

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

Appeal No. AT006000000133966/2022

In

Complainant No. CC006000000197774/2021

Deep Homes and Constructions LLP.
F.P. 136B, Off Eastern Express Highway,
Hahuri Village, Louiswadi, Behind RTO
Officer, Thane - 400604.

... Appellant

V/s

Mr. Amar Ketkar
704, 7th Floor, Auralis Tower 2, Louisewadi
Behind RTO Office, Thane – 400604

Mrs. Ketaki Ketkar
704, 7th Floor, Auralis Tower 2, Louisewadi
Behind RTO Office, Thane - 400604

... Respondents

*Adv. Ms. Jenisha Gala i/b Adv. Dr. Sanjay Chaturvedi for appellant.
Adv. Mr. Harshad Bhadbhade for respondents.*

CORAM : SHRI S. S. SHINDE J., CHAIRPERSON &

DR. RAJAGOPAL DEVARA, MEMBER (A)

RESERVED ON : 07th July, 2026

PRONOUNCED ON : 06th August 2026

(THROUGH VIDEO CONFERENCING)

JUDGMENT

[PER: SHRI S. S. SHINDE J., CHAIRPERSON]

1. The captioned appeal arises from the order dated 14.06.2022 passed by the Learned Member-I, Maharashtra Real Estate

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Regulatory Authority, (for short "the Authority") in the complaint nos. CC006000000197774/2021 filed by the appellant.

1. The appellant is the promoter of the project in the name and style "Auralis-The Twins" having MahaRERA Project registration no. P51700009177.
2. For the sake of convenience, hereinafter the appellant and respondents will be referred as "promoter" and "complainants/allottees" respectively.
3. The brief facts, as borne out from the pleadings, documents placed on record and the impugned order, are that the respondents/allottees purchased Flat No. 704 on the 7th Floor, admeasuring 1,153.36 sq. ft. carpet area, together with one puzzle car parking space in Tower-2 of the promoter's project, under a registered Agreement for Sale dated 16.03.2018, for a total consideration of Rs.1,75,39,814/-. Out of the said consideration, the allottees paid Rs.1,67,89,790/-, leaving an outstanding balance of Rs.7,50,024/-. Under the Agreement for Sale, the promoter had undertaken to hand over the possession of the flat on or before 31.01.2019.
4. Aggrieved by the failure to hand over possession by the due date as specified in the agreement for sale, the respondents/allottees filed the captioned complaint before the Authority seeking following reliefs.
 - a. direction to the promoter to hand over possession of the subject flat; and
 - b. payment of interest for delayed possession under the provisions of Section 18 of the RERA Act, 2016.
5. The promoter also filed Complaint No. CC006000000197774/2021 on 29.07.2021, seeking permission



to terminate the Agreement for Sale executed with the respondents/allottees, a direction to the allottees to execute a deed of cancellation, payment of brokerage charges and liberty to create third-party rights in respect of the subject flat.

6. The allottees contended before the Authority that, despite having paid substantial amounts in accordance with the demands raised by the promoter, the project remained incomplete. According to them, the balance amount was financed through a housing loan and was to be disbursed by the lending bank in accordance with the progress of construction. They submitted that, repeated follow-ups with the promoter did not yield any result. It was further contended that although the promoter issued a final demand notice dated 22.03.2021, the same was unjustified since, by an email dated 15.05.2019, the promoter had assured that the interest payable for delayed possession would be adjusted against the final payment at the time of handing over possession. The allottees further pointed out that the promoter had initially declared the proposed date of completion before MahaRERA as 01.06.2018, which was subsequently revised to 01.03.2019 and thereafter extended to 31.01.2021. It was, therefore, contended that there was a delay of nearly twenty-four months in handing over possession and that the promoter was liable to pay interest under Section 18 of the RERA Act.
7. The promoter, on the other hand, submitted that repeated demands were made calling upon the allottees to pay the outstanding consideration, but the allottees failed to comply. It was contended that the Occupancy Certificate had already been obtained and that demand notices dated 23.04.2018,



30.08.2018 and 22.03.2021 were issued to the allottees. As the allottees failed to clear the outstanding dues, the promoter issued a termination notice dated 17.07.2021. According to the promoter, the allottees had violated Sections 19(6) and 19(7) of the RERA Act, thereby entitling the promoter to terminate the Agreement for Sale.

