BEFORE THE MAHARASHTRA REAL ESTATE

APPELLATE TRIBUNAL, MUMBAI

Appeal No. AT006000000133968 of 2022
In
Complaint No. CC006000000151209

Mr. Brij Agarwal]
277, Proton Tower, 8 Blackwall Way]
London – E14 9GP, United Kingdom.] ... Appellant

Versus

1. Godrej Projects Development Ltd.,]
   5th Floor, Pirojshanagar, Eastern]
   Express Highway, Vikhroli (E),]
   Mumbai-400 079.]
2. M/s. R. R. Builders,]
   Qureshi House, 6th Floor, Nehru]
   Road, Santacruz (East),]
   Mumbai-400 055.]... Respondents.

Adv. Mr. Tanuj Lodha for appellant.
Adv. Ms. Jennifer Michael for Respondent No.1.
Adv. Ms. Ishani Khanvilkar for Respondent No.2.

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

RESERVED ON : 10th March, 2026

PRONOUNCED ON : 4th May, 2026

(THROUGH VIDEO CONFERENCING)

JUDGEMENT

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

1. The captioned appeal arises from the common order dated 05.07.2022 passed by the learned Member-I, Maharashtra Real Estate Regulatory Authority (for short "the Authority") in the

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captioned complaint No.CC006000000151209, filed by the allottee/appellant herein.

2. The respondent no.2 is the promoter of the project in the name and style as "Godrej Sky" bearing MahaRERA Registration No. P51900003595, situated at Mumbai. The respondent no.1 is co-promoter of the said project shown in the project registration with "revenue sharing" arrangement with respondent no.2 promoter. Therefore, the respondent nos. 1 and 2 are shown as promoter/co-promoter of the said project in the project registration.
3. The brief facts, culled out from the pleadings, documents on record, and the impugned order are that the appellant purchased a flat bearing no.2403, admeasuring about 954.28 square feet carpet area, in the promoter's said project for total consideration of Rs.3,52,36,400/-. The said flat was booked through the broker of the respondent no.1 namely "Services for the NRI Limited". The respondent no.2 issued an allotment letter dated 26.04.2016 to the appellant, which was communicated by the respondent no.1. During the booking, the appellant was represented that the possession of the flat will be handed over by December, 2018. The appellant purchased the said flat with an option of exclusive pre-launch offer of 50% down payment plan in exchange of an immediate gain of Rs.3,000/- per sq. ft. as a discount over construction linked payment plan.
4. Accordingly, the appellant paid booking amount of Rs.20,00,000/- by cheque dated 07.09.2025 in the name of respondent no.2. Till date the appellant has paid an amount of

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Rs.1,85,54,471/- for the said flat to the respondent nio.2. The details of the payments are given below:

Sr. No.	Date of Payment	Amount (Rs.)	Mode of Payment	Remarks
1	07.09.2015	10,00,000/-	By cheque	
2	07.09.2015	10,00,000/-	By cheque	
3	13.10.2015	10,00,000/-	By RTGS	
4	19.10.2015	10,00,000/-	By RTGS	
5	20.10.2015	10,00,000/-	By RTGS	
6	21.10.2015	10,00,000/-	By RTGS	
7	28.10.2015	10,00,000/-	By RTGS	
8	30.10.2015	10,00,000/-	By RTGS	
9	03.11.2015	10,00,000/-	By NEFT	
10	04.11.2015	10,00,000/-	By NEFT	
11	05.11.2015	10,00,000/-	By NEFT	
12	06.11.2015	10,00,000/-	By NEFT	
13	12.11.2015	10,00,000/-	By NEFT	
14	13.11.2015	10,00,000/-	By NEFT	
15	16.11.2015	10,00,000/-	By NEFT	
16	17.11.2015	10,00,000/-	By NEFT	
17	18.11.2015	10,00,000/-	By NEFT	
18	10.12.2015	4,42,017/-	By NEFT	
19	10.12.2015	5,57,983/-	By NEFT	Service Tax
20	11.01.2016	3,78,289/-	By NEFT	Service Tax
21	24.01.2016	1,76,182/-	By NEFT	TDS

5. Thus, the appellant has paid an amount of Rs.1,76,18,199/- towards consideration of the said flat and rest of the amount towards service tax. The respondent no.2 registered the said project with the MahaRERA as an on-going project after RERA Act, 2016 coming into force and the respondent no.1 has been mentioned therein as promoter land owner, having revenue sharing arrangement. This fact is not disputed by the respondent no.1

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6. The project was stuck by an order of the City Civil Court at Mumbai dated 29.09.2014 restraining any development on the project land by issuing a temporary injunction. The said order is in operation as on date of filing the complaint and the project is still incomplete. Due to failure on the part of the respondent nos. 1 and 2 to complete the project and hand over possession of the subject flat, the appellant filed the captioned complaint before the Authority, seeking relief of exiting from the project, seeking refund of the paid amount along with interest under section 18 of the Real Estate (Regulation and Development) Act, 2016 (for short 'the RERA Act, 2016').
7. The respondents appeared in the complaint and remonstrated the complaint by filing replies. The respondent no.1 contended that the respondent no.2 is owner of the land and respondent no.1 vide development management agreement dated 09.04.2012 has been associated with the said project. The respondent no.2 is the one who was responsible for getting all the approvals and cause development of the project land. However, due to dispute between the respondent nos. 1 and 2, an arbitration petition was filed in the Hon'ble Bombay High Court, bearing Suit No.412 of 2019 and the same is pending. Further, there is no privity of contract between the respondent no.1 and the complainant. The allotment letter has been issued by the respondent no.2 and the amounts have been paid by the complainant to respondent no.2. Further, the complainant has failed to produce any document showing that the possession would be handed over by December, 2018. Since the date of completion of the project as per the project registration is June,

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2024, the complaint is pre-mature. With these submissions, the respondent no.1 prayed to dismiss the complaint.

8. The Respondent no.2 contended that the said allotment letter has been allotted tentatively and it does not have IOD and commencement certificate to construct the building. Further, there is no specific time mentioned for completion of the project. Since the complaint has been filed in the year 2019, whereas the documents relied upon by the complainant is in 2012, therefore, the complaint is barred by limitation. The matter pertains to the time prior to RERA Act, 2016 coming into force. Further, the project completion date is 30.06.2024 as per the project registration with MahaRERA. The date of possession of December, 2018 was never promised to the complainant. With these submissions, the respondent no.2 prayed to dismiss the complaint.

