BEFORE THE MAHARASHTRA REAL ESTATE APPELLATE TRIBUNAL, MUMBAI

Appeal No. AT006000000113946 of 2022
In
Complaint No. CC006000000100233

M/s. S.M. Infrastructures.]
Through Authorised Signatory]
Mr. Tufal Riyaz Rahi]
Shop No.3, Ambiya Palace CHS Ltd.,]
Hatkesh Udyog Nagar, Opp.GCC Club]
Mira Road (East), Thane-401107.] ... Appellant.

Versus

Pramod Yagnarayan Singh]
Flat No.708, J Wing, Gurukal Plaza,]
Mangal Nagar, Mira Road (East),]
Thane-401107.] ... Respondent.

Adv. Ms. Sonam Singh for Appellant.
Adv. Mr. Sanjeev Singh for Respondent.

CORAM : SHRI S.S. SHINDE (J), CHAIRPERSON &
SHRIKANT M. DESHPANDE, MEMBER (A)

RESERVED ON : 27th April, 2026

PRONOUNCED ON : 8th May, 2026

(THROUGH VIDEO CONFERENCING)

JUDGEMENT

[PER: SHRIKANT M. DESHPANDE, MEMBER (A)]

1. The captioned appeal arises from the order dated 23.06.2022 passed by the learned Member-I, Maharashtra Real Estate Regulatory Authority (for short "the Authority") in complaint No.CC006000000100233, filed by the respondent herein allottee/original complainant.

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2. The appellant is a promoter of the project in the name and style as "Hutkesh Heights" having MahaRERA Project Registration No. P51700008077, located at Mira Road, Thane.
3. For the sake of convenience, the parties to the appeal will be hereinafter referred to as "promoter" and "complainant/allottee" respectively.
4. The brief facts culled out from the pleadings, material on record, and the impugned order reveal that the respondent/allottee purchased a flat bearing no.A-2, 302, admeasuring 408.40 sq. ft, carpet area, on the 3rd floor of the appellant's said project vide an allotment letter dated 31.12.2014 for total consideration of Rs.35,05,000/-, out of which the allottee has paid an amount of Rs.28,63,395/- towards consideration of the flat and service tax, aggregating total amount paid by the allottee to the promoter at Rs.29,00,000/-. The receipt of the said amounts is admitted by the promoter.
5. Further, the promoter *vide* letter dated 12.02.2019 terminated the allotment letter of the flat. In response to the said termination letter the allottee paid balance consideration amount to the promoter by cheques but the promoter did not respond to the said letter of the allottee nor deposited the cheques of balance consideration amount tendered by the allottee.
6. Aggrieved by the said termination letter by the promoter, the respondent/allottee filed the captioned complaint before the Authority in July 2019. In the complaint besides direction to set aside the said termination letter, the allottee also prayed for direction to the promoter to execute and register the agreement

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for sale under the provisions of Real Estate (Regulation and Development) Act, 2016 (for short 'the RERA Act, 2016') in respect of the said flat among other reliefs prayed for.

7. After hearing the said complaint, it was disposed of by order dated 13.11.2019 by the Authority, whereby the Authority directed the promoter to execute the agreement for sale with the allottee as per the provisions of Section 13 of the RERA Act, 2016, in terms of the allotment letter dated 31.12.2014.

8. Aggrieved by the said order dated 13.11.2019 the promoter filed an Appeal No.AT006000000052250 before the Appellate Tribunal. In the said appeal, the Tribunal passed an order dated 03.12.2021 and remanded back the matter for deciding afresh in view of certain observations made therein. The Tribunal in the said order observed as under:

> "a. On perusal of the relief clause of the complaint, it is evident that the first prayer is to declare the letter dated 12.02.2019 cancelling the allotment letter is illegal and bad in law and complainant sought to quash and set aside the said termination letter.
>
> b. Further the impugned order reveals thar the Authority did not address the grievance of the complainant regarding cancellation of allotment letter. There is no whisper in the entire order regarding the letter of cancellation dated 12.02.2019. So long as the letter of cancellation of allotment letter is in existence, direction under Section 13 of the RERA Act, 2016 to execute the agreement for sale to remain ineffective and un workable.

With these observations, the matter was remanded back to the Authority to decide afresh on merits of the case".

