BEFORE THE MAHARASHTRA REAL ESTATE APPELLATE TRIBUNAL, MUMBAI

Appeal No. AT006000000053709 of 2022
@ M.A.No.1071/2022 (Addl. Docs.,
M.A.No.652 of 2022(Injunction)
In
COMPLAINT NO.CC006000000171517 of 2019

Casa Fresco A to E Co-operative]
Society Limited,]
Wing-3, Lodha Amara, Kolshet Road,]
Thane (West), Maharashtra-400 607.].. Appellant.

Versus

Macrotech Developers Limited]
412, 4th Floor, Vardhaman Chambers,]
Cawasji Patel Street, Fort,]
Mumbai-400 001.].. Respondent.

Adv. Mr. Sagar K. Devre for appellant.

Adv. Mr. Vikramjit Garewal for respondent.

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

RESERVED ON : 24th February, 2026

PRONOUNCED ON : 12th August, 2026

(THROUGH VIDEO CONFERENCING)

JUDGEMENT

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

1. The captioned appeal arises from the order dated 15.02.2022 passed by the learned Chairperson, Maharashtra Real Estate

Regulatory Authority (for short "the Authority") in the captioned complaint.

2. The respondent is the promoter of the project "Lodha Amara, Tower 1 to 5, 7 to 19" registered with MahaRERA having Project Registration No. P51700001065. The said project consists of Wing 1 to 5 and Wing-7 to 19, having 18 building. The appellant is the society of the allottees of Wing-1 to Wing-5 of the said project. The said project is part of larger layout of various projects in the said larger project property, which are constructed in phase-wise manner. The allottees of the said project purchased their respective flats vide various agreements for sale executed between 2015 to 2018 i.e during pre-RERA and post-RERA period. There are 767 flat purchasers/allottees in the said project.
3. The proposed completion date of the project is 30.11.2019 with grace period of 18 months. The said project received occupation certificate on 24.01.2018. The allottees were put in possession of their respective flats in the year 2018 soon after obtaining of the occupation certificate. The allottees also signed the respective possession letters before taking possession of the respective flats.
4. Aggrieved by most of the common amenities as promised by the promoter in the agreements for sale with the allottees being incomplete or absent, which included car parking space, demarcation of visitors parking spaces, permanent two-wheeler parking spaces, water connection, and for list of amenities as provided in the respective agreements for sale, the appellant society filed the captioned complaint with the Authority with

various reliefs as set out in the complaint. Among others, the appellant also sought reliefs of refund, damages, and compensation with respect to various amenities and non-adherence to the terns of the agreements for sale as set out in the said complaint.

5. After hearing the parties, the Authority passed the impugned order. While passing the impugned order, the Authority observed that the occupation certificate for the project is obtained by the promoter on 24.01.2018 and the allottees have taken possession of the respective flats. Therefore, it appears that there is no issue with regard to the amenities to be provided in the respective flats. However, the dispute pertains mainly with regard to the common amenities and infrastructure to be provided in accordance with the terms of the agreements for sale executed by the promoter with the allottees. The said amenities have been specified in the respective agreements for sale, but no timelines for those amenities in the agreements for sale are provided. However, while granting occupation certificate the planning authority has ensured that all the amenities necessary for occupation of flats have been provided for as per the sanctioned plans.

6. The Authority, however, with regard to common amenities observed that it would be important to have amenities on the ground ascertained by a qualified professional. Hence, the Authority directed both the parties to appoint a registered Architect who shall inspect the said project as per the sanctioned plans and agreements for sale of the allottees and submit report to the MahaRERA. The report inter-alia, shall

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mention the amenities provided in the agreements for sale against, which of the amenities have been approved in the sanctioned plans, and the amenities actually provided by the promoter shall be noted clearly. While ascertaining those amenities, the Authority took the agreements for sale as the sole basis and not any marketing commitments as given by the promoter. The Authority also observed that the calculations of the damages claimed by the complainant are not supported with any documentary evidence, therefore, rejected the said claims for damages and compensation.

7. In the impugned order, the Authority further directed that the registered Architect may be appointed by the parties jointly in consultation with each other within two months of the order and the same shall be informed to the Authority and expenses of the registered Architect shall be borne by both the parties equally. With these observations and directions, the Authority disposed of the captioned complaint and granted liberty to the parties to approach the Authority subsequent to the submission of the report by the registered Architect.

8. Aggrieved by the impugned order, the appellant society has filed the captioned appeal on the grounds as set out in the memorandum of appeal seeking following reliefs:

A) Set aside the impugned order dated 15/02/2022

B) That the Respondent be directed to allot permanent car parking space to the members of the Complainant in the existing multi-level car park of basement and ground plus three upper floors in the manner mentioned in the Occupancy Certificate dated 24th January 2018 issued in *respect of the Project, at the cost and expenses of the Respondent*

C) In addition to prayer (a) above, the Respondent be directed to Pay damages of Rs. 2,50,00,000/- (Rupees Two Crore Fifty lakhs only) to the Complainant for loss of interest on account of collection of full agreement value on possession however delay in handover of a permanent place for parking as per OC and fraudulent and dishonest conduct in respect of non-allotment of permanent car parking space in existing multi-level car park of basement and ground plus three upper floors.

D) That the Respondent be directed to provide properly demarcated visitor parking in the compound of the Project.

E) That the Respondent be directed to demarcate two-wheeler parking space in the compound of the Project.

F) That the Respondent be directed to allot permanent two-wheeler parking space to the members of the Complainant as mentioned in Proforma B of layout submitted with Thane Municipal Corporation (hereinafter referred to as "TMC) at the costs and expenses of the Respondent.

G) In addition to prayers (d) and (e) above, the Respondent be directed to pay damages for the aforesaid fraudulent and dishonest conduct, and which in the estimate of the Complainant is Rs. 5,00,000 (Rupees Five Lakh only) to the Complainant for fraudulent and dishonest conduct of breach of Proforma B of layout *submitted with TMC and non-provision of two-wheeler parking space in the Project.*

H) That the Respondent be directed to provide water connection from the water lines of TMC within three (3) months from the date of passing of the Order in this Complaint at the cost and expense of the Respondent.

I) In the event Respondent is unable to obtain water connection, it will be in the interest of justice to summon the concerned officer of the Thane Municipal Corporation and direct it to provide water connection to the Project at the costs and expenses of the Respondent.

J) That the Respondent be directed to execute the conveyance at the cost and expenses of the Respondent.

