BEFORE THE MAHARASHTRA REAL ESTATE APPELLATE TRIBUNAL MUMBAI

Appeal No. AT006000000053447 of 2021

IN

Complaint No. CC006000000141071

1. **Deepak Jai Prakash Rai**)
2. **Swatantra Jai Prakash Rai**)
203, Lilac, Nahar Amrit Shakti)
Chandivali, Andheri (East))
Mumbai - 400072.) **... APPELLANTS**

-Versus-

1. **Ricardo Construction Pvt Ltd**)
(a group company of "Shapoorji)
Pallonji"))
Shapoorji Pallonji Centre 41/44,)
Minoo Desai Marg, Colaba,)
Mumbai – 400005.)

2. **Nirmal Developers**)
(Nirmal Lifestyle Ltd))
3rd Floor, Multiplex Building, LBS Marg)
Mulund (West), Mumbai – 400080.) **... RESPONDENTS**

Adv. Satish Dedhia for Appellants
Adv. Rubin Vakil for Respondent No.1

CORAM : SHRI SHRIRAM R. JAGTAP, MEMBER (J), &
DR. RAJAGOPAL DEVARA, MEMBER (A)

RESERVED ON : 05th MAY 2026
PRONOUNCED ON : 08th MAY 2026

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(THROUGH VIDEO CONFERENCE)

JUDGMENT

[PER : DR. RAJAGOPAL DEVARA, MEMBER (A)]

1. The captioned appeal takes exception to the impugned order dated 15.09.2021 passed by the learned Chairperson, Maharashtra Real Estate Regulatory Authority (for short "the Authority"), in Complaint No. CC006000000141071 filed by the Appellants/Allottees, wherein the learned Chairperson disposed of the complaint with directions to the present Promoter to comply with the interim order dated 04.09.2020.

2. For the sake of convenience, "Appellants" will hereinafter be referred to as "Allottees", and "Respondents", will hereinafter be referred to as the "Promoters".

3. The factual matrix of the matter is that the Appellants booked flat No.3406, admeasuring 672.43 sq. ft. carpet area situated on 34th floor, Wing B of building "Match Point" in the real estate project known as "US Open" located in village Nahur, Mumbai Suburban District, Mumbai for a total consideration amount of Rs.1,16,37,880/- on 22.06.2013. The Appellants, through various transactions as and when demanded, made a payment of Rs.78,96,348/- to the Respondents. An Allotment Letter dated 27.06.2013 was executed between the parties wherein details of the

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flat, area, consideration amount, part payment received and payment schedule are clearly recorded. It is an admitted fact that the Allottees have paid a sum of Rs.78,96,348, which is approximately 68% of the consideration amount between 27.06.2013 and 26.02.2016. As per the understanding between the parties, possession of the said flat was to be handed over by December 2017. However, the Respondent failed to hand over possession of the said flat on the promised date of possession which constrained Appellants to file complaint with the Authority.

4. In the meantime the Respondent No.2 defaulted in repayment of loans availed from HDFC, as a result HDFC classified the loan as Non-performing Asset (NPA) and initiated securitization proceedings against Respondent No.2. Thereafter, deed of conveyance came to be executed between Respondent No.1 and 2, whereby the project was taken over by Respondent No.1 with a view to completing construction of the said project, handing over possession of flats to flat purchasers and to repay outstanding dues of financial institutions.

5. The Appellants/Allottees submitted that M/s. Ricardo Construction Private Limited has taken over the said project and Respondent No.1 is presently reflected as the sole Promoter on MahaRERA website. As a result, Respondent No.2 ceased to be a Promoter. The

MahaRERA webpage, wherein the said project is registered, reflects the name of Respondent No.1 as Sole Promoter of the project. The transfer of the said real estate project has been duly affected in accordance with law, including grant of project registration under Section 5 of RERA Act, 2016.