9. Thereafter, the Authority heard the parties at length. The promoter appeared in the complaint and remonstrated the complaint by filing reply. The promoter contended that admittedly, the promoter has received the amount of Rs.28,63,375/- towards consideration out of total purchase value Rs.35,05,000/-. However, since 2015 till 2018 the complainant has been issued around 20 letters calling upon the allottee to come forward and execute and register the agreement for sale. However, the complainant/allottee failed to come forward and execute the agreement for sale. Therefore, the first termination notice was issued on 28.12.2018. However, the complainant failed to come forward to execute the agreement for sale. Hence, the promoter cannot wait for indefinite period for execution of the agreement for sale, even after the receipt of the occupation certificate in the month of May 2019. With these submissions, the promoter prayed to declare the said termination letter as valid in law.
10. The complainant/allottee in reply contended that by the said letters, the promoter has raised demands for further payments. However, in the said demand letters the promoter has added one line that "*agreement for sale is ready for stamp duty and registration charges*". But whenever allottee went to the office of the promoter for registration, the promoter used to accept the payments and used to state that the agreement for sale will be sent to the allottee soon. Complainant further stated that he made the last payment on 02.07.2018 of Rs.1,50,000/- to the

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promoter. With these submissions, the complainant pleaded to declare the said cancellation as illegal and bad in law.

11. After hearing the parties, the Authority passed the impugned order. In the impugned order, the Authority recorded that more than 90% of the consideration amount has been paid by the complainant. However, the promoter did not execute an agreement for sale for the said flat. It is the obligation of the promoter to execute and register the agreement for sale before accepting more than 20% consideration amount under Section 4 of the Maharashtra Ownership Flats Act (for short 'the MOFA') or 10% in the case of Section 13 of the RERA Act, 2016. Still, by various demand letters the promoter kept on raising demands and kept on receiving the amounts from the complainant/allottee. Thus, the promoter continued to violate both Section 4 of the MOFA and Section 13 of the RERA Act, 2016. When the promoter is in breach of provisions of the law, promoter cannot seek equity.

12. The Authority further observed that the promoter has merely and mechanically in the demand letters called upon the complainant to come forward to execute the agreement for sale. However, the promoter has not produced any single document on record to show that the promoter has ever shared the draft of the agreement for sale with the complainant, which the complainant has denied. It is pertinent that the promoter kept on raising demands without executing the agreement for sale. However, the complainant has made timely payments as per the demands from time to time. If the promoter would had annexed the draft agreement for sale along with final demand letter, in

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that case the submissions of the promoter would have been accepted. It was the duty of the promoter to share the draft of the agreement for sale to the complainant before execution of the agreement for sale. Hence, by merely making vague averments about execution of the agreement for sale, the promoter cannot be permitted to shy away from its responsibility to share the draft of the agreement for sale with the complainant.

13. With these submissions, the Authority held that the said termination letter dated 12.02.2019 issued by the promoter cancelling the allotment of the subject flat to the complainant is bad in law. Hence, the same is set aside.
14. Further, the Authority directed the promoter to execute and register the agreement for sale with the complainant as per Section 13 of the RERA Act, 2016, in accordance with the terms of the allotment letter dated 31.12.2014 within 30 days of the order, failing which the promoter is liable to penalty of Rs.10,000/- per day of default till the date of compliance of the said order.
15. Aggrieved by the said impugned order, the appellant/promoter has filed the captioned appeal on the grounds set out in the memorandum of appeal seeking relief of setting aside of the impugned order.
16. We have heard the learned Advocate for the parties. Their submissions are nothing but reiteration of the contents of the memorandum of appeal, reply and written submissions.
17. The learned Advocate for the appellant/promoter has submitted that the respondent/allottee has paid only Rs.28,63,375/- out of

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the total consideration of Rs.35,05,000/-, however the allottee was irregular in making payments to the appellant from 2015 to 2018. Several demand letters for payment of installments were sent to the allottee from time to time. However, the allottee never paid heed to the said demand letters. In every demand letter to the allottee, the promoter has mentioned that the agreement for sale is ready for stamp duty and registration. There were such 20 letters sent to the allottee from 07.12.2015 to 26.11.2018, however the allottee never come forward for satisfying the said lawful payments. In the demand letters, the promoter clearly mentioned that "register your agreement, we have already informed you many times". However, the allottee never did not come forward to execute and register the agreement for sale. Hence, it was within the rights of the promoter to cancel the allotment letter under Section 11 of the RERA Act, 2016 in terms of the allotment letter by issuing cancellation letter dated 24.11.2018 and also requested the allottee to approach its accounts department to get the refund of the paid amount. Further, the promoter issued another letter dated 12.02.2019 of cancellation of allotment letter.

18. The learned Advocate further submitted that since the allotment letter is cancelled, the respondent/allottee is not an "allottee" at the time of filing of the complaint. The promoter has cancelled the allotment on 24.12.2018 and subsequent letter dated 12.02.2019 was sent to the respondent, hence the respondent is not covered under the purview of RERA Act, 2016. The learned Advocate further submitted that the promoter had uploaded the draft agreement for sale on the MahaRERA

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website at the time of registration of the project, which is in public domain, which was not considered by the Authority. With these submissions, the learned Advocate for the promoter prayed to allow the appeal and set aside the impugned order.