9. After hearing the parties, the Authority passed the impugned order. While passing the impugned order, the Authority observed that the respondent no.2 is the promoter under Section 2(zk) of the RERA Act, 2016, who has registered the project with the MahaRERA. Further the respondent no.1 is the project manager appointed by respondent no.2 by virtue of development management agreement dated 09.04.2012. The respondent no.1 has also joined as the promoter of the said project on the project registration. Further, the name of the respondent no.1 has also been mentioned as co-promoter of the project registered by the respondent no.2, having revenue sharing arrangement. However, the Authority held that the respondent no.1 does not seem liable for handing over

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possession of the flat to the complainant. Hence, the Authority held that the respondent no.1 is not liable for any violation of the provisions of RERA Act, 2016.

10. The Authority also observed that the respondent no.2 has issued allotment letter and in spite of receiving more than 20% consideration amount, the respondent no.2 has not executed and registered the agreement for sale thereby violated Section 4 of the Maharashtra Ownership Flats Act, 1963 (for short 'the MOFA') as well as Section 13 of the RERA Act, 2016. Further, the respondent no.2 has failed to hand over possession even after proposed date of completion of the project as 30.11.2021. Hence, the complainant is liable for refund of the paid amount along with interest.
11. With these submissions, the Authority directed respondent no.2 to refund the entire amount paid by the complainant towards consideration (excluding statutory dues, taxes, if any) along with interest at the rate of SBI's MCLR plus 2% from the date of the payment till the actual realization of the said amount to the complainant.
12. The Authority further directed that in view of mitigating circumstances beyond the control and also to ensure that the said project is completed in time, keeping in mind the interest of the other buyers of the said project, the refund amount with interest shall be paid to the complainant within a period of 6 months from the date of the order.
13. The Authority further directed that the respondent no.2 is entitled to claim benefit of moratorium period as mentioned in Notifications/Orders dated 13 and 14 dated 02.04.2020 and

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18.05.2020 issued by the MahaRERA and Notifications/Orders which may be issued in this regard from time to time.

14. Aggrieved by the impugned order, the appellant has filed the captioned appeal on the grounds set out in the said memorandum of appeal, seeking inter-alia, the following reliefs for modification of the impugned order to the effect that;
    a) Direction to the respondent no.1 refund amount of Rs.1,85,54,471/- along with interest under Section 18 of the RERA Act, from the date of respective payments till the amount is realized to the appellant,
    b) Compensation of Rs.47,82,000/- towards loss of discount offered and Rs.1,50,87,210/- towards the loss of opportunity cost,
    c) Compensation of Rs.15,00,000/- towards mental cost and harassment,
    d) Penalty on respondent for false representation, and
    e) Penalty on respondent under Section 60 of the RERA Act, for violation of Section 4(2)(j) of the RERA Act, 2016.
15. 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.
16. The learned Advocate for the appellant has submitted that the subject flat was purchased with an option of 50% down payment plan. Vide an e-mail dated 25.08.2015, the agent of the respondent no.1 initially provided the possession date as December 2020. However, the said date was not agreeable to the appellant. Hence, the agent of respondent no.1 put the appellant in touch with the representative of respondent no.1

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and from their e-mail dated 27.08.2015, the said representative stated that the building will be ready by December, 2018, however the common area will be completed by December, 2020. The learned Advocate further submitted that the allotment letter darted 26.04.2016 did not specify the date of possession. However, the representative of the respondent no.1 represented that the flat will be handed over by December, 2018. Further, the website of the respondent no.1 also reflected the possession date as December, 2018.

17. The learned Advocate submitted that the respondents also suppressed the fact that the Hon'ble City Civil Court, Mumbai by its order darted 29.09.2014 had restrained any development on the project land by issuing temporary injunction. The said order is in operation even today and the project is suspended due to the same. There was no whisper of this fact in any of communication in this regard. The said injunction was in operation a year before the project was marketed, and the flat was sold to the appellants.

18. The learned Advocate submitted that despite the payment of Rs.1,85,54,471/- to the respondents, which is 50% of the consideration amount, the respondents failed and neglected to execute and register an agreement for sale thereby violated Section 4 of the MOFA and Section 13 of the RERA Act, 2016. Subsequently, the appellant sent a legal notice dated 02.04.2019 to the respondent and their directors. The appellant further sent reminder notice dated 07.06.2019. the respondent no.1 *vide* their reply darted 10.06.2019 offered to refund the amount of Rs.1,83,78,289/- along with interest. Although the

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respondent claimed that it is not the promoter of the project, the respondent no.1 represented to the appellant itself as the promoter of the said project when the subject flat was booked. Further, the respondent no.1 is the promoter under the definition of the promoter under section 2(zk) of the RERA Act, 2016. Further, the respondent no.1 marketed and sold the project under the brand name "Godrej". Marketing is being done as one of the Godrej Properties. Representations and the e-mails for all communications took place are with Godrej. All the payments are remitted to Godrej Sky Collection Account, operated by the respondent no.1. The respondent no.1 has explicitly mentioned their name and address for issuing legal notice on their e-mail dated 01.12.2018. The respondent no.1 has also disclosed themselves as a promoter of the project on RERA website. Thus, by at their acts and facts mentioned above the respondent no.1 is promoter of the project.

19. The learned Advocate further submitted that vide order dated 30.09.2021 the Sole Arbitrator in the arbitration proceedings filed by the respondent no.1 against the respondent no.2 has held in para 20(b) of the said Final Award that "The Claimant shall settle the unsettled customers detailed in Annexure 5". Further, the name of the appellant appears at serial no.34 in Annexure 5 to the Consent Award dated 30.09.2021. Thus, the said Consent Terms have clearly recorded that the respondent no.1 has agreed to settle the claims of the appellant. However, the said Consent Terms were never produced before the Authority by the respondent no.1.

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20. The learned Advocate submitted that, the respondent no.1 is therefore obligated to refund the entire paid amount towards consideration along with interest under section 18 of the RERA Act, 2016 from the respective dates of payments till the payments are realized to the appellant. Further, due to mis-representation the appellant has suffered great loss due to opportunity cost and hence is entitled for compensation under Section 18 of the RERA Act, 2016.
21. The learned Advocate further submitted that the respondents are not entitled for benefit of moratorium period as the due date of possession was December, 2018 which is much prior to the Covid-19 pandemic. Out of the 58 slabs of the super structure, not a single slab has been completed till date. Therefore, granting benefit of moratorium period on account of Covid-19 pandemic is unjust and unjustified.
22. With these submissions the learned Advocate for the appellant prayed to allow the appeal.
23. The learned Advocate for the respondent no.1 has submitted that keeping with its customer centric approach, the respondent no.1 had accommodated the requests made by the appellant on several occasion for ex-gratia payment of the amounts paid by him, which the appellant has deliberately concealed before the Authority as well as before this Tribunal. Despite thereto, by way of the present appeal, the appellant is trying to take undue advantage of the goodwill and longstanding reputation of respondent no.1 and the said conduct of the appellants thus reeks of malice wherein the appellant is trying to mislead this

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Tribunal by suppressing the material facts for proper adjudication of the case.

