BEFORE THE MAHARASHTRA REAL ESTATE APPELLATE TRIBUNAL MUMBAI

APPEAL NO. AT00600000174630 OF 2023

M86 Residency Private Limited ...Appellant

V/s.

1. Mr. Ketan Kataria & ... Respondent no. 1
2. L & T Finance Holdings Ltd. ... Respondent no. 2

Adv. Vikramjit Garewal for Appellant.
Adv. Manish Gala for Respondent No. 1.
Adv. Anand Pujari for Respondent No. 2.

CORAM : SHRI S. S. SHINDE J, CHAIRPERSON &
DR. K. SHIVAJI, MEMBER (A)
DATE : 18th JULY 2024

(THROUGH VIDEO CONFERENCE)

ORDER

[PER: DR. K. SHIVAJI, MEMBER (A)]

Captioned appeal has been preferred under The Maharashtra Real Estate (Regulation and Development) Act, 2016 (in short "the Act") with prayer to quash and set aside the impugned orders dated 24th February 2022 and 20th July 2023, passed by learned Member, Maharashtra Real Estate Regulatory Authority, (MahaRERA), whereby appellant has been directed *inter alia* to refund the entire amount paid by respondent no. 1 along with interest at prescribed rate in the captioned complaint no. CC006000000054749 filed by respondent no. 1.

2. Appellant is the promoter, who is developing a duly registered real estate project known as "PROMENADE- THE ADDRESS" located at Ghatkopar (East), Mumbai. Respondent no. 2 is in the business of financing real estate units. Respondent no. 1 is flat purchaser and complainant before

MahaRERA. Appellant, respondent nos. 1 and 2 have entered into tripartite agreement dated 28th January 2015 under a subvention scheme for the purpose of financing the subject flat. For the sake of convenience, appellant will hereinafter be addressed as "promoter", respondent no. 1 as "complainant" and respondent no. 2 will be addressed as "financier".

3. Captioned appeal having been filed by the promoter and compliance of the proviso to the Section 43(5) of the Act being statutorily mandatory and prerequisite before the appeal is entertained for consideration on merits, appellant has been directed by this Tribunal's order dated 24th April 2024 to pre-deposit the entire amounts as per the directions issued to promoter in the said impugned orders dated 24th February 2022/20th July 2023.
4. Pursuant to this order, Appellant/promoter has filed compliance report, vide its affidavit of compliance dated 8th June 2024 by depositing Rs.85,22,583/- in the Tribunal on 24th May 2024 towards the compliance of the said proviso.
5. Complainant has filed written objections on the compliance report on 13th June 2024 by submitting that the compliance is not complete on various grounds *inter alia* because the warrant issued for execution of these very impugned orders by MahaRERA itself is for recovery of Rs.3,48,40,409/- of the outstanding dues.
6. Brief background leading to filing of the above appeal:
   a. It is not necessary to narrate the background details in detail for the above purpose and would suffice to narrate that Respondent no. 1 has filed the captioned complaint before MahaRERA on 9th June 2018 seeking *inter alia* for refund of the entire money paid to promoter together with interest on the grounds as set out in the complaint.
   b. After hearing the parties, learned Adjudicating Officer, MahaRERA disposed of the complaint by its order dated 7th February 2019, whereby directing appellant/promoter *inter alia* to repay Rs.1,90,28,275/- to complainant

together with interest and compensation of ₹. 2 Lakhs.

c. Aggrieved appellant/promoter had preferred appeal in this Tribunal, challenging the said order. Upon hearing the parties, this Tribunal, in its order dated 1st December 2020, disposed of the said appeal and remanded it back to the MahaRERA *inter alia* to decide afresh by keeping all the contentions of the parties open.

d. Upon hearing the parties, learned Member, MahaRERA has passed the impugned order dated 24th February 2022, whereby directed appellant promoter *inter alia* to refund the entire amounts paid by complainant together with interest. Subsequently, the application filed by Appellant/promoter to review the order dated 24th February 2022 was also disposed of by MahaRERA by dismissing the review application, vide its order dated 20th July 2023.

e. Aggrieved appellant/promoter has preferred the instant appeal before this Tribunal seeking *inter alia* to quash and set aside these two orders, dated 24th February 2022 and 20th July 2023 passed by MahaRERA.