19. The learned Advocate for the respondent/allottee has submitted that out of total consideration amount of Rs.35,05,000/- the respondent/allottee has paid Rs.28,63,375/- from the year 2014 till October 2018. Despite substantial payment of over 90% of the consideration amount the promoter neglected and failed to execute the agreement for sale. In the allotment letter dated 31.12.2014 the promoter has expressly agreed that it will execute standard agreement for sale at a later date. The respondent had approached the appellant/promoter and requested to execute agreement for sale as per the provisions of the RERA Act, 2016, on number of occasions. It is the promoter who is under obligation under Section 4 of the MOFA and Section 13 of the RERA Act,2016 to execute and register the agreement for sale and shall not receive more than 20% in case of MOFA or 10% in case of RERA, as the case may be of the consideration amount without first executing and registering the agreement for sale.

20. The learned Advocate submitted that the respondent was shocked to receive a letter dated 12.02.2019 wherein admittedly the promoter has received last consideration amount on 02.07.2018 and further stated that they have informed to the allottee for the outstanding dues, but the respondent has not replied to the said letters. Further, the promoter also stated

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that the appellant has decided to cancel the allotment of the said flat.

21. The learned Advocate further submitted that the respondent allottee immediately replied through their Advocate by letter dated 11.03.2019, wherein the allottee brought on record that out of total consideration amount of Rs.35,05,000/-, the allottee had already paid Rs.28,63,375/- and further called upon the appellant/promoter to execute and register the agreement for sale as per the provisions of RERA Act, 2016. Further, it was mentioned in the said letter to specify the date as to when the appellant/promoter will hand over possession of the flat to the allottee. The allottee further requested the promoter to fix up the time for execution of agreement for sale and by the said letter the allottee also forwarded the cheque of Rs.6,06,575/- towards balance consideration and Rs.1,44,789/- towards GST. Such letters though received by the promoter but the promoter never replied to the said letter nor deposited the said cheques.

22. The learned Advocate submitted that it is settled legal position that as per the provisions of Section 4 of the MOFA and Section 13 of the RERA Act, 2016 the promoter cannot receive more than 20% or 10% as the case may be, of the consideration amount. The promoter accepted more than 90% of the consideration amount, still did not execute agreement for sale. The Authority has therefore rightly directed the promoter to execute and register the agreement for sale in accordance with the terms of the allotment letter dated 31.12.2014. Several judgments of this Tribunal have held that the said unilateral cancellation of the allotment letter on the ground of non-

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payment of installment is illegal. With these submissions, the learned Advocate for the respondent/allottee prayed to dismiss the appeal with exemplary cost.

23. The learned Advocate for the respondent/allottee has placed reliance on the following judgments:

   i) *Shree Sukhkarta Developers P. Ltd. V/s. Sunil Agarwal [Appeal No.AT006000000011133 decided by the Maharashtra Real Estate Appellate Tribunal, Mumbai, on 18.08.2020],*

   ii) *Sunil Devnani V/s. Geopreneur Spire Realty & Anr. [Complaint No.CC006000000054698 decided by the Maharashtra Real Estate Regulatory Authority, Mumbai, on 02.11.2018]*

   iii) *Shree Sukhkarta Developers P. Ltd. V/s. Mahendr Jain [Appeal No.AT006000000031832 decided by the Maharashtra Real Estate Appellate Tribunal, Mumbai, on 21.04.2022].*

24. Having heard the learned Advocate for the parties and after having considered the submissions of the parties supported by various documents, following points arise for our consideration and we have recorded our findings thereon for the reasons to follow, as under.

Sr. No.	Points	Findings
1.	Does the impugned order passed by the Authority warrant interference in this appeal?	In the negative.
2.	What order?	As per final order.

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REASONS

Point No.1

25. On ensemble of the facts as submitted by the parties, it is not in dispute that the respondent/allottee purchased the said flat from the appellant's said project vide an allotment letter dated 31.12.2014 for total consideration of Rs.35,05,000/- out of which the respondent/allottee has paid the amount of Rs.28,63,375/- towards consideration amount. The said allotment letter however does not disclose the date of possession.

26. It is also not in dispute that the promoter vide letter dated 12.02.2019 terminated the allotment of the said flat. The respondent allottee through his Advocate responded to the said letter on 11.03.2019, wherein the allottee brought on record that out of total consideration amount of Rs. 35,05,000/- the respondent has paid the amount of Rs.28,63,375/- towards consideration and further called upon the appellant to execute and register the agreement for sale as per the provisions of RERA Act, 2016. The respondent/allottee further requested the promoter to specify the date as to when the promoter will hand over possession of the said flat to the respondent/allottee. The allottee further requested the promoter to fix up time for execution and registration of the agreement for sale. Further, by the said letter, the allottee also forwarded the cheque of Rs.6,06,575/- towards balance consideration amount of Rs.1,44,789/- towards GST as per the final demand letter. The said letter was received by the promoter however the promoter never replied to the said letter nor deposited the said cheques.