K) In addition to prayer (g), the Respondent be directed to pay a sum of Rs.5,00,000 (Rupees Five Lakh only) to the Complainant as and by way of punitive damages:

L) That the Respondent be directed to refund to the Complainant a sum of Rs.21,13,519/- (Rupees Twenty Lakh Thirteen Thousand Five Hundred and Nineteen only), being the excess Building Common Amenities Management charges lying with the Complainant along with the interest thereon provided in paragraph (d) (x) (2) of the Complaint 18%.

M) That the Respondent be directed to refund to the Complainant a sum of Rs. 30,27,967/- (Rupees Thirty Lakhs Twenty-Seven Thousand Nine Hundred and Sixty Seven only) being the defect rectification cost billed to the

BCAM accounts along with the interest thereon @ 18% as mentioned in paragraph (d) (x) (3) to the Complaint

N) That the Respondent be directed to refund to the Complainant a sum of Rs. 9,48,210/- (Rupees Nine Lakh Forty Light Thousand Iwo Hundred and Ten only) being the excess electricity expenses incurred for the common area electricity than the average electricity expenses from the date of installation as mentioned in paragraph (d) (x) (4) to the Complaint,

O) That the Respondent be also directed to refund the interest income of Rs. 45,00,000 (Rupees Forty-Five Lakhs Only) earned on the lump sum BCAM amount collected from the date of possession of flats up to October 2019 as mentioned in paragraph (d) (x) (10) to the Complaint

P) In view of the discrimination as stated in paragraph (xi) (1) to the Complaint, the Respondent be directed to pay to the Complainant damages of a sum of Rs. 1,00,00,000/- (Rupees One Crore only),

Q) The Respondent be directed to provide consolidated and member wise statement of accounts including the supporting documents of collection, income and expenditure of the federation Common Area Maintenance charges, as promised in the Agreement to sell to be provided every year in the month of June for the verification of the Complainant.

R) The Respondent be directed to refund the excess FCAM amount collected as such along with interest 18% from *the date of filing of this Complaint until payment and/or realization.*

S) The Respondent be directed to provide all the FCAM accounts related statements and documents for verification by the complainant.

9. We have heard the learned Advocates for the parties at length. Their submissions are nothing but re-iteration of the contents of the memorandum of appeal, reply, rejoinder, and written submissions.

10. The learned Advocate for appellant society, with regard to the allotment of four-wheeler parking spaces in the multi-level car parking tower (for short "MLCP") to the allottees is concerned, has submitted that the appellant society is aggrieved by the wrongful and forceful allotment of car parking to allottees at higher parking levels that did not exist on the date of possession of their respective flats. On the date of possession of their respective flats, the car parking only at P1, P2 & P3 parking levels had existed in the MLCP for which the promoter obtained part occupation certificate. The only occupation certificate that existed at the time of possession in the month of September, 2018 was the first occupation certificate dated 24 January 2018, covering parking level P1, P2 and P3. Accordingly, car parking ought to have done in these 3 parking levels only. The second part occupation certificate was only received in March 2019 covering parking levels P4 to P11. Therefore, the parking allotments made on paper in September, 2018 of the higher parking levels from P4 to P12 to the member of the appellant society, when there was no occupation certificate existed at that

time for the said parking levels, is illegal and therefore may be declared void ab-initio. The learned Advocate for appellant therefore prayed that the parking allotment to the allottees be directed to be provided anywhere in the parking level at P1, P2 and P3 which existed when the possession was handed over with valid occupation certificate. The allotment of parking spaces on higher level P4-P12 of the MLCP building was forcefully accepted on paper by the allottees as it was not known to the allottees that the allotment was just paper allotments. The promoter did not allow the members of the appellant to visit and see the parking slot numbers as the levels beyond level P3 in the multi-level car parking was neither existing at that time nor having occupation certificate when the possession was handed over and allotment of parking spaces on level P4 to P12 when allotment was done in favour of the members of appellant.

11. The learned Advocate further submitted that the promoter has to exercise its right to allocate the parking at its sole discretion within the levels having valid occupation certificate and entitles the promoter to carry out allotment. The learned Advocate submitted that the as per the agreements for sale, the allottees were entitled to occupy car parking spaces along with flats at the time of possession in June 2018. As a result, the possession of the flats along with fixed car parking spaces was incomplete in terms of the agreements for sale due to the inability of the promoter to handover the physical possession of the fixed car parking as agreed in the agreements for sale at the time of possession.

12. The learned Advocate submitted that allottees were issued car parking allotment letters at the time of possession with car parking spaces in the higher levels P4- P12 of the multi-level car parking that did not exist on the date of possession, therefore possession is not in accordance with the agreements for sale for want of occupation certificate for level P4- P12 which was allotted to the allottees. Therefore, the appellant prayed for direction to the promoter to provide permanent parking slots to the members of the appellant in level P1 or any other level that existed at the time of possession of the flat. Further, the learned Advocate submitted that the allottees be given compensation for not providing the permanent car parking spaces at lower levels.

13. The learned Advocate for the appellant has submitted that the appellant has grievances on allotment of two-wheeler parking spaces to allottees. In the environment clearance provided by the Ministry of Environment, Forest and Climate Change vide its letter dated 15.04.2015 and annexed with the pre and post RERA agreements for sale, the promoter in its compliance thereto has submitted to the Ministry, inter-alia, agreeing to provide two-wheeler parking facility for 9467 two-wheelers in the compliance report. However, the promoter has failed to provide physically demarked share of area to the appellant for two-wheeler parking and prayed for directing the promoter to provide and demarcate the two-wheeler parking spaces for the members of the appellant society. Further, the promoter be directed to compensate the allottees/appellant for not proving and demarketing the two-wheeler spaces.

14. With regard to the water connection, the learned Advocate submitted that the allottees are currently being provided water for daily use through temporary connection from the water line of Maharashtra Industrial Development Corporation Ltd (for short "MIDC"). and not through the Thane Municipal Corporation (for short "TMC"). Even after three years since possession of the units, the promoter has not made application for water connection to the Thane Municipal Corporation. The learned Advocate submitted that the commercial water charges are being paid to the MIDC instead of residential rate of water charges. If for any reasons, the MIDC terminates the water connection and the promoter hands over the management of the project including the other projects, to the respective societies or the promoter ceases to exist before the Thane Municipal Corporation commences supplying water to the project, the appellant and allottees will face a precarious situation of no water supply or water supply at an exorbitant commercial rate or through water tankers. Therefore, the learned Advocate prayed to direct the promoter to obtain water connection to the project from the Thane Municipal Corporation and in the event the promoter is unable to obtain the water connection it would be in the interest of justice to direct the concerned officer of the Thane Municipal Corporation to provide water connection to the project at the cost and expenses of the promoter.