8. Upon hearing the parties, the Authority passed the impugned order. The Authority observed that although the Occupancy Certificate had been obtained on 17.03.2021, possession had not been handed over to the allottees on account of non-payment of the outstanding dues. It further observed that, under the Agreement for Sale, possession was required to be delivered by the stipulated date, whereas the Occupancy Certificate was obtained only on 17.03.2021. Consequently, the Authority held that the allottees were entitled to interest for delayed possession under Section 18 of the RERA Act.
9. The Authority further observed that the project had already received the Occupancy Certificate prior to the filing of the complaint by the allottees. Referring to Section 19(10) of the RERA Act, it held that an allottee is required to take possession within two months from the date of issuance of the Occupancy Certificate. Since possession had been offered, the allottees were not entitled to claim interest beyond the date of issuance of the Occupancy Certificate.
10. The Authority also held that, although the promoter had delayed completion of the project and was consequently liable to pay interest under Section 18 of the RERA Act, the allottees had equally failed to discharge their obligation of paying the outstanding consideration despite the offer of possession.



Accordingly, the Authority held that the allottees were liable to pay interest on the delayed payment under Section 19(6) of the RERA Act. As the parties had disputed the quantum of outstanding dues, the Authority observed that, it had no jurisdiction to reconcile their accounts and that such reconciliation would have to be undertaken by the parties themselves. Consequently, the Authority passed the following operative order -

- "a. *The promoter is directed to handover possession of the said flat to the allottees within a period of 15 days from the date of this order.*
- b. *The promoter is further directed to pay interest to the allottees for the period of delay, i.e., from 01/04/2019 till the date of occupancy certificate i.e., 17/03/2021 for every month on the actual amount paid by the allottees at the rate of Marginal Cost of funds-based Lending Rate (MCLR) plus 2 % as prescribed under the provisions of Section-18 of the RERA and the Rules made there under.*
- c. *The allottees are also directed to pay the interest for the delayed payment from the date of amount due and payable by the allottees till the date of actual payment at the rate prescribed under RERA and the relevant rules made thereunder i.e., Marginal Cost of funds based Lending Rate (MCLR) plus 2 %.*



- d. *The parties would be at liberty to set off the amount of interest payable by each other at the time of possession.*
- e. *With regard to the payment of interest to the allottees, the MahaRERA further directs that the promoter is entitled to claim the benefit of "moratorium period" as mentioned in the Notifications / Orders nos. 13 and 14 dated 2nd April 2020 and 18th May 2020 issued by the MahaRERA and the Notification/Order which may be issued in this regard from time to time."*
11. Aggrieved by the impugned order dated 14.06.2022, the promoter has preferred the present appeal. The promoter has sought quashing and setting aside of the impugned order, particularly the directions requiring adjustment of interest payable under Section 19(6) of the RERA Act and rejecting the promoter's prayer for termination of the Agreement for Sale. The promoter has further sought a direction restraining the respondents from circulating any notice, circular or other communication amongst the existing allottees of the project, and has prayed for permission to terminate the Agreement for Sale and proceed with the cancellation thereof.
12. Advocate appearing for the appellant submits that, the respondents/allottees did not pay the total outstanding amount of Rs. 07,50,024/- till date along with interest of Rs. 90,003/-. The appellant on several occasions asked the respondents/allottees to pay the outstanding amount and take the possession of their flat, but respondents/allottees failed to come forward and make the balance payments. The appellant sent demand letters to respondents on 23.04.2018, 30.08.2018



and 22.03.2021. Even then the respondents did not come forward to pay the pending dues. The appellant then sent out the termination letter on 17.07.2021 to the respondents.