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27. Closer examination of the allotment letter darted 31.12.2014 reveals the details of the project property, description of the flat, consideration amount, payment schedule etc. Clause (a) of section 2 of the Contract Act, 1872, talks about the proposal and clause (b) of section 2 of the Contract Act, 1872, speaks about the promise. Clause (a) of section 2 lays down that one person signifies to another his willingness to do or to abstain from doing anything, with a view to obtaining the assent of that other to such act or abstinence, he is said to make a proposal. Clause (b) of section 2 states that when the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted. A proposal, when accepted, becomes a promise. The said allotment letter and the receipts of the payments by the promoter reveal a clear picture of fulfilment of clause (a) and (b) of section 2 of Contract Act, 1872. Therefore, the said allotment letter depicts the clear picture of fulfillment of the Clause (a) and (b) of Section 2 of the Contract Act, 1872 and therefore is valid and concluded contract enforceable under law.

28. However, the said allotment letter does not disclose the date of possession. The Hon'ble Supreme Court in case of *Fortune Infrastructure (Now known as M/s. Hicon Infrastructure) & Anr. V/s. Trevor D'Lima & Ors.* [(2018) 5 SCR 273] has held that if the date of possession is not mentioned in the allotment letter/agreement for sale, the allottee is not expected to wait indefinitely and the promoter is required to hand over the possession of the unit within a reasonable period. The Hon'ble Supreme Court has held that three years was held to be

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reasonable period to hand over possession. Hence, we are of the view that it is reasonable to take the date of possession three years after the date of allotment letter. Hence, we come to the conclusion that the due date of possession is 31.12.2017.

29. Although the allotment letter has been issued in the year 2014 during MOFA regime and since the project is registered under the RERA Act, 2016 the said allotment letter is enforceable under the provisions of RERA Act, 2016. It is pertinent to note that the RERA Act, 2016 is retroactive in operation. The Hon'ble Supreme Court of India in case of *M/s. Newtech Promoters and Developers Pvt. Ltd. V/s. State of U.P. & Others* [Civil Appeal No(s). 6745-6749 of 2021 (arising out of SLP (Civil) No(s). 3711-3715 of 2021 decided on 21st November, 2021] in Para-37, 41 and 45 has held as under:

> '37. *Looking to the scheme of Act 2016 and Section 3 in particular the of which a detailed discussion has been made, all "ongoing projects" that commence prior to the Act and in respect to which completion certificate has not been issued are covered under the Act. It manifests that the legislative intent is to make the Act applicable not only to the projects which were yet to commence after the Act became operational but also to bring under its fold the ongoing projects and to protect from its inception the inter se rights of the stake holders, including allottees/home buyers, promoters and real estate agents while imposing certain duties and responsibilities on each of them and to regulate, administer and supervise the unregulated real estate sector within the fold of the real estate authority.*

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41. The clear and unambiguous language of the statute is retroactive in operation and by applying purposive interpretation rule of statutory construction, only one result is possible, i.e. the legislature consciously enacted a retroactive statute to ensure sale of plot, apartment or building, real estate project is done in an efficient and transparent manner so that the interest of consumers in the real estate sector is protected by all means and Sections 13, 18(1) and 19(4) are all beneficial provisions for safeguarding the pecuniary interest of the consumers/allottees. In the given circumstances, if the Act is held prospective then the adjudicatory mechanism under Section 31 would not be available to any of the allottee for an on-going project. Thus, it negates the contention of the promoters regarding the contractual terms having an overriding effect over the retrospective applicability of the Act, even on facts of this case.

45. At the given time, there was no law regulating the real estate sector, development works/obligations of promoter and allottee, it was badly felt that such of the ongoing projects to which completion certificate has not been issued must be brought within the fold of the Act 2016 in securing the interests of allottees, promoters, real estate agents in its best possible way obviously, within the parameters of law. Merely because enactment as prayed is made retroactive in its operation, it cannot be said to be either violative of Articles 14 or 19(1)(g) of the Constitution of India. To the contrary, the Parliament

indeed has the power to legislate even retrospectively to take into its fold the pre-existing contract and rights executed between the parties in the larger public interest."

30. The subject project was ongoing when the RERA Act, 2016 came into force and the said project is therefore registered with MahaRERA under the provisions of RERA Act, 2016. In the light of above exposition of law in M/s. *Newtech Promoters and Developers (supra)* the allotment letter which was executed prior to coming into force the RERA Act, 2016 can be enforced under the provisions of RERA Act, 2016. Hence, we are of the considered view that the appellant/promoter is entitled to seek relief under the provisions of RERA Act, 2016 even though the said allotment letter is executed prior to RERA Act, 2016 coming into force.

