

BEFORE THE MAHARASHTRA REAL ESTATE

APPELLATE TRIBUNAL, MUMBAI

Appeal No.AT0060000134091 of 2022

In

Complaint No. CC006000000192430

Mr. Niraj G. Jagwani]
Adult, Indian Inhabitant,]
Occupation: Business,]
201, Padma Ashish CHSL, 20th Road,]
Near Lakme Salon, Khar (West),]
Mumbai-400 052.] ... Appellant.

Versus

1. M/s. Triveni Developers,]
2. Mr. Ashok Jethwa,]
3. Mr. Mihir Jethwa,]
A Partnership firm through its]
Partners all having office address]
At 807, 8th Floor, Gold Crest]
Business Centre, L.T. Road,]
Borivali (West), Mumbai-400 092.] ... Respondents.

Along with

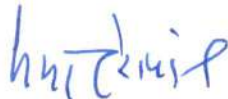
Appeal No.AT0060000134092 of 2022

In

Complaint No. CC006000000209595

Mrs. Janvi Niraj Jagwani]
Adult, Indian Inhabitant,]
Occupation: Business,]
201, Padma Ashish CHSL, 20th Road,]
Near Lakme Salon, Khar (West),]
Mumbai-400 052.] ... Appellant.

Versus



1. M/s. Triveni Developers,]
2. Mr. Ashok Jethwa,]
3. Mr. Mihir Jethwa,]
A Partnership firm through its]
Partners all having office address]
At 807, 8th Floor, Gold Crest]
Business Centre, L.T. Road,]
Borivali (West), Mumbai-400 092.] ... Respondents.

*Adv. Mr. B.R. Wadhvani for Appellant in both the appeals.
None for Respondents.*

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

RESERVED ON : 6th April, 2026

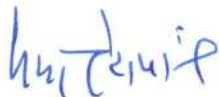
PRONOUNCED ON : 16th April, 2026

(THROUGH VIDEO CONFERENCING)

JUDGEMENT

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

1. The captioned appeals arise from the two separate orders dated 17.08.2022 passed by the learned member-I, Maharashtra Real Estate Regulatory Authority (for short "the Authority") in the complaints No.CC006000000192430 and complaint no. CC006000000209595 in respective appeals.
2. The respondent no.1 is promoter of the project in the name and style as "New Shiv Krupa CHSL Triveni Contour" bearing MahaRERA Project Registration No. P51800005989, located at Borivali, Mumbai.
3. For the sake of convenience, parties to the appeal here-in-after will be referred to as "the complainants/allottees" and "promoter" respectively.



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4. Since both the appeals arise from the identical project and have facts similar and the law points involved being identical, the appeals were heard together and decided by this common judgment.
5. The brief facts culled out from the pleadings, documents on record and the impugned order are that the appellants in the respective appeals have purchased the subject flats along with car spaces in the promoter's said project as per the details below:

Mr. Niraj G. Jagwani in Appeal No.AT006/134091

Sr. No.	Flat No.	Date of Agreement for sale	Consideration amount (Rs.)	Consideration Paid (Rs.)	Date of possession
1	701	29.08.2018	1,35,00,000	1,27,00,000	31.12.2019

Ms. Janvi Niraj Jagwani in Appeal No.AT006/134092

Sr. No.	Flat No.	Date of Agreement for sale	Consideration amount (Rs.)	Consideration Paid (Rs.)	Date of possession
1	2103	18.12.2019	1,00,76,000	1,00,76,000	31.12.2020
2	2003	18.12.2019	1,16,86,500	1,16,86,500	31.12.2020

6. The promoter failed to complete the construction of the project and hand over possession of the subject flats in the respective appeals by the due date of possession as per the respective agreements for sale. Aggrieved by this, the appellants filed captioned complaints before the Authority.
7. In the captioned complaint filed by Mr. Niraj Jagwani, the relief that was initially sought was refund of the amounts paid along

with interest under Section 18 of the Real Estate (Regulation and Development) Act, 2016 (for short 'the RERA Act, 2016'). However, by an amendment, which was allowed by the Authority, the prayer was changed to possession of flat and interest on account of delay in handing over of possession under Section 18 of the RERA Act, 2016.