15. The learned Advocate submitted that the promoter has not executed conveyance in favour of the appellant in compliance with the obligations mentioned in the agreements for sale

entered with the flat purchasers and Section 11(4) (f) of RERA and in view thereof has committed a breach of the agreements and the provisions of the RERA. The learned Advocate prayed for directions to the promoter to execute the conveyance of the flats and buildings at the cost and expenses of the promoter.

16. With regard to society hand over and building common area maintenance (for short "BCAM") accounts, the learned Advocate submitted that the promoter formed the appellant society on 07.06.2018. However, the promoter handed over charge of the appellant to the provisional committee of the appellant only on 21.01.2019 i.e after 10 months as against within three months as per the provisions of the Maharashtra Co-operative Societies Rules 1961. The said delay has resulted in loss of interest on the surplus building common amenities management charges amounts available with the promoter as on 07.06.2018 i.e. the date of formation of appellant society and loss of transfer charges during the aforesaid period of sale of flats which the society could have recovered from the incoming members as per the bye-laws of the society. In spite of being more than two and half years since the start of the handover to the appellant, the promoter has failed to transfer the surplus of amount of BCAM amounts available with the promoter. The learned Advocate submitted that the appellant was forced to take over affairs of the society without the transfer of surplus funds into the bank account of the appellant on 01.07.2019 onwards. Subsequently, the promoter provided total amount of Rs.84,40,000/- and 97,78,270/- out of total amount of Rs.2,03,31,789/- available with the promoter as per the

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unaudited BCAM accounts provided by the promoter. Therefore, the balance surplus BCAM amount available with the promoter is Rs.21,13,519/-/ as per the unaudited accounts statement till 30.06.2019.

17. The learned Advocate submitted that under Section 14(3) of the RERA Act, 2016 the promoter is under obligation to rectify the defects brought to the notice of the promoter by its own cost and expenses. In the present case the members of the appellant and after possession of their flats raised various defects for rectification by the promoter. The promoter by appointing an agency to rectify those defects incurred expenditure of Rs.30,27,967/- for carrying out such rectification of defects till date from the said BCAM amounts that was paid by the flat purchasers to the promoter instead of rectifying the defects as his own cost and expenses. Further, the electricity expenses charged to the BCAM accounts in respect of common area electric meters, the said charges were 5 to 6 times higher than the average monthly charges on those meters. In view of this, the learned Advocate for the appellant submitted that the promoter may be directed to refund to appellant the sum of Rs. 21,13,519/- being the BCAM charges, the balance amount with the promoter, along with interest thereupon. Further, the promoter may be directed to refund the amount of Rs.30,27,967/- being the defect rectification costs charged by the promoter to the BCAM accounts.

18. With regard to the federation common area maintenance accounts (for short "FCAM"), the learned Advocate submitted that the promoter coerced the flat purchasers to pay in advance

federation common area maintenance charges for five years instead of 18 months as promised in the pre-RERA agreements for sale and 30 months as provided in the post-RERA agreements for sale. The promoter has failed to provide consolidated and member wise statement of accounts including the supporting documents of collection, income, and expenditure of the FCAM charges as promised in the agreements for sale to be provided every year in the month of June for the verification of the appellant society. The learned Advocate prayed that the promoter may be directed to refund the excess FCAM amounts collected along with interest and promoter be directed to provide all the FCAM accounts related statements and documents for verification by the appellant.

19. With these submissions, the learned Advocate for the appellant prayed to allow the appeal.

20. The learned Advocate for the appellant has placed reliance on the following judgments:

   i) *Pioneer Urban Land & Infrastructure Ltd. (Civil Appeal No.12238 of 2018 decided by the Hon'ble Supreme Court of India on 02.04.2019],*

   ii) *Neelkamal Realtors Suburban Pvt. Ltd. & Anr V/s. Union of India & Ors. [W.P.No.2737 of 2017 decided by the Hon'ble Bombay High Court on 06.12.2017],*

   iii) *Vidya Drolia & Ors V/s. Durga Trading Corporation (2021) 2 SCC 1].*

21. Per contra, the learned Advocate for the promoter has submitted that prayers in the appeal are limited to the grievances with regard to the muti-level car parking,

conveyance, society handover and building common area maintenance account, and federation of common area maintenance charges.

22. The learned Advocate submitted that the appellant has attempted to misrepresent the facts in order to mislead the Tribunal. A plain reading of the impugned order clearly demonstrates that it is legally sound and has been passed after due consideration. The contentions raised by the appellant are wholly misconceived, unsubstantiated, and devoid of merit and ought not to be entertained by this Tribunal. The appeal is premised on an erroneous narration of facts and a flawed interpretation of law, rendering the claims therein baseless and unworthy of consideration.

23. The learned Advocate submitted that the project is a premium, state-of-the-art, larger scheme of residential township developed by the promoter over 40 acres of the project land. Except certain facilities that are common to the projects of the larger property, which are ongoing on the larger property, all the other amenities in the subject project have been provided.

24. The learned Advocate submitted that the appellant had filed the captioned complaint at a belated stage, after the members of the appellant had satisfied themselves with the specifications of their respective flats, parking, and amenities, and have accepted possession of their flats. In doing so, they expressly signed possession letters and waived any right or claim against the promoter. None of the possession letters were signed under protest as alleged by the appellant. The learned Advocate submitted that in the present case, approximately 70% of the

total members of the appellant have executed pre-RERA agreements for sale, which stipulated that any disputes or differences are to be resolved through arbitration, as per Clause 23 of the agreements for sale. Therefore, the disputes involving these members must be referred to arbitration and cannot be adjudicated by the Authority.

25. The learned Advocate submitted that under the agreements for sale, elaborate disclosures were made to the members of the appellant which includes but are not limited to the specifications, extent and the development of the project in a phase-wise manner. Therefore, the allegations of coercion and/or misrepresentation are untrue.