6. The Appellants/Allottees further submitted that Appellants were not parties to the documents executed inter se between the Respondents, and therefore, any such unilateral arrangement cannot bind them to such arrangement or alter the rights and obligations without the consent of the Appellants/Allottees. In the absence of Appellants approval, no arrangement that alters the rights and obligations of Appellants/Allottees can be made and any such arrangement is not binding on the Appellants. It was submitted that the Respondent No.1 is compelling the Complainants/Allottees to execute a unilateral 'Letter of Understanding' (LOU) which amounts to an unfair and illegal practice. The Allottees cited Hon'ble High Court judgment in case of ***Lakeview Developers*** wherein it is held that "*statutory obligation would override the contractual clauses in the agreement.*" It is further submitted that the Association of Allottees has given consent to the LOU. Though the Association of Allottees has allegedly consented to such

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arrangement, the Appellants have not given any consent nor accepted compensation strategy formula proposed therein.

7. The Appellants/Allottees further submitted that the Respondent No.1, being the successor Promoter, is liable under Section 15 r/w Section 18 of RERA Act for all obligations of Respondent No.2 including payment of interest for delayed possession. The letter dated 28.06.2019 recorded that the transfer of the project to the present Promoter was done based on mutual consent and not on account of any order and on completion of transfer the present Promoter would become Promoter, thereby admitting that the Appellants are the 'Allottees' of the project. Respondent No.1 acquired the project by Deed of Conveyance dated 29.06.2019, wherein *Annexure B* which contains the list of Allottees, has mentioned the Appellants as Allottees of the subject flat. Therefore, the Respondent No.1 is liable for all liabilities, including payment of interest for delayed possession, refund of consideration amount under Section 18 of RERA Act. In support of the above, the Appellants cited the judgment of Hon'ble Bombay High Court in case of ***Samrudhhi Developers Vs. Kiran Vasant Verekar [Second Appeal (ST) 27914 of 2018]*** and quoted Para Nos. 41, 42, 44, 48, 52 and 60 of the said judgment.

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8. The Appellants/Allottees further submitted that learned Chairperson in the impugned order clearly mentioned that the date of possession was December 2017, based on a letter dated 12.08.2015 in which the Respondent No.1 mentioned that "*the possession of the said premises will be given by December 2017, subject however to grace period of six month, in case of delayed possession, the company shall compensate by way of giving compensation from 1.07.2018 onwards till the date of possession of the said premises at Rs.35,000/- per month as compensation*". Accordingly, the Appellants/Allottees claimed interest on the part consideration amount paid from the dates of payment till handing over the possession of the said flat.

9. Per contra, the Respondent No.1 submitted that the said letter of allotment did not stipulate a definite timeline for completion or delivery of possession. However, execution of a formal Agreement for Sale under the provisions of the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act (MOFA), 1963 was contemplated, but no such agreement was executed by and between the parties.

10. The Respondent No.1 further submitted that the appeal is not maintainable as the reliefs sought are contradictory in nature. The Appellants/Allottees, in the present appeal have elected to continue

in the said project and cannot simultaneously challenge the impugned order.

11. The Respondent No.1 further submitted that no cause of action survives in favour of the Appellants for the following reasons, namely

(1) The said project was initially registered by erstwhile Promoter. Thereafter, the said project has been taken over by the Respondent No.1, at the request of consortium of financial creditors of the erstwhile Promoter.

(2) The Hon'ble Authority passed an interim order dated 4.09.2020 wherein seven directions were issued keeping in mind the interest of all stakeholders of the project including the Appellants and Associates of Allottees. The said interim order was confirmed by the final order dated 8.09.2021.

(3) Following the interim order various negotiations and discussions took place between the Respondent No.1 and Association of Allottees, which culminated into consent letter, *inter alia* giving consent for extension of registration of the said project and revised date for handover of possession.

