doing so, the Supreme Court, among others framed the following question:

> *2. Whether the Authority has jurisdiction to direct return/refund of the amount to the allottee under Sections 12, 14, 18 and 19 of RERA or the*

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> ***jurisdiction exclusively lies with the adjudicating officer under Section 71 of RERA****?*
>
> ***[Emphasis Supplied]***

30. After analysing the contentions of the parties, answering that the WTM has the authority to direct a refund, the Supreme Court concluded thus:

> *85.* ***From the scheme of the Act*** *of which a detailed reference has been made* ***and taking note of power of adjudication delineated with the Regulatory Authority and adjudicating officer****, what finally culls out is that although the Act indicates the distinct expressions like "refund", "interest", "penalty" and "compensation", a conjoint reading of Sections 18 and 19* ***clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the Regulatory Authority which has the power to examine and determine the outcome of a complaint****. At the same time,* ***when it comes to a question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine****, keeping in view the collective reading of Section 71 read with Section 72 of the Act.* ***If the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, is extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and functions of the adjudicating officer under Section 71 and that would be against the mandate of the 2016 Act****.*
>
> ***[Emphasis Supplied]***

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31. Marvel relies primarily on the last part of Paragraph 85 extracted above i.e. observations about adjudication of facets other than compensation by the Adjudicating Officer. Based on these observations, Marvel contends that the Supreme Court has squarely held that the Adjudicating Officer could never exercise any power other than adjudication of compensation and that such adjudication would expand the ambit and scope of the functions of the Adjudicating Officer under Section 71 of the RERA Act and be contrary to the mandate of the RERA Act.

32. In ***Newtech***, the Supreme Court was dealing with a contention that the WTM could never exercise the power to direct a refund. The analysis and findings of the Supreme Court in ***Newtech***, essentially are responsive to whether the WTM could have exercised jurisdiction to direct a refund. The Supreme Court was not dealing with a contention that the Adjudicating Officer could be delegated the power to direct a refund. Therefore, in my view, one must not lose the nuance with which the binding precedential nature of contents of ***Newtech*** must be discerned. What constitutes a precedent is subject matter of numerous well-settled iterations by the Supreme Court. The following extract from ***Ravi Ranjan***[10] should suffice:

10 Ravi Ranjan Developers Pvt. Ltd. Vs. Aditya Kumar Chatterjee – 2022 SCC

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> ***It is well settled that a judgment is a precedent for the issue of law that is raised and decided***. ***The judgment has to be construed in the backdrop of the facts and circumstances*** *in which the judgment has been rendered.* ***Words, phrases and sentences in a judgment, cannot be read out of context. Nor is a judgment to be read and interpreted in the manner of a statute***. *It is* ***only the law as interpreted by in an earlier judgment, which constitutes a binding precedent, and not everything that the Judges say***.
>
> ***[Emphasis Supplied]***

33. Seen in that light, in ***Newtech***, the Supreme Court essentially held that the WTM can indeed exercise the power to direct a refund. The Supreme Court did not at all venture into what the Adjudicating Officer cannot do. The Supreme Court only repelled the contention of the appellants before it that the Adjudicating Officer alone could deal with adjudication of a refund, and in that context indicated that extrapolating adjudication of issues beyond compensation *may* expand the ambit and scope of the Adjudicating Officer's powers under Section 71 of the Act. The Supreme Court took care to state that the extrapolated jurisdiction of the Adjudicating Officer "*as prayed*" by the appellants in ***Newtech***, may expand the ambit and scope of the powers and functions under Section 71 of the RERA Act. The Supreme Court

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was not dealing with a case of a positive delegation to the Adjudicating Officer under Section 81 of the Act.

34. I have already extracted and discussed Section 71 of the Act above – that provision exclusively confers adjudication of compensation on the Adjudicating Officer. It preserves this subject for that officer's jurisdiction alone. It is not a provision that limits what else may be delegated to the Adjudicating Officer, in particular, when one reads it with Section 81 of the RERA Act, which is also extracted and analysed above.

35. Under Section 81, any power and function of RERA other than the legislative function may be delegated to any officer of RERA. The Adjudicating Officer is but an officer of RERA. It would follow that there is a power to delegate any of RERA's powers and functions to the Adjudicating Officer. What the scheme of the RERA Act prohibits is the delegation of the power to adjudicate compensation, exercisable solely by the Adjudicating Officer to any other officer because that would be contrary to the requirement that quasi-judicial adjudication of compensation must necessarily vest in the Adjudicating Officer, who is meant to be a judicial officer.