13. Being aggrieved the respondents filed the complaint. It is submitted that the date of possession as per the agreement was on or before 31.03.2019 provided that the appellant is entitled to a reasonable period of time for the reasons beyond his control for giving possession. As per Clause 21 of the Agreement the appellant has already mentioned the causes of force majeure because of which the project may get delayed for which the appellant can seek the extension in completion of the same. It is submitted that the location clearance was granted by the MMRDA as on 16.11.2010. The Thane Municipal Corporation issued its IOD on 12.10.2011. The appellant applied for Environment clearance to MOEF and same was granted on 04.09.2014.
14. It is further submitted that the commencement certificate for one FSI was issued to appellant as on 30.11.2013 with regard to rental building/sale building and accordingly, construction work of all three buildings commenced. It is submitted that due to huge work, plinth completion was delayed and plinth certificate was issued on 20.04.2015 with regard to the sale building and for rental building it was issued on 01.09.2015. Thereafter, release of 0.75 FSI was delayed by MMRDA and accordingly, NOC for CC was issued on 19.07.2017.
15. It is submitted that the said delay was due to reasons which was actually beyond the control of the promoter. It is submitted that the appellant had completed the construction of the rental building and was willing to handover the same to MMRDA,



however promoter received the NOC for occupation as late as on 30.01.2019 and subsequently occupation certificate with regard to the rental building was issued on 16.03.2019. It is submitted that the time consumed due to aforesaid circumstances and therefore the appellant was not at fault. The appellant registered the project under the RERA Act, 2016, and mentioned the date of possession 01.03.2019, which it revised and put as 31.01.2021. Later, appellant come across a very unexpected situation of Covid-19 pandemic where all construction work stopped for a very long period of time, no workers were available, no raw material was available, which made project stand still and delayed construction for a period beyond the control of the appellant. It is submitted that as per Section 19 (6) of the RERA Act, 2016, every allottee, who has entered into an agreement for sale to take an apartment, plot or building as the case may be, under Section 13, shall be responsible to make necessary payments in the manner and within the time as specified in the said agreement for sale and shall pay at the proper time and place, the share of the registration charges, municipal taxes, water and electricity charges, maintenance charges, ground rent, and other charges, if any.

16. It is submitted that due to non-payment of dues, the appellant/promoter has removed their names of the allottees from the records of the appellant/promoter, they are not 'allottees' which is defined under Section 2(d) of RERA. Therefore, the appellant prays that the appeal may be allowed.



17. On the other hand, Advocate appearing for the allottees/respondents submits that the respondents/allottees have already filed the detailed affidavit in reply on 05.01.2023.
18. It is submitted that the respondents/allottees filed the complaint No. CC006000000197018 on 17.05.2021 for seeking directions to handover the possession of the flat and also to pay interest for delayed possession under Section 18 of the RERA Act, 2016 in respect of the booking of flat bearing no. 704 on the 7th Floor, admeasuring 1,153.36 sq. ft. carpet area, together with one puzzle car parking space in Tower-2 of the promoter's project Auralis-The Twins bearing registration no. P51700009177.
19. It is submitted that the entire consideration amount was paid by the allottees/respondents. The consideration amount of the flat was Rs. 1,75,39,814/-, excluding GST, Taxes, Stamp Duty and registration charges and till date the allottees have paid Rs. 2,10,44,969/- towards the said consideration.
20. It is submitted that the MahaRERA has rightly allowed the complaint filed by the allottees and interest on delayed possession so also directed the appellant to handover the possession. Pursuant to the order passed by the MahaRERA, the possession of the apartment under protest was accepted on 18.05.2021. It is submitted that the occupation certificate was received on 17.03.2021. However, agreed date of possession as per agreement for sale was 31.03.2019.
21. It is submitted that the appellant delayed handing over of the possession of the said flat to the respondents in spite of paying a huge amount of Rs. 2,10,44,969/-, including taxes etc. and therefore the appellant is not entitled for any interest for the simple reason that the appellant itself was responsible for giving



possession in the year 2021, though the agreed date of possession was 31.03.2019.

22. Heard, learned advocates appearing for the parties. We have also perused the written submissions filed by the advocate appearing for the parties. The following points arise for our consideration and determination.
- a. Whether the respondents/allottees were entitled for interest for delayed possession from the agreed date i.e. 31.03.2019, till the date of giving the actual possession?
 - b. Whether the appellant was entitled for exemption from paying the interest on account of getting late permissions from concerned authorities, and due to COVID-19 pandemic and also adverse circumstances faced during the COVID-19 pandemic by the Appellant?
23. The both points which are formulated hereinabove are squarely covered and gets answered by the exposition of the law by the Hon'ble Supreme Court in the case of *M/s. Newtech Promoters and Developers Pvt. Ltd. Vs. State of Uttar Pradesh & Ors* reported on 11th November 2021. The Hon'ble Supreme Court has interpreted the scope and purport of Section 18(1) and 19(4) of the RERA Act, 2016 in paragraph nos. 19 to 25; said paragraphs are reproduced herein below:
- "19. Section 18(1) of the Act spells out the consequences if the promoter fails to complete or is unable to give possession of an apartment, plot or building either in terms of the agreement for sale or to complete the project by the date specified therein or on account of discontinuance of his business as a developer either on account of suspension or revocation of the registration under the Act or for any other reason, the allottee/home buyer holds an unqualified right to seek refund of the*



