Case Citation: (2026) ibclaw.in 6302 HC



# IN THE HIGH COURT OF JUDICATURE AT BOMBAY
## CIVIL APPELLATE JURISDICTION

## SECOND APPEAL NO. 258 OF 2026

Rare Townships Pvt. Ltd.
CTS 194-B, Ghatkopar – Mankhurd Road,
Opp. Chedda Nagar, Chembur (East),
Mumbai – 400089, Maharashtra ...Appellant

**Versus**

1. Archana Y A Upadhyay & anr.
   Age : - Adult,

2. Dr. A K Upadhyay,
   Age:- Adult,
   Both having residential address
   at Flat No. A-802, Sabari
   Aashiana, Near Anushaktinagar,
   Deonar Farm Road, Deonar,
   Mumbai – 400088, Maharashtra. ...Respondents

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**WITH**
**INTERIM APPLICATION NO. 3953 OF 2026**
**IN**
**SECOND APPEAL NO. 258 OF 2026**

Mr. Mayur Khandeparkar, a/w Mr. Rubin Vakil, Ms. Ayushi Anandpara, Mr. Shubham Hundia, i/b Satyaki Law Associates, for the Appellant.

Ms. Archana Upadhyay & Mr. A K Upadhyay – Respondents.

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| CORAM | : | N. J. JAMADAR, J. |
| RESERVED ON | : | 28th SEPTEMBER 2026 |
| PRONOUNCED ON | : | 13th OCTOBER 2026 |



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JUDGMENT:

**1.** This Appeal is directed against an order dated 26th November, 2025 passed by the Maharashtra Real Estate Appellate Tribunal, Mumbai ("Appellate Tribunal") in Miscellaneous Application No. 860/2025 in Appeal No. AT06/00747/2025 preferred by the Respondents/allottees, and an order dated 16th April, 2026 in Review Application No. 05/2026 whereby the first order was modified to correct the amount paid by the allottees and the date of the allotment letter.

**2.** The background facts leading to this Appeal can be summarized as under :-

**2.1** The appellant is the promoter of the project "Rising City", Ghatkopar, Mumbai. On 15th January, 2011, the appellant issued a Holding Receipt in respect of a Flat bearing No. B-706 admeasuring 1200 sq.ft. plus one parking space, for a total consideration of Rs. 1,35,72,000/- (Rupees One Crore Thirty Five Lakhs Seventy Two Thousand only).

**2.2** Subsequently, on 30th September 2014, an allotment letter was issued in favour of the allottees in respect of Flat

No. 805 in building 'A-1' admeasuring 1103.01 sq. ft, ("the subject flat") for a consideration of Rs. 1,24,80,000/- (Rupees One Crore Twenty Four Lakhs Eighty Thousand only). The allottees claimed to have paid a sum of Rs. 58,47,609/- (Rupees Fifty Eight Lakhs Forty Seven Thousand Six Hundred and Nine only) up to 07th November, 2016. Upon coming into force of the Real Estate (Regulation and Development) Act, 2016 ("the RERA, 2016"), the project in question came to be registered with the Maharashtra Real Estate Regulatory Authority ("the Authority") as "North Sea Heights (A-1)".

**2.3** On 05th May, 2024, asserting that, the promoter failed to execute a registered agreement for sale despite having received a substantial consideration; complete the project and deliver the possession of the subject flat, the allottees filed a complaint before the Authority seeking diverse reliefs including of interest for delayed possession and compensation.

**2.4** By a judgment and order dated 02nd July, 2025, the Authority was persuaded to partly allow the complaint. The promoter was directed to execute a registered agreement for

sale with respect to the subject flat in conformity with the statutory obligation under Section 13 of the Act, 2016 as per the terms and conditions incorporated in the allotment letter dated 30th September, 2014, within a period of 30 days thereof.

**2.5** It was declared that, upon execution of the agreement for sale, the allottees shall be liable to pay the outstanding amount towards the consideration and also interest for the delay in making the payments as per the stage of construction as mandated under Section 19(7) of the Act, 2016. Simultaneously, the promoter was directed to pay interest for the delayed delivery of possession to the allottees from 04th October, 2024 at the stipulated rate till the date of offer of possession with an Occupation Certificate (OC) on the actual amount paid by the allottees towards consideration. Making a provision for adjustment and set off, the Authority directed that the balance amount, if any, payable by either party shall be paid at the time of delivery of possession.