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36. In that light, another question framed by the Supreme Court in ***Newtech*** – about delegation of powers – becomes relevant. It is as follows:

> *3.* ***Whether Section 81 of RERA authorises the Authority to delegate its powers to a Single member of the Authority*** *to hear complaints instituted under Section 31 of RERA?*
>
> ***[Emphasis Supplied]***

37. In dealing with the aforesaid question, the Supreme Court set out the following analysis:

> *86.* ***It is the specific stand of the respondent Authority of the State of Uttar Pradesh that the power has been delegated under Section 81 to the Single Member of the Authority only for hearing complaints under Section 31 of the Act****. To meet out the exigency, the Authority in its meeting held on 14-8-2018, had earlier decided to delegate the hearing of complaints to the Benches comprising of two members each but later looking into the volume of complaints which were filed by the homebuyers which rose to about 36,826 complaints,* ***the Authority in its later meeting held on 5-12-2018 empowered the Single Member to hear the complaints relating to refund of the amount filed under Section 31 of the Act.***
>
> *107.* ***Pursuant to the delegation of power to the Single Member of the Authority, complaints filed by the allottees/homebuyers for refund of the amount and interest under Section 31 of the Act came to be decided by the***

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Single Member of the Authority after hearing the parties in accordance with the provisions of the Act.

111. ***Section 81 of the 2016 Act empowers the Authority, by general or special order in writing, to delegate its powers to any member of the Authority, subject to conditions as may be specified in the order, such of the powers and functions under the Act. What has been excluded is the power to make regulations under Section 85, rest of the powers exercised by the Authority can always be delegated to any of its members obviously for expeditious disposal of the applications/complaints including complaints filed under Section 31 of the Act and exercise of such power by a general and special order to its members is always permissible under the provisions of the Act.***

112. In the instant case, the Authority by a special order dated 5-12-2018 has delegated its power to the Single Member for disposal of complaints filed under Section 31 of the Act. ***So far as refund of the amount with interest is concerned, it may not be considered strictly to be mechanical in process but the kind of inquiry which has to be undertaken by the Authority is of a summary procedure based on the indisputable documentary evidence, indicating the amount which the allottee/homebuyer had invested and interest that has been prescribed by the competent authority leaving no discretion with minimal nature of scrutiny of admitted material on record is needed****, if has been delegated by the Authority, to be exercised by the Single Member of the Authority in exercise of its power under Section 81 of the Act, which explicitly empowers the Authority to delegate under its wisdom that cannot be said to be dehors the provisions of the Act.*

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113. What is being urged by the learned counsel for the appellants in interpreting the scope of Section 29 of the Act is limited only to policy matters and cannot be read in derogation to Section 81 of the Act and the interpretation as argued by the learned counsel for the promoters if to be accepted, the very mandate of Section 81 itself will become otiose and nugatory.

114. ***It is a well-established principle of interpretation of law that the court should read the section in literal sense and cannot rewrite it to suit its convenience; nor does any canon of construction permit the court to read the section in such a manner as to render it to some extent otiose****. Section 81 of the Act positively empowers the Authority to delegate such of its powers and functions to any member by a general or a special order with an exception to make regulations under Section 85 of the Act.* ***As a consequence, except the power to make regulations under Section 85 of the Act, other powers and functions of the Authority, by a general or special order, if delegated to a Single Member of the Authority is indeed within the fold of Section 81 of the Act.***

115. ***The further submission made by the learned counsel for the promoters that Section 81 of the Act empowers even delegation to any officer of the Authority or any other person, it is true that the Authority, by general or special order, can delegate any of its powers and functions to be exercised by any member or officer of the Authority*** *or any other person but we are not examining the delegation of power to any third party.* ***To be more specific, this Court is examining the limited question as to whether the power under Section 81 of the Act can be delegated by the Authority to any of its member to decide the complaint under Section 31 of the Act****. What has been urged by the learned counsel for the promoters is hypothetical which does not arise in the facts of*

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the case. ***If the delegation is made at any point of time which is in contravention to the scheme of the Act or is not going to serve the purpose and object with which power to delegate has been mandated under Section 81 of the Act, it is always open for judicial review****.*

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

[Emphasis Supplied]

38. Therefore, when one takes a holistic view of the analysis in ***Newtech***, it is very clear that not only was the Supreme Court examining an issue that is fundamentally different from the factual matrix at hand, but also the Supreme Court made it clear that it was not dealing with any aspect of whether delegation to the Adjudicating Officer was valid. On the contrary, the Supreme Court squarely held that if and when any delegation under Section 81 of the RERA Act is assailed as being contrary to the scheme of the RERA Act, such delegation would be open to judicial review.

