BEFORE THE MAHARASHTRA REAL ESTATE

APPELLATE TRIBUNAL, MUMBAI

Appeal No. AT006000000063823 of 2022
In
Complaint No. CC006000000023946 of 2018

Mr. Narendra Ramchand Ochani]
And
Ms. Jyoti Narendra Ochani]
13/346, Jasmine, New M.I.G. Colony]
Bandra (East), Mumbai-400 051.] ... Appellants.

Versus

Veena Realcon Private Ltd.]
Veena Sarang, Opp. Sachin]
Tendulkar Gymkhana, Saibaba Nagar]
Extension Road, Borivali (West),]
Mumbai-400 092.] ... Respondent.

Adv. Mr. Ram Dayal for appellant.
None present for Respondent.

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

RESERVED ON : 29th April, 2026

PRONOUNCED ON : 6th May, 2026

(THROUGH VIDEO CONFERENCING)

JUDGEMENT

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

1. The captioned appeal arises from the order dated 26.04.2022 passed by the learned Chairperson, Maharashtra Real Estate Regulatory Authority (for short "the Authority") in the captioned complaint No.CC00600000023946 filed by the appellants herein/allottees.

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2. The respondent is the promoter of the project in the name and style as "Veena Serenity" having MahaRERA project Registration No. P51900000016.
3. For the sake of convenience, the appellants would be hereinafter referred to as "complainants/allottees" and respondent as "promoter" respectively.
4. The brief facts, gathered from the pleadings, documents on record, and the impugned order reveal that the appellants purchased a flat bearing no.1403 on 14th floor of C-Wing of the promoter's said project vide agreement for sale dated 22.03.2015 for the total consideration of Rs.1,58,75,000/- The appellants had opted subvention scheme of 10:80:10 provided under the said agreement for sale. The due date of possession as per the said agreement for sale is 22.09.2017 i.e. 30 months from the date of agreement for sale. The appellants have paid Rs.1,43,13,215/- towards consideration of the said flat, as per the details below:

Sr. No.	Date of payment	Amount Paid (Rs.)	Remarks
1	20.11.2014	Rs.5,00,000/-	Towards consideration
2	15.12.2014	Rs.11,00,000/-	Towards consideration
3	24.07.2015	Rs. 3,00,000/-	Towards consideration
4	29.07.2015	Rs.12,75,000/-	Towards consideration
5	31.10.2015	Rs.31,75,000/-	Towards consideration
6	29.04.2016	Rs. 16,000/-	TDS
7	29.06.2016	Rs.25,24,000/-	Towards consideration

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8	30.11.2016	Rs.28,57,580/-	Towards consideration
9	29.03.2017	Rs.24,40,000/-	Towards consideration
10	28.02.2018	Rs. 1,25,715/-	TDS
	Total	Rs.1,43,13,215/-	

5. The appellants have also paid stamp duty, service tax etc. as detailed below:

Sr. No.	Date of payment	Amount Paid (Rs.)	Remarks
1	14.02.2015	Rs.7,93,800/-	Stamp duty
2	14.02.2015	Rs.5,88,645/-	Service tax
3	01.03.2015	Rs.1,58,750/-	MVAT
4	01.03.2015	Rs.30,000/-	Registration charges
	Total	Rs.15,71,195/-	

6. The promoter obtained part occupation certificate dated 12.10.2018 for the flats up to 12th floor for residence use for C-Wing of the building. The said part occupation certificate did not however cover the subject flat of the appellants, which is on the 14th floor of C-Wing. The promoter offered fit out possession on 26.03.2018 to the appellants without occupation certificate for the subject flat, which the appellants refused to take. Thereafter, the promoter obtained full occupation certificate for the project on 05.04.2021, which covers the subject flat of the appellants.
7. Due to the failure to hand over possession of the said flat by the due date of possession as per the agreement for sale, the appellants filed the captioned complaint before the Authority on

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30.03.2018 seeking relief of possession and interest on account of delay in possession. It transpires from the record that the Authority passed the order dated 23.05.2018 directing the promoter to hand over possession of the said flat with interest. The appellants challenged the said order before the Appellant Tribunal. This Tribunal set aside the said order and remanded back the matter to the Authority by its order dated 28.01.2019 read with review order dated 04.02.2019. Thereafter, the complaint was heard afresh by the Authority. The Authority by its interim order dated 25.09.2019 allowed the appellants to change of reliefs from possession of the flat with interest to withdrawal from the project under section 18(1) of the Real Estate (Regulation and Development) Act, 2016 (for short 'the RERA Act, 2016'). Thus, the appellants have thus finally sought relief of refund of paid amount with interest and compensation under Section 18 of the RERA Act, 2016.