26. With regard to the grievances of the appellant with regard to the multi-level car parking (for short 'MLCP"), the learned Advocate submitted that the MLCP is a common amenity of the projects on the larger property, independent of the towers. The right of allotting individual parking slots to allottees in all the projects including the subject project is the sole prerogative of the promoter as clearly spelt out in Clause 9 of the pre-RERA agreements for sale and Clause 8 of the post-RERA agreements to sale. Without prejudice to the above, the learned Advocate submitted that the possession of the flats was handed over 8 months prior to the promised date. Each member of the appellant was allocated a permanent car parking spot in the MLCP as early as 2018-19 when possession of their respective flats was handed over. However, since occupation certificate for the higher car parking levels i.e. P-4 to P-12, that were allocated to members of the appellant society, was not received at the

time of handing over of the respective flats, temporary car parking spaces were provided at the lower levels of the MLCP in the level P-1 to P-3 which had already received occupation certificate from the planning authority. A mere receipt of the common occupation certificate for the lower floors of the MLCP and the wings, in no manner be read to mean that car parking spaces at the lower floors of the MLCP were for the exclusive use of the residents of the said wings. Factually and legally, there is no correspondence or correlation between the MLCP floors, and the residential buildings as falsely drawn by the appellant. In principle, the parking allocation has broadly been done by the promoter keeping in mind the convenience of all the current and prospective residents and commercial users of the whole of project Amara, larger development, on the basis of a calculated distance principle, such as, the user residing the farthest from the MLCP tower gets to parking at the lower most floors and the ones closest to the MLCP tower, such as the appellant's members on the higher floors which is fair and equitable to all the occupants of the project. Notably, the promoter has in fact handed over the allotted car parking slots to each member of the appellant, on the receipt of the occupation certificate for the higher floors of the MLCP in the year 2019.

27. The learned Advocate submitted that the planning authority had issued occupation certificate on 24.01.2018 for the project. At the same time, same occupation certificate also covers lower floors of the MLCP. When the parking slots in the higher floors were allocated to the members of the appellant, occupation

certificate for the same was yet to receive. However, the presumption of the appellant that the members of the appellant would be entitled to car parking slots on the lower floors of the MLCP which were ready at that point of time is misplaced.

28. The learned Advocate submitted that in terms of the agreements for sale, the allotment of car parking slots is the sole and exclusive right of the promoter. Therefore, the same cannot be read to mean that the same is contingent on a part occupation certificate for the lower floors which was received on 24.01.2018. In fact, Clause 6.4 of the pre-RERA agreements for sale, it was clearly and unequivocally stated that the promoter shall be at liberty and is entitled to complete any portion/floor/wing/part of the building and apply for part occupation certificate, and when offered possession of the flats, the purchaser shall be obliged and undertakes to take the unit for possession on the basis of such part occupation certificate. Further, Clause 5.2 of the post-RERA agreement for sale, also sets out that the promoter has obtained some approvals and shall obtain other approvals from time to time, and the purchaser has entered into the agreement for sale without any objection or demur and agrees to not raise and waives his right to raise any objection in that regard. In view of this, the promoter applied for part occupation certificate as and when it completed any portion and/or floor and/or wing and/or part of the building(s) in the project. Therefore, the promoter applied for an occupation certificate of the lower levels for the MLCP solely out of convenience and because the said portions reached completion around the same time. Therefore, receipt of the

occupation certificate for the lower floors of the MLCP in no manner be read to mean that car parking slots at the lower levels of the MLCP are for the exclusive use of the residents of the appellant's members.

29. The learned Advocate submitted that without prejudice to the above, a bare perusal of the agreements for sale as mentioned above indicates that the right/prerogative to allot car parking spaces rests and has always rested exclusively with the promoter. The promoter has the exclusive right to determine the exact location of the car parking slot for the flat purchasers at the time of the handover of the possession of their respective flats. The allegations of the appellant forcing the flat purchasers to sign parking allotment letters and/or the promoter committing a breach of the occupation certificate and/or the promoter has barricaded the upper ground floor of the MLCP and/or that the promoter has put the guards in place to restrict the access of the said floor for the members of the appellant are false and allocated parking are not barricaded. The right of the members of the appellant arises solely from their respective agreements for sale which have been executed and signed without protest or demur. Particularly, Clause 9 of the pre-RERA agreement for sale and Clause 8 of the pre-RERA agreements for sale clearly provides that the exclusive right to car parking spaces rests solely with the promoter. The promoter holds the exclusive authority to determine the exact location of the car parking slots to be allocated to the members of the appellant and the members of the appellant have expressly waives their right to dispute the allocation of car parking slots.

30. The learned Advocate submitted that Clause 11.1 and 11.2 of the agreements for sale, the date of offer of possession was November 30, 2018 with grace period of 18 months. According to the provisions of agreements for sale, the promoter had until July 31, 2020 to hand over possession and/or permanently allocate the parking slots to the residents who are members of the appellant. For an interim period, temporary parking slots were provided to the members of the appellant at the lower level of the MLCP. A careful review of the car parking demarcation letters clearly shows the permanent parking spots allocated on the higher floors. The said letters were accompanied by a notice expressly stating that the temporary parking spots were provided solely for convenience, pending the allocation of permanent parking spots. The occupation certificate for the 4^{th} to 11^{th} floors of the MLCP was received 22.03.2019 and for the 12^{th} floor on 29.11.2019, well in advance of the first hearing the complaint by the Authority and passing of the impugned order. This clearly indicates that the permanent parking was available to the members of the appellant long before the deadline stipulated in the agreements for sale i.e. July 2020.

31. The learned Advocate submitted that the permanent parking spaces have been allocated to the members of the appellant in accordance with the respective agreements for sale. The members of the appellant are not entitled to possession of the lower and upper floor as alleged as per their convenience. Without prejudice to the above, the learned Advocate submitted that the appellant's prayer for the allotment of car parking spots

on the lower levels of the MLCP is beyond the jurisdiction of this Tribunal. There is no provision under RERA empowering the Tribunal to restrain, control or direct the allocation of parking slots in a project, unless the appellant demonstrates a breach of provision of RERA Act, 2016 or provisions of agreements for sale. The Act does not prescribe a mechanism for the allotment of parking spots. Therefore, the terms of the agreements for sale, which incapsulates the intentions of the parties, must govern such matters. Further, as specifically outlined in the agreements for sale, the exclusive right to allocate car parking spaces rests with the promoter. Further, the RERA Act, does not cover or regulate the manner in which the promoter is required to demarcate and/or allot car parking spaces. Admittedly, the MLCP constitutes a closed parking space, which the promoter has the right to sell and/or allot at its discretion. With this submission, the learned Advocate submitted that prayers sought by the appellant with regard to the MLCP spaces and related compensation are not tenable and therefore may be rejected.

32. With regard to the visitors parking, the learned Advocate submitted that the same have been demarcated and provided. Further, the Proforma-B Layout plan for the visitors parking is with regard to the larger land and the construction with respect to the larger land is still underway.