**2.6** The allottees preferred an appeal before the Appellate Tribunal seeking *inter alia* directions to the promoter to

execute a RERA compliant agreement in favour of both the allottees, and incorporating therein the promised amenities including specific parking slot, and clauses compliant with the model agreement for sale, and to refrain from demanding payments and issuing termination notices until a RERA compliant agreement for sale was executed and registered.

**2.7** In the said appeal, the allottees filed an application, *inter alia,* seeking stay to the execution of the agreement for sale until compliance with the orders was verified by the Authority and to restrain the promoter from demanding payments or issuing termination notices till the decision of the appeal.

**2.8** By an order dated 26th November, 2025, the Appellate Tribunal was persuaded to allow the said interim application, with the following directions :-

> "i) The promoter shall, in the light of observations made here-in-above, share the draft Agreement for Sale which is RERA compliant and in terms of the allotment letter dated 30.11.2014 and shall execute RERA complaint Agreement for Sale within 60 days of this order.

ii) The applicants have paid Rs. 58,47,609/- towards the consideration of the said flat to the promoter which shall be recorded in the draft Agreement for Sale.

iii) The consideration amount of Rs. 1,24,80,000/- will be in accordance with the said allotment letter dated 30.11.2014.

iv) The draft Agreement for Sale shall also specify the due date of possession as per the said allotment letter and if not specified in the said allotment letter, shall not be more than three years from the date of the said allotment letter. Further, Agreement for Sale shall specify the payment schedules to be paid by the applicants in the Agreement for Sale to be executed and registered and also specify the car parking space as per the said allotment letter.

v) The promoter shall not further make demand of any amounts from the applicants till the RERA compliant Agreement for Sale is executed and registered.

vi) There would be no question of any interest on account of delayed payments would arise for any prior period of Agreement for Sale to be executed and registered and the payments would be strictly made by the applicants as per the payment schedule as incorporated in Agreement for Sale to be executed and registered by the parties.

vii) Further, the promoter shall provide to the applicants the deviation report with respect to the model Agreement for Sale as made available by the MahaRERA before execution of the said Agreement for Sale.

viii) The promoter shall not issue any termination notice on the grounds of non-payment of outstanding amounts, unless the Agreement for Sale is executed and registered.

ix) The applicants have granted liberty to file appropirate Misc. Application for bring on record additional documents without prejudice to the rights of the non-applicant to respond to such an application to be filed by the applicants within 2 weeks of this order."

**2.9** In the Review Application filed by the promoter, after noticing that, upon reconciliation of the accounts, the parties were ad idem that, the allottees had paid a sum of Rs. 38,47,247/- (Rupees Thirty Eight Lakhs Forty Seven Thousand Two Hundred and Forty Seven only) and the correct date of allotment letter was 30th November, 2014, the Appellate Tribunal corrected the figure in clause (ii) (extracted above) to Rs. 38,47,247/- from Rs. 58,47,690/-, and the date of the allotment letter from 30th November,

2024 to 30th November, 2014. The rest of the prayers of the promoter in the Review Application were not acceded to.

**3.** Being aggrieved, the promoter has preferred this Appeal.

**4.** I have heard Mr. Mayur Khandeparkar and Mr. Rubin Vakil, the learned Counsel for the appellant/promoter, and the Respondents – allottees in person. With the assistance of the learned Counsel and the parties-in-person, I have perused the material on record.

**5.** Mr. Khandeparkar would urge that, the order dated 26th November, 2025 passed by the Appellate Tribunal at an interim stage almost forecloses the determination of the appeal. At an interim stage, the Appellate Tribunal could not have issued mandatory directions, that too without recording reasons, was the thrust of the submission of Mr. Khandeparkar. Criticizing the directions under clause (iv) of the impugned order, (extracted above), Mr. Khandeparkar would urge that, the date on which the possession of the subject flat was agreed to be delivered was a matter of contest and yet to be adjudicated by the Appellate Tribunal. Thus, the direction therein that the

agreement for sale should also specify the due date of possession as per the allotment letter dated 30th November, 2014 and, if not specified therein, the date of possession should not be more than 3 years from the date of the said allotment letter, renders the adjudication in the appeal redundant.