24. The learned Advocate submitted that respondent no.1 entered in to a Development Management Agreement dated 09.04.2012 with the respondent no.2 undertaking only the responsibilities and obligations to the extent of a Development Manager to the said project, whereas it was respondent no.2 which had the sole authority and obligation to make the allotment of units and the receive sale consideration thereof. The allotment letter issued in the name of the appellant was also issued by respondent n.2 and thus by no manner whatsoever the respondent no.1 responsible to hand over the possession of the said flat to the appellant being merely a Development Manager. It is pertinent that the appellant by his own admission was aware about the authority, responsibility and obligation of the respondent no.2 with respect to the said project.

25. The learned Advocate submitted that pursuant to the launch of the said project, the respondent no.1 committed certain serious breaches and violations under the Development Management Agreement as well as RERA Act, 2016, such as lapse of the land lease, failing to obtain registration with various tax authorities, making payment to contractors, brokers and alias, among others, which led to inter-se disputes between the respondent no.1 and 2 and ultimately invocation of arbitration proceedings against the respondent no.2. The said disputes were amicably settled between the parties by way of a Consent Award dated 30.09.2021. Thereafter, the Development Management Agreement between the parties was cancelled and the said

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project was taken over by respondent no.2 and has been relaunched under the name as "Ruparel Vivanza".

26. The learned Advocate submitted that in no manner whatsoever there any privity of contract between the appellant and respondent no.1 because of which the respondent no.1 can be held liable for any violation under the RERA Act, and the same has been upheld by the Authority in the impugned order wherein in para-14 the Authority recorded the same. Devoid of any privity of contract and/or privity of whatsoever nature, the respondent no.1 cannot be made liable for the failure of respondent no.2 to perform its obligations. Thus, the present appeal filed by the appellant is misconceived and an attempt to tarnish the goodwill of respondent no.1

27. The learned Advocate further submitted that without prejudice to the above contentions of the respondent no.1, the respondent no.1 has no contractual obligations to refund any amount to the appellant. However, the respondent no.1 in an Bonafide attempt to amicably resolve the matter made voluntary offer as early as on 20.11.2018 to refund the entire amount paid by the appellant along with interest at the rate of 9% per annum, subject applicable taxes, such as tax deducted at source. The said offer was made without admission of liability and in the interest of concluding the mater amicably. The learned Advocate submitted that the said offer was re-iterated by respondent no.1 in response to legal notice dated 02.04.2019 and 07.06.2019 issued by the appellant. In its reply dated 10.06.2019 the respondent no.1 once again voluntarily offered to refund the entire amount deposited by the appellant with

respondent no.2 together with interest as contemplated under Section 18 of the RERA Act, 2016. This offer was made despite the absence of privity of contract and any corresponding legal obligation to make such payment. This offer was made by the respondent no.1 in good faith, despite there being no contractual obligation to do so.

28. The learned Advocate submitted that the appellant has expressly admitted to receiving this refund offer. However, the appellant refused to accept the refund on the ground that the respondent no.1 was unwilling to waive TDS deductions. The said deductions of TDS are a mandatory statutory requirement under the Income Tax Act, 1961. And no developer or corporate entity can legally agree to bypass such statutory deductions. Therefore, the appellant's insistence that the refund be made without deduction of TDS was not only unreasonable but also contrary to law. Such refusal amounts to unjustified non-acceptance of a valid, legally compliant, and interest-bearing refund offer. The refusal of the offer of refund as on 10.06.2019 is well documented in the correspondence exchanged between the parties, which clearly establishes that it was the appellant who declined to accept the refund offer, and thereby impeded the resolution of the dispute.

29. The learned Advocate submitted that the liability to pay interest under Section 18 of the RERA Act, 2016 arises only when the promoter fails to fulfil their obligations to refund the amounts due. However, once the promoter has offered to refund the amount, especially along with interest as stipulated under the RERA Act, 2016 and the allottee refused to accept such payment

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without just cause, no further obligation to pay interest survives. The cause of action for interest ceases upon the offer of refund being made and rejected. Refusal to accept refund vide e-mail dated 10.06.2019 precludes any claim of interest thereafter. The appellant through his own conduct, has prevented the completion of the refund transaction and thereby forfeited any entitlement to interest beyond that date i.e. 10.06.2019.

30. The learned Advocate submitted that a party cannot profit from its own intransigence is a well settled doctrine in Indian jurisprudence. The doctrine of mitigation of loss places an obligation on the aggrieved party to take reasonable steps to reduce the damage suffered. In the instance case, the appellant by refusing the refund offer, has failed to mitigate his losses and has instead contributed to the prolongation of this dispute. The appellant had a duty to mitigate damages by accepting a reasonable offer of refund. The failure to do so indicates that the appellant did not act to minimize loss, and accordingly should not be allowed to claim interest for the period after the refusal i.e. After 10.06.2019.

31. In support of the above contentions, the learned Advocate for respondent no.1 has placed reliance on the following judgements:

    i) *Murlidhar Chiranjilal V/s. Harishchandra Dwarkadas & Another [1961 SCC Online SC 100],*

    ii) *M. Lachia Shetty & Sons Ltd. V/s. Coffee Board, Bangalore [(1980) 4 SCC 636],*

32. The learned Advocate further submitted that from an equitable perspective as well, permitting the appellant to claim interest

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after having rejected a fair and lawful refund offer as was made on 10.06.2019 would result in unjust enrichment and would violate basic tenets of equity and fairness. Equity does not favour a party that refuses a fair and lawful resolution. The appellant seeks to invoke the equitable jurisdiction of this Tribunal to seek interest, however he, who seeks equity must do equity. It would be manifestly unjust and unequitable to permit the appellant to now claim interest for the period after 10.06.2019, having willfully refused a full refund with statutory interest and offer that was in compliance with all applicable laws and made in good faith.

33. The learned Advocate for the respondent no.1 relying the judgment of the Hon'ble Supreme Court held that once a person offers to pay the amount in dispute and this offer of payment is refused then the complainant cannot seek interest on such amount. It further held that a complainant should either accept an offered amount without prejudice or request its deposit and failure to do so disentitled the complainant from seeking interest thereafter. In the said judgment the Hon'ble Supreme Court observed that the complainant, by failing to adopt either of the two courses, could not impose a continuing liability upon the payee for future interest. Applying the same principle, the appellant herein cannot now seek to fasten interest liability upon respondent no.1 for a period of post the refund offer made on 10.06.2019 which the appellant declined without justification. This conduct disentitles the appellant from claiming any further amounts under the guise of interest, especially when the respondent no.1 has acted reasonably and lawfully throughout.

