BEFORE THE MAHARASHTRA REAL ESTATE APPELLATE TRIBUNAL MUMBAI

Appeal No. AT006000000053112 OF 2021
IN
Complaint No. CC006000000100192 OF 2019

1. Shreeram Haribhau Telang]
2. Kiran S. Telang]
A-3/603, Rutu Enclave, Ghodbunder]
Road, Thane - 400615.] **... Appellants**

Versus

1. Propel Developers Pvt. Ltd. @]
Runwal Homes Pvt. Ltd]
Runwal & Omkar Esquare, 5th Floor,]
off Eastern Express Highway, opp.]
Sion Chunabhatti Signal, Sion (East),]
Mumbai - 400022.] **... Respondent**

Adv. Satish Dedhia for Allottees/Appellants
Adv. Abir Patel for Promoter/Respondent

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

RESERVED ON : 05th MARCH 2026

PRONOUNCED ON : 12th MARCH 2026

(THROUGH VIDEO CONFERENCE)

JUDGMENT

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

1. Being aggrieved with the impugned order dated 02.03.2020 passed by the Learned Chairman, the Maharashtra Real Estate Regulatory Authority (for short "the Learned Authority"), in Complaint No. CC006000000100192 of 2019 filed by the allottees/appellants,

wherein the learned Authority rejected the claim of interest on delayed possession of flat by the promoters/respondents, the allottees/appellants have preferred instant appeal and assailed the impugned order on the grounds enumerated in the memorandum of appeal.

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

3. The brief facts culled out from the pleadings of the parties, impugned order and material on record revealed that allottees/appellants while relying on information given in brochure and website of promoter, representation made on the online portal, preferred to book flat in a "Runwal Greens Wing- 5-8" situated at Mulund, Mumbai. The allottees/appellants have purchased an apartment bearing No. 3305, admeasuring 1096 sq. ft. and registered agreement for sale on 17.10.2013 for a consideration amount of ₹2,46,68,500/-. The original possession date as per agreement for sale was 01.12.2015, which was revised to 31.10.2017 and later on 31.12.2019.

4. The Allottees/appellants contended that they have carried out voluminous correspondence raising grievances from time to time by series of emails exchanged with the promoter due to various

provisions of MOFA and provisions of RERA violation, contraventions and unfair practices on the part of the promoter/respondent. The allottees have suffered huge losses, hardships and mental agony. The Authority did not grant reliefs as sought by the allottees/appellants in Complaint No. CC0060000000100192. Thus, they challenged the impugned order dated 02.03.2020. The allottees/appellants contended that as per the agreement for sale, the carpet area of the flat is 101.82 sq. mtr i.e. 1096 sq. ft. however, the carpet area as per approved plan dated 15.07.2019 is 86.16 sq.mtr i.e. 927 sq. ft. Had the learned Chairman conducted proper inquiry as per Rule 6/7 by exercising his power under Section 35 to direct the respondent to furnish information and documents, it would have been clear that the carpet area of the flat in the sanctioned plans is lesser than the carpet area sold to the allottees under the agreement for sale. The promoter/respondent has charged excessive amount and caused financial loss of ₹37,94,217/- plus ₹1,89,769/- to the allottees/appellants.

5. The Allottees/Appellants further submitted that the Authority failed to appreciate the provisions under Section 18 in the light of Hon'ble High Court observations in Neelkamal judgment, which made it clear that the promoter/respondent is liable to pay interest for the entire delay period for use of allottees' money during the delay period. The

four words used in Section 18 of RERA Act, 2016 i.e. "If the promoter fails" "or is unable" "due to discontinuation of business" and more particularly "or for any other reasons", suffice to explain that this Section imposes the obligations on the promoter to pay interest and compensation to the allottee for the delay in giving possession and completing the project irrespective of reasons that caused the delay. Section 18 of RERA "by the dates specified therein" made it clear that the delay period has to be calculated from the promised date of possession. Thus, the promoter is liable to pay interest as well as compensation to the allottees/appellants from the promised date of possession i.e. 01.12.2015. Important extracts from Neelkamal Judgment:

> *Para-259: "A perusal of Section 18 indicates that payment of interest.. is payable on account of default committed by promoter.. this section does not consider a situation where the promoter is unable to complete or handover possession for no fault of his own..."*
> *Para-119: "Under the provisions of Section 18, the delay in handing over the possession would be counted from the date mentioned in the agreement for sale entered into by the promoter and the allottee prior to its registration under RERA".*

6. The Allottees/Appellants further contended that they have noted their claim against respondent and made it clear through series of correspondence from January 2016 to June 2019, before and after filing of the complaint that the appellants have always sought

interest/compensation from the respondent. As an abundant precaution at the time of taking possession of flat the allottees/appellants have specifically recorded that "we are taking possession of the flat and without prejudice and we reserving our rights and contentions in preferring an appeal before RERA Appellate Tribunal, Mumbai, against the order dated 02.03.2020 passed by MahaRERA in Complaint No.CC006000000100192". "Its possession letter is against the order dated 02.03.2020, passed by MahaRERA in Complaint No.CC006000000100192." Thus, the appellants have never agreed to waive their rights and claims to the respondent and there is express intimation to file appeal to get justice and redressal of grievances.

7. The Allottees/Appellants vehemently contended that their claim is for interest under Section 18 (1)(a) and under Section 12 for the delayed period beyond the promised date of possession i.e. 01.12.2015 till 19.09.2020. Clause 17 of the agreement for sale executed between the allottees and promoter mentioned that the possession of the flat was to be given on or before December 2015. However, actual possession is handed over to the allottees on 19.09.2020. Therefore, there is no dispute that the project is delayed beyond original possession date for no fault on their part. The respondent used moneys of the appellants beyond promised

date of possession in breach of the agreement for sale. Therefore, as per provisions of Section 18 (1)(a) r/w 12, the respondent is liable to pay interest for the entire delay period i.e. from the promised possession date 01.12.2015 to actual handing over of the possession of the flat i.e. 19.09.2020. The allottees contended that through a series of emails dated 22.01.2016, 05.03.2017, 10.03.2017, 06.03.2017 and 03.06.2019, etc. have constantly demanded interest/compensation for delay but the respondent refused to consider demands of the appellants to compensate for the delay beyond the promised date of possession on false and vague grounds and continued to make false promise of delivering possession by October 2017. The moment due date of handing over possession is over the claim for interest for delay of every month is accrued to the allottees. The right to claim interest is a statutory right once it is accrued, it lasts till the possession is handed over and building/layout are complete in all respect. Moreover, once delay is caused in the handing over possession, it is the continues cause of action to get possession and consequently interest on the period of delayed possession.

8. The Allottees/Appellants further contended that the learned Authority misinterpreted provisions of Section 18(1)(a) by ignoring binding precedents. It is evident from para-5 and 6 of the impugned

Order, the learned Chairman, blindly accepted the submissions of the respondent in its reply at para-4 to 10 and concluded that *"simple present tense used in the starting line of Section 18 clearly indicates that the provisions shall apply only till the project is incomplete or the promoter is unable to give possession Once the project construction is complete or possession is given, as the case may be, the said provision ceases to operate". "6. In view of the above facts, the respondent is not liable to pay interest on delay to the complainants as per Section 18 of the Real Estate (Regulation and Development) Act, 2016".* Here, the learned Chairman overlooked that such interpretation has been rejected by this Hon'ble Tribunal in many cases, as such interpretation is incorrect. The plain language of Section 18(1)(a) of RERA and objects spelt out by the Hon'ble High Court in Neelkamal Judgment made it clear that the promoter is liable to pay interest for entire delay period for use of allottees' money during the delay period.

