BEFORE THE MAHARASHTRA REAL ESTATE APPELLATE TRIBUNAL, MUMBAI

Appeal No. AT006000000053779 of 2022
In
Complaint No.CC006000000194803

Divya Kumar and Mr. Vinesh Kumar	]
203, Om Harmony CHS, Plot No.15/1,	]
Sector 11, Koparkhairane-400 709,	]
Navi Mumbai.	] ... Appellants.

Versus

M/s. Ravi Developments, Builders & Developers.	]
Laxmi Palace, 76, Mathuradas Road,	]
Kandivali (West), Mumbai-400 067.	] ... Respondent.

Adv. Mr. Arun Siwach for Appellants.
Adv. Mr. Makarand Raut for Respondent

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

RESERVED ON : 7th May, 2026

PRONOUNCED ON : 5th August, 2026

(THROUGH VIDEO CONFERENCING)

JUDGEMENT

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

1. The captioned appeal arises from the common order dated 04.02.2022 passed by the learned Chairperson, Maharashtra Real Estate Regulatory Authority (for short "the Authority") in the complaint No.CC006000000194803 filed by the appellants herein/allottees.

2. The respondent is promoter of the project in the name and style as "Gaurav Saffron" having MahaRERA Project Registration No. P51700003472.
3. For the sake of convenience, the parties to the appeal will be hereinafter referred to as "complainants/allottees" and "promoter/respondent" respectively.
4. Brief facts gathered from the pleadings, impugned order, and material on record are that the appellants booked a flat bearing no.1003 on 10th floor, B-Wing, admeasuring 468 sq. ft. carpet area in the promoter's said project on 01.02.2010. The agreement for sale dated 15.10.2010 came to be executed between the parties for total consideration of Rs.21,55,600/, out of which the appellants paid the amount of Rs.18,65,288/- towards consideration of the said flat besides Rs.1,35,340/- stamp duty and registration. The details of the payment are given below.

Sr.	Amount	Date of Payment
1	Rs. 51,000/-	01.02.2010
2	Rs.1,00,000/-	26.02.2010
3	Rs.1,00,000/-	20.08.2010
4	Rs. 4,000/-	20.08.2010
5	Rs. 70,000/-	20.09.2010
6	Rs.6,88,132/-	05.01.2011
7	Rs.3,23,340/-	24.03.2021
8	Rs.2,58,672/-	08.08.2011
9	Rs. 64,668/-	29.10.2011
10	Rs. 64,668/-	14.12.2011
11	Rs. 5,389/-	14.05.2012
12	Rs. 14,447/-	14.05.2012
13	Rs. 5,571/-	14.05.2012
14	Rs. 23,357/-	14.05.2012
15	Rs. 5,820/-	14.05.2012

16	Rs. 21,556/-	14.05.2012
17	Rs. 64,668/-	27.06.2019
	Rs.18,65,288/-	TOTAL

5. At the time of booking of the said flat, the promoter represented that all the requisite permissions have been obtained and plans were approved by the local body and the possession of the flat will be given within 18 months of the date of booking. However, the construction of the building was stopped and there were no signs of the promoter of handing over possession of the said flat. Therefore, the appellants were constrained to issue legal notice dated 09.02.2015 calling upon the promoter to refund the paid amount along with interest. The promoter responded to the said legal notice by its letter dated 23.03.2015 informing that there is a delay in issuance of commencement certificate, which is likely to be issued by May 2015. There was no further communication from the promoter nor was possession given to the appellants. The appellants therefore addressed a second legal notice dated 28.09.2015 to the promoter and once again called upon the promoter to refund the paid amounts with interest. Thereafter, the appellants issued further notices dated 23.05.2016 and 09.07.2016. On 18.07.2016, the promoter responded to the said legal notices by its letter dated 18.07.2016 stating therein that the project is delayed due to the circumstances beyond its control and demanded additional amount of Rs.2,000/- per sq. ft. for an alternate flat in another project named "Gaurav Excellency".
6. In reply to the said letter, the appellants by their letter dated 22.08.2016 recorded that they are willing to pay the additional

differential amount of Rs.2,000/- per sq. ft. for an alternate flat in another project "Gaurav Excellency". Thereafter, there was no further response from the promoter for several months. Thereafter, the appellants by their letter dated 19.06.2017 informed the promoter that they are not interested in alternative flat in another project. Thereafter, the appellants vide their letter dated 24.07.2017 and 30.08.2017 called upon the promoter to refund the paid amount with interest.