31. It is not in dispute that the appellant/promoter has received 90% of the consideration amount without executing the agreement for sale and registering the same. Section 4 of the MOFA casts an obligation on the promoter that the promoter shall not accept the sum of money as advance part consideration or deposit which will be more than 20% of the sale price without first entering into the written agreement for sale and the agreement shall be registered under the Registration Act, 1908. Section 13 of the RERA Act, 2016, also casts a similar obligation on the part of the promoter that the promoter shall not accept the sum more than 10% of the consideration price without first entering into written agreement for sale and registering the said agreement for sale.

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32. It is not in dispute that the total consideration of the subject flat is Rs.35,05,000/-, whereas the allottee has paid Rs.28,63,375/- to the promoter as per the demands raised by the promoter from time to time. Therefore, the promoter has received more than 20% amount in case of provision of Section 4 of the MOFA and 10% in case of provisions of RERA Act, 2016 without executing and registering the agreement for sale. Therefore, the promoter has violated the provisions of Section 4 of the MOFA and Section 13 of the RERA Act, 2016. The allotment letter also reveals that there is no specific date of possession mentioned. As per Section 4(1A)(a)(ii) of MOFA the promoter is obligated to mentioned the date by which the possession of the flat is to be handed over to the purchaser. In view of this, it is also a violation of the said provisions by the promoter.

33. It is also pertinent that the promoter has not shared with the respondent/allottee the draft of the agreement for sale. Further, the appellant never communicated any specific date or time for execution of the agreement for sale. Further, the promoter never specifically informed about the amount of stamp duty and registration charges to be paid at the time of registration. It is only as routine reminders in the demand letters, the appellant has mentioned that the agreement for sale is ready for stamp duty and registration charges. It is also pertinent that the promoter went on demanding and receiving the sum without executing an agreement for sale. In our view, the promoter ought not to have accepted the further payments exceeding 20% of consideration without executing and registering the agreement for sale. Thus, it clearly

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demonstrates that the promoter willfully kept on violating the provisions of Section 4 of the MOFA and Section 13 of the RERA Act, 2016.

34. The appellant/promoter tried to put blame on the complainant/allottee that the allottee never came forward for executing the agreement for sale. It is pertinent that the allottee visited the office of the promoter whenever demand notices were raided by the promoter, the office of the promoter only accepted the payments and when the allottee enquired about the agreement for sale, the allottee was told that that the agreement for sale will be sent in due course. There is nothing on record to show that the appellant/promoter has taken any steps to share the draft of the agreement for sale, communicate the date of registration, amount to be paid for stamp duty and registration charges etc. There is no communication whatsoever on record to that effect. On specific query to the learned Advocate for the appellant/promoter whether there was any communication in this regard to the allottee, to which the learned Advocate confirmed in the negative.

35. It is the contention of the promoter that the he has sent 20 letters to the respondent/allottee. We note that these letters were regarding raising further demands and only mentioned that the agreement for sale is ready for stamp duty and registration. The promoter never took any pro-active steps to execute and register the agreement for sale, even though it was the obligation of the promoter to execute and register the agreement for sale under the provisions of MOFA as well as the RERA.

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36. The promoter sent a termination letter on 24.12.2018 and thereafter another termination letter on 12.02.2019. Closer examination of the said termination letter dated 24.12.2018 reveals that the said termination is on the ground of nonpayment of the amounts as per the demand raised. The said termination notice is reproduced below:

> *"We have informed you many times regarding outstanding dues of above said Flat and Taxes by Demand Letters and Reminders but no reply from your side till today.*
>
> *We have received your last payment on 02.07.2018 and after that till today we have not received any payment. Company has decided to cancel your above said flat. Kindly contact our Accounts Department for your balance payment after deducting interest till date."*

37. Pertinently, when the promoter is legally barred to raise any further demand beyond the 20% in case of MOFA and 10% in case of RERA before executing and registering the agreement for sale, the promoter has terminated the allotment on the very same ground of non-payment of the amounts. At the one hand the promoter violated Section 4 of the MOFA and Section 13 of the RERA. On the other hand, promoter kept on raising demands for further payments of the amounts. In our considered view, the said demand letters are unlawful and bad in law. Further, on the very same ground of non-payment as per the demand raised, the promoter has terminated the agreement for sale. Therefore, we are of the considered view that the allotment cannot be cancelled on the ground when the promoter is not legally entitled to demand further payment,

without first executing and registering the agreement for sale. Therefore, the said termination letter dated 24.12.2018 and also dated 12.02.2019 are not legally sustainable.

