

**BEFORE THE MAHARASHTRA REAL ESTATE
APPELLATE TRIBUNAL MUMBAI**

Appeal No. AT006000000144418 of 2023

IN

Complaint No. CC006000000196137

1. Col Asoke Kumar]
2. Mrs. Darshan Rustagi]
Flat No. B- 803, CEDAR Wing, Rosewood]
Height Building, Sector 10, Kharghar,]
Navi Mumbai – 410210.] **... Appellants**

-Versus-

M/S Seema Promoters and Builders]
Pvt. Ltd.]
M/S Seema Promoters and Developers]
Pvt. Ltd. Regid. Office:]
Nirman Plaza CHS Ltd. Shop No.8,]
Nirman Nagri, Neral (East), Tah – Karjat,]
Dist: Raigad - 410101.] **... Respondent**

Col. Asoke Kumar one of the Appellants in Person

Adv. Aman Shukla h/f Adv. Anil D'souza for Respondent

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

RESERVED ON : 02nd APRIL 2026

PRONOUNCED ON : 23rd APRIL 2026

(THROUGH VIDEO CONFERENCE)

JUDGMENT

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

1. Being aggrieved with the impugned order dated 23.01.2023 passed by the Member-I, Maharashtra Real Estate Regulatory Authority (for



short "the Authority"), in complaint No. CC006000000196137 filed by the Appellants/Allottees, wherein the learned Authority has dismissed the complaint seeking refund, the Appellants/Allottees 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 gathered from the pleadings of the parties, impugned order and material on record revealed that the Appellants/Allottees have booked two shops bearing Nos. 5 and 6 in the Respondent's project known as "Abhishek Florida" located at Hari Om Nagar, Neral(E), Tal. Karjat, District Raigad, by executing registered agreements for sale dated 27.06.2017. Out of totaling consideration amount of Rs.10,42,600/- for Shop No.5 and Rs.12,50,500/- for Shop No.6, the Appellants/Allottees have paid an amount of Rs.9,46,520/- and Rs.11,37,500/- respectively for both the shops. As per the agreements for sale the Respondent has agreed to handover possession of the said shops on or before 31.03.2019. However, the Respondent has failed to handover the possession of the said shops on agreed date of possession. Being aggrieved with the Respondent's failure to give possession, the Appellants/Allottees



have filed complaint before the learned Authority seeking refund of the consideration amount along with interest from the dates of payment.

4. The Appellants/Allottees submitted that there was continuous correspondence with the Respondent for giving possession on account of delayed possession, through emails and registered letters from September 2019 till filing of the complaint in February 2021. But the Respondent/Promoter neither gave possession nor any reply to the letters/emails sent by the Appellants/Allottees. The said project remained incomplete till February 2021, which was admitted in writing by the Respondent vide email dated 02.02.2021. The said email dated 02.02.2021 mentioned that "we will solve all your complaints within two or three months and we have decided that, until or unless all your complaints are solved till your satisfactory level, we will not demand any payments henceforth and we will not charge any interest/penalty on account of arrears of shops". So, as admitted by the Respondent/Promoter vide the said email dated 02.02.2021, the cause of action for withdrawal continued as the project was incomplete till the date of filing of complaint with MahaRERA by the Appellants/Allottees.
5. The Appellants/Allottees further submitted that the email dated 12.02.2021 with the subject "request for withdrawal from the



project/building Rose Apartment C Wing” wherein it was clearly mentioned that we have incurred heavy losses to the tune of almost Rs.4,60,000/- on account of delay in giving possession of the said shops. To avoid further losses, we have consciously decided to move out, exit from the said project. The Respondent never issued a proper possession letter till 23.02.2021 as the completion of the project in all respects, which includes amenities as promised and provided for in the agreements for sale.

6. The Appellant/Allottees further submitted that the Respondent raised wrong and illegal 'Final Lumpsum Demand cum Possession Letter dated 15.10.2019', wherein the Respondent had deliberately combined all the last three instalments of payment, which also included the last instalment to be paid at the time of taking over of possession of shops by the Appellants/Allottees. By raising such wrong and illegal demand the Respondent had breached terms and conditions in Para 2 of the registered agreements for sale. It was falsely written in the said lumpsum demand cum possession letter that the project/shops were complete and ready in all respect for taking over possession by the Appellants.
7. The Appellant/Allottees further submitted that as per the terms and conditions of agreements for sale, the consideration value of shops is inclusive of common areas and facilities. However, the



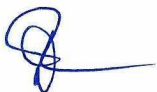
Member – I, MahaRERA, has failed to take cognizance of this breach of terms of agreement for sale in the impugned order.