8. The promoter appeared in the said complaint and remonstrated the complaint by filing reply. The promoter contended that the said project was developed on the property which belong to MHADA and NOC for redevelopment was obtained from MHADA on 17.06.2014. The building was ready in all respects in January 2018 and the promoter applied for occupation certificate before MHADA. However, there was dispute between MHADA and MCGM as to who will issue approvals as the planning authority. It was only by notification dated 23.05.2018 the said issued was clarified by the State Government that MHADA shall be the planning authority and all approvals shall be given by the MHADA. The promoter contended that there

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was delay due to above dispute between the MHADA and MCGM, which was beyond the control of the promoter. The promoter further contended that it offered fit out possession on 26.03.2018 and had also demanded further payment of Rs.15,61,785/- as per the agreement for sale.

9. With regard to payment of pre-EMI as per the Tripartite agreement, the promoter submitted that as per the tri-partite agreement under the subvention scheme, it was clearly stated that the promoter agreed to pay pre-EMI for a period of 24 months or intimation of fit out possession, whichever is earlier. A letter dated 26.05.2017 was addressed to the complainants stating that liability to pay pre-EMI will be ending on 26.07.2017.
10. The promoter further contended that the part occupation certificate up to 12th floor was obtained by the promoter on 12.10.2018 and the full occupation certificate on 05.04.2021. With these submissions, the promoter prayed to dismiss the complaint.
11. After hearing the parties, the Authority passed the impugned order. In the impugned order the Authority observed that as contended by the promoter there was delay in completing the construction on account of dispute between the MHADA and MCGM as to who will the planning authority. This was clarified by the State Government Notification dated 23.05.2018. Therefore, the delay in construction cannot be solely attributed to the said dispute since the promoter offered fit out possession on 26.03.2018 whereas the due date of possession as per the agreement for sale is 22.07.2017. Further, the fit-out possession

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without occupation certificate is not lawful possession. Full occupation certificate covering the subject flat is obtained only on 05.04.2021. Hence, the complaints are entitled to exit from the project seeking refund of the paid amount along with interest under Section 18 of the RERA Act, 2016.

12. However, the Authority observed that the interest on refund amount will be from 23.09.2017 i.e. the date of default in possession till 04.04.2021 i.e. the date of obtaining of full occupation certificate and the interest amount shall not be from the date of respective payments because the complaints had earlier decided to stay in the said project despite the delay and it is only subsequently decided to exit. Hence, the Authority can not make withdrawal from the project more lucrative than continuing with the project and thereby jeopardize the rights of other allottees who have chosen to stay in the project.
13. The Authority further observed that with regard to the payment of interest, the promoter is entitled to claim benefit of moratorium period as mentioned in the Notifications/Orders No.13, 14 and 21 dated 21.04.2020, 18.05.2020 and 06.08.2021 respectively issued by the MahaRERA. The said moratorium period shall be deducted from the total period for which the interest is payable.
14. With these observations the Authority passed the impugned order. The operative part of the impugned order is given below:

> *"a. The Complainant is entitled to refund of the amounts paid by him along-with interest from 23.09.2017 till 04.04.2021 at the rate as prescribed under Rule 18 of the Maharashtra Real Estate (Regulation and Development)*

(Registration of Real Estate Projects, Registration of Real Estate Agents, Rate of Interest and Disclosures on Website) Rules 2017 subject to deductions of moratorium period as mentioned in para No.17 hereinabove and also subject to the closure of the tripartite loan agreement as mentioned in para No. 16 hereinabove. The amounts of refund and the interest thereupon shall be paid by the Respondents to the Complainant in six (6) equal monthly instalments starting from 01.07.2022. Monthly instalments have been allowed to the Respondents as the Complainant has changed the reliefs from just interest for delay to refund with interest midway during the pendency of the complaint. This is to ensure resale of the apartment to a new prospective buyer. However, it is further directed that in case the said apartment is resold to any new prospective buyer during the course of refund, then the repayment of all the balance monies as aforesaid shall be paid in one instalment within 30 days from the execution of the resale agreement for the said apartment.

b. Needless to say, that both the Respondents and DHFL shall endeavour in every way to ensure an amicable closure of the tripartite loan agreement, and the Complainant should co-operate so that the said apartment be released from the mortgage/charge to enable the Respondents to sell it further

c. No order as to cost.