7. Heard learned Counsel for the parties in extenso.

8. Adv. Garewal, learned counsel for appellant/promoter submits that in view of both the said impugned orders, promoter has already predeposited Rs.85,22,583/- in the Tribunal on 24.05.2024 towards the full and complete compliance of the proviso to Section 43(5) of the Act and made further submissions as follows:

   a. Perusal of the impugned order dated 24th February 2022 shows that appellant/promoter has been directed to "...refund the entire amount paid by complainant along with interest...".

   b. This direction is in line with prayers made by the respondent no. 1 in his complaint seeking relief *inter alia* "...to refund the entire money paid by complainant with interest..."

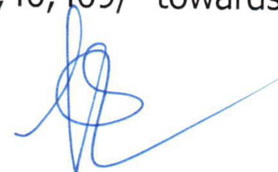
c. Working sheet for the amount paid by the complainant for the subject flat (page 95) also shows that Rs.53,23,433/- has been paid by complainant and Rs.1,36,30,530/- has been disbursed and paid to promoter by the financier "LTHL" under the loan sanctioned to complainant as per the subvention scheme for which, tripartite agreement has also been duly executed among complainant, appellant and financier, LTHL. Therefore, even though the total amounts received by appellant for the subject flat from the two sources are of Rs. 1,90,28,275/- but the amount actually paid by the complainant directly is only Rs.53,23,433/-, which is in line with the impugned orders directing for refund.

d. Clause 7 of the Tripartite agreement, executed among the parties shows that in case of "*the default by the borrower complainant or in the event of death of the borrower or in the event of the cancellation of the flat for any reason whatsoever, entire loan amount............will be refunded by the developer/appellant............ then, the borrower hereby subrogates all his rights for refund with respect to the said flats in favour of the financier*".

e. Adv. Garewal further submits that in the first round of the appeal filed in this Tribunal against the order dated 7th February 2019 passed by the learned Adjudicating Officer, the paid amount of Rs.1,90,28,275/- was taken as the basis for calculation for purpose of compliance of the proviso because the impugned order, then passed by learned Adjudicating Officer was different.

9. Adv. Gala, learned counsel for complainant, vehemently opposed the contentions of the appellant/promoter and made multifarious submissions as follows: -

a. that the impugned orders dated 24th February 2022 and 20th July 2023, which are currently under execution before MahaRERA (executing Authority) has issued recovery warrant of Rs.3,48,40,409/- towards the



refund of Rs.1,90,28,275/- being the paid amount by complainant to promoter and Rs.1,58,12,134/- being the interest till 30th January 2024.

b. The impugned order dated 24th February 2022 has clearly recorded the admitted amount paid by complainant and has accordingly, directed promoter to refund the entire amounts paid by complainant, which is also expressly mentioned in the recovery warrant. The promoter has also admitted the receipt of these payments made by the complainant and the financier. As such, promoter itself has also issued its summary / applicant ledger dated 2nd June 2018 (p. 178) and calculation details in Exhibit "C", filed by promoter itself (p. 562-563) dated 9th November 2019.All these clearly demonstrate that Rs.1,90,28,275/- has been paid by complainant to promoter.

10. Adv. Anand Pujari, learned counsel for the financier (respondent no. 2), while agreeing broadly with the submissions of the complainant, made the following specific submissions:

a. that the complainant is the primary and the main borrower of even the loan amounts disbursed by the financier directly to promoter, the loan was paid to promoter in the name of complainant as well as for and on behalf of the complainant towards the funding of the costs of the subject flat. Accordingly, the complainant being the main and primary borrower, it is the primary responsibility and accountability of the complainant to repay the entire loan amounts disbursed by the financier to promoter in case of default of repayment. As such, the entire loan has been advanced for and in the name of the complainant. As such, these amounts have been paid to the promoter on behalf of the complainant itself. Therefore, the complainant cannot escape its primary accountability for repayments.

b. In terms of the loan agreement and also as per the tripartite agreement executed among the parties, first recourse in case of exigencies of non-

payments of loan, lies squarely on the complainant borrower and only in case of default by the complainant/ purchaser, secondary recourse for recovery will also be initiated against the appellant/promoter simultaneously. Therefore, the first charge is against the complainant itself and only if complainant fails, then second charge lies against the promoter.

c. Even clause 7 of the tripartite agreement shows that the complainant is the primary borrower. Therefore, it is the primary accountability of the complainant to repay the loan and only in case of default of the complainant, the responsibility for repayment will shift on the appellant/promoter as its secondary responsibility.