(4) The terms of the said Consent Letter provided for the following:-

a. Irrevocable Consent by the allottee for extension of the validity of registration of the said Project;

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b. *A revised date of handover of the subject unit/flat being 39 months from the date of receipt of revised RERA Project extension certificate;*

c. *An agreement between the allottee and Respondent No. 1 that the terms of the Agreement for Sale / Allotment Letter inconsistent with the terms stated in the said Consent Letter qua the delivery date and interest / compensation shall stand superseded by the terms of the Consent Letter;*

d. *An agreement between the allottee and Respondent No. 1 for one time compensation to each allottee by issuance of a credit note;*

After approval of the consent letter by the Association, more than 2/3rd of the total Allottees in the said project have executed consent letters in favour of Respondent No.1. By the said consent letters, the Allottees have granted consent to the Promoter for- (i) takeover of the said project as Promoter. (ii) extension of registration of the subject project upto 39 months from the date of issuance of revised RERA project registration. (iii) revision date of handover of units to 39 months from the date of issuance of revised RERA project registration. (iv) accepting Rs.4,00,000/- (2BHK) or Rs.5,25,000/- (3BHK) as one-time compensation for settlement of all claims in the

form of a credit note to be adjusted against payment of last instalment.

12. The Respondent No.1 further submitted that once consent of more than 2/3rd of Allottees is obtained under Section 15 of the Act, the same is binding on all Allottees, including the non-consenting minority. If Section 15 of the Act is interpreted in a manner where, despite consent by 2/3rd Allottees, an individual Allottee/Allottees is/are permitted to stand outside the process and claim to be not bound thereby, the entire mechanism of Section 15 would be rendered *otiose* and unworkable. The intent behind Section 15 of the Act is to ensure completion of a project upon its transfer by one Promoter to another. Therefore, it would be unfair and unreasonable to those Allottees that act in the large interest of all Allottees including the non-consenting Allottees. Though the Allottees have not formally executed the said consent letter, they are legally bound by the decision of the said Association of Allottees, in view of the said interim order dated 04.09.2020. Accordingly, the Appellants are bound by the consent letters and are entitled only to compensation provided therein.

13. The Respondent No.1 further submitted that the impugned order fulfils the objectives of the Act and balances the rights of all stakeholders and thus no interference is warranted in the said order.

The Hon'ble Authority has rightly directed cooperation from all stakeholders in view of the exceptional circumstances under which Respondent No.1 has undertaken the project.

14. The Respondent No.1 further submitted that the present appeal is filed with malafide intent and is liable to be dismissed with costs. The Appellants/Allottees on one hand, seek withdrawal and refund under Section 18 of RERA Act, and on the other hand claimed relief of interest on the amount paid from the date of payment till possession. The Appellants changing stance makes it clear that they are merely seeking to take advantage of the present circumstances and not keeping in mind the benefit of all stakeholders. The Appellants are merely attempting to extract money from Respondent No.1 under any pretext. Therefore, the Appellants cannot be allowed to approbate and reprobate.

15. We have heard arguments of Advocate Satish Dedhia for Appellants/Allottees and Advocate Rubin Vakil for Respondent No.1. Appeal proceeded *ex-parte* against Respondent No.2. The submissions advanced by the respective parties are nothing but reiteration of the contents of complaint, affidavit in reply, appeal memo and written submissions.

16. Advocate Satish Dedhia appearing for Appellants placed his reliance on following citations:

i. *Lakeview Developers & Ors. Vs. Eternia CHS Ltd & Ors. [Suit No. 54/2014] decided by Hon'ble Bombay High Court.*

ii. *The Bombay Dyeing & Manufacturing Company Limited [Second Appeal (ST) No.4996/2020 with Second Appeal No.(ST) No.4931/2020] decided by Hon'ble Bombay High Court.*

III. *M/s. Newtech Promoters and Developers Pvt. Ltd. Vs. State of Up & Ors. Etc. [in Civil Appeal No(s). 6745-6749/2021] (Arising out of SLP(Civil) No(s).3711-3715/2021) decided by Hon'ble Supreme Court of India.*

IV. *M/s. Samrudhhi Developers Vs. Kiran Vasant Verekar [Second Appeal (ST) No. 27914/2018 with Civil Application No.1313/2018 and Other Appeals] decided by Hon'ble Bombay High Court on 17.09.2019.*

V. *Mangal Buildhome Pvt. Ltd. Vs. Ramasubramanian R. Nadar & Ors [Appeal No. AT006000000053504 and Other Appeals] decided by Maharashtra Real Estate Appellate Tribunal, Mumbai.*