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The learned Advocate submitted that in view of the above, the appellant cannot seek interest after 10.06.2019 and the respondent cannot be held liable to pay interest after 10.06.2019, the date on which the appellant refused a valid and legally compliance refund offer. Any continued claim for interest beyond this date is contrary to established legal principles and would amount to penalizing the respondent for an offer the appellant wrongfully declined.

34. The learned Advocate submitted that the appellant has sought refund of the amount paid by them along with interest at the rate of 15% per annum. However, the said interest rate is not in compliance with the proviso to RERA Act, 2016. RERA Rules 2017 stipulates the rate of interest payable which is SBI's MCLR plus 2%. Therefore, the appellant cannot seek interest amount more than prescribed rate of interest as per the RERA. The learned Advocate further submitted that it is trite that any person approaching the Authority for seeking relief, must categorically mention the relief and the relevant sections, under which the relief is sought, however the appellant had made averments without any iota of evidence, and has sought reliefs which, firstly cannot be sought or maintained against the respondent no.1 and secondly, is against the nature and the intent of the statute itself. The appellant extensively promulgates that the appellant was enticed into seeking allotment of the said flat allegedly due to the name of respondent no.1. However, it is a matter of great concern that the he has failed to produce any piece of evidence which can corroborate any relationship between the appellant and the

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respondent no.1. The appellant was in sound mind and took cautious steps before taking the decision of booking a unit of the said project and was sufficiently well aware of the respondent no.1 being promoter of the said project.

35. The learned Advocate further submitted that the appellant has claimed compensation of more than two crores under various heads towards alleged losses suffered by him. However, the appellant is not entitled for any such compensation as he has not produced any evidence to prove any loss occasioned to him and thus not entitled for any compensation. The appellant's entire case for compensation is based on an alleged discount and loss of opportunity etc. However, the appellant has not placed on record any single document evidencing the alleged discount or opportunity coast he has lost, so as to have "suffered any losses" as claimed by the appellant. It is trite law that a party can draw damages only if it is able to prove its case beyond doubt and that too is only entitled to the actual losses that it may have occurred and not notional or imaginary losses. Hence, the entire claim of the appellant for compensation is misconceived.

36. With these submissions, the learned Advocate for the respondent no.1 prayed to dismiss the appeal.

37. The learned Advocate for the respondent no.2 has submitted that the impugned order is erroneous and failed to consider that the provisional letter of allotment dated 26.04.2016 does not specify a time for completion of the project. The Authority failed to consider that the project completion date disclosed on the RERA website was 30.06.2025 and not on or before

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December 2018 or 30.11.2021. Therefore, the finding of the Authority that the completion date be treated as 30.11.2021 is contrary to its own finding that no date of possession is stated in the letter of allotment. Thus, the complaint was pre-mature and not maintainable.

38. The learned Advocate further submitted that the Authority also failed to consider that the allotment letter dated 26.04.2016 was not signed, stamped or registered and therefore it could neither be relied upon nor enforced by the Authority. Further, and in any event by and under the letter of allotment the flat was merely provisionally allotted to the appellant herein and subject to terms and conditions therein.

39. The learned Advocate submitted that the respondent no.1 was treated as promoter of the development project and disclosed as such on RERA website. The letter of allotment was sent by the respondent no.1 to the appellant. The amounts paid by the appellant has been deposited in the escrow account under the name and control of respondent no.1. The respondent no.2 has no access to such escrow account and/or monies paid by the appellant and the same have not been received by the respondent no.2. The respondent no.1 was acting as the promoter and was not merely facilitating the transaction for the benefit of the respondent no.2. The learned Advocate further submitted that under the Consent Award dated 30.09.2021 between the respondent no.1 and the respondent no.2 agreed to settle the unsettled customers which expressly included the appellant. Further, the respondent no.1 agreed to also be liable to settle all other claims arising from documents/ transactions

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executed by it from 09.04.2012 and the date of this Award. Therefore, admittedly, only the respondent no.1 is liable to repay monies, if any in satisfaction of any claims of the appellants. Despite the Consent Award of 2021 being awarded prior to the date of passing the impugned order, it was not brought to the notice of the Authority. Thereafter, in furtherance of the Consent Award of 2021, the respondent no.1 and respondent no.2 entered into Consent Terms dated 02.11.2022. In or around November, 2022, the incoming partners were first given access to the RERA Account of the project. On 25.01.2023 the present appeal was served on the respondent no.2. On perusal of the appeal, the respondent no.2 and the incoming partners first made aware of the impugned order, and were shocked to learn that the said order was passed in blatant disregard to the Consent Award and in suppression of such material facts by the respondent no.1.

40. With these submissions, the learned Advocate submitted that the impugned order requires modification/averments to the extent reflected in the agreement of the Consent Award and understanding between the respondents and admitted liability and undertaking of the respondent no.1. Further, the respondent no.1 was promoter of the said project. It is settled law that refund monies, if any, directed by the Authority excludes any statutory dues/taxes paid by the flat purchaser and/or the promoter. Certain amounts have been paid by the respondent no.2 in respect of statutory taxes and therefore, the appellant is not entitled to refund the same from the respondent no.2. The grant of 6 months' time for refund of the monies

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along with interest is entirely reasonable and fair. Further, the development project was stalled for over two years due to the Covid-19 pandemic and that the respondent no.2 suffered grave losses and financial difficulty during such period. Therefore, the respondent no.2 deserves the benefit of moratorium period.

41. The learned Advocate submitted that the respondent no.2 has thereafter taken all necessary steps to obtain approvals for construction of the development of the project. Two wings of the project have been completed up to 12th floors and the third wing of the project is still under construction. The estimated date of completion of the project is 2027. Therefore, bring an on-going project registered in 2017, the respondent no.2 is entitled to claim the benefit of moratorium period due to Covid-19 pandemic and the statutory Notifications/Orders No.13 and 14 dated 02.04.2020 and 18.05.2020 and any other notifications issued from time to time in this regard by the MahaRERA.

42. The learned Advocate submitted that the claim of the appellant to seek interest at the rate of 15% per annum is contrary to the RERA Act, 2016 and the rules and regulations thereunder. The appellant had failed to make out any case in this regard. The appellant has been granted interest under the impugned order and the Authority did not deem it fit and proper to grant any other penalty or compensation to the appellant and the reliefs claimed in this regard were accordingly rejected. The appellant neither suffered any loss nor proven the same against the respondent no.2. The impugned order in this regard is entirely correct and reasonable and sound and ought to be upheld.

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43. With these submissions, the learned Advocate for the respondent no.2 prayed to dismiss the appeal.