7. In the meanwhile, the said project being on-going project, the promoter registered the said project "Gaurav Saffron" on 05.08.2017 with the MahaRERA under the provisions of Real Estate (Regulation and Development), Act, 2016 (for short 'the RERA Act, 2016").
8. Aggrieved by the above conduct of the promoter, the appellants filed on 27.08.2018 a complaint bearing no.CC006000000055963 (for short 'the first complaint") for seeking relief of refund with interest. The Authority by its order dated 28.09.2018 dismissed the said complaint and directed the promoter to hand over possession of the said flat on/or before 31.10.2019.
9. Thereafter, pursuant to the said order dated 28.09.2018 of the Authority, there was no communication from the promoter for several months. The promoter by its demand letter dated 04.06.2019 demanded the appellants to pay balance amount of Rs.64,668/-. However, the said flat was not ready for delivery and the project is still remained incomplete. In response to the said demand letter, the appellants by their letter dated 24.06.2019 informed the promoter that they are ready and

willing to pay balance amount subject to promoter providing them the status of the project, completion certificate, etc. and undertaking that promoter would hand over possession of the flat by 31.10.2019 after obtaining occupation certificate as per the order of the Authority dated 28.09.2018. However, there was no response from the promoter.

10. Aggrieved by the non-compliance of the order of the Authority dated 28.09.2018, the appellants filed Execution Application on 13.11.2019. The said non-compliance application was dismissed by the Authority by its order dated 04.03.2020. The said order is passed ex-parte against the promoter. In the said proceedings, the appellants pleaded that the promoter is not in position to complete the construction and hand over possession, hence the appellants may be permitted to withdraw from the project seeking relief of refund with interest. In the said order dated 04.03.2020 the Authority directed the promoter to provide list of the allottees to enable them to form an association of allottees and thereafter informed the decision by invoking Section 7 and 8 of the RERA Act, 2016 to complete the construction of the project. In the said proceedings, the Authority made oral observations that in the event the appellants wish to withdraw from the project appropriate remedy would be to file a fresh complaint seeking the said reliefs instead of non-compliance application order by execution of the order dated 28.09.2018.

11. Thereafter, the appellants filed the captioned complaint on 06.11.2020 seeking the relief, inter-alia, praying for declaration that the promoter is in breach of the agreement for sale dated

15.10.2010; direction to the promoter to refund the paid amount of Rs.19,35,960/- towards consideration along with interest; injunction restraining the promoter from forfeiting any amounts paid by the appellants; and injunction from dealing with and/or disposing of and/or parting with possession or creating any third party rights, title or interest in favour of the third parties in respect of the said flat pending final disposal of the proceedings.

12. During the pendency of the captioned complaint, on 04.07.2021 the appellants and promoter arrived at a settlement dated 14.07.2021 in mediation proceedings of MahaRERA Conciliation Dispute Resolution Forum. Under the said settlement terms, the promoter agreed to refund a sum of Rs.36,64,908/- in six equal installments to the appellants commencing from 15.08.2021. The parties further agreed that in the event of failure of the promoter to comply with any terms of the settlement agreement, the complainant will be entitled to obtain judgment in accordance with the provisions of RERA Act, 2016. However, the promoter did not make any payments as per the said settlement agreement. The appellants vide legal notice dated 06.09.2021 and 30.09.2021 called upon the promoter to comply with its obligations under the settlement agreement. However, there was no response from the promoter to the said notice.

13. Due to above conduct of the promoter the appellants were constrained to proceed with the prosecuting the captioned complaint before the Authority.