VI. *Mannalal Khetan ETC Vs. Kedar Nath Khetan & Ors. [1977 AIR 536, 1977 SCC (2) 190] decided by Hon'ble Supreme Court of India.*

VII. *Union Bank of India, Jaipur vs. Rajasthan Real Estate Regulatory Authority & Ors [DB Civil Writ Petition No. 13688/2021 & Other] decided by Hon'ble Rajasthan High Court on 14.12.2021.*

VIII. *Union Bank of India Vs. Rajasthan Real Estate Regulatory Authority & Ors [SLP No. 1861-1871/2022] decided by Hon'ble Supreme Court of India on 14.02.2022.*

IX. *Forefront Private Limited (formerly known as Forefront Property Developers Pvt. Ltd.) Vs. Mrs. Rujuta Mandar Thatte & Anr. [Second Appeal No. 330/2021] decided by Hon'ble Bombay High Court on 28.02.2023.*

17. Advocate Rubin Vakil, appearing for Respondent No.1 placed his reliance on the following citations:

i. *Bengal Secretariate Cooperative Land Mortgage Bank and Housing Society Ltd Vs. Aloke Kumar and Anr. (Civil Appeal No.7261/2022, (Arising out of S.L.P. (Civil) No. 506/2020) decided by Hon'ble Supreme Court of India on 13.10.2022.*

ii. *Girish Mulchand Mehta & Anr. Vs. Mahesh S. Mehta & Anr. (2010 (2) Mh.L.J.) decided on 30.07.2009.*

iii. *Central Bank of India, Ltd. Amritsar Vs. Hartford Fire Insurance Co. Ltd. [1964 SCC Online SC 239 : AIR 1965 SC 1288 : (1965) 1SCJ 498 : (1965) 35 Comp Cas 378] decided by Hon'ble Supreme Court of India on 11.09.1964.*

iv. *Lalappa Lingappa and Ors. Vs. Laxmi Vishnu Textile Mills Ltd. [(1981) 2 Supreme Court Cases 238, Civil Appeal Nos.436 od 1980) decided by Hon'ble Supreme Court of India on 11.02.1981.*

v. *Joginder Pal Vs. Naval Kishore Behal [(2002) 5 Supreme Court cases 397, Civil Appeal No.3494/2002] decided by Hon'ble Supreme Court of India on 10.05.2002.*

vi. *Dr. Rajkaran Singh & Anr. Vs. Nirmal Lifestyle Ltd. [in Complaint No.CC006000000194841 & Other Complaints] decided by Real Estate Regulatory Authority, Mumbai on 28.08.2025.*

vii. *Jeba Anand Devman Nadar & Anr. Vs. Ricardo Construction Pvt. Ltd. & Ors. [in Complaint No.CC006000000194025 & Other Complaints] decided by Real Estate Regulatory Authority, Mumbai on 28.08.2025.*

18. After considering the submissions advanced by Advocate Satish Dedhia for Appellants/Allottees and Advocate Rubin Vakil for Respondent No.1, pleadings of the parties, impugned order and material placed on record, the following points arise for our determination, and we have recorded our findings thereupon for the reasons to follow:

Sr. Nos.	Points	Findings
1.	Whether the impugned order dated 15.09.2021, passed by the learned Chairperson, MahaRERA, in the complaint filed by the Allottee/Appellant, warrants interference in the captioned appeal?	In the Affirmative
2.	Whether the Appellants/Allottees are entitled to relief sought in the appeal?	In the Affirmative
3.	What Order?	As per final Order

REASONS

19. Upon careful examination of the pleadings of the parties, material on record and submissions advanced by the learned Counsel appearing for the respective parties, it is clearly revealed that the Allottees had purchased subject flat from Nirmal Developers i.e. Respondent No.2 and Allotment Letter came to be executed

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between Allottees and Respondent No.2. As per the said letter of allotment, Respondent No.2 had undertaken to handover possession of the subject flat by December 2017. It is not in dispute that the Allottees have paid approximately 68% of the consideration amount up to February 2016.