38. Further, the promoter vide letter dated 12.02.2019 again communicated that the allotment is cancelled. The contents of the said allotment letter reproduced below:

> *"We have informed you many times regarding outstanding dues of above said Flat and Taxes by Demand Letters and Reminders but no reply from your side till today.*
>
> *We have received your last payment on 02.07.2018 and after that till today we have not received any payment. Company has decided to cancel your above said flat. Kindly contact our Accounts Department for your balance payment after deducting interest till date."*

39. As we have already observed that such a demand for further payments without registering the agreement for sale is unlawful and not binding on the allottee. It is also pertinent that the allottee replied to the said letter by its letter dated 11.03.2019. The said letter is also reproduced below:

> *"1.You are aware that, you are the promoter within the meaning of section 2(zk) of The Real Estate (Regulation and Development) Act, 2016 (for short hereinafter referred to as "the RERA") and my client being the flat purchaser is the allottee within the meaning of section 2 (d) of RERA.*
>
> *2. You are also aware that somewhere in the year, 2014 you have agreed to sale to my client the aforesaid subject flat for the total consideration of Rs. 35,05,000/- (Rupees*

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thirty-five lakhs five thousand only) and accordingly my client has paid a sum of Rs. 28,63,375/- (Rupees Twenty Eight Lakhs Sixty Three Thousand Three Hundred Seventy Five Only) i.e. more than 95% of the total consideration amount from time to time.

3. My client state that inspite of receipt of more than 95% of the total consideration you have failed and neglected to execute and register the agreement for sale being your statutory obligations as contemplated under the Maharashtra Ownership of Flats (Regulation of the Promotion, Construction, Sale, Management and Transfer) Act, 1963 ("the MOFA") and RERA.

4. On one hand you have failed and neglected to comply with your statutory obligation as envisaged under the MOFA wherein you have failed and neglected to execute and register the agreement for sale, you have also failed to specify the timeline on which you will be handing over the possession of the subject flat to my client and have further even failed to provide the complete details of the project as to when the same will be completed and on the other hand you vide your letter dated 12.02.2019 have illegally and unlawfully tried to cancel the said allotment. In fact in the said letter dated 12.02.2019 is dehost, illegal, bad in law and contrary to the provisions of RERA.

5. My client first and foremost call upon you to provide to my client the agreement for sale as per the provisions of RERA, Secondly specify the date on which you will

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handover the possession of the subject flat to my client, Thirdly to fix up the time for the execution and registration of agreement for sale of the subject flat and fourthly in order to show my client bonafide, my client with the present letter forward you the cheque of Rs.6,06,575/- (Rs. Six Lakhs Six thousand Five Hundred Seventy Five Only) being drawn on Union Bank Of India, having cheque no 157814 dated 11.03,2018 and towards the 99% Instalment demand by you and GST Rs. 1,44,789/- (Rs. One Lakh Forty Four Thousand Seven Hundred Eighty Nine Only) being drawn on Union Bank Of India, having cheque no 157815 dated 11.03.2018."

40. Thus, the allottee requested the promoter to specify the date on which the possession will be handed over, provide the copy of the draft agreement for sale, and fix up time for execution of the agreement for sale. Further, to show bonafides the allottee enclosed cheque of Rs.6,06,575/- towards the outstanding amounts as per the demand raised by the promoter and Rs.1,44,789/- towards GST. However, the promoter did not respond to the said letter.

41. The Hon'ble Supreme Court in the case of *Dr. Amit Arya v/s Kamleh Kumari* [Civil Appeal arising out of SLP (C) No.20091 of 2022 decided on 19.12.2025] in para 7 of the said judgement has held as under.

"7. Unquestionably, the power to extend the time granted within the decree for performance of its conditions can be extended on such terms as the Court may deem fit. However, it is matter of record that in this case no such

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extension was granted. However, such non-grant of extension of time cannot, in our view, be the end of the transaction. Taking such a view would be classic example of a hyper-technical approach which, this Court has observed, ought to be eschewed [see Ramankutty Gupta v/s Avara 1994 2 SCC 642]. We are supported in such a view by a recent order of this Court in Ram Lal v.s Jairnal Singh 2025 SCC OnLine SC 584, whereby it has been observed that, "the non-payment of balance sale consideration within the time period fixed by the trial Court does not amount to abandonment of the contract and consequent rescinding the same. The real test must be to see of the conduct of the plaintiff will amount to a positive refusal to complete his part of the contract."

In the present case, the allottee has expressed his readiness and willingness to perform its part of the contract in respect of the said flat by executing and registering the agreement for sale and payment of balance consideration. In the light of the above judgement, when there was positive conduct of the allottee to perform its contractual part, the termination of the allotment letter is not legally sustainable.

42. In view of the above discussion, we come to the conclusion that the cancellation letter dated 24.12.2018 and 12.02.2019 are illegal and hence liable to be set aside.