15. Aggrieved by the impugned order, the appellants have filed the captioned appeal on the grounds set out in the memorandum of appeal seeking following reliefs:

    i) Set aside the impugned order dated 26.04.2022,

    ii) Allow the appellants to withdraw from the project and direction to the promoter to refund principal amount of Rs.1,43,13,215/- along with interest from the date of respective payments till the said amount is realized to the appellant.

    iii) Pending the realization of the payment, directions that the charge of the said amount shall remain on the subject flat.

    iv) Direction to the promoter to pay appellants an amount of Rs.39,00,245/- as compensation.

    v) Direction to the promoter to refund stamp duty amount of Rs.7,93,800/-, service tax of Rs.5,88,645/- and MVAT of Rs.1,58,750/- to the appellants with interest from the date of respective payments till the amounts are realized to the appellants.

16. We have heard the learned Advocate for the appellants. Despite sufficient opportunities to put-forth its case, neither the promoter nor its Advocate appeared for making oral submissions. However, the promoter has filed the reply to the appeal and its written submissions on record of this Tribunal. The submissions of the learned Advocate for the appellants is nothing but reiteration of the contents of the memorandum of appeal and written submissions.

17. The learned Advocate for the appellants has submitted that 90% of the entire consideration of the amount is paid to the

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promoter and remaining 10% was to be paid at the time of possession. The due date of possession as per the Clause 30 of the agreement for sale is 30 months from the date of agreement for sale. Thus, the due date of possession is 22.09.2017. The complaint has been filed on 30.03.2018 when the said date of possession had already passed and the promoter failed to hand over possession of the subject flat by the said due date as per the agreement for sale. Thereafter, the Authority allowed to change of reliefs from possession with interest to withdrawal from the project seeking relief of refund with interest and of compensation. Since the promoter failed to hand over possession of the said flat by the due date of possession in the agreement for sale, the appellants are entitled to relief of refund of the paid amount with interest from the date of respective payments till the refund amount with interest is realized to the appellants. Further, the appellants are entitled to refund of the amounts paid towards the stamp duty, registration charges and other charges paid to the promoter along with interest from the date of respective payments.

18. The learned Advocate further submitted that the appellant also had substantiated the claim of compensation of Rs.40,70,292/- before the Authority. The Authority ought to have segregated the claim of the complainant with regard compensation to the Adjudicating Officer for further adjudication under Section 71 and 72 of the RERA Act, 2016, However, the Authority failed to do so. The learned Advocate submitted that the appellants are also entitled to claim compensation under Section 71 and 72 of the RERA Act, 2016.

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19. With these submissions, the learned Advocate for the appellants prayed to allow the appeal.
20. The record reveals that the in spite of sufficient opportunities and specific date and time was mentioned for final hearing, none appeared for the promoter. However, the promoter has filed its reply and written submissions. We have therefore, taken into consideration the said reply and written submissions of the promoter.
21. The promoter in its affidavit in reply and written submissions has submitted that out of total consideration amount of Rs.1,58,75,000/- the appellants have paid Rs.1,43,13,215/- and the remaining amount was to be paid at the time of possession. Accordingly, the promoter offered the appellants fit out possession on 26.03.2018 and raised demand vide letters dated 23.03.2018 and again on 30.03.2018 for payment of remining balance amount of Rs.15,61,785/- along with applicable taxes. However, the appellants neglected and failed to pay the same nor took fit out possession.
22. The promoter in its affidavit in reply has submitted that the construction of the building was completed in all respects and promoter applied to MHADA for occupation certificate on 17.01.2018. However, there was dispute between the MHADA and MCGM as to who shall issue approvals as the planning authority with regard to the development of the projects belonging to the MHADA. The Government ultimately issued notification dated 23.05.2018 notifying that MHADA shall exercise the powers of planning authority in respect of the areas of land of MHADA's layouts under the jurisdiction of MCGM.