9. The Promoter/Respondent contended that the allottees/appellants have under the garb of filing an appeal, attempted to agitate issues that were never argued before the Authority below and produced documents for the very first time in appeal. The allottees/appellants cannot by way of an appeal seek to open up new issues that were never considered by the Authority while passing the impugned order.

These documents have been admitted keeping the contentions of the parties open, and therefore, cannot be admitted in evidence. The case argued by the allottees/appellants before the Authority below is recorded in Para 1 of the impugned order. No other issues has been pressed nor agitated by the allottees/appellants before the Authority below. As there is evident from the impugned order, the allottees/appellants have argued only the issues of (1) alleged delay in possession, (2) alleged non-provision of amenities and (3) alleged reduction in the carpet area of the subject flat. So, the allottees/appellants cannot argue before this Tribunal in appeal, what they did not argue before the Authority below.

10. The Promoter/Respondent further contended that there is no cause of action for filing proceedings by the allottees/appellants. It is pertinent to note that the respondent has obtained Occupation Certificate in respect of the subject flat on 07.07.2018 and accordingly offered possession to the allottees/appellants on 12.07.2018. The alleged delay in possession agitated by the allottees/appellants is premised on the ground that the respondent did not offer possession in December, 2015 as per the agreement for sale. However, the complaint before the Authority below has been filed on 21.06.2019 i.e. after 3.5 years. There is nothing on record to explain the delay in filing complaint by the

allottees/appellants and allottees/appellants waited until the Occupation Certificate was obtained to exercise their rights under Section 18 of the Real Estate (Regulation & Development) Act, 2016. So, the allottees/appellants have slept over their rights and their claims are hit by delays and laches and should not be entertained. The issue of whether or not Section 18 of RERA Act, 2016 applies after Occupation Certificate is obtained and possession is offered is not settled yet, with the Authority still holding that Section 18 cannot be applied after possession is offered. The issue is pending determination before the Hon'ble Bombay High Court, who has admitted a Second Appeal *inter alia* on this specific question of law.

11. The Respondent further contended that the claim of allottees/appellants is barred under Section 55 of the Indian Contract Act, 1872. It is the case of respondent that vide email dated 03.02.2017, the allottees/appellants were specifically informed that the date of possession mentioned in the agreement for sale dated 17.10.2013 was revised. The allottees/appellants were given an option to exit the project and take refund if they did not wish to continue with the revised possession date. The allottees/appellants consciously out of refund and continued in the project even beyond December 2015 and voluntarily made payments till October 2018. So, the allottees/appellants by the act of voluntarily making

payments and opting to continue in the project accepted the revised date of possession. So, it is sufficient to conclude that they have accepted revised possession date in place of December 2015. Such waiver, by conduct, is implied waiver and has full recognition under law. (In the judgment- *Krishna Bahadur Vs. Purna Theatre & Ors.*).

The allottees/appellants have the duty to speak in December 2015, but remained silent when they were informed of the revised possession timelines. Their silence amounts to acceptance of the revised date of possession and abandonment of the date of December 2015.

12. The Respondent further contended that there is no reduction in carpet area and height of the subject flat. It is pertinent to note that factually constructed carpet area of subject flat, is 1099.22 sq. ft., whereas in the said agreement the carpet area mentioned is 1096 sq. ft. Therefore, there is a 3 sq. ft. increase in the carpet area. The carpet area mentioned in the agreement for sale is calculated as per the provisions of the Maharashtra Ownership of Flats Act, 1963 ('MOFA'). Upon the promulgation of the RERA, the formula for calculation of carpet area changed from what was prescribed under the MOFA. The allottees/appellants are cleverly, trying to use this change of methodology to confuse and mislead courts. It is also pertinent to note that under Clause 20 of the said agreement the