44. Having heard the learned Advocates for the parties at length and on examination of the pleadings of the parties, the submissions advanced by the parties, the impugned order and the material on record, the points that arise for our consideration and our findings thereon for the reasons to follow, are as under:

Sr.No.	Points	Findings
1.	Whether the respondent no.1 falls within the definition of promoter under the provisions of RERA Act, 2016?	In the Affirmative.
2.	Whether the appellant is entitled to relief of refund with interest under section 18 of RERA Act, 2016?	In the affirmative.
3.	Whether the impugned order warrants interference in this appeal?	In the affirmative
4.	What order?	As per final order.

REASONS

Point No.1

45. On ensemble of the facts as submitted above by the parties, it is not in dispute that the appellant purchased the subject flat in

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the promoter's said project for total consideration of Rs.3,52,36,400/-. Further, the respondent no.2 issued a letter of allotment dated 26.04.2016. The appellant has made total payment of Rs.1,85,54,471/- towards consideration of the said flat in the Escrow Account of the project. Further, the said project is registered with the MahaRERA as on-going project by the respondent no.2 and in the said registration, the respondent no.1 has been shown as promoter land owner having revenue sharing arrangement. The project was stuck by an injunction order passed by the Hon'ble City Civil Court at Mumbai by its order dated 29.09.2014 restraining any development on the project land. The said order was not revealed by the respondents to the appellant. The project is still incomplete and respondents have failed to obtain occupation certificate for the said project as on date. Therefore, the appellant has sought relief of refund of the paid amount under section 18 of the RERA Act, 2016.

46. It is the contention of the respondent no.1 that it is not the promoter or co-promoter of the said project. It is not in dispute that the respondent no.1 was appointed by the respondent no.2 vide Development Management Agreement dated 09.04.2012 undertaking the responsibility and obligations to the extent of Development Manager. It is also the contention of the respondent no.1 that the respondent no.2 had the still authority and obligations to make allotment of the units and sale thereof. Further, the allotment letter is issued by the respondent no.2. By no manner whatsoever was the respondent no.2 was

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responsible to any offer possession of the said flat to the appellant being merely a Development Manager.

47. It is pertinent that the respondent no.1 in the project registration has shown as promoter/land owner, having revenue sharing arrangement. The respondent no.1 has not disputed this fact. Therefore, as per the registration of the project at the relevant time the respondent no.1 was shown as co-promoter of the project. It is pertinent that as per the Circular No.12 of 2017 of the MahaRERA, land owners or investors who are entitled the share of the total revenue generated from the sale of apartments or share of the total area developed for the sale which are also marketed and sold by such individuals/ organizations will squarely falls within the meaning of the promoter. In accordance with the circular when the project was registered with the MahaRERA, on account of revenue sharing arrangement between the respondent no.1 and respondent no.2, the respondent no.1 is shown as the promoter of the project along with the respondent no.2.

48. It is also pertinent to note the conduct of the respondent no.1. The respondent no.1 i.e. Godrej has represented itself as a promoter of the project to the appellant. Further, the project is marketed and sold under the brand name of "Godrej" of which respondent no.1 is absolutely legal owner and propriety holding of the legal rights and licenses as such. Marketing of the project was being done by respondent no.1 as one of the Godrej Properties. Representations and e-mail ID for all communications took place are with Godrej. All the payments are remitted to Escrow Account in the name of 'Godrej Sky

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Collection Account' and operated in the name of "Godrej" and processed by respondent no.1. Further, the respondent no.1 has all the legal contractual rights under Clause 18.6 of the Development Management Agreement and undertaken the completion of the project in the event the project is stalled/stopped/suspended/slowed down. The respondent no.1 has explicitly mentioned their name and address for issuing legal notice on their e-mail. Thus, it is clearly evident that the respondent no.1 by its acts as mentioned above acted like promoter. The respondent no.2 has also contended that the Escrow Account was exclusively operated by the respondent no.1 and respondent no.2 had no access to the said Escrow Account. Keeping in view the said conduct of the promoter it is apparent that the respondent no.1 acted like promoter.

49. While deliberating on the definition of the promoter under RERA Act, 2016 and on the liability of the promoter under RERA Act, 2016, it has been held by the Hon'ble Bombay High Court [*Second Appeal(stamp) No. 21842 of 2023] in Wadhwa Group Housing Private Ltd. V/s. 1. Mr. Vijay Choksi 2. SSS Escatics Pvt. Ltd.* as under:

> *"17. The project 'The Nest' has been registered as an ongoing project under Section 3 of RERA Act. To decide liability of Appellant to refund amount paid for purchase of flat in the real estate project, it would be necessary to determine whether Appellant falls in the definition of the term 'promoter'. Section 2(zk) of RERA defines the term "Promoter" thus:*
>
> *(zk) "promoter" means, -*
>
> *(i) a person who constructs or causes to be constructed an independent building or a building consisting of apartments, or converts an existing building or a part*

thereof into apartments, for the purpose of selling all or some of the apartments to other persons and includes his assignees; or

(ii) a person who develops land into a project, whether or not the person also constructs structures or any of the plots, for the purpose of selling to other persons all or some of the plots in the said project, whether with or without structures thereon; or

(iii) any development authority or any other public body in respect of allottees of-

(a) buildings or apartments, as the case may be, constructed by such authority or body on lands owned by them or placed at their disposal by the Government;

(b) plots owned by such authority or body or placed at their disposal by the Government;

(c) for the purpose of selling all or some of the apartments or plots,

or

(iv) an apex State level co-operative housing finance society and a primary co-operative housing society which constructs apartments or buildings for its Members or in respect of the allottees of such apartments or buildings; or

(v) any other person who acts himself as a builder, coloniser, contractor, developer, estate developer or by any other name or claims to be acting as the holder of a power of attorney from the owner of the land on which the building or apartment is constructed or plot is developed for sale; or

(vi) such other person who constructs any building or apartment for sale to the general public.

Explanation.- For the purposes of this clause, where the person who constructs or converts a

> ***building into apartments or develops a plot for sale and the person who sells apartments or plots are different persons, both of them shall be deemed to be the promoters and shall be jointly liable as such for the functions and responsibilities specified, under this Act or the rules and regulations made thereunder;***

Thus, definition of the term "Promoter" under Section 2(zk) of RERA is wide enough to include every person who is associated with construction of the building such as builder, coloniser, contractor, developer, estate developer or by any other name or even the one who claims to be acting as the holder of a power of attorney from the owner of the land. One of the principal objectives of RERA is to bring transparency in real estate sector and to protect the interests of the consumers in the real estate project. The term 'Promoter' has been so widely defined that it virtually includes every person associated with construction of the building. Thus, even a person who is merely an investor in the project along with the Promoter and who is entitled to benefit in the real estate project is also covered by definition of the term 'Promoter'. In the present case, I need not delve deeper into the enquiry as to whether Appellant is covered by the expression 'Promoter' or not. While registering the project as ongoing project under Section 3 of the RERA, Appellant's name has been included in the list of Promoters. Therefore, Appellant cannot run away from the fact that it is the promoter in respect of the project 'The Nest'. Explanation to Section 2(zk) makes all persons who construct or convert building into apartments or develop a plot for sale, as well as a person who sells apartments or plots to be promoters making them jointly liable as such for the functions and responsibilities specified under the Act, or the Rules and Regulations made thereunder. Thus, a person who does not actually construct or causes to be constructed a building but merely takes part in the joint venture and sells flats, becomes a Promoter. Appellant admits that it is entitled to a share in the joint venture in the constructed area,

which it is entitled to sell. Thus, the Appellant is entitled to sell flats in the project and accept consideration for such sale. There is therefore no doubt to the position that, both Appellant as well as the second Respondent are Promoters and are jointly liable in respect of the responsibilities under the RERA and Rules and Regulations made thereunder.

