IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 333 OF 2026
WITH
INTERIM APPLICATION NO. 5578 OF 2026

Orbit Enterprises,
A partnership firm,
having office at Dheeraj Plaza,
4th Floor, Hill Road, Bandra (W),
Mumbai – 400 050, through its partnership
Rajen Dhruv and Sarkar Heritage,
Bandstand, Bandra (West),
Mumbai – 400 250. ..Appellant

Versus

Vazirani Realty Private Limited
A company registered Under the
Companies Act, 1956 having office at
Transasia House, B, Chandivali Studio
Road, Andheri (East),
Mumbai – 400 072. …Respondent

WITH
SECOND APPEAL NO. 334 OF 2026
WITH
INTERIM APPLICATION NO. 5575 OF 2026

Orbit Enterprises,
A partnership firm,
having office at Dheeraj Plaza,
4th Floor, Hill Road, Bandra (W),
Mumbai – 400 050, through its partnership
Rajen Dhruv and Sarkar Heritage,
Bandstand, Bandra (West),
Mumbai – 400 250. ..Appellant

Versus

Vazirani Realty Private Limited
A company registered Under the
Companies Act, 1956 having office at
Transasia House, B, Chandivali Studio
Road, Andheri (East),
Mumbai – 400 072. …Respondent

SANTOSH SUBHASH KULKARNI

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Date: 2026.10.16 09:18:32 +0530

Judgment corrected as per order dated 15/12/2026.

WITH
SECOND APPEAL NO. 335 OF 2026
WITH
INTERIM APPLICATION NO. 5564 OF 2026

Orbit Enterprises,
A partnership firm,
having office at Dheeraj Plaza,
4th Floor, Hill Road, Bandra (W),
Mumbai – 400 050, through its partnership
Rajen Dhruv and Sarkar Heritage,
Bandstand, Bandra (West),
Mumbai – 400 250. ..Appellant

Versus

Vazirani Realty Private Limited
A company registered Under the
Companies Act, 1956 having office at
Transasia House, B, Chandivali Studio
Road, Andheri (East),
Mumbai – 400 072. …Respondent

Mr. Aspi Chinoy, Senior Advocate, with Vibhav Krishna, for the Appellant/Applicant in all Appeals/Applications.
Mr. Manish Gala, with Nilesh Gala and Ashok Suthar, for the Respondent in all Appeals/Applications.

CORAM: N. J. JAMADAR, J.
RESERVED ON : 23rd SEPTEMBER 2026
PRONOUNCED ON : 14th OCTOBER 2026

JUDGMENT:

1. These Second Appeals are directed against a common judgment and order dated 26th March 2026 passed by the Maharashtra Real Estate Appellate Tribunal, Mumbai ("the Appellate Tribunal") in Appeal Nos. AT006000000133969 of 2022, AT006000000133972 of 2022 and AT006000000133973 of

2022, whereby the Appeals preferred by the Respondent-allottee against a common order dated 23rd May 2022 passed by the Maharashtra Real Estate Regulatory Authority ("the Authority") in the complaints filed by the allottee, came to be partly allowed and the Appellant-promoter was directed to pay interest on the amounts paid by the allottee towards consideration at the specified rate from the respective dates of delivery of possession of the apartments till 24th September 2021.

2. The background facts leading to these Appeals can be stated in brief as under:

2.1 The Appellant is the promoter of the project: "Indian Newspapers Society" (hereinafter referred to as the promoter). The Respondent had booked nine units in the said project on the 9th floor being unit Nos. 901, 902 and 905 to 911. The Appellant had executed agreements for sale in respect of unit Nos. 907 and 908 and agreed to deliver the possession thereof on 31st May 2015 (subject matter of Complaint No. CC006000000057464 -Appeal No. 133973 of 2022). Allotment letters were issued in respect of unit Nos. 909, 910 and 911 and the agreed date of delivery of possession of those units was 31st May 2015 (subject matter of Complaint No. CC006000000057197 and Appeal No. 133972 of 2022). The

Allotment letters were also issued in respect of unit Nos. 901, 902, 905 and 906 and the possession thereof was to be delivered on 30th June 2017 (subject matter of Complaint No. CC006000000056953 and Appeal No. 133969 of 2022).

2.2 Asserting that the promoter had failed to execute and register agreements for sale in respect of the units, for which only allotment letters were issued, and failed to deliver the possession of the units as agreed, the Respondent-allottee filed the above-numbered complaints with the Authority, seeking execution of registered agreements for sale, delivery of possession and interest for delay in delivery of possession.