11. From the rival pleadings, submissions and documents relied upon by the parties, following points arise for our determination and we have recorded our findings against each of them for the reasons to follow:

	POINTS	FINDINGS
1.	Whether the total amounts received by the promoter, i.e. directly from complainant as well as the amounts received from the financier out of the loan sanctioned under the subvention scheme be accounted for making deposit by Appellant Promoter towards compliance of the proviso to Section 43 (5) of the Act based on the impugned orders passed by MahaRERA?	In the affirmative.
2.	If not then, what order?	As per the order.

REASONS

Points 1 & 2.

12. These points are interdependent and correlated. Therefore, have been taken up together.

13. It is not in dispute that appellant is the promoter of the said project and has deposited Rs.85,22,583/- in the Tribunal on 24.05.2024 towards the compliance of the proviso to the Section 43(5) of the Act. It is also not in

dispute that Appellant, respondent nos. 1 and 2 have entered into a tripartite agreement on 28th January 2015 under subvention scheme for loan to complainant for funding of the subject flat. Accordingly, payments for the costs of the subject flat have been made from two sources as follows: -

A. Payments made by the complainant himself directly to appellant promoter, i.e. "source A".
B. Payments made by the financier to the promoter on behalf of and in the name of the complainant under the said subvention scheme from out of the loan sanctioned to complainant borrower. i.e., "source B".

14. It is the case of the appellant promoter that for the complete compliance of the proviso based on the impugned orders dated 24th February 2022 and dated 20th July 2023, promoter is required to pre-deposit only the amount paid directly by complainant i.e. the payments made from out of the "source A" only and it is not required to pre-deposit the payments received by promoter from the financier out of the loan sanctioned under the subvention scheme i.e. from out of the "source B".
15. Whereas complainant vehemently opposed the contentions of appellant by submitting that promoter is liable to make pre-deposit of the total amounts received by promoter from both the financing sources of A and B for complete compliance of the proviso in terms of the provisions of Act. Learned counsel for the financier, broadly agrees with the contentions of the complainant.
16. Indisputably, the appeal has been filed by promoter of the said registered project. Hence, provisions of Section 43 (5) of the Act are attracted. As the controversies revolves around the Section 43(5) of the Act of 2016, the same is being reproduced here as under: -

"(5) Any person aggrieved by any direction or decision, or order made by the Authority or by an adjudicating officer under this Act may prefer an appeal before

the Appellate Tribunal having jurisdiction over the matter: Provided that where a promoter files an appeal with the Appellate Tribunal, it shall not be entertained, without the promoter first having deposited with the Appellate Tribunal at least thirty per cent. of the penalty, or such higher percentage as may be determined by the Appellate Tribunal, or the total amount to be paid to the allottee including interest and compensation imposed on him, if any, or with both, as the case may be, before the said appeal is heard.

17. In the case of M/s Newtech Promoters and Developers Pvt. Ltd Vs, State of UP & Ors. [Civil Appeal Nos.6745-6749 of 2021], the Hon'ble Supreme Court thoroughly considered the relevant provisions of pre-deposit in other enactments and regarding proviso to Section 43(5) of the Act and observed in paragraph Nos. 127 and 128 as follows –

    "127. It may further be noticed that under the present real estate sector, which is now being regulated under the provisions of the Act 2016, the complaint for refund of the amount of payment, which the allottee/consumer has deposited with the promoter and at a later stage, when the promoter is unable to hand over possession in breach of the conditions of the agreement between the parties, are being instituted at the instance of the consumer/allottee demanding for refund of the amount deposited by them and after the scrutiny of facts being made based on the contemporaneous documentary evidence on record made available by the respective parties, the legislature in its wisdom has intended to ensure that the money which has been computed by the authority at least must be safeguarded, if the promoter intends to prefer an appeal before the tribunal and in case, the appeal fails at a later stage, it becomes difficult for the consumer/allottee to get the amount recovered, which has been determined by the authority and to avoid the consumer/allottee to go from pillar to post for recovery of the amount that has been determined by the authority in fact, belongs to the allottee

at a later stage could be saved from all the miseries, which come forward against him. "