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Thereafter, the MHADA granted part occupation certificate only up to 12th floor on 12.10.2018. The promoter in its reply has further submitted that there was no justification from MHADA for issuance of occupation certificate only up to 12th floor by withholding full occupation certificate. The promoter can not be held liable for any delay in obtaining the occupation certificate and the same is beyond the control of the promoter and therefore the promoter can not be penalized for the same. Ultimately, the full occupation certificate came to be issued on 05.04.2021.

23. The promoter in its reply has also submitted that upon receipt of the full occupation certificate, the promoter offered possession of the said flat to the appellants subject to payment of the balance amount. However, the appellants did not take possession. Hence, the appellants are not entitled to claim refund of the paid amounts with interest from the respective date of possession since the flat was ready for possession in all respects with full occupation certificate.

24. The promoter in its reply also submitted that Clause 30 of the agreement for sale provided that the promoter shall automatically be entitled to reasonable extension of time for giving delivery of the said flat, if the completion of the said building is delayed on account of:

    i) Non-availability of steel, cement, other building material, water, electric supply etc.;

    ii) War, civil commotion, Act of God, force majeure and reasons beyond the control of the promoter, including strikes by the workers, employees or labourers of the

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promoter, contractors, suppliers or due to disturbance/ hindrance in work site by any anti social elements;

iii) Any notice, order including stay order from competent court or authority, rule, notification, permissions of the Government and/or other public or competent authorities;

iv) Other reasonable causes.

25. The promoter in its reply submitted that the delay in hand over of possession, if any, is due to failure on the part of the competent authority to issue necessary sanctions and occupation certificate and as such the reason is beyond the control of the promoter. Therefore, the promoter is entitled to receive extension of time for handing over of possession of the said flat to the appellants. Furthermore, the appellants have failed to demonstrate the delay in obtaining occupation certificate due to the reasons attributable to the promoter or on account of promoter's negligence.

26. The promoter in its reply also submitted that the stamp duty, registration charges, taxes, pre-EMI, interest on home loan are not part of consideration paid to the promoter and the same are paid to the authorities. Further, there is no provision under the RERA Act, 2016 which stipulates the refund of stamp duty and other statutory dues to allottees. Hence, the appellants are not entitled to relief of said amounts.

27. The promoter in its reply has submitted that since the project completion date has been extended to 01.12.2021, the appellants are not entitled to claim any interest or refund as there has been no delay in completing the project and obtaining the occupation certificate, since the occupation certificate is

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obtained on 05.04.2021, much prior to the extended date of completion of the projects.

28. With these submissions, the learned for the promoter in the affidavit in reply and written submissions has prayed to dismiss the appeal with costs.

29. Having heard the learned Advocate for the appellants and submissions of the promoter in its affidavit in reply and written submissions as well as the available record before this Tribunal, including the record before the Authority, the following points that arise for our consideration and we have recorded our findings thereon for the reasons to follow, are as under:

Sr.No.	Points	Findings
1.	Whether the appellants are entitled to the relief of refund with interest under section 18 of RERA Act, 2016?	In the Affirmative.
2.	Whether the impugned order warrants interference in this appeal?	In the affirmative
3.	What order?	As per final order.

REASONS

Point No.1

30. On ensemble of the facts as submitted above by the parties, it is not in dispute that the appellants have purchased the subject flat from the promoter's said project vide agreement for sale dated 22.03.2015 for total consideration of Rs.1,58,75,000/-.

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The appellants have paid amount of Rs.1,43,13,215/- towards consideration of the said amount besides the amount of Rs.15,71,195/- towards stamp duty, registration charges, service tax and MVAT. The due date of possession as per the said agreement for sale was 30 months of the date of signing of the agreement for sale. Thus, the due date of possession of the said flat as per the agreement for sale is 22.09.2017. The complaint has been filed on 30.03.2018 i.e. after expiry of said due date of possession.