allottees/appellants have specifically agreed to variation in the carpet area of the subject flat and undertaken to pay for the same. The Occupation Certificate for the project granted by the Municipal Corporation of Greater Mumbai, clearly shows that the carpet area of the subject flat is 1096 sq. ft. However, the allottees/appellants have alleged a reduction in the height of the subject flat, without any credible document produced in this regard. It is pertinent to note that the height of subject flat is 11 ft. from the bare floor slab of the subject flat (floor) to the bare floor slab of flat above (ceiling), inclusive of thickness. Any variation in carpet area is on account of the finishes such as false ceiling, flooring, plastering, construction exigencies etc. Further, the allottees/appellants have no locus standi whatsoever to challenge any variation in the carpet area or height as they are already residing in the flat for the last 2.5 years and have carried out changes therein.

13. The Respondent further contended that it cannot be denied one stage of proceedings, because the case of delay in possession has not been entertained by the Authority, since it was raised after Occupation Certificate and after possession was offered. The claim was rejected as not maintainable without going into the merits of submissions made by the parties on the issue. If the Tribunal probes into the merits of appeal, it takes away one stage of appeal from

the respondent. That would be most unfair and unjust. (Paras 17 and 18 of the Judgment- Institute of Chartered Accountants of India Vs LK Ratna and Ors.). In the light of the above contentions, the allottees/appellants are not entitled to any reliefs, either as prayed for in the appeal or even otherwise and the captioned appeal be rejected with costs.

14. The learned Advocate Satish Dedhia for Appellants has placed his reliance on the following case laws:

(i) *Sea Princess Realty Vs Manoj Votavat & Ors [(upheld by HC in SA (st) 13762 of 2018) (MahaREAT AT-78)]*
(ii) *Park Xpress Vs Sagar Saboo [Bom HC - SA No. 180 of 2024]*
(iii) *Forefront Property Developers Pvt. Ltd. vs. Rujuta Mandar Thatte & Anr [Bom HC - SA No. 330 of 2021]*
(iv) *Bombay Dyeing Vs Ashok Narang [Bom HC - SA (st) No. 4996 of 2020]*
(v) *Sea Princess Realty Vs Rajesh Mehta & Ors [Bom HC - SA (st) 13781 of 2018]*

15. The learned Advocate Abir Patel for Respondent has placed his reliance on the following case laws:

(i) *Daman Singh & Ors. vs State of Punjab & Ors. [(1985) 2 SCC 670].*
(ii) *Institute of Chartered Accountants of India vs LK Ratna and Ors. [(1983) 4 SCC 537]*
(iii) *Union of India vs N. Murugesan and Ors. [Civil Appeal Nos. 2491-2492 of 2021]*

(iv) *Larsen and Toubro vs Rekha Sinha [SA No. 12744 of 2021]*

(v) *Hindustan Petroleum Corporation Limited vs Batliboi Environmental Engineers Ltd. Mumbai & Anr. [2008 (2) Mh. L.J.]*

(vi) *Krishna Bahadur vs Purna Theatre And Others [(2004) 8 SCC 229]*

(vii) *Arosan Enterprises Ltd. vs Union of India & Anr. [(1999) SCC 449]*

(viii) *Mahesh Maaganlal Sikotra & Anr. vs Propel Developers Pvt. Ltd. [Appeal No. AT001000000010740]*

(ix) *Ashok Kapil vs Sana Ullah and Ors. [(1966) 6 SCC 342]*

(x) *Linker Shelter Pvt. Ltd. vs Charmaine Chougule and Anr. [Order dated 18th July 2025 passed in Second Appeal No. 391 of 2025.]*

(xi) *Before REAT at Mumbai Appeal No. AT006000000052847 In Complaint No. CC006000000074977 Ashley Neil Serrao vs Propel Developers Pvt. Ltd. [Order dated 31st January 2023].*

16. We have heard argument of Adv. Satish Dedhia for the Allottees/Appellants and Adv. Abir Patel for Promoter/Respondent. The submissions advanced by the learned Counsel appearing for respective parties are nothing but reiteration of the contents of complaint, affidavit in reply, appeal memo and written submissions.