33. With regard to two-wheeler parking the learned Advocate submitted that contention of the appellant that the promoter is bound to provide separate two-wheeler parking to the members of the appellant is misconceived. This claim does not arise from

the terms of the agreements for sale or provisions of RERA. The parking that is contemplated and agreed upon in the agreements for sale have in fact been provided to the members of the appellant. The learned Advocate further submitted that the reliance of the appellant on the Environment Clearance Certificate and the promoter's compliance Report thereto is misplaced, as the appellant has failed to disclose that the Environment Clearance Certificate pertains to the larger piece of land, on which the project is constructed forms only a part of that. Further, the agreements for sale specifically provide for the allocation of a four-wheeler parking slot only. The Agreements do not mention the provision of a parking slot for two-wheelers. The promoter is therefore under no obligation to provide a two-wheeler parking slots to the members of appellant. Furthermore, it is not the appellant's case that the promoter breached any provision of the agreements for sale in respect to the two-wheeler parking slot. With the submissions, the learned Advocate prayed to reject the prayers of the appellant with regard to two-wheeler parking slots and related compensation.

34. With regard to the federation common area maintenance (for short 'the FCAM') charges, the learned Advocate submitted that a bare perusal of the agreements for sale, it shows that the flat purchasers including the members of the appellant were notified of all charges to be levied and each disclosure was elaborately made in the agreements for sale, more specifically, in annexure-6 of the agreements for sale. The aforesaid is further explained by the definition of the FCAM charges, which stipulates that the

said charges would be for 5 years, only with a view to maintain the common area amenities such as maintenance of roads, sewage treatments plant, federation common areas etc. for the benefit of the residents. FCAM charges are collected for maintenance of those areas which physically fall outside the notional boundary of the relevant society and/or services which are largely shared between different societies forming a part of the larger development. It is pertinent to highlight, that in view of clauses 15.5 to 15.12 of agreements for sale, the promoter is entitled to collect the FCAM charges from the date when the possession of the flat was offered to the appellant till the time the federation is formed and property is handed over to the federation of the ultimate organization.

35. The learned Advocate submitted that thus, the FCAM charges have been sought for a period of five years, in compliance with the terms of agreements for sale and the possession demand letters only with a view to maintain the common area amenities such as maintenance of roads, sewage treatments plants, federation common areas etc. for the benefits of the residents. FCAM charges are collected for maintenance of those areas which physically fall outside the notional boundary of the relevant society excluding BCAM charges and/or services which are largely shared between different societies forming a part of the larger development. Pending the formation of the federation of the societies, the said charges are required to be collected as per the agreement for sale. With these contentions, the learned Advocate submitted that the prayers with regard to the FCAM charges are not tenable and may be rejected.

36. With regard to the building common area maintenance charges (for short "BCAM") and handover grievances, the learned Advocate submitted that these charges are applicable from 31st day of receipt of the possession demand letter. Therefore, in certain situations, even if the flat purchaser has not physically taken possession of the flat, they are still obligated to pay BCAM charges from the 31st day of receipt of the Possession Demand Letter. The learned Advocate submitted that BCAM charges have been correctly applied as per the provisions of agreement for sale and will be regularized once the flat purchasers take possession of their flats and make the necessary payments. The learned Advocate submitted that there has been no loss to the appellant with regard to BCAM, as alleged or otherwise. As of today, there is a small component of BCAM with the promoter that is to be paid upon the final handover of the Casa Fresco cluster. The said handover has been delayed due to discrepancies in the accounts between the appellant and the promoter. The learned Advocate submitted that once the accounts are settled, the balance BCAM will be handed over to the appellant. The appellant has not been cooperating in taking the final handover of the Casa Fresco cluster and is now attempting to impose a false liability on the promoter. Although the possession of approximately 93% of the flats were handed over to the members by March 2019, the residents only began to shift in and take up the day-to-day responsibilities of the appellant in sufficient numbers in April 2019. Subsequently, the society was formally constituted, and the society operations were managed by the newly-formed society and its PMC

members. The first general body meeting was held on 21.04.2019, and the society was officially handed over on 06.07.2019. Further, it is important to note that simply handing over possession of the flats does not equate to the residents actually residing in the flats and assuming the day-to-day management of the appellant society.

37. With regard to the conveyance of the land, the learned Advocate submitted that the relief sought by the appellant is vague as the relief does not clarify that the conveyance of what is sought i.e. of area, land or a land along with building. The said relief of contrary to the terms of the agreements for sale. Clause 14.2 of the agreements for sale provides for formation of an ultimate organization/federation of societies in respect of larger layout. Clause 14.4 provides that within 18 months from the receipt of the occupation certificate of the last building on the larger property, the promoter shall execute a Deed of Conveyance in respect of the promoter's right, title and interest in the larger property in favour of the ultimate organization/federation of societies, of which appellant shall form part. The said Clause is in consonance with Rule 9(2)(iii)(b) of the Maharashtra Real Estate (Regulation and Development) (Registration of Real Estate Projects, Registration of Real Estate Agents, rates of interest and disclosures on website) Rules 2017 as amended by the Maharashtra Real Estate (Regulation and Development) (Registration of Real Estate Projects, Registration of Real Estate Agents, rates of interest and disclosures on website) (Amendment) Rules 2019 which stipulates that " *In the case of a layout, the promoter shall execute the conveyance of the*

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entire undivided or inseparable land underneath all buildings jointly or otherwise, within three months from the date of issue of occupancy certificate to the last building or wing in the layout".

38. The learned Advocate submitted that, according to the RERA website the proposed completion date of the said Project is 31.12.2028. Until the project is completed, conveyance cannot take place. The learned Advocate further submitted that the appellant has failed to establish a case on this ground and therefore the prayer with regard to the conveyance of the land may be rejected.

39. With regard to the water connection grievances, the learned Advocate submitted that the said grievances no longer survive as around October 2021, the promoter has obtained a water connection from the Thane Municipal Corporation. That being so, the delay in obtaining the water connection from Thane Municipal Corporation is not attributable to the promoter as the TMC had expressed its inability to supply water despite such water shortage on the part of TMC. The promoter through its efforts in good offices procured water supply from the Maharashtra Industrial Development Corporation (MIDC) and potable water tankers so that the residents have 24/7 supply of water. The learned Advocate submitted that the TMC in its approval expressed its inability to supply water to the project for several years. Thane, in general, faces a water shortage due to the limited supply from the TMC. In light of this, the promoter has procured water supply from MIDC, as the TMC does not have sufficient provisions to meet Thane's water demands.