31. It is also not in dispute that the promoter obtained part occupation certificate on 12.10.2018 for the building, C-Wing up to 12th floor, which did not cover the subject flat of the appellants. The promoter offered fit out possession on 26.03.2018 without occupation certificate covering subject flat and requested the appellants to take possession by paying outstanding amount of Rs.15,61,785/- along with applicable taxes. However, the appellants did not take possession since the promoter did not have valid occupation certificate for the subject flat.

32. The record also reveals that the Authority passed an order on 23.05.2018 directing to hand over possession of the said flat with occupation certificate. The appellant has challenged the said order before the appellate Tribunal which came to be remanded back to the Authority by the order of the Tribunal dated 28.01.2019 read with review order dated 04.02.2019. Further, the Authority by its interim order dated 25.09.2019 allowed the appellants to change the reliefs sought in the complaint from possession with interest to withdrawal from the

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said project, seeking refund of the paid amount with interest and compensation under Section 18(1) of the RERA Act, 2016. The appellants in the complaint thus have sought relief of refund amount along with interest and compensation.

33. As we have already observed above, the due date of possession of the subject flat is 22.09.2017, however the promoter obtained occupation certificate for the subject flat only on 05.04.2021. This sufficiently demonstrates that the promoter has failed to hand over possession of the subject flat in accordance with the due date of possession as per the agreement for sale.

34. It is the contention of the promoter that the delay has caused on account of dispute between the MHADA and MCGM as to who is the planning authority of the subject project. The Government by its notification dated 23.05.2018 notified that the area of lands of MHADA's layout which comes under the jurisdiction of MCGM, the planning authority for grant of approvals including occupation certificate is the MHADA. It is pertinent that the said order was passed on 23.05.2018, whereas the part occupation certificate for the subject project was obtained on 12.10.2018. Further, the full occupation certificate covering the subject flat was obtained on 05.04.2021. Therefore, the contention of the promoter that the project got delayed because of the dispute between the MHADA and MCGM, does not hold any water. Further, the due date of possession of the said flat was 22.09.2017, which is much prior to the said dispute that arises between the MHADA and MCGM.

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35. It is also the contention of the promoter that the project completion date has been extended till 01.12.2021 whereas the occupation certificate covering the subject flat was obtained on 05.04.2021 and therefore there is no delay in completion of the project. We do not accept these contentions. The date of possession as mentioned in the agreement for sale is sacrosanct and promoter is obligated to hand over possession of the said flat by the due date mentioned in the agreement for sale. Any extension to the project completion date has no bearing on the possession date as mentioned in the agreement for sale. Possession date can only be amended by the mutual consent f of the parties to the agreement. However, the promoter has not produced any document on record to suggest that the appellants have agreed to extended date of 01.12.2021 as a new date of possession. In absence of any evidence, we are of the considered view that the extended date for completion date can not absolve the liability of the promoter to hand over possession as per the due date of possession as mentioned in the agreement for sale.
36. It is the contention of the promoter that the Clause 30 of the agreement for sale provides that the promoter shall automatically be entitled to reasonable extension of time for giving delivery of the said flat if the completion of the said flat is delayed on account of non-availability of steel, cement and other building materials, water, electric supply; war civil commotion, Act of God, force majeure and reasons beyond the control of the promoter; any notice, order including stay order

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from competent court or authority, notification, permissions of the Government etc.

37. It is pertinent to note that the above factors outlined in Clause 30 of the agreement for sale are generic and cannot be considered relating specifically to this project. It further cannot be construed that by signing the agreement for sale, the allottees have consented to wait infinitely for completion and possession concerning all these factors that could delay the completion of the project. The Hon'ble Bombay High Court, in the case of *Neelkamal Realtors Suburban Pvt. & Anr. Vs. Union of India & Ors.* [(2017) SCC Online Bom 9302] in para 119 has held that "*while the proposal is submitted, the promoter is supposed to be conscious of the consequences of getting the project registered under RERA. Having sufficient experience in the open market, the Promoter is expected to have a fair assessment of the time required for completing the project....*". As an experienced promoter in the market, it is the promoter who is well aware of the factors that may endanger the prospects of timely completion of the project. So being domain expert and considering likely time to be consumed by various activities and approvals, promoter is the best judge to estimate the likely timeline for completion of the project. On the contrary, the purchasers have no domain knowledge, neither aware nor expected to be aware of the nature of mitigating factors which may delay the project. The allottees executed the agreement for sale based on the commitment given by the promoter to hand over possession by a certain date as specified in the agreement for sale.