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

18. Hence, Para 127 and 128 of the judgment stipulate for prior pre-deposits of total amounts in order to secure the "*the total amounts to be paid to the allottee*", as determined in the impugned order/s.
19. It can be seen from the above proviso that in appeal filed by promoter, challenging the order granting refund to allottee, Tribunal is expected to direct promoter to first deposit *the total amount to be paid to the allottee* and these pre-deposits are *sine qua non* before the said appeal be admitted and entertained for further consideration on merits.
20. In paragraph 31 of the judgment in the case of Nusli Neville Wadia Vs. Ivory Properties & Ors. [(2020) 6 SCC 5571], the Hon'ble Supreme Court has clarified the word "entertain" means to admit a thing for consideration, to adjudicate upon or to proceed to consider on merits as follows: -

"*31. The expression 'entertain' means to admit a thing for consideration. When a suit or proceeding is not thrown out in limine, but the court receives it for consideration for disposal under the law, it must be regarded as entertaining the suit or proceeding. It is inconsequential what is the final decision. The word 'entertain' has been held to mean to admit for consideration, as observed by this Court in Lakshmiratan Engineering*

Works Ltd. v. Assistant Commissioner, Sales Tax, Kanpur, AIR 1968 SC 488. The expression 'entertain' means to adjudicate upon or to proceed to consider on merits as observed in Hindusthan Commercial Bank Ltd. v. Punnu Sahu (Dead) through Legal Representatives, 1971 (3) SCC 124.

32. The meaning of the word 'entertain' has been considered to mean 'adjudicate upon' or 'proceed to consider on merits.' It has been observed in Hindusthan Commercial Bank Ltd. v. Punnu Sahu (Dead) through Legal Representatives, 1971 (3) SCC 124 as under:

"4. Before the High Court it was contended on behalf of the appellant, and that contention was repeated in this Court, that Clause (b) of the proviso did not govern the present proceedings as the application in question had been filed several months before that clause was added to the proviso. It is the contention of the appellant that the expression "entertain" found in the proviso refers to the initiation of the proceedings and not to the stage when the Court takes up the application for consideration. This; contention was rejected by the High Court relying on the decision of that court in Kundan Lal v. Jagan Nath Sharma, AIR 1982 All 547. The same view had been taken by the said High Court in Dhoom Chand Jain v. Chamanlal Gupta, AIR 1962 All 543 and Haji Rahim Bux and Sons v. Firm Samiullah and Sons, AIR 1963 All 320 and again in Mahavir Singh v. Gauri Shankar, AIR 1964 All 289.

These decisions have interpreted the expression "entertain" as meaning 'adjudicate upon' or 'proceed to consider on merits.' This view of the High Court has been accepted as correct by this Court in Lakshmiratan Engineering Works Ltd. v. Asst. Comm., Sales Tax, Kanpur, AIR 1968 SC 488. We are bound by that decision, and as such, we are unable to accept the contention of the appellant that Clause (b) of the proviso did not apply to the present proceedings."

The word 'entertains came up for consideration in Hindusthan Commercial Bank Ltd. (supra) in the context of Order XXI Rule 90 as amended by the Allahabad High Court. The expression entertain has been held to mean to adjudicate upon or proceed to consider on merits."

21. In view of above, the contentions of the appellant promoter that promoter is not required to pre-deposit the entire amounts received from both the aforesaid two financing windows (sources A and B, both) towards the compliance of the proviso, is legally not tenable on account of the followings: -

a. Complainant is the primary borrower to whom, the subvention loan has been sanctioned to the complainant (borrower) for funding the subject flat under the subvention scheme and this loan amount has been disbursed to promoter for and on behalf of as well as in the name of the complainant. Therefore, the complainant has the primary responsibility for repayment of the outstanding loans. Clause (i) of the tripartite agreement, also shows that "......*The Borrower has represented, and such representation being a continuing representation, the Borrower's has obligation to repay the Loan, shall be a distinct and independent obligation more particularly independent of any issues/concerns/dispute of whatsoever nature between the Borrower and Developer.".* Whereas promoter has been directed to refund the entire amount paid vide para 36 of the impugned order.

b. Clause (2) of the tripartite agreement further reveals that the "*loan to the borrower shall be subject to the borrower's repayment capacity...*" and Clause (iii) of the tripartite agreement further indicates the "*loan advanced by the borrower shall be repayable by the borrower by way of equated monthly installments...*" Complainant herein has been defined as the Borrower in the tripartite agreement.