amount with interest at such rate as may be prescribed in this behalf.

20. Section 18(2) of the Act mandates that in case, loss is caused to allottee due to defective title of the land, on which the project is being developed or has been developed, the promoter shall compensate the allottee and such claim for compensation under Section 18(2) shall not be barred by limitation provided under any law for the time being in force.

21. Section 18(3) of the Act states that where the promoter fails to discharge any other obligation under the Act or the rules or regulations framed thereunder or in accordance with the terms and conditions of the agreement for sale, the promoter shall be liable to pay 'such compensation' to the allottees, in the manner as prescribed under the Act.

22. If we take a conjoint reading of subsections (1), (2) and (3) of Section 18 of the Act, the different contingencies spelt out therein, (A) the allottee can either seek refund of the amount by withdrawing from the project; (B) such refund could be made together with interest as may be prescribed; (C) in addition, can also claim compensation payable under Sections 18(2) and 18(3) of the Act; (D) the allottee has the liberty, if he does not intend to withdraw from the project, will be required to be paid interest by the promoter for every months' delay in handing over possession at such rates as may be prescribed.

23. Correspondingly, Section 19 of the Act spells out "Rights and duties of allottees". Section 19(3) makes the allottee entitled to claim possession of the apartment, plot or building, as the case may be. Section 19(4) provides that if the promoter fails to comply or being unable to give possession of the apartment, plot or building in terms of the agreement, it makes the allottees entitled to claim the refund of amount paid along with interest and compensation in the manner prescribed under the Act.

24. Section 19(4) is almost a mirror provision to Section 18(1) of the Act. Both these provisions recognize right of an allottee two distinct remedies, viz, refund of the amount



together with interest or interest for delayed handing over of possession and compensation.

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."

(emphasis supplied)

24. The principal grounds urged by the appellant for the delay in completion of the project are that the requisite permissions from the concerned authorities were received belatedly and, secondly, that the promoter was adversely affected by the circumstances arising out of the COVID-19 pandemic. The further contention of the appellant that the respondents did not pay the balance amount of Rs. 7,50,024/-.
25. It is a settled principle of law that lawful possession can be handed over and accepted only upon the issuance of an Occupation Certificate by the Competent Authority and not prior thereto. The MahaRERA, upon appreciating the factual aspects of the matter, including whether the respondents had paid the



entire consideration amount and other requisite charges, has recorded a finding that the allottees have paid the entire consideration amount.

26. In our opinion, there is no perversity in the findings recorded by the MahaRERA and, therefore, no case is made out for interference with the said findings. It is well settled that, interference with findings of fact is warranted only when such findings are shown to be perverse.
27. As already observed, the right of an allottee to seek refund under Section 18(1) is not contingent upon the fulfilment of any condition or stipulation. Paragraph 25 of the judgment of the Hon'ble Supreme Court in *M/s. Newtech Promoters and Developers Pvt. Ltd. v. State of Uttar Pradesh & Ors.* (supra) makes this position abundantly clear. In view of the authoritative pronouncement of the *M/s. Newtech Promoters and Developers Pvt. Ltd. v. State of Uttar Pradesh & Ors.* (supra) and upon considering the case in its entirety, and after carefully examining the findings recorded by the MahaRERA, we are of the considered view that the appeal is devoid of merits and warrants no interference in the impugned order.
28. Accordingly, we answer both the points formulated in para 22 in the negative. As a corollary, the appeal is dismissed.
29. No order as to costs.
30. Copy of this Order be communicated to the Authority and the respective parties as per Section 44(4) of the RERA Act, 2016.



(DR. RAJAGOPAL DEVARA)



(S. S. SHINDE, J.)

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