Since the date of possession, there have been no water cuts, and the residents of the Amara Project enjoy a 24x7 water supply. The learned Advocate submitted that, current water distribution regulations applicable to the TMC, each household is entitled to only 90 liters of water. Therefore, any usage beyond this limit would be subject to regular MIDC charges, which are paid by the promoter. The promoter, in turn, charges members of the appellant at a subsidized charge for water. It is the promoter, who incurs the differential cost, i.e., the difference between the rate charged by MIDC to the promoter and the subsidized rate charged to the members of the appellant. In fact, the water bills raised by the promoter on the members of the appellant remain unpaid to this day. Additionally, the promoter is constructing an elevated water reservoir to procure water supply from the TMC. However, no specific time limit has been imposed for the construction of the said elevated water reservoir. With these submissions, the learned Advocate for the promoter prayed to dismiss the appeal.

40. The learned Advocate for the promoter has placed reliance on the following judgment:

    i) *Ayyaz Khan and Saba Khan V/s. Era Realtors Pvt. Ltd. & Ors. [Complaint No.CC006000000194835 decided by the Maharasgtra Real Estate Regulatory Authority, Mumbai on 14.01.2022]*

41. Having heard the learned Advocates for the parties, at length and with due regard to the contents of the memorandum of appeal, reply, written submissions and 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 impugned order warrants interference in this appeal?	In the affirmative.
2.	What order?	As per final order.

REASONS

Point No.1 and 2

42. On ensemble of the facts as submitted above by the parties, it is not in dispute that the respondent is promoter of the subject project with consisting of building, Wing-1 to 5 and Wing 7-19. It is also not in dispute that the said project is part of larger layout of various projects on the said larger project property which are constructed in a phase-wise manner. The allottees of the subject project purchased their respective flats vide various agreements for sale executed between 2015 to 2018 during both pre-RERA and post-RERA periods. There are about 776 flat purchasers in the subject project. The proposed date of completion of the project is 30.11.2019 with grace period of 18 months. Further, the project received occupation certificate on 24.01.2018. The allottees were put in possession of the respective flats in the year 2018-2019 soon after obtaining of the occupation certificate by the promoter. The allottees also signed the possession letters before taking possession of their

respective flats without protest. It is not in dispute that multi-level car parking (MLCP) is independent building of towers in various projects on the larger project property and the said building provides parking common to all the projects in the larger layout including the subject project. The promoter also obtained part occupation certificate for MLCP tower on 24.01.2018 which covered the P-1 to P-3 parking levels. The promoter further obtained occupation certificate for the MLCP tower of the levels from P4 to P11 on 22.03.2019 and for the P12 floor on 29.11.2019.

43. It is the contention of the promoter that approximately 70% of total members of the appellant have executed pre-RERA agreements for sale, which stipulate that any dispute or differences are to be resolved through arbitration as per Clause-23 of the said agreements for sale. Therefore, the dispute involving these members must be referred to arbitration and cannot be adjudicated by the Authority under RERA Act, 2016.

44. It is pertinent that although the said flats for which the agreements for sale were executed prior to RERA coming into force, the said agreements for sale are enforceable under the provisions of RERA Act, 2016, since the project is registered under RERA Act, 2016. 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 Developers* (supra), the said agreements 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 members of appellant are entitled to seek relief under the provisions of RERA Act, 2016 even though the said agreements are executed prior to RERA Act, 2016 coming in force.

45. We will now answer the point as to whether the jurisdiction of the RERA Act, 2016 is ousted if the agreements specifically provide the arbitration clause? The Hon'ble Bombay High Court in *M/s. Rashmi Realty Builders Pvt. Ltd. Versus Mr. Rahul Rajendrakumar Pagariya & Ors. [Second Appeal No.434 of 2023 With I.A.No. (ST) NO.16005 of 2023 decided on 25.10.2024]* in paragraph 3, framed substantial question of law which reads as under:

> *"Whether the jurisdiction of Real Estate Regulatory Authority established under Section 20 of the Real Estate Regulation and Development Act, 2016 is ousted, if the agreement between the promoter and the allottee contains arbitration clause?"*

46. The Hon'ble Bombay High Court while answering the said substantial question of law in paragraph 63 held as under by reaching following conclusions:

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> "(i) *The dispute between the individual allottee and the promoter or the dispute between the Association of the Allottees and the Promoter covered under Real Estate Regulation and Development Act, 2016 is non-arbitral in nature.*
>
> (ii) *The jurisdiction of Real Estate Regulatory Authority established under Section 20 of the Real Estate Regulation and Development Act, 2016 is not ousted, even if the agreement between the promoter and the allottee contains arbitration clause".*

In the light of authoritative pronouncement by the Hon'ble Bombay High Court in case of *M/s. Rashmi Realty* (supra) the jurisdiction of Real Estate Regulatory Authority established under Section 20 of the Real Estate Regulation and Development Act, 2016 is not ousted even if the agreement between the promoter and the allottee contains arbitration clause. Therefore, the contention of the promoter that the grievances with regard to the pre-RERA agreements for sale cannot be adjudicated by the Authority under the provisions of RERA Act, 2016, is not tenable and therefore is rejected.

47. The appellant in this appeal has raised the following grievances and sought reliefs pertaining specifically with multi-level car parking (MLCP), two-wheeler parking, water connection related grievances, conveyance, society handover and building common area maintenance, and federation common area maintenance charges. Since the relief sought by the appellant are restricted to these grievances, will deal them as subsequent paragraphs.

48. The appellant has filed complaint before the Authority much after lapse of long time after taking over possession of the flats and accepting the allotment of the parking spaces by the allottees. It is not in dispute that the promoter obtained part

occupation certificate for multi-level car parking tower on 24.01.2018 for P1 to P3 level. It is also not in dispute that the promoter obtained occupation certificate for the MLCP tower for the level P4 to P11 on 22.03.2019 and for P12 on 29.11.2019. It is also not in dispute that vide allotment letters in 2018-19 the promoter has allotted the permanent car parking spaces to the members of the appellant on the higher floor for which the part occupation certificates were obtained on 22.03.2019 (for P4-P11 levels) and 29.11.2019 (for P12 level).