14. The Authority heard the captioned complaint. It transpires that the promoter failed to appear for the hearing and the complaint proceeded ex-parte against the promoter.

15. The Authority heard the complainants and passed the impugned order. In the impugned order, the Authority observed that the due date of possession is not mentioned in the agreement for sale. However, in the order dated 28.09.2018, wherein the Authority directed the promoter to hand over possession on/or before 31.10.2019. Thus, the date of possession for the said project came to be redefined as 31.10.2019. With these observations, the Authority directed the promoter to refund the paid amount towards consideration with interest from the date of possession with occupation certificate. Further, the Authority entitled the promoter to the benefit of moratorium period as mentioned in the Notifications/Orders dated 13, 14 and 21 dated 02.04.2020, 18.05.2020 and 06.08.2021 issued by the MahaRERA in this regard. Further, the said moratorium period shall be excluded from the total period for which the interest is payable. The interest as calculated above shall be paid on/or before 31.03.2022 in one installment and subsequent interest shall be payable on/or before 5th of every month till the amounts are realized to the complainants.

16. Aggrieved by the said impugned order, the appellants have filed the captioned appeal on the grounds set out in the memorandum of appeal seeking following reliefs:

> "(a) That this Appellate Tribunal be pleased to quash and set aside the direction in the Impugned Order dated 4th February, 2022 passed by the learned Authority only in so far as the award of interest payable by the promoter to the appellants w.e.f. 1st November 2019 (excluding the moratorium period).

(b) The promoter be directed to pay to the appellants interest at the rate of 18% per annum (compounded annually) on the sum of Rs. 19,35,960/- (Rupees Nineteen Lakhs Thirty Fixe Thousand Nine Hundred and Sixty only) from 1st August, 2011 till the date of filing of this Appeal and at the rate of 18% per annum on the sum of Rs. 66,668/- (Rupees Sixty-Six Thousand Six Hundred and Sixty-Eight Only) from 28th June 2019 till the date of filing of this appeal and further interest thereon at the rate of 18% per annum from the date of filing of this appeal till payment and/or realization;

(c) In the alternative to prayer clause (b), the learned Authority be pleased to pass an order as per terms and conditions of the Settlement Agreement executed between the Parties and direct the Respondent to pay sum of Rs. 36,64,908/- (Rupees Thirty-Six Lakhs Sixty-Four Thousand and Nine Hundred and Eight the Appellants and further interest thereon at the rate of 18% per annum from the date of filing of this Appeal till payment and/or realization;

(d) Such other costs/reliefs as this Hon'ble Authority may deem appropriate."

17. We have heard the learned Advocate for the parties. Their submissions are nothing but re-iteration of the contents of the memorandum of appeal and written submissions.

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18. The learned Advocate for the appellants has submitted that the promoter has failed to hand over possession within 18 months of booking of the flat as promised by the promoter. Therefore, the appellants are entitled to withdraw from the project and seek relief of refund of paid amounts along with interest under Section 18 of the RERA Act, 2016. The learned Advocate further submitted that the interest on the refund amount would be from the date of respective payments and not the dated of 01.11.2019, as has been granted by the Authority in the impugned order.

19. In support of the above contentions, the learned Advocate has placed reliance on the following judgments:

    i)Imperia structures Ltd, V/s. Anil Patni, [(2020) 10 SCC 783],

    ii) M/s. Newtech Promoters and Developers Pvt. Ltd. V/s. State of UP & Ors. [2021 SCC Online SC 1044],

    iii) Experian Developers Pvt. Ltd. V/s. Sushma Ashok Shirur, [(2022) SCC Online SC 416],

    iv) Pioneer Urban Land and Infrastructure Ltd. V/s. Govindan Raghavan [(2019) 5 SCC 735].

20. Per contra, the learned Advocate for the promoter has submitted that there is no intentional delay on the part of the promoter in completing the construction of the project. The delays are caused due to covid-19 lockdown, liquidity crunch due to covid-19 pandemic, delay in getting approvals from the planning authority, etc. The delay caused in completion of the project is beyond the control of the promoter and therefore the promoter

is entitled to reasonable extension of time in completion of the project.