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38. The *force majeure* factors as demonstrated by the promoter do not fall within the ambit of explanation to Section 6 of RERA Act, 2016 which clearly clarifies that "*force majeure*" shall mean case of war, flood, drought, fire, cyclone, earthquake or any other calamity caused by nature, affecting the regular development of real estate project. None of the grounds as demonstrated by the promoter fall within the scope of explanation to Section 6 of RERA Act, 2016 which could have justified the delay. Therefore, we are of the considered view that delay in granting permissions/ sanctions/ NOCs by various competent authorities, etc. as contended by the promoter cannot be construed as *"force majeure"*. The promoter can neither expect allottees to be aware of the likely delay nor can make allottees bear the brunt of the failure on the part of promoter to act professionally by assessing the requisite date for possession.

39. Considering the liability of promoter to assess the likely date of completion of the project, allottee has very limited liability of discharging its own obligations as per the terms of the agreement for sale *inter alia* relating to primarily to make payments from time to time as per the demands from the promoter so that the project is not starved of funds to cause delay in completion. It is not in dispute that the appellants have made 90% payment of the total consideration to the promoter along with the other charges as per demand from the promoter from time to time with remaining 10% to be paid at the time of possession. Allottees can be held responsible only if failure to discharge their obligation as per the agreement for sale has caused delay in completion of the project. If the allottees are

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not responsible for the reasons for the delay, they are entitled to relief under Section 18 of RERA Act, 2016 and cannot be saddled with consequences for delay in completing the project. The language employed in Section 18(1)(a) of RERA Act, 2016 makes it clear that the Promoter is obligated to hand over possession of flat as per the agreement for sale by the date specified therein. 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 2020] is 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)."*

40. Even if, *force majeure* factors as demonstrated by the promoter are given some consideration, we are of the view that the promoter is not entitled to get benefit of the same for the reason that the same are not attributable to the allottees nor is the case of the promoter that the allottees in any way has caused delay in completion of the project and possession. Therefore, the

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submission of the promoter that he is entitled to reasonable extension on account of delays due to factors beyond its control as per the Clause 30 of the agreements for sale is not tenable. While explaining the scope of Section 18 of RERA Act, 2016 the Hon'ble Supreme Court in *M/s. Newtech Promoter and Developers Pvt. Ltd. V/s. State of Uttar Pradesh* [2021 SCC Online 1044] dated 11 November, 2021 held that;

> *"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.*

41. It is therefore clear that appellants/allottees are not responsible for the delay in construction of the project. Further, the allottees have made timely payment of 90% of the consideration amounts and remaining 10% consideration amount was due and payable at the time of possession. Therefore, there are no shackles or limitations on exercise of rights by allottees to seek

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refund of the paid amount along with interest and compensation under section 18 of the RERA Act, 2016. The promoter was supposed to deliver the possession of the said flat on or before 22.09.2017. It is not in dispute that the promoter obtained occupation certificate covering the said flat on 05.04.2021. It is therefore, sufficient to hold that the subject flat was not ready in all respects for handing over of possession. Therefore, we come to the conclusion that the allottees/appellants are entitled to relief of refund of the paid amounts along with interest and compensation under Section 18 of the RERA Act, 2016. Accordingly, we answer point no.1 in the affirmative.

Point No.2

42. The Authority in the impugned order has not granted interest on refund amount from the respective dates of payment. The reason for the same given by the Authority that the interest on refund amount will be from 23.09.2017 i.e. the date of default in handing over of possession till 04.04.2021 i.e. date of obtaining of full occupation certificate and not from the date of respective payments because the allottees have earlier decided to stay in the said project despite the delay and it is only subsequently decided to exit from the project. Hence, the Authority cannot make withdrawal more lucrative than continuing with the project and thereby jeopardize the rights of the other allottees who have chose to stay in the project. We are of the considered view that the reasons given by the Authority are extraneous consideration and not legally sustainable.