8. The Appellant/Allottees further submitted that at the time of issuing final lumpsum demand cum possession letter dated 15.10.2019 many works were incomplete and it is accepted by the Respondents/Developers. The works like Garden, Children's Play Area, compound wall, tile work in front of shops, and other works were incomplete. The emails dated 16.12.2019, 16.12.2020, 17.12.2020, 02.02.2021 and 19.09.2021 addressed to the Respondent/Promoter clearly pointed out the incomplete work in the project and raised demand for compensation on account of delay in completion and handing over the possession of the project. It is pertinent to note that on 10.02.2021, proper possession letter was not issued. The final lumpsum demand cum possession letter dated 15.10.2019 cannot be called a proper possession letter. Further, the Respondent termed the letter dated 15.10.2019 as a soft possession letter issued exclusively for the purpose of fit-out and interiors. It is thereby concluded that Respondent never issued letter before February 2021, even in February 2021, after receipt of Occupation Certificate, despite the amenities and other common facilities being incomplete, the Occupation Certificate was obtained, which means the project was incomplete, but still Occupancy Certificate was



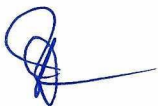
obtained. Thus, the Allottees have rightly demanded for compensation for delayed possession and demand for delayed possession was first registered in 2019 and repeated it through letters and emails from time to time till February 2021.

9. Per contra the Respondent/Promoter submitted that Section 31 of the Real Estate (Regulation and Development) Act, 2016, clearly stipulates that a complaint can only be filed when there has been a violation of any provisions of this Act. In the instant case, the Appellants have failed to point out any single breach of any Section of RERA Act by the Respondent.
10. The Respondent/Promoter further submitted that the Appellants/Allottees were offered soft possession of the said shops on 15.10.2019 and raised appropriate demand letters against the same, which were accepted by the Appellants without any dispute. However, the Appellants after more than 1 year 4 months, have intentionally and with *mala fide* intention filed the aforesaid complaint before the learned Authority. The said complaint was filed without any cause of action for filing the same, which is highlighted by the learned Authority. This clearly shows that the Appellants/Allottees had accepted the revised date of possession.
11. The Respondent/Promoter further submitted that in terms of Section 55 of Indian Contract Act, 1872, when a party fails to perform his



promise as per the agreed timelines, and other party agrees to such performance at any time other/after the agreed timelines, the party accepting such revised performance cannot claim compensation for non-performance as per the originally agreed timelines, unless at the time of acceptance of performance as per the revised timelines, the party gave notice of his intention to claim compensation. In the instant case, while accepting the revision in possession date to March 2020, the Appellants did not give any notice or reserve their right to claim compensation or a refund with interest for not being offered possession on or before 31.10.2019 and are therefore barred from making any claim on that count.

12. The Respondent/Promoter further submitted that the Allottees have violated Section 19(10) of RERA Act, 2016. The Appellants/Allottees were required by law to take possession of their said shops within two months of the Occupation Certificate. The Respondent had offered fit-out possession on 15.10.2019 of the said shops by making balance payment of the consideration amount, which was accepted by the Appellants and thereafter also received an Occupation Certificate for the said project on 05.02.2020, however, the Appellants/Allottees on 12.02.2021 sent a withdrawal application for withdrawing from the said project. Thus, the Appellants are a party in breach and not entitled to any relief under RERA Act.



13. The Respondent/Promoter further submitted that there is violation/breach of terms of agreements for sale dated 27.06.2017. However, the Appellants deliberately did not produce the agreement for sale on record of the learned Authority. The Appellants/Allottees have filed the present complaint on 23.02.2021 which is neither desirable nor permissible under law, as Section 18 of the said Act clearly indicates that provisions of withdrawal from the project is permissible only till the said project is incomplete. Pursuant to the said project being complete and the Occupation Certificate being received, the provisions of Section 18 cease to operate. Further, it is settled law that complaint cannot be entertained at such a belated stage i.e. after more than a year receiving OC and offering possession of the said shops.
14. We have heard arguments of Col Asoke Kumar, one of the Appellants/Allottees in Person and Advocate Aman Shukla h/f Adv. Anil D'souza for Respondent/Promoter. The submissions advanced by the respective parties are nothing but reiteration of the contents of complaint, affidavit in reply, appeal memo and written submissions.
15. After considering the submissions advanced by Col Asoke Kumar, one of the Appellants/Allottees in Person and Advocate Aman Shukla h/f Adv. Anil D'souza for Respondent/Promoter, 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 23.01.2023, passed by the Member-I, MahaRERA, in the complaint filed by the Allottees/Appellants, warrants interference in the captioned appeal?	In the Affirmative
2.	Whether the Allottees/Complainants are entitled to relief sought in the complaint?	In the Affirmative
3.	What Order?	As per final Order

