

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

Appeal No. AT006000000144304 of 2023

IN

Complaint No. CC006000000195169 of 2021

1. **Mr. Mahendra Mehta**]
2. **Mr. Vikram Mehta**]
3. **Mrs. Hinal Mehta**]
148/13, Vasant Building, Major]
Parmeshwaran Marg, S.I.W.S. College]
Lane, Wadala, Mumbai – 400031.] **... Appellants**

Versus

Omkar Realtors and Developers]
Private Limited]
1, Omkar House, Off Eastern Express]
Highway, Sion(E), Mumbai – 400022.] **... Respondent**

Adv. Akash Rebello for Appellants

Adv. Sonali Jain for Respondent

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

RESERVED ON : 23rd MARCH 2026

PRONOUNCED ON : 08th APRIL 2026

(THROUGH VIDEO CONFERENCE)

JUDGMENT

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

1. Being aggrieved with the impugned order dated 19.12.2022 passed by the Member-I, Maharashtra Real Estate Regulatory Authority (for short "the Authority"), in complaint No. CC006000000195169 of 2021 filed by the Appellants/Allottees, wherein the learned Authority directed refund of the consideration amount paid by the Allottees,

without any interest, the 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 Allottees have through their application dated 28.03.2015, requested the Promoter to allot Unit No./ Flat No.3502 on 35th Floor in building Tower C of real estate project named "Omkar 1973". Letter of allotment dated 26.04.2016 was executed between the Appellants/Allottees and Respondent/Promoter vide which the Appellants have become Allottees of the said unit/flat and made an advance payment of Rs.7,33,41,450/- vide Cheque No. 014655 dated 31.03.2016, along with an advance payment of Rs.35,40,955/- towards TDS, Service Tax and VAT. The letter of allotment acknowledged receipt of the consideration amount and clause 19(e) has stated that the possession of the said unit/flat would be handed over to the Allottees/Complainant on or before 30.06.2019 and latest by 30.06.2020. In the meantime, the Allottees became aware of the fact that the said project is facing number of problems and the



construction work of Tower C has come to a standstill. The Appellants also became aware of the Hon'ble Bombay High Court orders preventing the Developer /Respondent from carrying out any further construction work on the said project. On the basis of the above facts and circumstances, the Appellants/Allottees issued a Notice dated 01.08.2018 to the Respondent demanding refund of the consideration amount paid along with interest at the rate of 14% par annum from the date of payment till the date of refund and thereafter cancel letter of allotment dated 26.04.2016.

4. The Appellants submitted that the learned Member-I failed to consider the provisions of Section 18(1)(a) of the RERA Act, which mandates *return of amount and compensation, 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.* In the absence of execution of formal agreement for sale, the allotment letter is to treated as agreement for sale. In the present case, the Respondent/Developer failed to complete the said flat/unit by the agreed date of delivery, thereafter, the Appellants issued demand notice for full refund of the amount paid towards the said flat/unit, including statutory charges and interest. However, the Member-I, MahaRERA directed the Respondent/Promoter to refund



of consideration amount, without interest, after deducting 2% of the total consideration amount of the said flat/unit and ignored the statutory provisions on interest and compensation due to the Allottees.

5. The Allottees further submitted that the learned Member – I, failed to consider the rights of Allottees through the provisions of under Section 19(4) of RERA Act, 2016 which states that *"(4)the allottee shall be entitled to claim the refund of amount paid along with interest at such rate as may be prescribed and compensation in the manner as provided under this Act, from the promoter, if the promoter fails to comply or is unable to give possession of the apartment, plot or building, as the case may be, in accordance with the terms of agreement for sale or due to discontinuance of his business as a developer on account of suspension or revocation of his registration under the provisions of this Act or the rules or regulations made thereunder."* This right is mandatory, not discretionary and the Member – I erred in not granting interest on the refund claimed by the Allottees.
6. The Allottees further submitted that the Respondent/Promoter disregarded the terms and conditions of allotment letter executed by and between the Allottees and Respondent/Developer. As per clause 20 of the said allotment letter, the Respondent agreed that in




the event of *force majeure* or other circumstances beyond its control, the failure on the part of the Respondent to hand over the said unit/flat by the extended due date would entitle the Allottees to refund of entire amount paid towards consideration of the said unit, but the Respondent/Promoter neither responded nor refunded the amount. It is further submitted that the Appellants/Allottees paid amount of Rs.7,33,41,450/- to the Respondent towards the consideration of the said unit. Additionally, Allottees paid Rs.35,40,955/- towards the statutory charges i.e. the total amount of Rs.7,68,82,405/-. However, the learned Authority in the impugned order incorrectly excluded these statutory dues from the refund amount, by applying the new policy framed by MahaRERA under Order No. 35 of 2022 dated 12.08.2022, despite Sections 18 and 19 of RERA Act not provide for such exclusions.