21. The learned Advocate further submitted that the Order No.13, 14 and 21 passed by the Authority, whereby the MahaRERA has directed that the promoter is entitled to the benefit of moratorium period. The said orders are statutorily valid and subsisting and not the subject matter of challenge in any proceedings. Therefore, the said orders are binding upon the appellants. Hence, the Authority has rightly granted the benefit of the moratorium period to the promoter.

22. The learned Advocate further submitted that when the project was registered with the MahaRERA, the project completion date is mentioned as 30.12.2022. The MahaRERA further granted extension to project completion date to 30.06.2026. Hence, there is no delay in handing over of the possession. Therefore, there is no violation of provisions of Section 18 of the RERA Act, 2016.

23. With these submissions, the learned Advocate for the promoter prayed to dismiss the appeal with costs.

24. Having heard the learned Advocates for the parties at length, and with due consideration to the averments made by the learned Advocates for the parties and memorandum of appeal, written submissions, impugned order, and the material placed on record, the following points arise for our consideration, and we have recorded our findings thereupon, for the reasons to follow, as under.

Sr.No.	Points	Findings
1.	Whether the appellants are entitled to relief of refund with interest under section 18 of the RERA Act, 2016?	In the Affirmative.
2.	Whether the impugned order warrants interference in this appeal?	In the affirmative.
3.	What order?	As per final order.

REASONS

Point No.1

25. On ensemble of the facts as submitted by the parties above, it is not in dispute that the appellants have purchased the subject flat for total consideration of Rs.21,55,600/- vide agreement for sale dated 15.10.2010. Further, the appellants have paid the amount of Rs.18,65,288/- towards consideration, besides Rs.1,35,340/- towards stamp duty and registration charges. The payment details are as per table in para-4 of this judgement. The promoter promised possession of the said flat within 18 months from the booking date of 01.02.2010, however no date of possession is mentioned in the agreement for sale. The promoter has not obtained occupation certificate as on date and project is still incomplete.

26. The agreement for sale does not disclose any specific date of possession and the same column is kept blank. In the case of *Fortune Infrastructure (Now known as M/s. Hicon*

Infrastructure) & Anr. V/s. Trevor D'Lima & Ors. [(2018) 5 SCR 273] wherein the Hon'ble Supreme Court has held that if the date of possession is not mentioned in the agreement, the promoter is expected to hand over the possession of the unit within a reasonable time and the period of three years held to be reasonable time. We are of the view that the 3 years will be reasonable time for handing over of possession in the facts of this case. Therefore, we take the due date of possession of the said flat as 15.10.2013.

27. Then said agreement for sale was executed and registered prior to RERA Act, 2106 coming into force. However, the said project is registered as on-going project under the RERA Act, 2016. The RERA Act, 2016 being retroactive, we are of the view that the said agreement for sale is enforceable under the provisions of RERA Act, 2016.

28. The Hon'ble Supreme Court in M/s. Newtech Promoters and Developers Pvt. Ltd. V/s. State of U.P. & Others [Civil Appeal No(s). 6745-6749 of 2021 (arising out of SLP (Civil) No(s). 3711-3715 of 2021 decided on 21st November, 2021] has held that the RERA Act, 2016 is retroactive in its operation and held in Para-37, 41 and 45 as under

"*37. Looking to the scheme of Act 2016 and Section 3 in particular the of which a detailed discussion has been made, all "ongoing projects" that commence prior to the Act and in respect to which completion certificate has not been issued are covered under the Act. It manifests that the legislative intent is to make the Act applicable not only to the projects which were yet to commence after the Act* *became operational but also to bring under its fold the ongoing projects and to protect from its inception the inter se rights of the stake holders, including allottees/home buyers, promoters and real estate agents while imposing certain duties and responsibilities on each of them and to regulate, administer and supervise the unregulated real estate sector within the fold of the real estate authority*