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39. Therefore, in my view, as indicated in ***Ravi Ranjan***, extracted above, ***Newtech*** is not a precedent that would have a bearing on this factual matrix of this case. Indeed, neither should words, phrases and sentences in a judgement be read out of context nor should a judgement be read like one would read a statute.

40. Indeed, in Issue No. 2 in ***Newtech***, the Supreme Court was *not* dealing with a question of delegation under Section 81 of the Act, but was dealing with whether under the very scheme of the RERA Act (without any element delegation of power under Section 81), it could be held that the Adjudicating Officer had exclusive jurisdiction to grant refund. The Supreme Court answered in the negative. In Issue No. 3, the Supreme Court considered the question of delegation and squarely answered that delegation of any power or function of RERA to any officer of RERA was feasible under Section 81 save and except for the power to make subordinate legislation.

41. There is one other facet of ***Newtech*** that stands out, and that too to indicate what the power to adjudicate compensation entails, and what the power to direct refund does not entail. The Supreme Court analysed the scheme of the RERA Act to find that the exercise of power to adjudicate compensation necessitated conducting of a trial while in

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sharp contrast, the exercise of power to direct a refund, although strictly not mechanical, the kind of inquiry to be undertaken was summary in nature based on indisputable documentary evidence with minimal scrutiny and no discretion in dealing with admitted material on record.

42. Therefore, what an Adjudicating Officer alone is empowered by law to do, with a careful choice of who can be an Adjudicating Officer (a judicial officer), other officers of RERA (who are not judicially trained) cannot be expected to do. On the other hand, a judicially trained Adjudicating Officer, in whose domain a quasi-judicial adjudication would lie, would be able to undertake the lesser task of conducting a summary procedure to decide a refund. Therefore, delegation of the exercise of refund power to the Adjudicating Officer is not contrary to the scheme of the Act. It is the extrapolation of Section 71 "***as prayed***" that was commented upon by the Supreme Court, making it clear that any other manner of delegation can always be judicially reviewed when such a delegation is made.

43. Marvel is indeed conscious that the Supreme Court was dealing with a contention that the WTM could never exercise the power to direct a refund and that it was not dealing with a contention (such as the matter in hand) that the Adjudicating Officer could never be

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delegated with the power to direct a refund. Conscious that a judgement is a precedent for what it decides, Marvel contends that *obiter dicta* of the Supreme Court is binding on the High Court. For the reasons set out above, in my opinion, even the *obiter dicta* in ***Newtech*** is not the nature as sought to be canvassed by Marvel.

Case against Exercise of Discretion for a Writ:

44. I have set out above why in my view ***Newtech*** does not constitute a reasonable basis for interference that the Impugned Order was a product of *coram non judice* and that it needs to be quashed at this distance of time, and that the Recovery Order to enforce the Impugned Order deserves to be set aside. However, faced with an expression of the aforesaid *prima facie* view, Marvel would at a later date of hearing, point to ***Marveledge***, where a Learned Division Bench of this Court had exercised discretion to quash a recovery order accepting the reading of the extract from ***Newtech*** as canvassed in the captioned Writ Petition.

45. The second issue of delegation under Section 81 of the RERA Act dealt with in ***Newtech***, does not seem to have been presented to the Learned Division Bench and there is no ruling on that facet of the

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matter. Be that as it may, judicial discipline would necessitate having to respectfully follow the approach of the Learned Division Bench, the only scope that remains is limited to any distinguishing features in the matter in hand.

46. In this light, purely from the perspective of whether discretion ought to be exercised in the captioned Writ Petition, it is clear to me that the instant case stands on a completely distinguishable and different footing. It is indeed the duty of the writ court to see if the facts of the matter in hand would warrant exercise of discretion in the same manner in the particular facts of the instant case.