49. As mentioned earlier, the due date of possession for the subject flat along with car parking spaces was 30.11.2019 with 18 months grace period i.e by July, 2020. Therefore, we are of the view that the parking spaces allotment made by the promoter at higher floors in the MLCP tower and obtaining occupation certificate for those floors was much prior to the due date of possession. The contention of the appellant is that when the subject flats was handed over to the allottees, there was no occupation certificate for the higher floors of the MLCP, on which the allotment of parking spaces for the allottees was made and therefore members of appellant society must be given the allotment on lower floors for which the occupation certificate was obtained on 24.01.2018 when the flats were handed over to them. We do not find any merits in these submissions of the appellant requiring the promoter to allot the car parking spaces to allottees on lower floor. The allotment of the parking spaces on higher floor was made by promoter vide respective allotment letters in 2018, the members of appellant made no grievances against that allotment. Further, the promoter obtained

occupation certificate for the higher floors of MLCP building on 22.03.2019 (for P4-P11) and 29.11.2019 (for P12), and the due date of possession of the flats with car parking spaces is July 2020. Hence allotments of car parking spaces are as per the terms of the agreement for sale and there is no any violation of the provisions in the agreements for sale. Mere allotment of car parking spaces on lower floor on temporary basis till the occupation certificate for higher floors is obtained does not entitle the members of the appellant the car parking spaces at lower floor for which occupation certificate was obtained by the promoter on 24.01.2018. On the other hand, the promoter handed over the flats and the car parking space much prior to the due date of possession of July 2020 thereby avoiding any inconvenience to the members of appellant, besides obtaining occupation certificate for the higher-level car parking on 22.03.2019 and 29.11.2019 that is also prior to the due date of possession.

50. The promoter has by applying the principle based on a calculated distance principle, whereby users residing farthest from the MLCP tower are allocated parking on the tower floors, while those residing closer to the MLCP tower, such as appellant are allotted parking on the higher floor. Therefore, we do not find it arbitrary on the part of the promoter having allotted the parking spaces to members of appellant at higher floors. We do not fine malafide on the part of the promoter in allotment of the parking spaces to members of the appellant on higher floors. Thus, there is no merit in the case of the appellant that promoter having allotted parking spaces at the higher floors has

violated the terms of the agreements for sale. We note that Clause 9 of the pre-RERA agreements for sale and Clause 8 of the post-RERA agreements for sale clearly provide that the exclusive right to car parking spaces rests solely with the promoter. The promoter holds the exclusive authority to determine the exact location of the car parking slots to be allocated to the members of the appellant and the members of the appellant have expressly waives their right to dispute the allocation of car parking slots. When the flats were handed over to the members of appellant the temporary car parking spaces were allotted, however that does not entitle the member of appellant to make a claim on the said slots or at lower floors. Therefore, the prayer with regard to the four-wheeler car parking spaces is not tenable and therefore rejected. The prayer for compensation for not allotting the car parking spaces on the lower floors is also not tenable and therefore rejected. We hold that the allotment of car parking spaces to the members of the appellant are in accordance with the clauses of agreements for sale and there is no violation of the provisions of the agreements for sale.

51. With regard to the two-wheeler parking spaces, it is pertinent that under the agreements for sale only four-wheeler parking slots was agreed to be handed over. The agreements for sale nowhere mention parking slots for two-wheelers and hence the promoter is under no obligation to provide a two-wheeler parking slots to the members of the appellant.

52. The contention of the appellant is that in the Environment Clearances Certificate provided by Ministry of Environment,

Forest and Climate Change, vide letter dated 15.04.2015 and annexed with the agreements for sale, the promoter in its compliance thereto has submitted to the Ministry, inter-alia agreeing to provide two-wheeler parking facilities. However, the promoter has failed to provide physically demarcated share of the area of the appellant for two-wheeler parking and therefore has sought relief of direction to the promoter to provide the same and award the compensation for not providing the same in time. We do not find any merit in the above contention of the appellant. This claim does not arise from the terms of the agreements for sale or from any violations of provision under RERA. The parking that is contemplated and agreed to in the agreements for sale have been provided by the promoter to the members of the appellant. Agreements for sale specifically provided for four-wheeler parking slots only. The agreements do not mention the provision of parking slots of two wheelers. The promoter is therefore under no obligation to provide two-wheeler parking slots to the members of the appellant. Further, it is not the appellant's case that the promoter breached any provision of the agreements for sale in respect of the two-wheeler parking space. Therefore, there is no merits in the contention of the appellant with regard to the two-wheeler parking space and related claim of compensation and therefore the same are rejected.

53. With regard to the grievances related to water connection, promoter has contended that the promoter has obtained the water connection from the Thane Municipal Corporation in 2021 and therefore the said grievances no longer survive. It is also

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the contention of the promoter that the delay in obtaining any water connection from Thane Municipal Corporation is not attributable to the promoter as the Thane Municipal Corporation had expressed its inability to supply water due to water shortages on the part of the Thane Municipal Corporation. We also note that the promoter procured water supply from MIDC and potable water tankers so that the allottees in the said project have 24/7 supply of water. We also note that the TMC in its approval expressed its inability to supply water to the project for several years. Thane city, in general, faces a water shortage due to the limited supply from the TMC. Therefore, the promoter had procured water from MIDC as TMC does not have sufficient provision to meet the water demands of the Thane City. Further, the current water distribution applicable to the TMC, each household is entitled to only 90 liters of water. Therefore, any usage beyond this limit would be subject to regular MIDC charges, which in fact have been paid by the promoter. The promoter, in turn, charges members of the appellant at a subsidized charge for water and the promoter bears the differential costs. We also note that the promoter is constructing an elevated water reservoir to procure water supply from the TMC, the construction of which is undergoing. In view of above, we do not find any merits in the submission of the appellant and therefore the contention of the appellants is rejected especially when the promoter has obtained the water connection from TMC.

54. It is the contention of the appellant that the promoter has collected in excess the maintenance and other charges

particularly towards federation common area maintenance charges (FCAM). It is the contention of the promoter that bare perusal of the agreements for sale, it shows that the flat purchasers including the appellant knew all charges are notified and disclosures of which was elaborately made in the agreement for sale. Agreements for sale have clearly explained the definition of FCAM charges which stipulates that the said charges would be for a period of five years, only with a view to maintain common area amenities such as maintenance of roads, sewage treatments plant, federation common areas etc. for the benefit of the residents. The said FCAM charges are collected for maintenance of those areas which physically fall outside the notional boundary of the relevant society and or services which are largely shared between different societies forming a part of the larger development. Perusal of the clause 15.5 to 15.12 of agreements for sale, it reveals that the promoter is entitled to collect the FCAM charges from the date when the possession of the flat was offered to the appellant till the time of federation of societies is formed and property is handed over to the federation of the ultimate organization for further maintenance. The said charges have been sought for a period of five years in compliance with the terms of the agreement for sale and till the federation of societies is formed. Therefore, we are of the view that the said charges have been levelled and demanded by the promoter in accordance with the terms of the agreements for sale. We also note that the said FCAM account is subject to audit to ensure transparency and will be handed over to the federation of societies which will be formed once the entire projects in larger layout of the project property are completed. Further, in order to ensure the transparency regarding the FCAM charges collected and spent, we direct the promoter to provide the appellant a statement of accounts with regard to the collection and expenditure of the FCAM charges for their information as per the provisions in the agreements for sale and address if there are any grievances of the excess collection, if any, as claimed by the appellant, when the federation of societies is formed.