7. Learned Advocate Akash Rebello for Appellants/Allottees placed his reliance on following judgments.

I. Bjon Dhirendra Talukdar and Ors. Vs. Dhruva Woolen Mills Pvt. Ltd.


II. Rohit Chawla and Ors. Vs. Bombay Dyeing & Mfg. Co. Ltd.

8. Per contra, the Respondent/Promoter submitted that the Appellants/Allottees had filed execution application against impugned order dated 19.12.2022 in which order dated 30.10.2023



was passed by the Hon'ble Tribunal. Furthermore, the Respondent filed revision application seeking review of the order dated 30.10.2023 with respect to interest portion plus 2% as prescribed under Section 18 of RERA Act. The said review application was also allowed by order dated 08.01.2024.


9. The Respondent further submitted that the Allottees have suppressed the said orders dated 30.10.2023 and 08.01.2024 and tried to mislead the Hon'ble Tribunal. On many occasions the Allottees have filed applications/complaints/letters and later on have withdrawn them and had not disclosed the orders passed before the Hon'ble Tribunal.
10. The Respondent further submitted that the impugned order dated 19.12.2022 has attained finality as execution application is decided by order dated 30.10.2023 by issuing warrant of attachment. In view thereof, the appeal is not maintainable and liable to be dismissed.
11. The Respondent further submitted that the Appellants/Allottees in the present matter had withdrawn from the project and claimed refund by filing complaint before expiry of the extended date of possession i.e. 30.06.2021 as per Covid-19 Pandemic. In view thereof the Appellants are not entitled for interest and compensation. Further, as per new policy Order No. 35 of 2022



dated 12.08.2022, the Respondent is entitled to forfeit 2% of total consideration amount in case of cancellation.

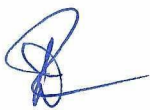
12. We have heard arguments of Advocate Akash Rebello for Appellants/Allottees and Advocate Sonali Jain for Respondent/Promoter. The submissions advanced by the learned counsel appearing for respective parties are nothing but reiteration of the contents of complaints, affidavit in reply, appeal memo and written submissions.
13. After considering the submissions advanced by the learned counsel 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 19.12.2022, 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/Appellants are entitled for interest on consideration amount paid to the Promoter/Respondent?	In the affirmative
3.	What Order?	As per final Order

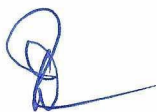


REASONS

14. Upon careful consideration of pleadings of the parties, submissions advanced by the parties and material on record revealed that the Allottees had booked a flat in Tower C of the real estate project named as "Omkar 1973" for a total consideration amount of Rs.36,85,50,000. A letter of allotment dated 26.04.2016 was executed upon advance payment of Rs.7,33,41,450/- and Rs.35,40,955/- towards TDS, Service Tax and VAT. It is not in dispute that the Allottees by virtue of letter of allotment dated 26.04.2016 executed between the Appellants and Respondent have acquired the status of Allottees in the said project. It is also not in dispute that by virtue of letter of allotment the Promoter had committed to hand over the possession of the subject flat to the Allottees on or before 30.06.2019 with an extended timeline up to 30.06.2020. However, construction of Tower C was stalled on account of judicial orders, including directions restraining the Respondent from selling, transferring, or creating third party interest with respect to the topmost floor and open terrace, wherein the said flat is located. Consequently, the said project faced number of problems and construction work of Tower C was stopped as a result the Promoter failed to deliver the possession of the said flat to the Allottees on agreed date mentioned in letter of allotment.



15. The material on record revealed that the controversy in the captioned appeal pertains to the provisions of Section 18 of RERA Act, 2016 that protects the rights of homebuyers and provides relief of interest, refund of amount with interest and compensation to Allottees. If the Promoter fails to hand over the possession of subject flats/apartment/plot by specified date, Section 18 of RERA Act entitles Allottees, who wishes to exit from the real estate project, to claim refund of amount with interest.
16. The record further indicates that the Allottees, having failed to get possession of the flat, issued notice dated 01.08.2018 to the Respondent/Developer demanding refund of the amount of Rs.7,33,41,450/- + Rs.35,40,955/- paid towards statutory dues together with interest at the rate of 14% per annum from the dates of payment till realization and thereafter cancel the letter of allotment dated 26.04.2016. The said notice also mentioned about the ongoing litigation affecting the project "Omkar 1973", including interim orders preventing further construction work. The Hon'ble Bombay High Court in the interim order directed Respondent not to sell, transfer, mortgage or create third party interest in any manner whatsoever and/or not to take any further steps concerning the topmost floor and the open terrace in Tower C.