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43. Section 2(za) defines the term interest. The said clause is reproduced below:

> *"2(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.*
>
> *Explanation – For the purpose of this clause –*
>
> *i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;*
>
> *ii) The interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid".*

44. As per the said definition of interest, it has made it clear that the interest payable by the promoter to the allottee shall be from the date promoter receives the amount or any part thereof till the date amount or part thereof and interest thereon is refunded. Further, the interest payable by the allottee to the promoter shall be from the date of alleged default to payment to the promoter till the date it is paid. Thus, this provision makes it abundantly clear that in case of refund of the amount, the interest payable by the promoter to the allottee shall be from the date the promoter received the amount till it is refunded to the allottee. Thus, the promoter is liable to pay interest from the date of respective payments.

45. The Hon'ble Supreme Court in the case of *Experian Developers* (supra) has held that interest payable on amount deposited by the flat buyers is not only restitutionary but also compensatory

and interest has to be paid from the date of deposits and not from the estimated date of possession. The Hon'ble Supreme Court in the case of *Experian Developers* (supra) has in para-22.1 has held as under:

> *"22.1 We are of the opinion that for the interest payable on the amount deposited to be restitutionary and also compensatory, interest has to be paid from the date of the deposit of the amounts. The Commission in the order impugned has granted interest from the date of last deposit. We find that this does not amount to restitution. Following the decision in DLF Homes Panchkula Pvt Ltd v. DS Dhanda16 and in 0modification of the direction issued by the Commission, we direct that the interest on the refund shall be payable from the dates of deposit. Therefore, the appeal filed by purchaser deserves to be partly allowed. The interests shall be payable from the dates of such deposits."*

46. In the light of the discussion above, we come to the conclusion that appellants are entailed to relief of refund of the paid amounts with interest from the dates of respective payments under section 18 of RERA Act, 2016. On this count the impugned order warrants interference in this appeal.

47. The Authority has also allowed the promoter to avail the benefit of moratorium period as mentioned in the Notifications/Orders No.13, 14 and 21 dated 02.04.2020, 18.05.2020 and 06.08.2021 respectively issued by the MahaRERA and held that the said moratorium period shall be deducted from the total period for which the interest is payable. As we have already observed that

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the due date of possession of the subject flat as per the agreement for sale is 22.09.2017, whereas the Covid-19 epidemic erupted in the year 2020. Therefore, the Covid-19 epidemic is not relevant *force majeure* factor for extending date of possession. Therefore, the promoter is not entitled to the benefit of moratorium as allowed by the Authority in the impugned order. On this count as well the impugned order warrants interference in this appeal. Accordingly, we answer the point no.2 in the affirmative.

48. The appellants have contended that GST, MVAT, TDS, stamp duty and registration charges should be refunded together with interest by the promoter, as the promoter has failed its obligation to hand over possession of the subject flat by the due date as per the agreed timeline stipulated in the agreement for sale. The promoter, however, has contended that these statutory dues were paid by the allottees and the promoter has transmitted the same to the Government authorities and therefore, the promoter is not the beneficiary of these amounts towards the statutory dues and taxes etc., and therefore, is not liable to refund.

49. We are of the view that the said taxes and duties were paid to the Government. The said amounts are not towards the consideration amount for the subject flat. Further, the promoter has not benefited from the said amount. Section 18(1) of the RERA Act clearly stipulates that in case the allottee wishes to withdraw from the project, the promoter is obligated to refund the amount received by him in respect of that apartment, plot, building, as the case may be. We are therefore of the view that taxes paid to the

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Government could not be termed as the amount received by the promoter in respect of the subject flat.

50. It is pertinent that taxes such as GST/MVAT are borne by the consumer/allottee and collected by service providers i.e., promoter. Thus, the promoter acts as collection agent and transmits those taxes to the Government. Besides, the agreement for sale specifies the consideration amount which excludes all the statutory taxes and duties including GST etc. Under the GST framework, the promoter can adjust the GST liability upon withdrawal from the project and could refund the GST amount. There has been, however time limit prescribed for adjusting the tax liabilities and builder/promoter must issue a credit note by 30th November of the financial year following the one in which original invoice was issued. In such an eventuality, after said time limit is over, the promoter cannot issue a credit note towards refund of the GST to the allottee. If the promoter is unable to issue credit notes within the prescribed time limit, the buyer/allottee must claim GST/MVAT refund directly from the tax authorities.