18. In my view therefore, mere falling of flat in the share of the second Respondent under the Joint Development Agreement, would not excuse the Appellant from the responsibilities and liabilities under the RERA, Rules and Regulations made thereunder qua that flat. RERA does not demarcate or restrict liabilities of different promoters in different areas. The liability is joint for all purposes under the Act, Rules and Regulations.

19. Circular dated 4 December 2017, on which reliance is placed on behalf of the Appellant, far from assisting it, actually mitilates against the Appellant. The Circular is issued with a view to tackle a situation where several developers had entered into agreements with individuals/organisations like land owners or investors by which such individuals/organisations were also entitled to share in the total revenue generated out of sale of apartments. It was observed that such individuals/ organisations were not included in the online registration with MahaRERA. With a view to ensure their inclusion in the online registration with MahaRERA, the Circular dated 4 December 2017 is issued. Relevant part of the Circular reads thus:

> ***Whereas**, during the online registration process, especially for on-going projects, it was observed that several developers (who actually obtain building permissions and construct) of the real estate project, have entered into arrangement with individuals/organizations like land owners or investors, by which the said Individuals/organizations are entitled to a share of the total revenue generated from sale of apartments or share of the total area developed for sale which are also marketed and/or sold by such individuals/organizations.*

***Whereas**, a careful consideration of the aforesaid definition in the light of the true object and purpose of the said Act leaves no manner of doubt that such individuals/organizations are also covered and clearly fall within the aforesaid definition of the term 'Promoter' and as such are Promotors within the meaning of the said terms for the purpose and for the implementation of the said Act and all the rules framed thereunder. They are therefore jointly liable for the functions and responsibilities specified in the Act in the same manner as the Promoter who actually obtains building permissions and carries out construction.*

***Whereas**, for the ease of filing online registration application and for the benefit of the consumers it is necessary to distinguish and / or identify whether such Promoter is the land owner, investor or is actually obtaining the building permissions for carrying out the construction and is in fact carrying out construction.*

***Therefore**, it is directed that*

(1) Such individuals/organizations who fall within the aforesaid definition of the term 'Promoter' on account of being landowners or investors, shall be specified as such, at the time of online registration with MahaRERA.

(2) Though liabilities of such landowner Promoter or investor Promoter shall be as co-terminus with the written agreement /arrangement governing their rights in the real estate project, for the purpose of withdrawal from the designated bank account of a real estate project, the obligations and liabilities of all such Promoters shall be at par with each other.

(3) A copy of the written agreement or arrangement between Promoters (whether landowner or investor) which clearly specifies and details the rights and shares of each Promoter, should be uploaded on the MahaRERA website, along with other details for public viewing.

(4) Such landowner Promoter and investor Promoter should also submit declaration in Form B of Maharashtra Real Estate (Regulation and Development) (Registration of Real Estate Projects, Registration of Real Estate Agents, rates of Interest and Disclosures on website) Rules, 2017.

(5) Further each such landowner Promoter or investor Promoter, who is entitled to a share of the total area developed, should also open separate bank account for deposit of 70% of the sale proceeds realized from the allottees of their share.

20. Thus, the Circular dated 4 December 2017 also makes it abundantly clear that even the entities who are entitled to share in the revenue generated from sale of flats are jointly responsible/liable for functions and responsibilities specified under the Act as if they are Promoters themselves".

Thus, the above judgement has laid down the position of law that "*while registering the project as ongoing project under Section 3 of the RERA, Appellant's name has been included in the list of Promoters. Therefore, Appellant cannot run away from the fact that it is the promoter in respect of the project.*" In the present case admittedly the name of respondent no.1 is shown as co-promoter of the project. Hence by the ratio laid down in the above judgment, the respondent no.1 being co-promoter is liable to discharge all the functions and liabilities arising out of the provisions of RERA Act, 2016.

50. In the light of the above judgement, it is pertinent to scan the terms of the Development Management Agreement executed between the respondent no. 2 and 1. Recital E of the said DMA states that "..... *appointment of a Development Manager who as a part of its scope of work will be managing, facilitating, assisting, and supervising through contractors the construction and*

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development of the said project which construction and development shall be undertaken by such contractors, consultants, and availing of the Development Manager's consideration skills and expertise in the business of design, conceptualization and planning of real estate development project and being also desirous of the Development Manager's Brand Name associated with the project."

51. Clause 3.1.5 of the said DMA states that "*The Development Manager shall have overall control, responsibilities, obligations including but not limited to supervision, management and marketing for developing the project which shall mean the services as more particularly set out in Annexure B*". Further, Clause 3.2.1 states that "*The Development Manager on the commencement date shall permit the use of the Brand Name of the project to "Godrej" solely for the purpose of branding and marketing the project. RR Builder agrees that all intellectual property rights in an arising out of or connected with the Brand Name including all corporate logos, shall be sole, absolute and exclusive property of Development Manager alone. .... Marketing shall all times be under the sole control of the Development Manager....*".