20. It is worthy to note that M/s Ricardo Construction Pvt Ltd i.e. Respondent No.1 has taken over the said project from Respondent No.2 by virtue of Deed of Conveyance dated 29.06.2019. Pursuant thereto, Respondent No.1 registered the project and stepped in as the Promoter of the said project, which was communicated to the Appellants/Allottees by letter dated 28.06.2019 by Respondent No.2. Thus, Respondent No.1 has taken over the said real estate project in all respects and undertaken the obligation to complete the construction and handover the possession to the Allottees. In other words, Respondent No.1 has stepped into the shoes of Respondent No.2 in terms of Section 15 of RERA Act, 2016, which governs transfer of real estate projects to new developer. Section 15 of RERA Act, 2016 reads as follow:

> *"15(1) The promoter shall not transfer or assign his majority rights and liabilities in respect of a real estate project to a third party without obtaining prior written consent from two-third allottees, except the promoter, and without the prior written approval of the Authority: Provided that such transfer or assignment shall not affect the allotment or sale of the apartments, plots or buildings as the case may be, in the real estate project made by the erstwhile promoter. Explanation.—For the purpose of this sub-section, the*

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allottee, irrespective of the number of apartments or plots, as the case may be, booked by him or booked in the name of his family, or in the case of other persons such as companies or firms or any association of individuals, by whatever name called, booked in its name or booked in the name of its associated entities or related enterprises, shall be considered as one allottee only.
(2) On the transfer or assignment being permitted by the allottees and the Authority under sub-section (1), the intending promoter shall be required to independently comply with all the pending obligations under the provisions of this Act or the rules and regulations made thereunder, and the pending obligations as per the agreement for sale entered into by the erstwhile promoter with the allottees:"

21. In the present case, it is not in dispute that the prior consent of 2/3rd of Allottees and approval of the Authority was obtained for such transfer. In view of Section 15(2) of the Act, the transferee Promoter i.e. Respondent No.1 is required to independently comply with all the pending obligations under the provisions of this Act, Rules and Regulations made thereunder, as well as obligations arising out of the agreement for sale entered by the erstwhile Promoter with the Allottees. It is worthy to note that the unequivocal rights of the Allottees under Section 18 are protected under Section 15(2) of RERA Act, in case of transfer of the project to a third party.

22. It is pertinent to note that the transfer or assignment under the provisions of Section 15 does not result in, *ipso facto,* extending the time for completion of the real estate project. Incumbent Promoter i.e. Respondent No.1 shall be required to honor the pending obligations of the erstwhile Promoter and, in case of default or delay,

shall be liable to the consequences thereof. In the present case Respondent No.2 had promised to complete the project and deliver possession of the said flat by December 2017. So it is not in dispute that the Respondent No.1 and Respondent No.2 did not adhere to the commitment and failed to handover possession of the subject flats to Allottees on the agreed date. Consequently, upon execution of the Deed of Conveyance dated 29.06.2019, the Respondent No.1 became liable to fulfil all pending obligations of Respondent No.2 including those arising out of delay in handing over possession of the said flat.

23. The Respondent No.1 contended that the interim order dated 4.09.2020, the final order dated 8.09.2021 and the draft consent letter, collectively stipulate the rights and obligations of the parties. While giving consent letter, the Allottees have agreed for one time compensation as submitted in the letter of consent. The Allottees are bound by the terms of such consent letters including acceptance of one-time compensation. We do not find merit in the contentions of Respondent No.1. The statutory rights of Allottees cannot be curtailed by such arrangements made through Letter of Understanding. Section 8 of MOFA Act speaks about the refund of amount paid with interest for failure to give possession within specified time or further time allowed. Section 8 of MOFA lays down

that "if *(a) the promoter fails to give possession in accordance with the terms of his agreement of a flat duly completed by the date specified, or any further date or dates agreed to by the parties, or (b) the promoter for reasons beyond his control and of his agents, is unable to give possession of the flat by the date specified, or the further agreed date and a period of three months thereafter, or a further period of three months if those reasons still exist, then, in any such case, the promoter shall be liable on demand (but without prejudice to any other remedies to which he may be liable) to refund the amounts already received by him in respect of the flat (with simple interest at nine per cent. per annum from the date he received the sums till the date the amounts and interest thereon is refunded), and the amounts and the interest shall be a charge on the land and the construction if any thereon in which the flat is or was to be constructed, to the extent of the amount due, but subject to any prior encumbrances."*