c. Clause (7) of the tripartite agreement further shows that "*That if the Borrower fails to pay the balance amount representing the difference between the Loan sanctioned by LTHFL and the actual purchase price of the Flat or in the event of death of the Borrower or in the event of cancellation of the Flat for any reason whatsoever the entire loan amount advanced by LTHFL to the developer in respect of the mortgage of the unit will be refunded by the Developer to LTHFL forthwith, subject to forfeit of earnest money. The Borrower hereby subrogates all his rights for refund with respect to the said flat in favour of LTHFL.*"

d. Accordingly, as submitted by the learned counsel for the financier, complainant is the primary borrower of the loan from the financier for which, complainant has the primary responsibility for repayment of these borrowed amounts, which have been paid to the promoter directly on behalf of and in the name of the complainant towards the funding of subject flat. Learned counsel for the promoter also confirms this at the time of oral submissions as stipulated in clause (7) of the tripartite agreement.

   Therefore, the responsibility for repayment as stipulated even under clause (7) will fall squarely first on the complainant and only in case of default/non-payment by the borrower complainant, it may shift on promoter. Otherwise also, the complainant will continue to be accountable for repayments.

e. Learned counsel for the promoter submits that in view of the provisions in clause (7) of the tripartite agreement, the promoter itself is willing to refund this amount to the financier directly. This contention is *prima facie* not tenable because it is the complainant, who is primarily accountable and will continue to be accountable until it is refunded completely, because the loan amount is disbursed actually in the name of the complainant.

f. It is pertinent to note that the amount deposited in the Tribunal towards the compliance of the proviso also continues to earn interest. Therefore, there is no financial loss to the rightful claimant/s of this deposit amount.

g. Perusal of the para 36 impugned order dated 24th February 2022, clearly reveals that promoter has been directed *inter alia* "*......to refund the entire amount paid by complainant along with interest.......*"

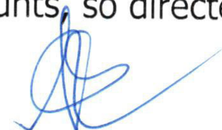
Whereas para 30 of the impugned order dated 24th February 2022, itself has concluded that "*complainant has paid an amount of Rs.1,80,50,000/- towards the consideration value by availing loan and also paid charges towards the stamp duty.........*"

Therefore, it is crystal clear that the total amounts to be refunded by promoter as directed in the impugned order are the entire amounts received by promoter from both the two financing sources amounting to Rs.1,80,50,000/-, i.e. the entire amounts received by it from both the sources A & B as above.

h. Perusal of Section 43(5) of the Act also reveals that appellant promoter is required to deposit the "*......... the total amount to be paid to the allottee including interest and compensation imposed on him .... "*.

Therefore, the provisions of Section 43(5) also stipulate for predeposit of the entire amounts received from all the sources without making any distinction of the amounts paid to the promoter, whether amounts are received directly or indirectly or from different sources directly or indirectly or through different financial products/ instruments etc.

i. It is also pertinent to note that, promoter has been directed to refund the entire amounts paid by complainant, vide para 36 of the impugned order dated 24th February 2022. Therefore, the refund amounts, so directed in



the impugned orders belong to the complainant and not of the promoter. Thus, even after depositing this amount in the Tribunal, promoter is not going to be out of its pockets. In addition, even in case of outcome of the appeal, if it goes in favour of the promoter, even then, this amount will be refunded to promoter with interest accrued thereon. Therefore, there is no financial loss to promoter, because the deposits made in the Tribunal are not non-interest-bearing deposits.

j. It is pertinent to note that learned counsel for the promoter, himself confirms that the total amount received from both the sources (A and B) were considered for deposits in the Tribunal towards the compliance of the proviso, when the promoter had preferred appeal in the first round of filing of appeal against the order passed by learned adjudicating officer dated 7th February 2019, but that order was different.

k. It is also not in dispute that the said impugned orders dated 24th February 2022 and 20th July 2023 are under execution, wherein MahaRERA itself, in the capacity of the executing authority has issued recovery warrant dated 1st March 2024 for an amount of Rs.3,48,40,409/- (i.e. Rs.1,90,28,275/- principal and Rs.1,58,12,134.30/- as interest till 31st January 2024) i.e. total amount received from both the sources (A and B) plus interests.