8. In the captioned complaint filed by Janvi Niraj Jagwani the appellant has sought relief of possession and interest on account of delay in possession under Section 18 of the RERA Act, 2016.
9. Thus, the prayer for reliefs sought by the appellants in the respective complaints is possession and interest on account of delay in handing over of possession under Section 18 of the RERA Act, 2016.
10. The record reveals that none appeared for the respondents/promoter in the said complaint. Further, the respondents/promoter failed to file reply to the complaint and the complaints were heard ex-parte against the respondents/promoter. The Authority in the impugned order has clearly recorded that the notices of hearing dated 25.01.2020, 01.06.2022 and 04.08.2022 were duly served upon the respondents but they failed to appear and put forth their contentions.
11. After hearing the complainants and with due consideration to the material before it, the Authority passed the said impugned order in the respective complaints. The Authority observed that the promoters failed to hand over possession by the due date of possession as per the respective agreements for sale and



hence the complainants are entitled to seek relief of interest on account of delay in handing over of possession under Section 18 of the RERA Act, 2016.

12. With these observations the Authority directed in the respective impugned orders that:

- i) In case of flat no.701 in the captioned complaint No.CC006000000192430 the promoter/respondents were directed to pay interest on the paid amounts with effect from 01.01.2020 till the date of possession with occupation certificate,
- ii) In case of flat nos.2103 and 2003 in the captioned complaint no. CC006000000209595 the promoter/respondents are directed to pay interest on the paid amounts with effect from 01.01.2021 till the date of possession with occupation certificate,
- iii) In both the captioned complaints, the Authority directed that in view of mitigating circumstances beyond the control of the promoter/respondents and also to ensure that the said project is not jeopardized due to the outflow of finances and is completed keeping in mind the interest of the other buyers of the said project at large, the amounts of interest shall be paid by the respondents/promoter to the complainants after obtaining full occupation certificate,
- iv) In both the captioned complaints the Authority directed that the promoter is entitled to claim benefit of "moratorium period" as mentioned in the Notifications/Orders No.13 and 14 dated 02.04.2020 and



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

13. Aggrieved by the impugned orders, the appellants have filed the respective captioned appeals on the grounds set out in the said memorandum of appeals inter alia seeking following reliefs:

Direction to the promoter/respondents to pay interest as per SBI's highest Marginal Cost Lending Rate (MCLR) plus 2% on the paid consideration amounts with immediate effect i.e. 01.01.2020 (in case of flat no.701) and with effect from 01.01.2021 (in case of flat no.2103 and 2003) till the possession is handed over.

14. The record reveals that the respondents despite sufficient opportunities failed to appear in these appeals and put-forth their contentions. Hence, the appeals have proceeded ex-parte against the respondents.

15. We have heard the learned Advocate for the appellants at length. The submissions advanced by the learned Advocate are nothing but re-iteration of contents of the memorandum of appeals and written submissions.

16. After having heard the learned Advocate for appellant and on examination of the pleadings, material on record, the points that arise for our consideration and findings thereon for the reasons to follow are as below:

Sr.No.	Points	Findings
1.	Is the appellant in the respective appeals entitled to relief of interest under section 18 of the RERA Act, 2016?	In the Affirmative.

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2.	Whether the impugned orders in the respective appeals warrant interference in these appeals?	In the affirmative.
3.	What order?	As per final order.

REASONS

Point No.1

17. On ensemble of the facts as submitted above by the appellants and the material on record, it reveals that the appellants in the respective appeals have purchased the subject flats from the respondents in the said project as per the details in the table at para-5 here-in-above.
18. The appellant in the respective appeals have paid full/almost full consideration amount. However, the promoter failed to hand over possession of the subject flats by the due date of possession as per the dates specified in the respective agreements for sale. The construction is still incomplete and the respondents/promoter have not obtained occupation certificate. Hence, the appellants in the respective appeals are entitled to relief of interest under Section 18 of the RERA Act, 2016.
19. Further, there are no pleadings both in the captioned complaint proceedings and in the appeal proceedings from the respondents/promoter about the reasons for delay in completing the construction of the project thereby delay in handing over of possession or any force majeure factors beyond

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the control of the respondents/promoter entitling the respondents/promoter any extension in date of possession as specified in the respective agreements for sale.