52. The clause 3.6.3.1 of the DMA states that "*the Development Manager shall ensure, supervise and manage the performance of the duties and services of the Main contractor and Other Contractors and third-party consultants, as it may be required.*" Further the Clause 3.6.3.2 states that *"the Development Manager shall be entitled to appoint construction management agencies, third party consultants including but not limited to marketing/creative agencies at the costs of Development Manager to perform part of the services/obligations under the Agreement."*

53. The clause 3.6.3.4 of the DMA states that " *the Development Manager shall execute marketing strategy and also provide personnel for the purpose of marketing and to manage the site sales and marketing office. All costs relating to marketing, advertising, promoting, and events organized by the Development Manager or participated in respect of the project shall be sole responsibility of t Development Manager.*" Further, Clause 5.5 of the DMA states that " *It is agreed between the parties that the sale revenue shall be deposited in the Escrow Account be first utilized towards (a) Project costs, (b) tax, and (c) payment of Development Management Fees.....*". Further, Clause 17.2.9 of the DMA states that "*Development Manger shall promote, advertise and facilitate sales of the said project.*"

54. Thus, collective readings of the said clauses of the Development Management Agreement clearly depict the picture of respondent no.1 as promoter as respondent no.1 is caused construction of the said project and solely responsible for marketing of the project, exclusively under its Brand name, and also having responsivities of appointment of construction management agencies, third party consultants it its own costs. The respondent fits into definition of promoter under the explanation of the section 2 (zk) of the RERA Act, 2016 which states that "*Explanation.- For the purposes of this clause, where the person who constructs or converts a building into apartments or develops a plot for sale and the person who sells apartments or plots are different persons, both of them shall be deemed to be the promoters and shall be jointly liable as such for the functions and responsibilities specified, under this Act or the rules and regulations made thereunder.*" Thus, from the clauses

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of the Development Management Agreement, it is clear that the respondent no.1 falls within the definition of the "promoter" within the meaning of section 2(zk) of RERA Act, 2016.

55. It is also the contention of the respondent no.1 that is has no privity of contract with the appellant. The respondent no.2 received the consideration amount, the respondent no.2 issued allotment letter in favour of the appellant hence on the ground of privity, the respondent no.1 is not liable to pay refund of the amount with interest to appellant under the provisions of RERA Act, 2016. It is pertinent that the Hon'ble Bombay High Court in case of *Wadhwa Group Housing Private Limited (supra)* in para-24 and 25 has held as under:

> *"24. The Appellant's contention about absence of privity of contract between it and the Complainant is totally misplaced. Definition of the term 'promoter' under Section 2(zk) of the RERA would indicate that even persons/entities with whom a flat purchaser does not enter into contract are also covered by definition of the term 'promoter'. Therefore, it is not necessary that there has to be an agreement between every Promoter and the flat purchaser. As observed above, it is a matter of indoor management between the Promoters and the flat purchaser who is not supposed to know the intricacies of the arrangements made between several promoters amongst themselves. When a claim is raised in respect of a real estate project by a flat purchaser, all promoters become jointly liable qua that flat purchasers, irrespective of whether there is privity of contract with each of the*

promoter or not. This is the scheme of RERA and mere absence of privity of contract with a particular promoter does not relieve such promoter in respect of the liabilities under RERA.

25. I am therefore of the view that Appellant cannot escape the liability to refund the amount received towards sale of flat to Respondent No. 1."

56. From the ratio laid down by the Hon'ble Bombay High Court, the privity of contract with each of the promoter is immaterial so far as the liability under the RERA of all the promoters is concerned. All the promoters are jointly and severally liable to discharge the functions and liabilities arising under the provisions of RERA Act, 2016.

57. In the case of *Wadhwa Group Housing Pvt. Ltd.*(supra) the Hon'ble Bombay High Court in para-17 has held as under:

"17.... *While registering the project as ongoing project under Section 3 of the RERA, the Appellant's name has been included in the list of promoters. Therefore, Appellant cannot run away from the fact that it is the promoter in respect of the project..."*

58. Thus, by the ratio laid down by the Hon'ble Bombay High Court In the said judgment, since the name of the respondent no.1 has been included in the list of the promoters as co-promoter, the respondent no.1 is the promoter of the said project. It is pertinent that at the relevant period when the respondents were put to notice for refund, the respondent no.1 was promoter on the MahaRERA webpage. Even till the proposed date of completion of the said project when the said project was registered with the

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MahaRERA the date of completion is shown as 30.11.2021. Therefore, even during this period till 30.11.2021, when the appellant's rights under Section 18 were crystalized and accrued to the appellant, the respondent no.1 continued to be the co-promoter of the subject project. Therefore, respondent no.1 is liable for all liabilities towards the appellant arising out of the provisions of RERA Act, 2016.

59. Thus, from the dictum and ratio laid down in above judgement in the case of *Wadhwa Group Housing Private Ltd. (supra)* by Hon'ble High Court, we are of the view that the respondent no.1 cannot escape its liability or obligation as promoter under the provisions of RERA Act, 2016. Therefore, the respondent no.1 and respondent no.2 are jointly and severally liable in respect of the responsibilities and liabilities under the RERA. Act, 2016 and Rules and Regulations made thereunder. In view of the above, we are of the considered view that the respondent no.1 being having revenue sharing arrangement and having shown while registering the project as co-promoter and continued as co-promoter till the rights of the appellant were crystalized and accrued to the appellant, the respondent no.1 falls under the definition of the promoter under the provisions of RERA Act, 2016. Accordingly, we answer point no.1 in the affirmative.

Point no.2

60. The said allotment letter dated 26.04.2016 reveals all the ingredients of valid and concluding contract. Closer examination of the said allotment letter reveals with the details of the project property, total consideration of the subject flat, payment schedule along with other terms and conditions. The said allotment letter

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also records the amount of Rs.20,00,000/- having been received by respondent no.2, for the purchase of the subject flat. It is significant to note that the respondents/promoters have not specifically denied the factum of payments made by the appellant including that recorded in the said allotment letter. Both the parties have acted in furtherance of the said allotment letter and the respondents have received the payments from the appellant.

61. We are of the considered view that the said allotment letter is valid and concluded contract as it depicts clear picture from the point of view of Clause (a) and (b) of Section 2 of the Contract Act, 1872. Therefore, the said allotment letter is enforceable under the law.

62. Although the date of possession has not been mentioned in the said allotment letter, the Hon'ble Supreme Court in the case of *Fortune Infrastructure (Now known as M/s. Hicon Infrastructure) & Anr. V/s. Trevor D'Lima & Ors.* [(2018) 5 SCR 273] wherein the Hon'ble Apex Court has held that if the date of possession is not mentioned in the agreement, the promoter is expected to hand over the possession of the unit within a reasonable time and the period of three years held to be reasonable time. Therefore, the due date of possession can be inferred to be 26.04.2019, three years being reasonable period for completion of the project.

63. It is pertinent that the appellant has paid almost 50% consideration amount, however the respondents have not executed agreement for sale with the appellant. Section 4 of the MOFA casts an obligation on the promoter that the promoter shall not accept the sum of monies as advance part consideration or deposits, which may be more than 20% of the sale price without entering into written agreement for sale and the agreement for sale shall be

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registered under the Registration Act, 1908. Section 13 of the RERA Act, also casts a similar obligation on the part of the promoter that the promoter shall not accept the sum of more than 10% of the purchase price from the allottees without first entering into written agreement for sale and registering the said agreement. It is not in dispute that the appellant has paid around 50% consideration amount, which is more than 20% in case of Section 4 of the MOFA and 10% in case of Section 13 of the RERA Act, 2016 without executing and registering the agreement for sale. Therefore, the respondents have violated the provisions of Section 4 of the MOFA and Section 13 of the RERA Act, 2016.