**6.** Likewise, the direction in clause (vi) of the impugned order restraining the promoter from claiming interest on account of delayed payment in accordance with the terms of the contract between the parties for the period prior to the execution of the agreement for sale has the trappings of finally deciding the appeal. Therefore, Mr. Khandeparkar would urge, at the least, two substantial questions of law arise. First, whether the Appellate Tribunal committed a manifest error in passing the interlocutory operative directions as contained in clause (iv) of the order dated 26th November, 2025 sans reasons ? And second, whether the Appellate Tribunal committed manifest error in specifying the date of delivery of possession to be incorporated in the agreement for sale without recording reasons in support thereof, especially in the context of the operative directions at Paragraph No. 14(f) of the order passed by the Authority.

**7.** The allottees in person have stoutly countered the submissions on behalf of the appellant. Highlighting the nature of the dispute and the defaults on the part of the promoter to deliver the possession of the subject flat though a period of more than 15 years has elapsed, the allottees have asserted that no substantial question of law arises for consideration. The allottees laid emphasis on the purported blameworthy conduct of the promoter. It was urged that, since the promoter did not prefer an appeal against the order passed by the Authority, the said order has attained finality qua the promoter and the impugned order passed by the Appellate Tribunal has merely operationalised and given meaning and content to the order passed by the Authority.

**8.** To start with the uncontroverted facts. First, the jural relationship between the appellant and the respondents as promoter – allottees is not in dispute. There is also not much controversy over the fact that initially a Holding Receipt dated 15th January, 2011 in respect of Flat No. B-706/East Block for a consideration of Rs. 1,35,72,000/- (Rupees One Crore Thirty Five Lakhs Seventy Two Thousand only) was issued and, subsequently, the parties

agreed to a change in flat and consideration therefor. The consequent issuance of a provisional letter of allotment dated 30th November, 2014 in favour of allottees in respect of the subject flat for a consideration of Rs. 1,24,80,000/- (Rupees One Crore Twenty Four Lakhs Eighty Thousand only), is incontestable. The parties are also not at issue over the registration of the project under the name and style "North Sea Heights (A-1)" after the coming into force of the RERA, 2016.

9. By and large, there is not much controversy over the fact that the allottees have paid a sum of Rs. 38,47,247/- towards consideration, by the year 2016. As a matter of fact, the agreement for sale has not been executed by the promoter in favour of the allottees. The controversy between the parties revolves around the defaults in the execution of the agreement for sale, the payment of balance consideration, the terms of the agreement for sale and the delay in the completion of the project and the resultant liability of the parties.

10. The imperativeness of the execution of a registered agreement for sale cannot be overemphasized. It is the

mischief of accepting substantial amounts from the flat purchasers without executing the Agreements for Sale that was sought to be addressed by legislative measures. The provisions contained in Section 4 of the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963, ("MOFA, 1963"), proscribed acceptance of any sum of money as advance payment or deposit exceeding 20% of the sale price without entering into a written agreement for sale and mandated that such agreements shall be registered under the Registration Act, 1908. To address the further mischief of exploiting the vulnerabilities and lack of bargaining power of flat purchasers, the law mandated that the Agreements for Sale should be executed in the prescribed form, incorporating essential terms of the bargain, so as to protect the interest of the flat purchasers. MOFA 1963, thus directed that such agreement shall be in the prescribed form.

**11.** RERA, 2016, has made it obligatory on the promoter to execute a registered agreement for sale, before the promoter accepts a sum of more than 10% of the cost of the apartment. Sub-section (1) of Section 13 mandates

that the promoter shall not accept a sum of more than 10% of the cost of the apartment, plot or building, as an advance payment or an application fee from a person without first entering into a registered written agreement for sale. Sub-section (2) of Section 13 provides that the agreement for sale shall be in such form as may be prescribed, and enumerates the particulars that are required to be mandatorily specified therein, apart from such other particulars, as may be prescribed.

**12.** The mandatory specifications include, *inter alia*, the particulars of the development of the project including the construction of the building and apartments, alongwith specifications and internal development works and external development works, the dates and manner by which the payment towards the cost of the apartment, plot or building, as the case may be, is to be made by the allottee, and the date on which possession of the apartment is to be handed over, and the rates of interest payable by the promoter to the allottee and the allottee to the promoter in case of default.

**13.** In the light of the aforementioned statutory mandate, which has been incorporated to ensure that the sale of the apartment takes place in a transparent manner and to protect the interest of consumers in the real estate sector, the legality and justifiability of the impugned order deserves to be appreciated.