51. With regard to TDS, the said amount is deposited by the allottee directly with the Government and the promoter receives the credit of their advance tax. However, promoter is not liable to refund the said amount because the TDS was submitted to the Income Tax Department, the promoter is not responsible for the refunding it to the allottee. An appropriate recourse is through the tax authority and the allottee can apply for it to the Income Tax Department.

52. With regards Stamp Duty and Registration Charges, these are paid by the allottee in the allottee's own name. Therefore, allottee alone can seek refund from the appropriate authority after executing the deed of cancellation.

53. The appellants have placed reliance on the judgement of this Tribunal in the case of *Kunal Kumbhat and another v/s Krishna Developers Private limited* (Appeal No. AT006000000133980) decided on 14 June 2023 wherein the Tribunal allowed the allottees the relief of refund of taxes, fees, statutory payments paid by the allottees to the promoter. We have carefully perused the said judgement of the coordinate bench, however, in view of the discussions and reasons explained in para 67-71 above we do not agree with the view taken in the said judgement. Further the said judgement does not explain the rationale for granting the said relief.

54. In view of above, we are of the view that the contention of the appellants to direct the promoter to refund, along with interest, all the statutory taxes and duties including GST, MVAT, TDS, stamp duty, and registration charges cannot be accepted. The appellants may take an appropriate remedy with appropriate government authority for their refund after execution of deed of cancellation between the parties. However, the promoter can be directed to render/extend all necessary cooperation enabling the appellant to seek refund from the relevant Government authorities.

55. With regard to the compensation, we observe that the complaint is composite complaint seeking relief of refund with interest and

compensation. Therefore, the Authority ought to have segregated the complaint with regard to the compensation and refer the same to the Adjudicating Officer for adjudication in accordance with Section 71 and 72 of the RERA Act, 2016. Since the Authority has not passed any order on compensation, we are of the view that we can not adjudicate on the relief of compensation first time in the appeal. It would be therefore appropriate if we give the liberty to the appellants to file appropriate proceedings for compensation before the Adjudicating Officer.

56. In view of the aforesaid discussion, we proceed to pass the following order.

ORDER

1. The captioned appeal AT006000000063823 of 2022 in complaint no. CC006000000023946 of 2018 is partly allowed and the impugned order is modified and substituted as under.
   a. The Respondent/promoter is directed to refund the consideration amount paid by the appellant of ₹.1,43,13,215/- (Rupees One Crore Forty Three Lakhs Thirteen Thousand Two Hundred Fifteen Only) along with interest at the rate of 2% above the State Bank of India's highest MCLR, from the dates of respective payments of the amount, as specified in the table in Para-4 of this judgement within a period of 30 days from the date of this order, failing which the respondent/promoter shall also pay further interest on the outstanding amount as on 06.06.2026. at the same

rate prescribed above till the amounts are realized to the appellant.

b. After the consideration amount along with interest as mentioned above is realized to the appellants, the respondent/promoter is directed to execute Deed of Cancellation within a period of two months from the date of this order, so as to enable the appellants to seek refund of stamp duty and other taxes paid to the Government, failing which the respondent/promoter shall refund to the appellants the stamp duty and other taxes paid by the appellants as mentioned in table in Para-5 of this judgement within a further period of one month together with interest as prescribed above from the date of respective payments till the amounts are realized to the appellants. The appellants shall extend full cooperation to the promoter in executing the deed of cancellation.

c. Till the said amounts as mentioned above are realized to the appellants, the charge of the said amounts shall remain on the subject flat. Further, the promoter shall not create any third-party rights in the said flat, till the amounts are realized to the appellants.

d. The respondent/promoter upon execution of Deed of Cancellation shall extend cooperation to the appellants in getting refund of stamp duty charges and other statutory taxes paid by the appellants refunded from concerned Government authorities.

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e. So far as the claim of compensation is concerned, the appellants are at liberty to file appropriate proceedings before the Adjudicating Officer.

2. Parties to bear their own costs.

3. The appeal stands disposed of in the above terms.

4. Copy of this order be communicated to the parties and MahaRERA as per Section 44(4) of the RERA Act, 2016.

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

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