17. After considering the submissions advanced by the learned Counsels appearing for respective parties, pleadings of the parties, impugned order, and material placed on record, the following points arise for

our determination, and we have recorded our findings thereupon for the reasons to follow.

Sr. Nos.	Points	Findings
1.	Whether the impugned order dated 02.03.2020, passed by the learned Chairman, MahaRERA, in the complaint filed by the Allottees/Appellants, warrants interference in the captioned appeal?	In the affirmative
2.	Whether the complaint is maintainable?	In the affirmative
3.	Whether the complainants are entitled to reliefs sought in the complaint?	Partly affirmative
4.	What Order?	As per final Order

REASONS

18. On ensemble of pleadings of the parties as above and material produced on record by the parties revealed that the allottees/appellants have booked Flat No. 3305, admeasuring 1096 sq. ft. carpet area in "Runwal Greens Wing- 5-8" and executed a registered agreement for sale dated 17.10.2013 and the possession date as per the agreement for sale was 01.12.2015.

19. It is specific contention of the promoter/respondent that it was the duty of the allottees/appellants to expressly state that they have not relinquished their claim of interest on account of delayed possession, the allottees/appellants have not communicated that they have not

relinquished such claim to the promoter/respondent and the allottees continued to voluntarily make payments till October 2018. Therefore, now the allottees are precluded from claiming interest on account of delayed possession. It is further case of respondent that vide email dated 03.02.2017 the allottees were informed about the revised date of possession and at the same time offered the option to exit the project. However, the allottees continued in the project even beyond December 2015 and voluntarily made payments thereafter, which means by conduct they have accepted revised date of possession in place of December 2015. We are unable to accept the aforesaid contentions of the promoter. The material placed on record reveals that there was continuous exchange of emails between the allottees and the promoter with regard to the delay in handing over the possession. The allottees/appellants in series of emails January-February 2016 in response to the promoters letter dated 11.01.2016 clearly raised the issue in delay in possession of the apartment, mentioning therein that 92% of the total consideration amount is already paid, that the delay was causing great financial loss and requested the promoter to compensate them for delay in delivery from January 2016 till the date of actual possession. Section 8 of the Maharashtra Ownership Flats Act, 1963 (for short 'MOFA') speaks about the refund of amount paid with

interest in case of failure to give possession within specified time or within the further time allowed. Section 8 of MOFA lays down that:

> *"(a) the promoter fails to give possession in accordance with the terms of his agreement of a flat duly completed by the date specified, or any further date or dates agreed to by the parties, or*
> *(b) the promoter, for reasons beyond his control and of his agents, is unable to give possession of the flat by the date specified, or the further agreed date and a period of three months thereafter, or a further period of three months if those reasons still exist,*
> *then, in any such case, the promoter shall be liable on demand to refund the amounts already received by him in respect of the flat with simple interest."*

The Section 18 of RERA Act 2016 prescribes return of amount and compensation, it lays down that:

> *"(1) If the promoter fails to complete or is unable to give possession of an apartment, plot or building, -*
> *(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or*
> *(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason, he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act: Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."*

20. In the instant case, it is not in dispute that the promoter was unable to hand over possession of the subject flat to the allottees within the agreed time. The record further indicates that the allottees, being aggrieved by the delay in possession, addressed several communications to the promoter and demanded compensation on account of such delay. The emails placed on record demonstrate that the allottees had clearly asserted their grievance regarding delay and sought interest for the period of delay. Thus, as expected under Section 18 of RERA, the allottees had registered demand for interest for every month of delay till handing over of the possession with the promoter.

21. In view of the above material, the contention of the promoter that the allottees were under a duty to specifically state that they had not relinquished their claim for interest cannot be accepted. The correspondence on record sufficiently establishes that the allottees had consistently raised the issue of delay and had sought compensation for the same.