24. Section 18 of RERA Act spells out consequences if the promoter fails to complete or is unable to give possession of flat or apartment either in terms of agreement for sale or to complete the project by the date specified therein on account of discontinuance of his business as a developer on account of suspension or revocation of registration or for any other reason, the allottee/ home buyer holds

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unqualified right to seek interest on the paid amount by him at such rate as may be prescribed in this behalf or to seek refund of amount with interest if he wishes to withdraw from the project. It is now settled law that if delay is not attributable to the allottees/ home buyers, they are entitled to claim relief provided under Section 18 of RERA Act. It has been observed by the Hon'ble Supreme Court in a case of

M/s. Imperia Structures Ltd. Vs. Anil Patni & Ors. [in Civil Appeal No. 3581-3590 of 2020] that-

> *"In terms of Section 18 of the RERA Act, if a promoter fails 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 18(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 18(1) or under proviso to Section 18(1)."*

25. Even if force majeure factors as demonstrated by the promoter are given some consideration, we are of the view that promoter is not entitled to get benefit of the same for the reasons that the same are not attributable to the allottees nor is the case of promoter that allottees in any way caused delay in handing over the possession.

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While explaining scope of section 18 of RERA Act 2016 the Hon'ble Supreme Court in a case of **M/s Newtech Promoter and Developers Pvt. Ltd. V/s. State of Uttar Pradesh** [2021 SCC Online 1044] dated 11 November, 2021 Civil Appeal Nos. 5745, 6749 and 6750 to 6757 of 2021]- has held in para 25 as under:

> *"Para 25. The unqualified right of the allottee to seek refund referred under Section 18(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.*

26. The Respondent No.1 further contended that the Appellants/Allottees cannot be allowed to approbate and reprobate by seeking inconsistent and contradictory reliefs. We do not find merit in the contentions of the Respondent No.1. The Appellants/Allottees, having waited for considerable period from 2013 till 2021, without receiving possession, are within their rights to elect to continue in the incomplete project and demand interest for delayed possession on the actual amount paid. Perusal of the complaint filed by the Allottees and the impugned order, clearly

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revealed that the Allottees sought interest for the delay in delivery of possession of the said flat. The learned Chairperson in the impugned order directed the Allottees to continue in the project and cooperate with the new Promoter i.e. Respondent No.1 and Association of Allottees in early completion of the project. The Allottees having exercised the option to continue in the project sought interest for delay in delivery of possession of the said flat. Section 18 of RERA Act, 2016 clearly provides the option either to continue in the project or to exit and seek refund. Exercise of such option by Allottees cannot be termed as inconsistent and contradictory.

27. In view of the foregoing discussion, we are of the view that the Promoter has failed to handover the possession of subject flat to Allottees within the stipulated period and has thereby violated provisions of Section 18 of RERA Act. Therefore, the impugned order warrants interference in the captioned appeal. We answer point Nos. 1 to 3 accordingly. Consequently, we proceed to pass the following order.

ORDER

1. Appeal No. AT006000000053447 of 2021 is partly allowed.
2. The Respondent No.1 is directed to pay interest on part consideration amount of Rs.78,96,348/- paid by Allottees, from 1.07.2018 till date of handing over possession of the

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said flat, at the rate of State Bank of India's Marginal Cost of Lending Rate (MCLR) + 2% to the Allottees.

3. The Respondent No.1 is directed to pay cost of Rs.20,000/- to the Appellants/Allottees.

4. Copy of this order be communicated to the learned Authority and respective parties as per section 44(4) of RERA Act 2016.

(DR. RAJAGOPAL DEVARA) **(SHRIRAM. R. JAGTAP)**

V. K. Bhople_