41. The clear and unambiguous language of the statute is retroactive in operation and by applying purposive interpretation rule of statutory construction, only one result is possible, i.e. the legislature consciously enacted a retroactive statute to ensure sale of plot, apartment or building, real estate project is done in an efficient and transparent manner so that the interest of consumers in the real estate sector is protected by all means and Sections 13, 18(1) and 19(4) are all beneficial provisions for safeguarding the pecuniary interest of the consumers/allottees. In the given circumstances, if the Act is held prospective then the adjudicatory mechanism under Section 31 would not be available to any of the allottee for an on-going project. Thus, it negates the contention of the promoters regarding the contractual terms having an overriding effect over the retrospective applicability of the Act, even on facts of this case.

45. At the given time, there was no law regulating the real estate sector, development works/obligations of promoter and allottee, it was badly felt that such of the ongoing projects to which completion certificate has not been *issued must be brought within the fold of the Act 2016 in securing the interests of allottees, promoters, real estate agents in its best possible way obviously, within the parameters of law. Merely because enactment as prayed is made retroactive in its operation, it cannot be said to be either violative of Articles 14 or 19(1)(g) of the Constitution of India. To the contrary, the Parliament indeed has the power to legislate even retrospectively to take into its fold the pre-existing contract and rights executed between the parties in the larger public interest.*"

The subject project was ongoing when the RERA Act, 2016 came into force and the said project is therefore registered with MahaRERA under the provisions of RERA Act, 2016. In the light of above exposition of law in M/s. Newtech Promoters and agreement for sale which were executed prior to coming into force the RERA Act, 2016 can be enforced under the provisions of RERA Act, 2016. Hence, we are of the considered view that the appellants are entitled to seek relief under the provisions of RERA Act, 2016 even though the said agreement for sale is executed prior to RERA Act, 2016 coming in force.

29. The project is still incomplete and the promoter has failed to obtain occupation certificate. Therefore, this clearly demonstrates that the promoter has failed to hand over possession of the flat by the due date of possession and therefore the appellants are entitled to withdraw from the project seeking relief of refund of interest under Section 18 of the RERA Act, 2016.

30. It is the contention of the promoter that there is no intentional delay on the part of the promoter when the delay is caused due to covid-19 lockdown, liquidity crunch due to covid-19 effect, and delay in getting approvals from the planning Authority etc. The delay caused in completion of the project is beyond the control of the promoter and therefore the promoter is entitled to reasonable extension of time in completion of the project. It is pertinent that due date of possession is 15.10.2015 which is much prior to the covid-19 epidemic, which happened in the year 2020. Therefore, the said reason of covid-19 lockdown is not relevant as *force majeure* reason justifying the delay. Therefore, the said contention is rejected. Further, the other reasons i.e. liquidity crunch and delay in getting the approvals from the competent authority is also not tenable as *force majeure* factors.

31. The *force majeure* factors as demonstrated by the promoter do not fall within the ambit of explanation to Section 6 of RERA Act, 2016 which clearly clarifies that "*force majeure*" shall mean case of war, flood, drought, fire, cyclone, earthquake or any other calamity caused by nature, affecting the regular development of real estate project. None of the grounds as demonstrated by the promoter fall within the scope of explanation to Section 6 of RERA Act, 2016 which could have justified the delay. Therefore, we are of the considered view that delay in granting permissions/ sanctions/ NOCs by various competent authorities, financial crunch, etc. as contended by the promoter cannot be construed as "*force majeure*". The promoter can neither expect allottees to be aware of the likely delay nor can make allottees

bear the brunt of the failure on the part of promoter to act professionally by assessing the requisite date for possession.

32. Section 18 of the RERA Act, 2016 provides for refund of amounts and compensation if the promoter fails to complete or is unable to give possession of an apartment in accordance with the terms of the agreement for sale. The said clause is reproduced below:

> "*18. 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; 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 allottee, 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".