22. In these circumstances, we are of the view that the plea of the promoter that the allottees, by their conduct, implicitly accepted the revised date of possession and thereby waived their claim for interest is devoid of merit. The delay in handing over possession gives rise to a continuing cause of action and the allotees cannot be

said to have relinquished their statutory entitlement to claim interest for the period of delay.

23. It is not in dispute that the allottees/appellants executed agreement for sale for a flat admeasuring 1096 sq. ft. carpet area and paid consideration amount to the developer. The entire dispute between the allottees and the respondent revolves around the carpet area of the said flat as promised in the agreement and the actual area of the flat at the time of possession. The learned Advocate Satish Dedhia for allottees/appellants vehemently submitted that as per the agreement for sale, the carpet area of the flat is 1096 sq. ft., whereas the carpet area reflected in the approved plan dated 15.07.2019 is 927 sq. ft. As a consequence, the promoter has allegedly charged excess amount of ₹37,94,217/- along with stamp duty of ₹1,89,769/-, totaling ₹39,83,986/-. It is further submitted that the learned Chairman, MahaRERA, ought to have conducted proper inquiry by exercising powers under Section 35 by directing the respondent to submit relevant documents so as to ascertain the discrepancy between the area reflected in the sanctioned plan and the area as mentioned in the agreement for sale.

24. Per contra learned Advocate Abir Patel appearing for the respondent submitted that there is no reduction in carpet area or height of the subject flat. It is contended that the factually constructed carpet

area of the subject flat is 1099.22 sq. ft. which is 3 sq. ft more than carpet area agreed under the agreement for sale. It is further submitted that the carpet area mentioned in agreement for sale was calculated in accordance with the provisions of MOFA, whereas the methodology for calculation of carpet area underwent a change upon promulgation of RERA. The allottees have tried to use change in methodology to confuse and mislead court. The learned Counsel further submitted that under clause 20 of the agreement for sale, the allottees had expressly agreed to variation in the carpet area of the subject flat and undertaken to pay for the same. It is also submitted that the height of the subject flat is 11 ft. from the bare floor slab of the subject flat (floor) to the bare floor slab of flat ceiling. Further, the allottees have no locus standi whatsoever to challenge any variation in the carpet area or height, particularly when they have been residing in the flat for the last 2.5 years and may have already carried out alterations therein.

25. It is worthy to note that the documents placed on record in support of agreed carpet area and actual carpet area and the confusion is arising out of the carpet area formula and calculations. It is pertinent to note that the material on record reveals that the promoter/respondent had sought fifteen different concessions under Development Control and Promotion Regulations, 2034 (DCPR

2034), and the same has been approved by the Planning Authority vide 'CHE/ES/4261/S/337(New) 4C. REPORT on VERIOUS CONCESSION SOUGHT' dated 01/04/2019. In one of the concessions sought, it was stated that as per the market, the demand for tenements of bigger sizes is less, so it is requested to allow entire component of tenement's having carpet area up to 50 sq. mtrs of 20% BUA of basic zonal FSI, in Building No. 2, Tower Nos. 1 to 5. It is also noticed that the Planning Authority has allowed staircase, lift, lift lobby as free of FSI on habitable floors by charging premium. However, upon close scrutiny of the area calculations forming part of the carpet area of the flat, it appears that such areas have been included while computing carpet area of the flat.

26. It is interesting to note that definition of *Carpet Area* under the Maharashtra Ownership Flats Act, 1963 (MOFA) means the net usable floor area of an apartment, excluding the area covered by external walls but including the area covered by the internal partition walls of the apartment; balconies, terraces, flower beds and verandahs are not included in the carpet area. Similarly, under the Real Estate (Regulation and Development) Act, 2016, *Carpet Area* refers to the net usable floor area of an apartment, calculated on the basis of a clear and uniform definition. It includes the entire area within the walls of the flat, excluding the external walls, and internal

partition walls which separate rooms within the flat. However, it does not include the balconies, verandahs, terraces or common areas such as staircase and lobby. Thus, it becomes evident that the carpet area reflected in the approved plan of the subject flat is lesser by 168.58 sq. ft. than the carpet area mentioned in the agreement for sale.