17. 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 dates specified therein on account of discontinuance of his business, on account of suspension or revocation of registration or for any other reason, the Allottee/ Homebuyer 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)."

18. In our considered view, the Allottees have primary duty of making payments from time to time so that the real estate project is not starved of funds to cause delay in completion of the project. The Allottees can be held responsible only if they failed to discharge their obligation as per the terms of agreements for sale. In the instant case the Allottees have paid earnest money at a time of letter of allotment. Thereafter, the material on record doesn't indicate any demand notice issued by the Developer for payment of consideration amount. Thus, the Allottees have not defaulted in making timely payment to the Developer. On the contrary it is the Promoter who has ability to assess the likely date of completion of the real estate project considering all likely factors that could delay the completion of the project. In the instant case, material on record revealed that the Promoter neither made proper communication/correspondence with the Allottees nor apprised the progress of construction of the said project. Despite attempts by the Allottees to assert the progress of the said project. The notice dated 01.08.2018 issued by allottees to the Developer remonstrate the failure on the part of Developer to update the progress of construction to the Allottees. In this context it is pertinent to note that Section 19(2) of RERA Act states that "*the allottees shall be entitled to note stagewise*



time schedule of completion of the project, including the provisions of water, sanitation, electricity and other amenities and services as agreed between the Promoter and Allottees in accordance with the terms and conditions of agreement for sale". In the present case, the Promoter failed to furnish details of the project completion and violated/prevented the provisions of RERA Act.

19. Even if the legal issues and the stay granted by the Hon'ble Bombay High Court demonstrated by the Promoter are given same consideration, we are of the view that the Promoter is not entitled to get benefit for the reasons that the same are not attributable to the Allottees. It is not the case of Promoter that the Allottees in any way caused delay in handing over the possession of the said flats. While explaining the 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.*

20. The Promoter/Respondent contended that the impugned order dated 19.12.2022 has attained finality with the execution application and warrant of attachment and the present appeal is not maintainable and liable to be dismissed. The contention of Promoter/Respondent is devoid of merit. The Allottees are within their rights to seek enforcement of the impugned order granting refund of consideration amount. In other words, the Allottees have merely sought their rights of relief of refund. The present appeal is confined to the limited aspect of entitlement to interest on the amount paid towards consideration from the date of payment till the realization.
21. On examination of impugned order, it is revealed that the learned Authority has rightly concluded that there was delay in completion of the project and Promoter/Respondent failed to hand over the possession as per terms of letter of allotment. Clause 20 of the allotment letter provides that, in the event of *force majeure* or other circumstances beyond control, the failure on the part of the



Respondent to hand over the said unit/flat by the due date, the Developer shall refund the earnest money received, along with interest at rate of 9% per annum from the date of receipt till the date of refund. Thus, the liability of Respondent to refund the consideration amount paid along with interest stands established. However, the learned Authority erred in granting refund, without awarding interest from the dates of payment, which is contrary to the provisions of the RERA Act.

Section 2 (za) of RERA Act, 2016 defines interest:

*"(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.
Explanation.—For the purpose of this clause—*

(i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;

*(ii) **the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;***

It means the interest payable by the Promoter to the Allottees shall be from the date the Promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded. The learned Authority has failed to consider the provision that clearly establishes, that the interest on refund of consideration amount should be awarded from the dates of payment till realization.



Therefore, we are of the considered view that the impugned order warrants interference in the captioned appeal to the extent of date of payment of interest. As a result, thereof the impugned order requires to be modified to that extent only. We, therefore, answer Point Nos.1 to 3 accordingly. Consequently, we proceed to pass following order.

ORDER

1. Appeal No. AT006000000144304 of 2023 is allowed.
2. The impugned order dated 19.12.2022 is modified as under.
3. The Respondent/Promoter is directed to refund the part consideration amount plus amount paid by Appellants/Allottees towards TDS, Service Tax and VAT, with interest as per State Bank of India's Marginal Cost of Lending Rate (MCLR) + 2% calculated from the respective dates of payment till realization of the entire amount to Appellants/Allottees.
4. Parties shall bear their own costs.
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)



(SHRIRAM. R. JAGTAP)

V. K. Bhople