33. The said provision makes it clear that if the promoter fails to handover possession of the subject flat by the date specified in the agreement for sale, then the promoter shall be liable, on demand, to the allottees, in case allottees wish to withdraw from the project, without prejudice of any other remedy available, to return the amount received by the promoter in respect of the flat along with interest at such rate, as may be prescribed in this regard.

34. It is worth noting that it is not in dispute that the promoter has failed to hand over possession of the subject flat to the appellants by the date of possession as mentioned in the said agreement for sale. As we have already observed that the due date of possession for the said flat is 15.10.2015. There is no material on record to show that the appellants are responsible for the delay in completing the subject project. The ratio laid down by the Hon'ble Supreme Court in *M/s. Imperia Structures Ltd. Vs. Anil Patani & Ors.* [in Civil Appeal No. 35813590 of 2020] is that-

"In terms of Section 18 of the RERA Act, if a promoter fails to complete or is unable to give possession of an apartment duly completed by the date specified in the agreement, the Promoter would be liable, on demand, to return the amount received by him in respect of that 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)."

35. While explaining the scope of Section 18 of RERA, the Hon'ble Supreme Court in *M/s. Newtech Promoter and Developers Pvt. Ltd. V/s. State of Uttar Pradesh* [2021 SCC Online 1044] dated 11 November, 2021 held that;

"Para 25. *The unqualified right of the allottee to seek refund referred under Section 18 (1) (a) and Section 19 (4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature had 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".*

36. Section 18 of the RERA Act, 2016, thus spells out the consequences that if the promoter fails to complete or is unable to give possession of an apartment by the date specified in the agreement, the allottee holds an unqualified right to seek refund of the amount with interest on such rate as may be prescribed in this behalf, including compensation in the manner as provided in the RERA Act, 2016. We have already observed that the promoter has failed to hand over possession by the date specified in the said agreement for sale (i.e. 15.10.2015), therefore in the light of the ratio laid down by the Hon'ble Supreme Court in above judgements, the promoter/respondent is liable to refund the amount paid by the appellants in respect of the subject flat along with interest under section 18 of the RERA Act, 2016.

37. In view of the above, we come to the conclusion that the appellants are entitled to relief of refund along with interest under Section 18 the RERA Act, 2016. Accordingly, we answer point no.1 in the affirmative.

<u>Point No.2</u>

38. While granting relief of refund with interest, the Authority has observed that the date of possession is not mentioned in the agreement for sale. Further, in the order dated 29.09.2018 the Authority directed the promoter to hand over possession on/or before 31.10.2019. Thus, the date of possession for the said project came to be redefined as 31.10.2019. Therefore, the Authority directed the refund of the paid amount with interest

from the date the date of possession with occupation certificate. In this regard it is pertinent to visit the relevant section of the RERA Act 2016, which defines the term interest.

39. Section 2(za) defines the term interest. The said clause is reproduced below:

"2(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".

40. As per the said definition of interest, it has made it clear that the interest payable by the promoter to the allottees shall be from the date promoter receives the amount or any part thereof till the date amount or part thereof and interest thereon is refunded. Further, the interest payable by the allottees to the promoter shall be from the date of alleged default to payment to the promoter till the date it is paid. Thus, this provision makes it abundantly clear that in case of refund of the amount, the interest payable by the promoter to the allottees shall be from

the date the promoter received the amount till it is refunded to the allottees. Thus, the promoter is liable to pay interest from the date of respective payments.

41. The Hon'ble Supreme Court in the case of *Experian Developers* (supra) has held that interest payable on amount deposited by the flat buyers is not only restitutionary but also compensatory and interest has to be paid from the date of deposits and not from the estimated date of possession. The Hon'ble Supreme Court in the case of *Experian Developers* (supra) has in para-22.1 has held as under:

> "*22.1 We are of the opinion that for the interest payable on the amount deposited to be restitutionary and also compensatory, interest has to be paid from the date of the deposit of the amounts. The Commission in the order impugned has granted interest from the date of last deposit. We find that this does not amount to restitution. Following the decision in DLF Homes Panchkula Pvt Ltd v. DS Dhanda16 and in 0modification of the direction issued by the Commission, we direct that the interest on the refund shall be payable from the dates of deposit. Therefore, the appeal filed by purchaser deserves to be partly allowed. The interests shall be payable from the dates of such deposits.*"

42. In the light of the discussion above, we come to the conclusion that appellants are entailed to relief of refund of the paid amounts with interest from the dates of respective payments under section 18 of RERA Act, 2016.