2.3 Pursuant to an interim order passed by the Authority on 16th December 2019, the promoter executed agreements for sale dated 8th July 2020 in respect of unit Nos. 901, 902, 905, 906, 909, 910 and 911. However, as the promoter failed and neglected to deliver possession of the subject units, the allottee filed a Writ Petition being Writ Petition No. 5542 of 2021 in this Court. Pursuant to an order dated 24th September 2021 passed by a Division Bench of this Court, the promoter delivered the keys of the subject units to the allottee on 24th September 2021. The complaints were thus prosecuted for the Award of interest for delay in delivery of possession of the subject units.

2.4 After recording that the promoter had obtained the Occupation Certificate ("O.C.") on 12th February 2021 and failed and neglected to deliver the possession of the subject units in accordance with the terms of the contracts, the Authority directed the promoter to pay interest for the delayed delivery of possession in respect of unit Nos. 907, 908, 909, 910 and 911 from 1st May 2017 to 12th February 2021; the day on which the O.C. was obtained, and in respect of unit Nos. 901, 902, 905 and 906 from 1st July 2007 till 12th February 2021. The Authority was also persuaded to grant the benefit of the moratorium to the promoter in terms of the Notifications/Order Nos. 13 and 14 dated 2nd April 2020 and 18th May 2020 issued by the MahaRERA, in the wake of the Covid-19 pandemic.

2.5 Being aggrieved, the allottee preferred the appeals before the Appellate Tribunal, seeking *inter alia,* modification of the impugned order in regard to the period for which the interest was awarded by the Authority, and a direction to the promoter to pay interest for the delayed delivery of possession in respect of unit Nos. 907 and 908 from 1st June 2015, in respect of unit Nos. 909, 910 and 911 from 1st June 2015 and in respect of unit Nos. 901, 902, 905 and 906 from 1st July 2017, till the date of

actual delivery of possession of those units, i.e., 24th September 2021.

2.6 The promoter resisted the Appeals on the grounds, *inter alia,* that the promoter had offered possession of the subject units to the allottee as soon as the O.C. was obtained on 12th February 2021 and the allottee had failed to take possession of the subject units and, therefore, the Authority was justified in awarding interest only up to the date of the O.C .

2.7 The Appellate Tribunal, after noting uncontroverted facts, found that there was no justification for the delay in delivery of possession. The fact that the allottee had made full/substantial payment and other charges qua the respective units was indisputable. No fault could be attributed to the allottee. Thus, in accordance with the mandate contained in Section 18 of the Real Estate (Regulation and Development) Act, 2016 ("RERA 2016"), the allottee was entitled to interest.

2.8 The Appellate Tribunal was persuaded to modify the order passed by the Authority on two counts. First, the Authority had no jurisdiction to change the agreed date of delivery of possession; from which interest for delayed delivery of possession on the amounts parted with by the allottee became due and payable. Second, the Authority committed an error in

extending the benefit of the moratorium period as the dates of the delivery of possession of the respective units were much prior to the onset of the Covid-19 pandemic. Therefore, the Appellate Tribunal modified the order passed by the Authority to direct the payment of interest at the specified rate from the agreed date of delivery of possession of the respective units till the actual delivery of possession, i.e., 24th September 2021.

2.9 Being aggrieved, the promoter is in Appeal.

3. I have heard Mr. Aspi Chinoy, the learned Senior Advocate for the Appellant-promoter, and Mr. Manish Gala, the learned Counsel for the Respondent. With the assistance of the learned Counsel for the parties, I have perused the material on record.

4. Mr. Chinoy, the learned Senior Advocate, mounted a two-fold challenge to the impugned order. First, the Appellate Tribunal committed a gross error in law in determining the liability to pay interest. It was urged with tenacity that, under a fortnight of the issue of the O.C., the promoter had called upon the allottee to take possession of the subject units vide communication dated 25th February 2021. Yet the allottee failed to take possession of the subject units. Attention of the Court was invited to a copy of the communication dated 25th February 2021 purportedly addressed by the promoter to the allottee,

whereunder the allottee was requested to make the payment of final dues within a period of 15 days and complete all legal formalities including execution and registration of agreement for sale and, thereupon, the allottee would be intimated about the date of handover of keys and occupation of the subject units. In the face of the said communication, Mr. Chinoy urged, the Appellate Tribunal was clearly in error in holding that there was nothing to show that the promoter had offered possession of the subject units.