20. The due dates of possession in the respective agreements for sale have already been passed and the respondents/promoter has not completed construction of the project. This demonstrates sufficiently that the respondents/ promoter has failed to hand over possession of the respective flats to the appellants by the due date of possession in their respective agreements for sale. Therefore, the appellants in the respective appeals are entitled to relief of interest under Section 18 of the RERA Act, 2016.
21. 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

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may delay the project. The appellants executed the agreement for sale based on the commitment given by the promoter to hand over possession by a certain date as stipulated in the agreement for sale.

22. Considering the liability of the promoter to assess the likely date of completion of the project, allottees have very limited liability for discharging its own obligations as per the terms of the agreement for sale *inter alia* relating to primarily making payments from time to time so that the project is not starved of funds to cause delay in completion. The appellants have made full payment/almost full payments of the total consideration to the promoter. Allottees can be held responsible only if failure to discharge their obligations as per the agreements for sale has caused delay in completion of the project. If the Allottees are not responsible for the reasons for the delay, allottees 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 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

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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)."

Thus, as per the ratio laid in the above judgement, the allottees are entitled to seek relief of interest once there is delay.

23. While explaining the scope of Section 18 of RERA, the Hon'ble Supreme Court in *M/s. Newtech Promoter and Developers Pvt. Ltd. V/s. State of Uttar Pradesh* (supra) in para 25 held that:

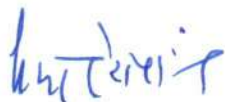
"Para 25. The unqualified right of the allottee to seek refund referred under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute 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

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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.”

Thus, as per the ratio laid in the above judgement, the entitlement of seeking relief of interest is unqualified and unconditional. This indefeasible right to seek interest on account of delay in possession cannot be defeated for any reasons.

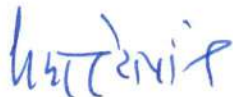
24. The appellants are not responsible for the delay in construction of the said project. Further, the appellants have made payment of full consideration/almost full consideration amounts to the promoter. Therefore, there are no shackles or limitations on exercise of rights by the appellants to seek interest once there is a delay in possession. The respondents/promoter was supposed to deliver the possession of the subject flat to the appellants on or before 31.12.2019 and 31.12.2020 as per the respective agreements for sale. It is not in dispute that the respondents/promoter has not completed construction of the project till date. It is therefore sufficient to hold that respondents/promoter has failed to hand over the subject flats to the appellants on the dates specified in the respective agreements for sale. We therefore come to the conclusion that the appellants are entitled to relief of interest from the date of default in handing over of possession as per the respective



agreements for sale. We, accordingly, answer point no.1 in the affirmative.

Point No.2

25. The Authority in the impugned order has directed that in view of the mitigating circumstances beyond the control of the promoter and also to ensure that the project is not jeopardized due to outflow of finances and completed keeping in mind the interest of other allottees of the said project at large, the amount of interest shall be paid by the respondents/promoter to the complainants after obtaining the occupation certificate.
26. As we have already observed above, the Hon'ble Supreme Court in the case of *Newtech Promoters* (supra) has held that the entitlement of seeking interest is unqualified and unconditional. An indefeasible right to seek interest on account of delay in possession can not be defeated for any reasons. Therefore, the above observations of the Authority are not in accordance with the law and the ratio laid down by the Hon'ble Supreme Court in the above judgment.
27. Further, Rule 19 of the Maharashtra Real Estate (Regulation and Development) (Registration of Real Estate Project, Registration of Real Estate Agents, Rate of Interest and Disclosure on Website) Rules 2017, stipulates timeline for the refund. The said Rules stipulates that 30 days from the date of the order for said refund along with applicable interest and compensation, therefore the respondents/promoter are obligated to pay interest to the appellants within 30 days of the impugned order. Therefore, we are of the considered view that the impugned



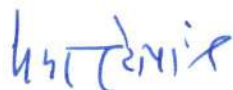
order warrant interference in these appeals on account of the above.