43. It is pertinent that the promoter cannot take advantage of its own wrong doing. The Hon'ble Supreme Court in the case of *Kusheshwar Prasad Singh V/s. State of Bihar and others* [*Supreme Court Civil Appeal No.7351 of 2000*] has held that:

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"It is settled principle of law that a man cannot be permitted to take undue and unfair advantage of his own wrong to gain favourable interpretation of law. It is sound principle that he, who prevents a thing from being done shall not avail himself of the non-performance he has occasioned. To put it differently, "a wrongdoer ought not to be permitted to make a profit out of his own wrong."

44. When the promoter committed wrong by not executing the agreement for sale, which bars the promoter from raising further demands for payments, whereas on the very same ground the promoter terminated the allotment letter, the appellant/promoter cannot take advantage of its wrong. On this count also the said cancellation of the said allotment vide letter dated 24.12.2018 and 12.02.2019 are illegal and liable to be set aside. We therefore do find that the direction of the Authority to set aside the cancellation of allotment legally sustainable. Accordingly, we answer the point no. in the negative.

45. It is pertinent that in the complaint the allottee has also prayed following directions, which the Authority has failed to adjudicate in the impugned order:

    a) Direction to the promoter to hand over possession and

    b) interest on account of delay in handing over of possession.

46. It is pertinent that the allotment letter is issued in the year 2014. The complaint is filed in July 2019. The occupation certificate has been issued on 24.05.2019. It is seen that more than 10 years of the allotment letter was issued and 6 years since the promoter promoter obtaining the occupation certificate, the respondent/allottee is out of possession despite of having made

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substantial payment of the consideration amount. In our view the Authority has not addressed in the impugned order prayers of directions to the promoter to hand over possession or direction to pay interest on delayed possession. At this stage when considerable time has passed since filing of the complaint in the year 2019, we are of the view that these reliefs can also be addressed and adjudicated finally in the appellate stage, instead of remanding the case to the Authority for adjudication of those reliefs sought in the complaint, by forcing on the parties another round of litigation.

47. Section 107 of Code of Civil Procedure talks about the powers of Appellate Court. Clause(a) of sub section (1) of Section 107 of C.P.C. empowers the Appellate Court to determine a case finally. Sub-section 2 of Section 107 of C.P.C. talks about the future powers of Appellate Court, and it lays down that the Appellate Court shall have the same powers and shall perform as nearly as may be the same duties as are conferred and imposed by this Code on courts of original jurisdiction in respect of suits instituted therein. Apart from this, Order 41 Rule 33 of Code of Civil Procedure lays down that the Appellate Court shall have the power to pass any decree and make any order which ought to have been passed or made and to pass or make such further or other decree or order as the case may require, and this power may be exercised by the Court notwithstanding that the appeal is as to part only of the decree and may be exercised in favour of all or any of the respondents or parties. It means the Appellate Court has wide powers under Section 107 and

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Order 41 Rule 33 of Code of Civil Procedure to adjudicate all issues and decide the matter on merits at appellate stage.

48. It is to be noted that the regulations are framed to carry out the purpose of the Act. Regulation 39 of Maharashtra Real Estate Regulatory Authority (General) Regulation, 2017 speaks about saving of inherent powers of the Authority. It reads as under;

> "*Nothing in the Regulations shall be deemed to limit or otherwise affect the inherent power of the Authority to make such orders as may be necessary for meeting the ends of justice or to prevent the abuse of the process of the Authority.*"

Similarly, Regulation 25 of Maharashtra Real Estate Appellate Tribunal, 2019 speaks about saving of inherent powers of the Tribunal;

> *"25(1) Nothing in these Regulations shall be deemed to limit or otherwise affect the inherent power of the Tribunal to make such orders as may be necessary for meeting the ends of justice or to prevent the abuse of the process of the Tribunal."*

It means the Regulatory Authority as well as the Appellate Tribunal have inherent powers under the Regulations framed under RERA Act, 2016 to pass such orders which are necessary to meet the ends of justice. In exercise of powers thereof in the instant case, it is in the interest of justice we deem it appropriate to adjudicate on the relief of possession and interest on account of delay in handing over of possession in this appeal, which remained unaddressed by the Authority in the impugned order.

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Instead of remanding the case back we are of the view the same need to adjudicated in this appeal in the interest of justice.