5. Secondly, Mr. Chinoy would urge, the Appellate Tribunal committed a manifest error in law in interfering with the order of the Authority extending the benefit of moratorium period though there was no challenge to the said order by the Appellant. The said point was never urged by the allottee before the Appellate Tribunal. Yet, the Appellate Tribunal, modified the said order on its own. Such a course was legally impermissible. Therefore, the substantial questions of law on the aspect as to whether the Appellate Tribunal could have awarded interest for the period beyond 25th February 2021, despite the offer of possession, and tinkered with the benefit of the moratorium period without such a ground having been raised in the appeals and urged before the Appellate Tribunal, arise for consideration.

6. Mr. Gala, the learned Counsel for the respondent – allottee submitted that none of the aforesaid grounds urged on behalf of the appellant merits consideration. Mr. Gala laid emphasis on the fact that the Appellate Tribunal has recorded in no uncertain terms that, despite a specific query by the Appellate Tribunal, the promoter could not demonstrate that it had addressed any communication to evidence the fact that the promoter had offered possession after obtaining the Occupation Certificate. The letter dated 25th February, 2021, now sought to be pressed into service on behalf of the promoter, was never addressed to the allottee. Even otherwise, the allottee had purchased almost all the units on the ninth floor. The letter dated 25th February, 2021, even if taken at par, indicates that it was in respect of unit Nos. 905, 906, 909, 910 and 911. The said letter thus runs counter to the claim of the promoter that it had offered possession of all the units as soon as the Occupation Certificate was obtained. Moreover, Mr. Gala would urge, in an appeal under the regime of Section 100 of the Code of Civil Procedure, 1908 ("the Code"), the factual aspect as to whether such letter was addressed, especially in the face of the observations of the Appellate Tribunal, cannot be examined. Mr. Galla stoutly submitted that it was the failure and refusal on

the part of the promoter to deliver the possession of the subject units, despite having received the entire consideration, forced the allottee to approach this Court by filing WP/5542/2021. Therefore, the submission that the Appellate Tribunal could not have granted interest up to the date of actual delivery of possession is neither well-founded in facts nor well-grounded in law.

7. Mr. Gala further submitted that, the Appellate Tribunal was fully justified in disallowing the benefit of the moratorium period in the wake of the COVID-19 pandemic, wrongly extended by the Authority as the possession of the respective units, in accordance with the terms of the contract, was to be delivered years before the onset of the COVID-19 pandemic. Thus, the appeals deserve to be dismissed, submitted Mr. Gala.

8. At the threshold, it is necessary to note that there is not much controversy over the fact that the allottee had parted with almost the entire consideration in respect of all the units by 3rd July, 2018. A copy of the account of Orbit Enterprises (page 643) indicates that the allottee had paid a consideration of ₹78,25,61,184/-. At any rate, it cannot be disputed that the allottee had parted with substantial consideration even in respect of the units for which full payment was not made.

Secondly, the Appellate Tribunal, on the basis of the stipulations in the Agreement for Sale, has arrived at a finding of fact that the possession of unit Nos. 907 to 911 was agreed to be delivered by 31st May, 2015, and the possession of unit Nos. 901, 902, 905 and 906 was agreed to be delivered by 30th June, 2017. Thirdly and incontrovertibly, the Occupation Certificate was obtained on 12th February, 2021. Fourthly, the possession of the subject units was delivered to the allottee on 24th September, 2021, pursuant to the order in WP/5542/2021. It needs no emphasis that the possession of the subject units could not be delivered to the allottee on or before the date of delivery of possession in accordance with the terms of the contract.

9. In the event of delay in delivery of the possession of the apartment/units in accordance with the terms of the contract between the parties, under Sections 18(1) and 19(4) of the RERA 2016, the allottee becomes entitled to two rights to be exercised at its option. If the allottee elects to withdraw from the project, the allottee is entitled to a refund of the amount paid by him in respect of the apartment/unit, with interest at the prescribed rate. This right of the allottee is without prejudice to any other remedy available to the allottee on account of the breach of the

terms of the contract by the promoter. In a sense, the main part of sub-section (1) of Section 18 confers an unconditional, unqualified and absolute right on the allottee to seek refund of the amount alongwith interest. In the event, the allottee wishes to continue with the project, the proviso to sub-section (1) of Section 18 confers a right on the allottee to receive interest for every month of delay till the handing over of possession, at the prescribed rate.

10. In either eventuality, the Parliament has designedly protected the interest of the allottee by ensuring that the allottee is monetarily compensated for the failure or delay on the part of the promoter. The decisions of the Supreme Court in the cases of ***M/s. Newtech promoters and Developers Private Limited vs. State of Uttar Pradesh***[1], and ***M/s. Imperia Structures Limited vs. Anil Patni and Others***[2] highlight the unqualified and absolute right of the allottee.