28. Further, the Authority in the impugned order has also held that the promoters are entitled to claim benefit of moratorium period as mentioned in the Notifications/Orders No.13 and 14 dated 02.04.2020 and 18.05.2020 issued by the MahaRERA and Notification and Order which may be issued in this regard from time to time.
29. In this regard as we have already observed that there are no pleadings from the promoter in the complaint proceedings about any reasons for the delay in completing the construction of the project or any claim with regard to the force majeure grounds entitling the promoter for benefit of moratorium period. Further, it is also pertinent that the date of possession as specified in the agreements for sale are much prior to the Covid-19 pandemic. Therefore, the respondents/ promoter are not entitled to any benefit of "moratorium period" as has been allowed by the Authority in the impugned orders. On this count also the impugned orders warrant interference in these appeals. Accordingly, we answer point no.2 in the affirmative.
30. In view of the above discussion, we proceed to pass the following order.

ORDER

1. The captioned Appeal No. AT006/000000134091 of 2022 and Appeal No. AT006/000000134091 of 2022 are partly allowed and the impugned orders in the respective appeal are modified and substituted as under:

(A): In Appeal No. AT006/000000134091 of 2022



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- i) The respondents/promoter are directed to pay interest on the amount of Rs.1,27,00,000/- (Rupees One Crore Twenty Seven Lakhs Only), paid by the appellant to the respondents/promoter towards consideration of the subject flat bearing no.701, at the rate of State Bank of India's Highest Marginal Cost Lending Rate (MCLR) plus 2% with effect from 01.01.2020 till the date of this order, within 30 days of this order, failing which the respondents/promoter shall also pay interest on the amounts outstanding as on 16.05.2026 at the same interest rate as prescribed above till the payments are realized to the appellant.
- ii) Further, the respondents/promoter are also directed to pay interest on the amount of Rs.1,27,00,000/- (Rupees One Crore Twenty-Seven Lakhs Only) paid by the appellant to the respondents/promoter towards consideration of the subject flat no.701 from the date of this order **for every month** till the said flat is handed over to the appellant along with occupation certificate.
- iii) The respondents/promoter are directed to hand over lawful possession of the subject flat no.701 to the appellant after obtaining occupation certificate.

(B) In Appeal No. AT006/000000134092 of 2022

- i) The respondents/promoter are directed to pay interest on the amount of Rs.1,00,76,000/- (Rupees One Crore and Seventy Six Thousand

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Only), paid by the appellant to the respondents/promoter towards consideration of the subject flat bearing no.2103 and the amount of Rs.1,16,86,500/- (Rupees One Crore Sixteen Lakhs Eighty Six Thousand and Five Hundred Only) paid by the appellant to the respondents/promoter towards consideration for the flat no.2003 at the rate of State Bank of India's Highest Marginal Cost Lending Rate (MCLR) plus 2% with effect from 01.01.2021 till the date of this order, within 30 days of this order, failing which the promoters shall also pay interest on the amounts outstanding as on 16.05.2026 at the same interest rate as prescribed above till the payments are realized to the appellants.

- ii) Further, the respondents/promoter are also directed to pay interest to the appellant on the amounts of Rs.1,00,76,000/- (Rupees One Crore and Seventy Six Thousand Only), paid by the appellant to the respondents/promoter towards consideration of the subject flat no.2103 and the amount of Rs.1,16,86,500/- (Rupees One Crore Sixteen Lakhs Eighty Six Thousand and Five Hundred Only) paid by the appellant to the respondents/promoter for the subject flat no.2003 from the date of this order, for **every month** at the same rate prescribed above till the

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subject flats are handed over to the appellants along with occupation certificate.

iii) The respondents/promoter are directed to hand over lawful possession of the subject flat no.2103 and 2003 to the appellant after obtaining of the occupation certificate.

2. Parties to 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.
4. Accordingly, the both the appeals stand disposed of in above terms.

(SHRIKANT M. DESHPANDE)

(S.S. SHINDE, J.)

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