49. It is worthy to note that it is not in dispute that the Respondent have failed to handover possession of the subject flats to the Appellant by the date of possession as mentioned above. There is no material on record to show that the Appellant is responsible for the delay in completing the subject project. The ratio laid down by the Hon'ble Supreme Court in *M/s. Imperia Structures Ltd. Vs. Anil Patni & Ors.* [in Civil Appeal No.3581-3590 of 20201 is that-

> " *In terms of Section 18 of the RERA Act, if a promoter falls to complete or is unable to give possession of an apartment duly completed by the date specified in the agreement, the Promoter would be liable on demand, to return the amount received by him in respect of that apartment if the allottee wishes to withdraw from the project. Such right of an allottee is specifically made "without prejudice to any other remedy available to him". The right so given to the allottee is unqualified and if availed, the money deposited by the allottee has to be refunded with interest at such rate as may be prescribed. The proviso to Section 1B(1) contemplates a situation where the allottee does not intend to withdraw from the Project. In that case he is entitled to and must be paid interest for every month of delay till the handing over of the possession. It is upto the allottee to proceed either under Section 1B(1) or under proviso to Section 1B(1)."*

50. While explaining the scope of Section 18 of RERA, the Hon'ble Supreme Court in M/s. *Newtech Promoter and Developers Pvt. Ltd. V/s. State of Uttar Pradesh* [2021 SCC Online 10441 dated 11 November, 2021 held that;

> *"Para 25. The unqualified right of the allottee to seek refund referred under Section 1B(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottee, if the promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the allottee/home buyer, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act with the proviso that if the allottee does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed."*

51. The due date as per the allotment letter is 31.12.2017. The occupation certificate has been obtained by the promoter on 24.05.2019. This demonstrates that the promoter has failed to hand over possession of the flat by the due date of possession. The delay in handing over of possession of flat is entirely on the

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promoter. Not having registering and executing the agreement for sale the allottee cannot be faulted for delay in possession.

52. Section 18 of RERA Act, 2016 spells out consequences that if promoter fails to complete the or unable to give possession of an apartment by the dates specified in the allotment letter, the allottee holds an unqualified right to seek interest on delayed possession at such rate as may be prescribed in this behalf. Therefore, we are of the view that the respondent is entitled to receive interest under Section 18 of the RERA Act, 2016 on account of delay in possession till the possession is handed over to the allottee.

53. It is not in dispute that the promoter has obtained occupation certificate covering the said flat on 24.05.2019 and since then the allottee for more than 7 years is out of possession. We are of the view that the respondent is entitled to possession upon the payment of outstanding consideration, if any, without any interest for delayed payment.

54. However, the moot question that arises for consideration is whether the entitlement to claim interest on account of delay in possession and direction to hand over possession can be given in the appeal filed by the appellant/promoter, in absence of cross appeal or cross objections filed by the respondent/allottee.

55. In this regard it would be apt to refer to provision of Order-41 Rule-33 of the Code of Civil Procedure. The said provision is reproduced below.

> *"0-41 R-33 Power of Court of Appeal-The Appellate Court shall have power to pass any decree and make any order which ought to have been passed or made and to pass or*

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make such further or other decree or order as the case may require, and this power may be exercised by the Court notwithstanding that the appeal is as to part only of the decree and 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, [and may, where there have been decrees in cross-suits or where two or more decrees are passed in one suit, be exercised in respect of all or any of the decrees, although an appeal may not have been filed against such decrees]'

56. As per the said provision the Appellate Court shall have power to pass any decree and make any order which ought to have been passed or made to pass or make such further or other decree or order, this power may be exercised by the Appellate Court notwithstanding that the appeal is as to part only of the decree and 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 objections. We therefore exercise the above power in the interest of justice, especially when the allotment letter is issued in the year 2014 and the occupation certificate is obtained in the year 2019.

57. In view of the discussion above, we pass the following order.

ORDER

1. The captioned Appeal No.AT006000000113946 of 2022 in complaint no. CC006000000100233 is dismissed with further following directions.
    i) The appellant/promoter is directed to execute and register the agreement for sale in terms of the

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allotment letter dated 31.12.2014 with due date of possession as 31.12.2017, within 30 days of this order.

ii) The appellant/promoter is directed to hand over possession of the subject flat within 30 days upon payment of balance consideration amount of Rs.6,41,625/- with applicable taxes without charging interest on delay in payment.

iii) Further, the appellant/promoter is also directed to execute sale deed within 30 days of payment of balance consideration amount at the cost of the promoter.

iv) The promoter is directed to pay interest on the amount of Rs.28,63,375/- amount paid by the respondent towards consideration of the said flat to the promoter with effect from 01.01.2018 till the date of handing over of said flat with occupation certificate to the respondent.

2. The appellant/promoter shall pay cost of Rs.2,00,000/- (Rupees Two Lakhs Only) to the respondent/allottee.
3. Copy of this order be communicated to the Authority and the respective parties as per Section 44(4) of RERA Act, 2016.
4. Accordingly, the appeal stands disposed of in above terms.

(SHRIKANT M. DESHPANDE) **(S.S. SHINDE, J.)**

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