l. Promoter itself has admitted the receipt of Rs.1,90,28,275/- (page 1530) in the outstanding summary dated 2nd June 2018 in the accounts of the complainant.

m. In terms of the paras 127 and 128 of this judgment of Hon'ble Supreme Court in the case of M/s Newtech Promoter and Developers Pvt. Ltd. V/s. State of Uttar Pradesh (supra), total payable amounts to the allottee as

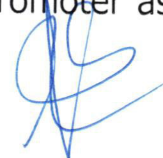
directed in the impugned orders are required to be pre-deposited as security without any distinction, whether the amount has been received directly or indirectly or from different sources of funding in the name and on behalf of the complainant.

n. Meaning of the word "entertain", as has been clarified above by the Hon'ble Supreme Court in the aforesaid judgments and the plain reading of the Proviso to Section 43(5), makes it crystal clear that any appeal filed by promoter cannot be entertained or considered for adjudication or proceed further on merits without the promoter having first complied with the Proviso to Section 43(5) of the Act. Therefore, the said disputes/controversies *inter alia* above in the appeal cannot be adjudicated at this stage without first complete compliance of the proviso.

o. Adv. Pujari learned counsel for the financier also confirmed that the amount sanctioned under the subvention scheme is governed by the tripartite agreement/loan agreement, wherein the amounts are disbursed on behalf of and in the name of the complainant. Therefore, complainant allottee continues to be primarily accountable for repayment of entire disbursed amounts rewards servicing the loan in the first place.

p. The tribunal has no power either to reduce amount or waive such requirements under the Act except some limited judicial discretion in relation to the penalty quantum (between 30-100%).

q. It is pertinent to note that only a single solitary condition is required to be fulfilled before insisting for mandatory complete pre-deposits under the proviso is required that if an Appellant is a promoter. Relevant abstract of the proviso is "......if the appellant is a promoter as per the



provisions of the Act of 2016.......". Admittedly, appellant herein, is promoter.

r. The Hon'ble Supreme Court in para 127 of its judgment in the case of M/s. Newtech Promoters and Developers Pvt. Ltd. (supra) has held that total amounts to be paid to allottees need to be secured first before the appeals filed by promoters are entertained. Therefore, if the contention of the learned counsel for promoter is allowed then, in the event of outcomes of these appeals, if found in favour of allottees on merits then, allottee complainant will be left with no security for recovery of these amount. In that case, allottee will be subjected to undergo pillar to posts to recover these amounts from promoter. This will defeat the very basic intentions of the proviso itself and is contrary to the above decisions of the Hon'ble Supreme Court. In view of the above, more particularly the judicial pronouncements, if the Promoter does not deposit the complete amount under the proviso, then, it will defeat the basic purpose of securing the amount to be paid to allottees as per the impugned order.

s. Intention of the legislature is for the protection of interests of Consumers of the real estate sector in these provisions, which is aimed at ensuring that these amounts "*to be paid to the allottee*" are to be secured first "irrespective of the sources of its payments. These may be from the paid from financier under the subvention scheme or otherwise". The provisions of Section 43 (5) stipulate for pre-deposit of the entire amounts to be paid to allottees (except in case of penalty, if any, then, between 30 - 100%).

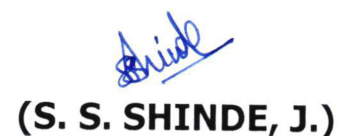
t. Hence, sources for the receipt of the funds by the promoter are immaterial and is not relevant as far as the compliance for the proviso to the Section 43 is concerned.

22. In view of above and in line with the judicial pronouncement referred herein above, we are of the considered view that for compliance of the proviso, promoter is statutorily and mandatorily required to first pre-deposit the entire amounts received by the promoter from both by availing the loan from financier as well as the amounts received directly from the complainant, which have been directed to be refunded in the impugned orders Accordingly, we answer the points 1 as well as 2 as above and we proceed to pass the Order as follows: -

ORDER

Appellant promoter is being directed once again as last chance to pre-deposit the entire amounts received from both the sources (A and B), i.e. total amounts received from the respondent no. 2, financier under the subvention scheme and also the amounts received directly from respondent no. 1 together with interest on the entire amounts (received from both the sources) for the period starting from the date of receipts of these amounts till the date of actual deposit in the tribunal as directed in the impugned order dated 24th February 2022.

(DR. K. SHIVAJI)



(S. S. SHINDE, J.)