REASONS

16. On ensemble of pleadings of the parties as above and material placed on record, it is revealed that the Appellants/Allottees had booked two shops in the project named as "Abhishek Florida" located at Hari Om Nagar, Neral(E), Tal. Karjat, District Raigad. Agreements for sale dated 27.06.2017 were executed for total consideration amount of Rs.10,42,600/- and Rs.12,50,500/- for Shop Nos. 5 and 6 respectively. It is not in dispute that the Allottees have paid more than 95% of the consideration amount. It is pertinent to note that possession of the said shops was to be handed over on or before 31.03.2019. However, the Respondent failed to



complete the project and deliver the said shops on the agreed date of possession.

17. The Appellants/Allottees contended that through a series of emails and registered letters, immediately after the agreed date of possession, they persistently demanded possession failing which compensation for the delay in giving possession as per the various provisions of RERA Act, 2016. In the email dated 17.10.2019 addressed to the Respondent, the Allottees specifically invoked Section 18(1) of RERA Act, seeking refund with interest or compensation for delay in delivery of possession of the said shops. The Respondent failed to reply to the said email and earlier emails of the Allottees. It is absolutely unethical corporate culture and sought the advice of the Respondent as to what the Allottees should do further, and earlier emails were attached for reference. Interestingly, in the said email the Allottees specifically drawn the attention of the Respondent/Promoter to Para 1(a) of Section 18 RERA Act, 2016 that deals with *"Return of amount and compensation:- (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"* 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 highest Marginal Lending Rates of SBI plus 2%.

18. The said email from the Allottees further requested the Respondent/Promoter to initiate action as required vide Para 1(a) of Section 18, Chapter III of the Real Estate (Regulation and Development) Act, 2016, without any further delay to compensate for the losses already caused due to inordinate delay in handing over the possession of shops and garages under reference above. It is also mentioned to treat this matter as urgent and important, if no action is initiated as per Para 4 above, in next fifteen days he will be left with no choice but to make complaint to RERA Authority. The said email along with series of emails later on, clearly established that the Allottees have raised demand for compensation, failing which the Appellants/Allottees would exit the project. The record revealed that the Allottees have sought possession of the said shops as per the agreed date of possession as mentioned in the agreements for sale. The record demonstrates continuous correspondence through emails dated 26.09.2019, 04.10.2018, 12.10.2019, 13.10.2019, 14.10.2019, 15.10.2019, 17.10.2019, 18.10.2019, 16.12.2019, 24.12.2019, 28.12.2019, 11.08.2020,



12.08.2020 and 03.02.2021, whereby the Allottees demanded possession of the said shops. Despite this, the Respondent ignored the communication and remained silent until 2021.

19. It is worthy to note that vide email dated 18.10.2019, the Allottees demonstrated that the construction had progressed substantially which includes completion of slabs upto 5th floor and brickwork plus plastering completed in March 2019, and payment as per the schedule of work is accordingly demanded by the Respondent and paid by the Allottees. This establishes that the Respondent's contention that construction was halted/stopped at plinth level due to absence of Plinth Completion Certificate from Zilla Parishad, Raigad is incorrect.
20. On careful examination of the correspondence with the Respondent/Promoter, more particularly the email dated 03.02.2021, would show that by this email the Allottees again reiterated that the delay in completion of the project and handing over of the said shops caused financial loss to the Allottees. It has been specifically mentioned in the email that "if you are not ready to compensate me for the financial loss that has accrued to me due to delayed project, then please let me know about it today only, so that we can exercise our second option of withdrawing from the your Rose project w.r.t. shops as per the RERA provisions." Subsequently,



the Appellants/Allottees issued a withdrawal letter on 12.02.2021. From the material on record, it is clearly established that the Allottees have raised demand for compensation for delay in handing over possession of the said shops, in case the Respondent/Promoter failed to accept the demand for compensation, the Allottees made it clear that they would withdraw from the project. Thus, we are of the view that the Appellants/Allottees have raised their demand for compensation and exercised the option of withdrawal in case compensation for delay is not accepted by the Respondent/Promoter. It is worthy to note that the Respondent/Promoter failed to respond to the emails and letters of the Allottees.

21. The Respondent/Promoter contended that soft possession of the said shops was offered to the Allottees in October 2019, whereas the complaint was filed belatedly with RERA after 1 year 4 months of the soft possession. It is contended that the learned Authority in the impugned order highlighted the same that the complaint was filed without any cause of action. This contention of Respondent is devoid of merit. The material on record clearly establishes that the Allottees, through series of email exchanges, have raised their demand for compensation and informed their option to withdraw in case compensation is not paid by the Respondent. However, the



Respondent neither offered compensation nor given possession of said shops with completion certificate as prescribed under provisions of RERA Act, 2016. Further the concept of soft fit-out possession is not recognized under RERA framework. Possession must be lawful and accompanied by requisite Completion Certificate, which was not there in the instant case.