27. The next contention of the promoter is that the appeal itself is not maintainable as the delay in possession has not been entertained by the Authority for the reason that the complaint was filed after Occupation Certificate and possession was offered. If the Tribunal proceeds to examine the merits of the appeal, it takes away one stage of appeal from the respondent. Further the respondent submitted that the complaint before the Authority was filed after delay of 3.5 years, and there is no record to explain the delay in filing of the complaint. Therefore, according to the respondent, the allottees' claims are hit by delays and laches and should not be entertained. We do not find merit in the contentions advanced by learned Advocate on behalf of the respondent.

28. It is pertinent to note that at the time of taking possession of the flat the allottees had specifically recorded the following remarks; "we are taking possession of the flat and without prejudice and we reserving our rights and contentions in preferring an appeal before

RERA Appellate Tribunal, Mumbai, against the order dated 02.03.2020 passed by MahaRERA in Complaint No. CC006000000100192". "Its possession letter is against the order dated 02.03.2020, passed by MahaRERA in Complaint No. CC006000000100192." The above remarks of the allottees/appellants on possession note indicate that the allottees accepted possession without prejudice and expressly reserved the right and contentions to challenge the impugned order by filing an appeal.

29. Section 18 of RERA Act, 2016 provides a statutory right upon the allottee to claim interest on account of delayed possession of a flat. In this context, the Hon'ble Supreme Court in ***Mahendra Prasad Agarwal Vs Arvind Kumar Singh and Others*** [Civil Appeal No. 17141 of 2025] held that:

> *"14. There is no doubt about the fact that the "consider jurisprudence", so routinely adopted these days and if we may use the expression – to throw the ball out of the Court, is counterproductive and harms the system.*
> *15. When a claim of a right is legal and justified, relief must follow. The Constitutional or statutory remedies are not intended for academic discourse. If a case deserves relief, it must be granted then and there, unflinchingly if need be. Balancing of equities is not to be confused with avoiding or postponing the relief."*

Thus, the statutory right of the allottees to get interest for delayed possession cannot be denied merely on the ground that

entertaining the appeal would deprive the respondent one stage of appeal.

30. For the foregoing reasons, we are of the view that the impugned order warrants interference in the captioned appeal. It is worthy to note that the allottees have challenged the impugned order primarily on the grounds of denial of interest on delayed possession and reduced carpet area of the flat as compared to the agreed carpet area. We do not find substance in the contentions advanced on behalf of the promoter, therefore, the impugned order is liable to be set aside to the extent indicated herein below. We, therefore, answer point Nos. 1, 2, 3 & 4 accordingly. Consequently, we proceed to pass the following order.

ORDER

1. Appeal AT006000000053112 of 2021 is allowed.
2. The impugned order dated 02.03.2020 passed by the learned Chairman, MahaRERA, in complaint No. CC006000000100192 of 2019 filed by the allottees/appellants, is partly set aside.
3. The Promoter/ Respondent is directed to pay interest to allottees/appellants on the consideration amount paid from 01.12.2015 till the actual date of possession as per State Bank of India's Highest Marginal Cost of Lending Rate (MCLR) + 2% simple interest.

4. The promoter/ Respondent is further directed to refund ₹39,83,986/- to the allottees/appellants on account of reduction in carpet area of 167 sq. ft. together with interest as per State Bank of India's Highest Marginal Cost of Lending Rate (MCLR) + 2% from the date of payments till the date of realization.
5. Parties shall bear their own costs.
6. Copy of this order be communicated to the learned Authority and respective parties as per section 44(4) of RERA Act 2016.

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

*V. K. Bhople_*