64. Although, the allotment letter has been issued prior to RERA Act, coming into force, we are of the considered view that the said allotment letter is enforceable under the provisions of RERA Act, 2016.

65. The Hon'ble Supreme Court in the 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] has held that the RERA Act, 2016 is retroactive in its operation and held in Para-37, 41 and 45 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.

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."

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 the above exposition of law in the case of *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/allottee is entitled to seek relief under the provisions of the RERA Act, 2016 even though the said allotment letter is executed prior to RERA Act, 2016 coming in force.

66. The project is still incomplete and respondents have not obtained occupation certificate. Therefore, the respondents have failed to hand over possession of the said flat by the due date of possession i.e. 26.04.2019. Once there is delay in handing over of possession, the appellant is entitled to relief of refund with interest and compensation under Section 18 of the RERA Act, 2016.

67. 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

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delay the project. The allottee executed the agreement for sale based on the commitment given by the promoters to hand over possession by a certain date as specified in the agreement for sale.

68. Considering the liability of promoters 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 allottee has made substantial payment of the total consideration to the promoter along with the other charges as per demand from the promoters from time to time. Allottee can be held responsible only if failure to discharge its obligation as per the agreement for sale has caused delay in completion of the project. If the allottee is not responsible for the reasons for the delay, he is 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)."

69. 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

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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.

70. It is therefore clear that the appellant is not responsible for the delay in construction of the said project. Further, the appellant has made substantial payment consideration amounts at the time of booking of the flat itself. Therefore, there are no shackles or limitations on exercise of rights by allottee to seek relief of withdrawal from the project once there is delay in possession. The promoter was supposed to deliver possession of the subject flats to the appellant by 24.04.2019 as observed above. However, it is not in dispute that the construction of the project is still incomplete and the promoter has not yet obtained occupation certificate as on date. Therefore, we are of the considered view that the appellant is entitled to refund of the amount paid to the respondents along with interest at the prescribed rate under the RERA Act, 2016 and the rules and regulations thereunder. In view of this, we answer Point No.2 in the affirmative.

Point no.3

71. As already observed above, the respondent no.1 is shown as promoter by virtue of revenue sharing arrangement while registering the project. Therefore, the respondent no.1 along with respondent no.2 is jointly and severally liable for functions and liabilities as promoter. The Authority in the impugned order has held that the respondent no.1 is not promoter and therefore not

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liable under the provisions of RERA Act, 2016. As already observed above, the respondent no.1 by its own conduct and the fact that it has been shown in the project registration as co-promoter by virtue of revenue sharing arrangement. Therefore, the respondent no.1 is also promoter of the said project and respondent no.1 and 2 are jointly responsible to discharge all the liabilities arising out of RERA Act, 2016. Therefore, the view taken by the Authority is not sustainable in the eyes of law and contrary to the settled position of law. Hence, the impugned order warrants interference in this appeal to that extent.

72. The Authority has also allowed entitlement to the respondent to the benefit of moratorium period due to Covid-19 pandemic. As already observed above, the due date of possession for handing over of possession is 26.04.2019 which is much prior to the Covid-19 pandemic. Therefore, the respondents are not entitled to any benefit of moratorium period. It is to this extend also the impugned order warrants interreference in this appeal. Accordingly, we answer the point no.3 in the affirmative.

73. As we have already observed above, the respondents are jointly and severally liable for all the liabilities under the RERA Act, 2016 and therefore, the amount of refund with interest is joint and several liability of the respondent nos. 1 and 2. We also note that the reliance of the respondents on the consent terms executed between the respondent no.1 and 2 is misplaced. The said consent award is between the respondents as a private contract to which the appellant is not party and hence the same is not binding on the appellant. Further, the said consent terms between private parties

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will not override the provisions and liability arising from the RERA Act, 2016.

74. The respondent no.1 has contended that it had offered the appellant the refund of the entire amount along with interest as per the RERA Act, 2016 on 10.06.2019. However, the appellant has refused to accept the same and insisted that the refund with interest should be without deduction of TDS. In our view, the interest amount on the refund would attract TDS as per the Income Tax Act and therefore refusal to accept the refund with interest when offered by the respondent no.1 on 10.06.2019 is unreasonable. Now, the appellant is seeking interest on the refund amount under Section 18 of the RERA Act, 2016 from the date of respective payments till the amounts are realized. We are of the view that when the respondent no.1 offered to refund the amount with interest as per RERA Act, 2016 on 10.06.2019, by not accepting the said offer and now claiming interest beyond the period of 10.06.2019 is not just and reasonable. Further, it will be unjust to fasten the liability of interest on the respondents beyond the period from 10.06.2019. This is especially when the appellant himself refused when the offer was made in good faith by the respondent no.1. Therefore, we are of the view that the appellant is entitled to seek refund of entire amount of Rs.1,85,54,471/- along with interest from the date of respective payments till 10.06.2019. However, we cannot ignore that the respondent no.1 has retained the said amount with itself, which would also carry interest and if the said amount is deposited by the respondent no.1 before the Hon'ble High Court in the non-compliance proceedings of the consent award, then the appellant is entitled to the accrued

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interest, if any, on the said amount mentioned above deposited before the Hon'ble High Court.

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

ORDER

1. The captioned Appeal No.AT006000000133968 of 2022 in Complaint No. CC006000000151209 is partly allowed and the impugned order dated 05.07.2022 is modified and substituted as under:

   i) The respondent nos. 1 and 2 jointly and severally are directed to refund the amount of Rs.1,85,54,471/- (Rupees One Crore Eighty-Five Lakhs Fifty-Four Thousand Four Hundred Seventy-One only) along with interest at the rate of SBI's highest Marginal Cost Lending Rate (MCLR) plus 2% from the respective dates of payment till 10.06.2019. Further, the appellant is entitled to accrued interest, if any, on the said amount if deposited by the respondent no.1 before the Hon'ble High Court in the non-compliance proceedings of the consent award. In the event the respondent no.1 has not deposited the said amount before the Hon'ble High Court, then the respondents shall refund the paid amount as mentioned above together with the interest rate as prescribed above, from the respective dates of payment till the amounts are realized to the appellant.

   ii) The respondents are directed to pay the aforesaid amounts within 30 days of this order, failing which the respondents shall pay further interest at the same rate

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of interest as prescribed above on the outstanding amount as on 04.06.2026 till the amounts are realized to the appellant.

iii) It is reiterated that the respondent nos. 1 and 2 are jointly and severally liable to pay the amounts to the appellant as mentioned above.

2. Parties shall bear their own costs.

3. Copy of this Order be communicated to the Authority and the respective parties as per Section 44(4) of RERA Act, 2016.

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

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