11. It is pertinent to note that, under the proviso to Section 18(1), the liability of the promoter to pay interest subsists till the handing over of the possession. Thus, the date on which the possession was agreed to be delivered and the date on which the possession has actually been delivered assume significance. The

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1 2021 SCC OnLine SC 1044.

2 AIR 2021 SUPREME COURT 70

promoter is statutorily liable to pay interest at the prescribed rate for the aforesaid period.

12. It is conceivable that, in a given case, the promoter might have offered the possession and the allottee refused to accept the possession unjustifiably and, yet, seeks interest up to the date of actual delivery of possession. RERA 2016 provides mutual rights and obligations, though the overarching object of RERA 2016 is to secure the interest of consumers. Sub-section (10) of Section 19 casts an obligation on the allottee to take physical possession of the apartment, within a period of two months from the date of issue of the Occupancy Certificate. It could thus be urged that the promoter had done all that was within its powers to complete the construction, obtain the Occupation Certificate and offer possession, and, in that situation, the allottee, who unjustifiably refused to accept delivery of possession, is not entitled to claim interest for the period beyond the date of offer of possession or at any rate beyond two months of the grant of Occupancy Certificate, if it can be demonstrated that, after the grant of Occupancy Certificate, possession was, in fact, offered to the allottee.

13. The aforesaid was the premise on which Mr. Chinoy canvassed the submission on behalf of the promoter. It is

imperative to note that, the Appellate Tribunal has made categorical observations in paragraph 41 of the impugned order that no document was placed on record to show that the promoter had offered the possession to the allottee and that, even after a specific query, the promoter failed to demonstrate that such communication was addressed.

14. Mr. Chinoy attempted to salvage the position by pressing into service the letter dated 25th February, 2021. Mr. Gala was justified in canvassing the submission that, in this appeal the question as to whether such a document was produced before the Appellate Tribunal cannot be delved into.

15. It would be rather difficult to accede to the submission that, despite such document having been placed on record of the Tribunal, the latter made categorical observations in paragraph 41 of the impugned order. The legal position in this context is absolutely clear. If a party is aggrieved by an incorrect observation made by the Court/Tribunal, the proper course would be to first approach such Court/Tribunal and seek the correction of its record. A useful reference in this context can be made to the judgment of the Supreme Court in the case of ***State of Maharashtra Vs. Ramdas Shrinivas Nayak &***

Anr.[3], wherein the Supreme Court delineated the correct practice, in case a party thinks that, the observations in regard to the happenings in the Court and the conduct recorded by the Judge are incorrect. The Supreme Court delineated the practice as under:-

> "4. ..... We are bound to accept the statement of the Judges recorded in their judgment, as to what transpired in court. We cannot allow the statement of the Judges to be contradicted by statements at the Bar or by affidavit and other evidence. If the Judges say in their judgment that something was done, said or admitted before them, that has to be the last word on the subject. The principle is well-settled that statements of fact as to what transpired at the hearing, recorded in the judgment of the court, are conclusive of the facts so stated and no one can contradict such statements by affidavit or other evidence. If a party thinks that the happenings in court have been wrongly recorded in a judgment, it is incumbent upon the party, while the matter is still fresh in the minds of the Judges, to call the attention of the very Judges, who have made the record to the fact that the statement made with regard to his conduct was a statement that had been made in error (Per Lord Buckmaster in *Madhusudan v. Chandrabati, AIR 1917 PC 30*). That is the only way to have the record corrected. If no such step is taken, the matter must necessarily end there. ....."
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> (emphasis supplied)

16. Even otherwise this Court finds that, the said letter dated 25th February, 2021 was in respect of five units only. The promoter had not indicated any amount which remained to be paid by the allottee therein. This assumes critical salience as the material on record indicates that the allottee had parted with almost the entire consideration by the year 2018. Likewise,

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3 AIR 1982 SC 1249

the invitation to execute the agreement for sale was also uncalled for as the agreements for sale were already executed. Moreover, the filing of the writ petition by the allottee seeking a direction to the promoter to deliver possession of the subject units indicates that the state of affairs was not as was sought to be projected by the promoter.

17. Cumulatively, this Court is not persuaded to interfere with the findings of fact recorded by the Appellate Tribunal that the promoter had not offered the possession of the subject units to the allottee and, therefore, the liability of the promoter to pay interest continued till the actual delivery of possession of the subject units.