**14.** As noted above, the promoter has accepted a sum of Rs. 38,47,247/- without executing an agreement for sale. The said amount constitutes more than 30% of the agreed consideration. Under the legal regime governing the field, even before the enforcement of RERA 2016, also, the promoter could not have accepted the said amount without executing a registered agreement for sale. Thus, the direction issued by the Authority to execute the registered agreement for sale in favour of the allottees, in conformity with the provisions contained in Section 13 of RERA 2016 is legally impeccable.

**15.** The fulcrum of the challenge was the specification of the date of delivery of possession in the agreement for sale to be executed by the promoter in favour of the allottees. The Authority did not, in terms, indicate the date of

delivery of possession to be incorporated in the agreement for sale in Clause 14(c), which directed the execution of a registered agreement for sale. The substance of the submission on behalf of the promoter was that the direction in Clause (iv) of the impugned order to specify the due date of possession as per the allotment letter and, in the absence of such specification in the allotment letter, the date of possession shall not be more than three years from the date of the allotment letter was sans consideration and reasons, and that could not have been done at an interlocutory stage.

**16.** To appreciate the aforesaid submission in the backdrop of the facts that *prima facie* emerge from the record, (being fully conscious of the fact that the appeal preferred by the allottees awaits final adjudication by the Appellate Tribunal), recourse to the stipulations in the allotment letter becomes necessary. Clause (10) of the allotment letter dated 30th September, 2014 reads as under:

> "10. We have informed you that the said building will be completed within a period of 42-months from the date of start of construction and or of obtaining of the commencement certificate in respect whereof, subject however, to force majeure and circumstances beyond our control."

**17.** The aforesaid stipulation makes it crystal clear that the promoter had agreed to complete the construction of the building within a period of 42 months from the grant of the commencement certificate. The allotment letter thus indicated the time frame within which the building was to be constructed and possession of the subject flat was to be delivered to the allottees.

**18.** This Court finds that in paragraph 13(i), (j), (k) and (l), the Authority construed the terms of the allotment letter to arrive at a finding regarding the date of delivery of possession of the subject flat by the promoter to the allottees. Taking note of the grant of the commencement certificate on 1st October, 2016 and the revision thereof, the Authority recorded that the expected date of delivery of possession would have been 4th April, 2023. The Authority further professed to grant the benefit of the provisions contained in Section 8(b) of MOFA 1963, and the extension granted by the Authority in the wake of the COVID-19 pandemic and held that the date of delivery of possession of the subject flat stood extended upto 4th October, 2024. The allottees were thus held entitled to seek interest on account of delay in the delivery of possession, as

prescribed under Section 18 of the RERA 2016, from 4th October, 2024 till the date of offer of possession of the subject flat with Occupation Certificate (OC).

**19.** Undoubtedly the aforesaid determination by the Authority is under challenge before the Appellate Tribunal. Yet, it is imperative to note that, the aforesaid order passed by the Authority was not challenged by the promoter. Nor does it appear that the promoter preferred any cross-objection in the appeal preferred by the allottees.

**20.** In the light of the above, the broad features of the case deserve to be noted. First, the termination of the allotment by the promoter has been explicitly declared by the Authority to be neither proper nor legal as it was in contravention of Section 13 of RERA 2016. Second, the statutory liability to execute the registered agreement for sale can hardly be disputed. Third, in the order passed by the Authority, which is impugned before the Appellate Tribunal, the date of delivery of possession has been arrived at by the Authority, though in the operative order, the Authority has not specified the said date. Fourth, the promoter has not challenged the order passed by the

Authority, including the direction in paragraph 14(f) of the order passed by the Authority to pay interest for the delayed possession from 4th October, 2024.

**21.** If considered, in the backdrop of the aforesaid features, the directions in the impugned order appear to be in consonance with the object of RERA 2016, and the provisions thereunder, save and except the stipulation as to the date to be specified in the agreement for sale for the delivery of possession of the subject flat. In the considered view of this Court, the date of delivery of possession is a matter which warrants adjudication at the final hearing of the Appeal, especially in view of the categorical finding of the Authority that the date of possession stood extended upto 4th October 2024.