22. The Respondent/Promoter further contended that the Allottees have violated Section 19(10) of RERA Act, 2016 which requires the Allottees to take possession of shops within two months of the Occupation Certificate. The Occupation Certificate of the said project is received on 05.02.2020. The contention of the Respondent is devoid on merit. The material on record clearly established that the Respondent agreed and accepted that the project is incomplete even in the month of February 2021 and assured that it will be completed within two to three months. This clearly indicates that the project was incomplete, despite the Occupancy Certificate having been obtained by the Respondent. Therefore, the relief sought by the Allottees to withdraw from the project is fair and justified under provisions of RERA Act, 2016.

23. Section 18 of RERA Act spells out consequences if the promoter fails to complete or is unable to give possession of flat or apartment either in terms of agreement for sale or to complete the project by



the date specified therein on account of discontinuance of his business as a developer on account of suspension or revocation of registration or for any other reason, the allottee/ home buyer holds unqualified right to seek interest on the paid amount by him at such rate as may be prescribed in this behalf or to seek refund of amount with interest if he wishes to withdraw from the project. It is now settled law that if delay is not attributable to the Allottees, they are entitled to claim relief provided under Section 18 of RERA Act. It has been observed by the Hon'ble Supreme Court in a case of **M/s. Imperia Structures Ltd. Vs. Anil Patni & Ors.** [in Civil Appeal No. 3581-3590 of 2020] that-

"In terms of Section 18 of the RERA Act, if a promoter fails to complete or is unable to give possession of an apartment duly completed by the date specified in the agreement, the Promoter would be liable, on demand, to return the amount received by him in respect of that apartment if the allottee wishes to withdraw from the Project. Such right of an allottee is specifically made "without prejudice to any other remedy available to him". The right so given to the allottee is unqualified and if availed, the money deposited by the allottee has to be refunded with interest at such rate as may be prescribed. The proviso to Section 18(1) contemplates a situation where the allottee does not intend to withdraw from the Project. In that case he is entitled to and must be paid interest for every month of delay till the handing over of the possession. It is upto the allottee to proceed either under Section 18(1) or under proviso to Section 18(1)."

24. It is not the case of Promoter that the Allottees in any way caused delay in handing over the possession of the said flats. On the



contrary, the Allottees have made substantial payment towards consideration amount and executed agreements for sale, thus discharged their obligation whereas the Respondent/Promoter failed to discharge its obligations. In this context while explaining scope of section 18 of RERA Act 2016, the Hon'ble Supreme Court in a case of ***M/s Newtech Promoter and Developers Pvt. Ltd. V/s. State of Uttar Pradesh*** [2021 SCC Online 1044] dated 11 November, 2021, Civil Appeal Nos. 5745, 6749 and 6750 to 6757 of 2021]- has held in para 25 as under:

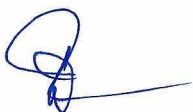
*"Para 25. The unqualified right of the allottee to seek refund referred under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottee, if the promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, **which is in either way not attributable to the allottee/home buyer**, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act with the proviso that if the allottee does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed.*



25. On examination of impugned order revealed that the learned Authority has arrived at conclusion that there is delay in completion of the project and the Respondent/Promoter failed to hand over possession as per the terms of agreement for sale. The said shops were to be handed over on or before March 2019. It is worthy to note that the Respondent has accepted that there is delay in handing over the possession of the subject shops to the Allottees. As a result thereof, the Respondent is liable to compensate the Allottees. The Allottees have exercised the option of withdrawal from the project as provided under Section 18 of RERA Act, 2016. Therefore, we are of the considered view that the impugned order warrants interference in the captioned appeal. We, therefore, answer Point Nos.1 to 3 accordingly. Consequently, we proceed to pass following order.

ORDER

1. Appeal No. AT006000000144418 of 2023 is allowed.
2. The impugned order dated 23.01.2023 is set aside.
3. The Respondent/Promoter is directed to refund the entire consideration amount paid by the Appellants/Allottees with interest as per State Bank of India's highest Marginal Cost of Lending Rate (MCLR) + 2% calculated from the respective dates of payment till realization of the entire amount to Appellants/Allottees.



4. The Respondent/Promoter is directed to pay Rs.10,000/- as cost to the Appellants/Allottees.
5. 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)

V. K. Bhople



(SHRIRAM. R. JAGTAP)