18. The second ground of unjustified disallowance of the benefit of the moratorium period, forcefully canvassed by Mr. Chinoy, also does not carry much substance. The promoter had agreed to deliver possession of unit Nos. 907 to 911 by 31st May, 2015 and unit Nos. 901, 902, 905 and 906 by 30th June, 2017. The said agreed dates of delivery of possession of the subject units expired four and two years, respectively, before the COVID-19 pandemic restrictions came into force. The Appellate Tribunal was, therefore, fully justified in holding that the Authority could not have extended the benefit of the moratorium period, where

the liability to pay interest had commenced years before the COVID-19 pandemic situation.

19. The submission of Mr. Chinoy that the said ground was not urged before the Appellate Tribunal and the latter interfered with the order of the Authority on that count, on its own, need not detain the Court. In view of the provisions contained in Order XLI Rule 33 of the Code, the Appellate Court is conferred with wide powers so as to do complete justice.

20. Rule 33 of Order XLI of the Code, empowers the Appellate Court to pass any decree and make any order which ought to have been passed or made by the trial court, notwithstanding that the appeal is as to part only of the decree, and the said power may be exercised in favour of all or any of the respondents or parties, although such respondents or parties may not have filed any appeal or objection.

21. In the case of ***Banarsi & ors. Vs. Ram Phal***[4], the Supreme Court, after referring to the provisions contained in Rule 4 and Rule 33 of Order XLI of the Code, observed as under :-

> "15. .....The abovesaid provisions confer power of the widest amplitude on the appellate court so as to do complete justice between the parties and such power is unfettered by consideration of facts like what is the subject-matter of the appeal, who has filed the appeal and whether the appeal is being dismissed, allowed or disposed of by modifying the

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4 (2003) 9 SCC 606

> judgment appealed against. While dismissing an appeal and though confirming the impugned decree, the appellate court may still direct passing of such decree or making of such order which ought to have been passed or made by the court below in accordance with the findings of fact and law arrived at by the court below and which it would have done had it been conscious of the error committed by it and noticed by the appellate court. While allowing the appeal or otherwise interfering with the decree or order appealed against, the appellate court may pass or make such further or other, decree or order, as the case would require being done, consistently with the findings arrived at by the appellate court. The object sought to be achieved by conferment of such power on the appellate court is to avoid inconsistency, inequity, inequality in reliefs granted to similarly placed parties and unworkable decree or order coming into existence. The overriding consideration is achieving the ends of justice. ….. The power is subject to at least three limitations: firstly, the power cannot be exercised to the prejudice or disadvantage of a person not a party before the court; secondly, a claim given up or lost cannot be revived; and thirdly, such part of the decree which essentially ought to have been appealed against or objected to by a party and which that party has permitted to achieve a finality cannot be reversed to the advantage of such party."

22. In the case of ***K. Muthuswami Gounder Vs. N. Palaniappa Gounder***[5], a three-Judge Bench of the Supreme Court exposited the powers of the Appellate Court under Order XLI Rule 33 of the Code, as under :-

> "12. Order 41 Rule 33 enables the appellate court to pass any decree or order which ought to have been made and to make such further order or decree as the case may be in favour of all or any of the parties even though (i) the appeal is as to part only of the decree; and (ii) such party or parties may not have filed an appeal. The necessary condition for exercising the power under the Rule is that the parties to the proceeding are before the court and the question raised properly arises (sic out of) one of the judgments of the lower court and in that event, the appellate court could consider any objection to any part of the order or decree of the court and set it right. We are fortified in this view by the decision of this Court in *Mahani Dhangir vs. Madan Mohan* (AIR

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5 (1998) 7 SCC 327

> 1988 SC 54). No hard and fast rule can be laid down as to the circumstances under which the power can be exercised under Order 41 Rule 33 CPC and each case must depend upon its own facts. The Rule enables the appellate court to pass any order/decree which ought to have been passed. The general principle is that a decree is binding on the parties to it until it is set aside in appropriate proceedings. ....."

23. Applying the aforesaid principles to the facts of the case at hand, it becomes evident that, the allottee had preferred the appeals before the Appellate Tribunal primarily seeking the interest from the agreed date of delivery of possession of the respective units till the date of actual delivery of possession of the subject units. The challenge to the order passed by the Authority also in regard to the grant of benefit of moratorium to the promoter was thus implicit therein. Therefore, in the considered view of this Court, no question of law, much less, a substantial question of law, arises for consideration.

24. Resultantly, the Second Appeals deserve to be dismissed.

25. Hence, the following order:

: O R D E R :

(i) The second appeals stand dismissed with costs.

(ii) In view of the dismissal of the appeals, interim applications also stand disposed.

[N. J. JAMADAR, J.]

Judgment corrected as per order dated 15/12/2026.

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