**22.** It would be contextually relevant to note that, the respondents-allottees have filed an affidavit regarding the date of delivery of possession of the subject flat to be determined by the Appellate Tribunal at the time of final adjudication of the appeal. In the affidavit filed on behalf of the allottees on 19th August, 2026 the allottees have affirmed that, without prejudice to the rights and

contentions of the allottees, the Appellate Tribunal may fix the date of delivery of possession of the subject flat. Paragraphs 10 and 11 of the said affidavit read as under:

> "10. As suggested during the deliberations before this Hon'ble Court, we have no objection if the Hon'ble Maharashtra Real Estate Appellate Tribunal (MahaREAT) considers fixing a definite date of possession in place of the present direction contained in Clause (iv) of the operative portion at page 14 of the order dated 26th November 2025, which reads as under :
>
> "iv) The draft agreement for sale shall also specify the due date of possession as per the said allotment letter and if not specified in the said allotment letter, shall not be more than three years from the date of the said allotment letter."
>
> 11. It is humbly submitted that our no objection recorded above is, however, subject to the following so as to fully safeguard our interests and to ensure that all facets of the pending appeal before the Hon'ble MahaREAT continue without any prejudice :
>
> (a) Any definite date of possession that may be fixed by the Hon'ble MahaREAT shall be without prejudice to all our rights, contentions, claims and remedies in the pending Appeal No.AT06/00747 of 2025 and connected proceedings before the Hon'ble MahaREAT.
>
> (b) The pending appeal before the Hon'ble MahaREAT shall continue on all issues, including but not limited to the correct date of booking (January 2011), quantum of payments made, deviations from the model Agreement for Sale, interest and compensation under Section 18 of the Real Estate (Regulation and Development) Act, 2016, parking, amenities, and all other grounds raised by us;
>
> (c) Fixation of any definite possession date shall not amount to waiver, abandonment, curtailment or prejudice of any our rights or contentions, nor shall it limit or affect the scope of the Appeal pending before the Hon'ble MahaREAT in any manner;

(d) All other directions contained in the order dated 26th November 2025 (as modified / corrected by the Review Order dated 16th April 2026) shall continue to operate with full force and effect; and

(e) The present statement of no objection is made purely in furtherance speedy delivery of justice and is without prejudice to all our rights and contentions in the present Second Appeal as well as in the proceedings pending before the Hon'ble MahaREAT."

**23.** In view of the aforesaid statement made on behalf of the allottees that, the question of date of delivery of possession be kept open to be adjudicated by the Appellate Tribunal, it would be appropriate to modify the direction in regard to the date of delivery of possession, to be incorporated in the agreement and specify that the date stipulated by the Authority in the order impugned before the Tribunal, i.e., 4th October, 2024, shall be incorporated in the agreement for sale as a tentative date, subject to the final adjudication by the Appellate Tribunal. In the event the Appellate Tribunal alters the date of delivery of possession determined by the Authority, the parties rights and liabilities will be governed by the determination so made by the Appellate Tribunal, and the parties will have to execute an appropriate deed of rectification.

**24.** At this juncture, this Court need not delve into the other disputes between the parties, including the terms of the agreement for sale. Suffice to clarify that the agreement for sale to be executed by the promoter in favour of the allottees, shall be in conformity with the provisions contained in Section 13 of RERA, 2016, and the model form of the agreement for sale prescribed by the Authority. And all questions shall remain open for adjudication by the Appellate Tribunal.

**25.** Hence, the following order:

**: O R D E R :**

**(I)** The second appeal stands disposed with the following directions:

**(a)** The date of delivery of possession to be incorporated in the agreement for sale to be executed by the appellant in favour of the respondents shall be 4th October, 2024.

**(b)** The aforesaid date shall be tentative and without prejudice to the rights and contentions of the parties, and subject to the final adjudication by the Appellate Tribunal in the appeal preferred by the allottees.

(c) In the event the Appellate Tribunal alters the aforesaid date, the rights and liabilities of the parties shall be governed by such date of delivery of possession to be determined by the Appellate Tribunal and, in that event, the parties shall execute the requisite deed of rectification.

(d) The agreement for sale to be executed by the Appellant in favour of the respondents shall be in conformity with the provisions of Section 13 of RERA 2016, and the model form of agreement (Annexure 'A') prescribed under Rule 10(1) of the Maharashtra Real Estate (Regulation and Development) (Registration of Real Estate Projects, Registration of Real Estate Agents, Rates of Interest and Disclosure on website) Rules, 2017.

(e) Such agreement for sale shall be executed and registered within a period of four weeks from today.

(f) All contentions of the parties on all the points are expressly kept open and shall be adjudicated by the Appellate Tribunal at the time of final adjudication of the appeal.

(II) In view of disposal of the appeal, IA/3953/2026 also stands disposed.

[N. J. JAMADAR, J.]