47. In that light, it is noteworthy that the Impugned Order had been passed in December 2019, seven years ago. The Recovery Order was passed in October 2021, five years ago. The Supreme Court judgement in ***Newtech*** was rendered in November 2021. Marvel had a statutory right to appeal against the Impugned Order, which it did not avail of. This resulted in the Impugned Order attaining finality and there was nothing in the then state of the law to cast any cloud over the Impugned Order. When Marvel participated in the enforcement proceedings that led to the Recovery Order, the judgement in ***Newtech*** had not been rendered. However, Marvel did not even table the issue –

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evidently there was no issue to table because even if Marvel is assumed to have known about the issues framed in ***Newtech***, the issue was not at all aligned with the issue involved in the facts of the instant case.

48. Even after the judgement was rendered in ***Newtech***, Marvel did not file any writ petition seeking to rely on ***Newtech*** until nearly three years later, in 2024. Even if one can raise the facet of jurisdiction at any stage it is well settled that closed and concluded matters cannot be reopened on the premise that a subsequent judgement of a superior court has declared the law differently. Once there is a statutory period for an appeal and that period has expired, the order has attained finality. If a subsequent declaration of the law (as perceived by Marvel to give it some basis to reopen the issue) is made, it would not follow that long-closed matters can be reopened. In this light, I am not inclined to exercise discretion to interfere with the finally closed Impugned Order as a matter of exercise of discretion in the extraordinary writ jurisdiction of this Court.

49. Marvel would contend that the jurisdictional issue cuts to the root of the matter and it can be raised even in execution. This contention can always be raised in the enforcement proceedings before the authorities who conduct the execution. I am not inclined to exercise

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the discretion available in jurisdiction of the writ court to make an intervention and reopen a matter that had already attained finality way before ***Marvel*** started perceiving the rights purportedly flowing to it from ***Newtech***. The earlier decisions are distinguishable because they only examined whether Section 71 of the RERA Act created a divide in the jurisdiction of the Adjudicating Officer "*as prayed*" by the appellants in Newtech, and did not examine the effect of Section 81 of the Act.

50. That apart, WP 2271 was filed by the Flat Purchaser and another Learned Division Bench is seized of the matter. The captioned Writ Petition was filed subsequently and is fomenting and creating multiplicity of litigation to attempt to reopen a matter that had attained finality seven years ago (as of now) and five years ago (as of the time this Writ Petition was filed). It is also noteworthy that admittedly, ***Marveledge*** is an affiliate or sister concern of Marvel, it is apparent that Marvel has simply attempted to take a chance with this Writ Petition.

51. This is why Mr. Kothari's reliance on ***UP Jal Nigam*** and ***Bhailal Bhai*** resonates with me in the decision not to exercise discretion in favour of the intervention sought by Marvel in this Writ Petition. The law does not protect the indolent and indeed the stratagem of following

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suit after ***Marveledge*** to reopen even older cases does not appeal to me to issue a writ as sought by Marvel.

52. Purely for completeness, it must be stated that Mr. Kothari's contention about the "Ganga Clause" has no application to this case. That provision relates to defect in constitution of the relevant bench and is not relevant for purposes of considering the contention of inherent lack of jurisdiction raised by Marvel, based on the observation in ***Newtech***.

Conclusion:

53. Therefore, to summarise, considering: (i) that the Impugned Order had attained finality in 2019; (ii) that the captioned Writ Petition was filed nearly three years after ***Newtech*** was delivered; (iii) that the petition in ***Marveledge*** was filed close to the ruling in ***Newtech***; (iv) that the analysis of the scheme of the RERA Act read with the interpretation in ***Newtech*** as set out above, does not point to an inexorable binding ratio or obiter having come into existence; (v) that ***Marveledge*** is distinguishable as explained above; (vi) that there is an inordinate and unexplained delay in filing the captioned Writ Petition; (vii) that another Learned Division Bench is seized of WP 2271 and this issue can

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indeed be gone into in those proceedings that had been initiated by the Flat Purchaser prior in time; (viii) and that the writ court must necessarily apply its mind to the matter of whether to exercise discretion in favour of issuance of writ, I am not inclined to use the discretionary writ jurisdiction in favour of Marvel to interfere with the Impugned Order or the Recovery Order.

54. The Writ Petition is therefore ***dismissed*** without any intervention. No costs.

55. All actions required to be taken pursuant to this order shall be taken upon receipt of a downloaded copy as available on this Court's website.

[SOMASEKHAR SUNDARESAN, J.]

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