43. In view of above, the grant of relief of refund from the due date of possession as granted by the Authority in the impugned orders is not legally sustainable and contrary to the provisions of RERA Act, 2016 and settled position of law. Accordingly, we are of the considered view that the appellants are entitled to refund of the paid amounts with interest from the dates of respective payments till the amounts are realized to the appellants. On this ground, the impugned order warrants interference in this appeal.

44. It is also pertinent that the due date of possession as observed above is 15.10.2013, which is prior to covid-19 pandemic. Therefore, the impugned order granting benefit of moratorium period as mentioned in the Notification/Orders No.13,14 and 21 issued by the MahaRERA are not sustainable and the promoter is not entitled to benefit of said moratorium period for the purpose of calculation of interest that is payable to the appellants. The impugned order warrants interference to this count as well. Accordingly, we answer point no.2 in the affirmative.

45. It is the contention of the promoter that the during the pendency of the complaint, the appellants and promoter arrived at a settlement dated 14.07.2021 in mediation proceedings before the MahaRERA Reconciliation and Dispute Resolution Forum. Under the said settlement agreement, the promoter had agreed to refund a sum of Rs.36,64,908/- in 9 equal installments to the appellant commencing from 15.08.2021. The parties further agreed in the event of failure of the promoter to comply with any of the terms of the settlement agreement, the

complainants shall be entitled to obtain judgment in accordance with the provisions of RERA Act, 2016. As the fact of the matter, the promoter did not make any payment as per the settlement agreement and breached the said settlement agreement. Therefore, the contention of the promoter that the present complaint and the appeal is not maintainable since the matter has been amicably settled between the parties is not tenable, hence is rejected.

46. In view of the above discussion, we proceed to pass the following order.

ORDER

1. Appeal No.AT006000000053779 of 2022 in complaint No.CC006000000194803 is allowed.
2. The impugned order dated 04.02.2021 is modified and substituted as under:

    i) The respondent promoter is directed to refund the amount of Rs.18,65,288/- paid by the appellants towards consideration of the subject flat to the promoter as per details given in table in para 4 of the judgement along with interest at the rate of 2% above SBI's Highest Marginal Cost Lending Rate from the dates of respective payments as specified in the said table in para-4, within the period of 30 days from the date of this order, failing which the promoter shall also pay further interest on the outstanding amount as on 05.09.2026 at the same rate of interest, prescribed above, till the amounts are realised to the appellants.

महाराष्ट्र

ii) Upon realization of the amounts mentioned above to the appellants, the respondent promoter is directed to execute the deed of cancellation in respect of the said agreement for sale within the period of two months from the date of this order so as to enable the appellants to seek refund of stamp duty and other taxes paid to the government, failing which the promoter shall refund to the appellant stamp duty and other taxes paid by the appellants i.e. Rs.1,35,340/- together with interest as prescribed above, from the date of respective payments, till the amounts are realized to the appellants.

iii) The appellants shall extend full cooperation to the promoter in executing the deed of cancellation upon realization of the amounts as mentioned above.

iv) The promoter shall extent co-operation to the appellants in getting the registration charges, stamp duty charges and other taxes paid by the appellants refunded from the concerned government authorities.

v) Till the amounts as mentioned are realized to the appellants, the promoter shall not create any third-party rights, interest, and encumbrances in the said flat and the charge of the said amounts shall remain on the said flat.

3. Parties to bear their own costs.

4. Copy of this Order be communicated to the Authority and the respective parties as per Section 44(4) of RERA Act, 2016.
5. Accordingly, the captioned appeal stands disposed of in above terms.

(SHRIKANT M. DESHPANDE) **(S.S. SHINDE, J.)**

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