55. With regard to the building common area maintenance accounts, it is the contention of the appellant that even though the appellant society was formed on 07.06.2018, however the promoter handed over charge of the appellant to the provisional committee of the appellant only on 1.07.2019 and the said delay has resulted in loss of interest on the excess of building common maintenance charges accounts available with the promoter as on 07.06.2018. Further, out of the said account, the promoter has so far transferred the amount of Rs.84,40,000/- an Rs.97,78,278/-, out of total collected amount of Rs.2,03,31,789/- and therefore there is balance amount of Rs.21,13,519/- with the promoter. Further, the promoter is under obligation to rectify the defects brought to the notice of the promoter under section 14(3) of the RERA Act, 2016 at its own cost and expenses. It is the contention of the appellant that the promoter however spent Rs.30,27,967/- for carrying out the rectification of defects brought to its notice by allottees and appellant, but charged the said amount to the BCAM

account, which is not permissible and therefore be refunded to the appellant society.

56. It is the contention of the promoter that these BCAM charges are applicable from 31st day of receipt of the possession demand letter. Therefore, in certain situations, even if the flat purchaser has not physically taken possession of the flat, they are still obligated to pay BCAM charges from the 31st day of receipt of the Possession Demand Letter. The promoter has contended that BCAM charges have been correctly applied as per the provisions of agreement for sale and will be regularized once the flat purchasers take possession of their flats and make the necessary payments. Further, there has been no loss to the appellant with regard to BCAM, as alleged or otherwise and as of today, there is a small component of BCAM with the promoter that is to be paid upon the final handover of the Casa Fresco cluster. The said handover has been delayed due to discrepancies in the accounts between the appellant and the promoter. Once the accounts are settled, the balance BCAM will be handed over to the appellant. The promoter has contended that appellant has not been cooperating in taking the final handover of the Casa Fresco cluster and is now attempting to impose a false liability on the promoter. Although the possession of approximately 93% of the flats were handed over to the members by March 2019, the residents only began to shift in and take up the day-to-day responsibilities of the appellant in sufficient numbers in April 2019. Subsequently, the society was formally constituted, and the society operations were managed by the newly-formed society and its PMC members. The first

general body meeting was held on 21.04.2019, and the society was officially handed over on 06.07.2019. Further, it is important to note that simply handing over possession of the flats does not equate to the residents actually residing in the flats and assuming the day-to-day management of the appellant.

57. In view of above, we of the view that the promoter be directed to reconcile the BCAM accounts in consultation with appellant society. However, in the reconciliation of the said account, the expenditure incurred by the promoter for removing the defects that were brought to its notice by the allottees under Section 14(3) of the RERA Act, should not be included. Thereafter transfer the balance in the BCAM account along with accrued interest in the said account, to the society as per the agreements for sale. The society will thereafter will be responsible to manage the said BCAM account.

58. With regard to the conveyance of the land, it is the contention of the promoter the said relief is contrary to the terms of the agreements for sale. Clause 14.2 of the agreements for sale provides for formation of an ultimate organization/federation of societies in respect of larger layout. Clause 14.4 provides that within 18 months from the receipt of the occupation certificate of the last building on the larger property, the promoter shall execute a Deed of Conveyance in respect of the promoter's right, title and interest in the larger property in favour of the ultimate organization/federation of societies, of which appellant shall form part. The said Clauses are in consonance with Rule 9(2)(iii)(b) of the Maharashtra Real Estate (Regulation and

Development) (Registration of Real Estate Projects, Registration of Real Estate Agents, rates of interest and disclosures on website) Rules 2017 as amended by the Maharashtra Real Estate (Regulation and Development) (Registration of Real Estate Projects, Registration of Real Estate Agents, rates of interest and disclosures on website) (Amendment) Rules 2019 which stipulates that " *In the case of a layout, the promoter shall execute the conveyance of the entire undivided or inseparable land underneath all buildings jointly or otherwise, within three months from the date of issue of occupancy certificate to the last building or wing in the layout*".

59. We note that according to the RERA website the proposed completion date of the said entire larger project is 31.12.2028. In view of the above-mentioned clauses of the agreements for sale and the provisions in RERA Rules mentioned above, until the project is completed and occupation certificate is obtained for the last building of the larger project, conveyance cannot take place. It is not in dispute that last building of the project in the larger project land is still incomplete. In view of this, the prayer with regard to the conveyance of the land is rejected at this stage as premature.

60. In view of the above, we answer the point no.1 in the affirmative and the point no.2 accordingly. We accordingly pass the following order.

ORDER

1. The captioned appeal No.AT006000000053709 of 2022 in complaint no. CC006000000171517 of 2019 is partly

allowed and the impugned order is modified to the extent below:

i) With regard to the BCAM account, the promoter is directed to reconcile the account in consultation with the appellant society. However, while doing the re-conciliation of the account, the amounts spent and charged to the BCAM accounts in carrying out works related to rectification of defects under Section 14(3) of the RERA Act, 2016, should not be included. Further, the promoter is directed to transfer the balance amount in the said BCAM account, that is remaining with the promoter, after this reconcilation exercise, to the appellant society within the period of 60 days of this order. The balance amount in the BCAM accounts mentioned above shall be transferred to the appellant together with accrued interest thereupon in the said BCAM account. The appellant shall render all the assistance and cooperation to the promoter for the reconciliation exercise as mentioned above.

ii) With regard to the FCAM charges, the promoter is directed to share the statement of accounts reflecting the collection of the amounts and expenditure under the said account to the appellant as per provisions of the agreements for sale.

iii) The remaining prayers in the appeal are rejected.

2. In view of disposal of the appeal, nothing survives for our consideration in M.A.No.1071 of 2022 (Addl. Docs)

and M.A.No.652 of 2023 (Injunction) and same stand disposed of.

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 appeal stands disposed of in above terms.

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

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