BEFORE THE MAHARASHTRA REAL ESTATE APPELLATE TRIBUNAL MUMBAI

Appeal No. AT006000000093910 of 2022
IN
Complaint No. CC006000000196969 of 2021

1. Shweta Phene)
2. Shadab Rizvi)
301, Jal Darshan Extension, Chimbai Road,)
Bandra (West), Mumbai - 400 050.)
) ... Appellants

-Versus-

Rishiraj Developers Private Limited)
Plot No. 89/7, Bombay Hindu CHS Ltd.,)
3rd Lane, Hindu Colony, Dadar (East),)
Mumbai - 400 014.) ... Respondent

Adv. Ms. Sneha Phene for Appellants
Adv. Mr. Yash Balle for Respondent

CORAM : SHRI S. S. SHINDE (J.), CHAIRPERSON, &
DR. RAJAGOPAL DEVARA, MEMBER (A)

RESERVED ON : 16th JUNE 2026
PRONOUNCED ON : 11th AUGUST 2026

(THROUGH VIDEO CONFERENCE)

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

1. The captioned appeal arises from the impugned order dated 11th April 2022 passed by the learned Chairperson, Maharashtra Real Estate Regulatory Authority (for short, "the Authority") in Complaint

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No. CC006000000196969 of 2021 filed by the Appellants/Allottees. By the said order, the Authority partly allowed the complaint and directed the Respondent/Promoter to pay interest for the delay in handing over possession for the period from 01st January 2020 to 15th February 2022.

2. The Respondent/Promoter, Rishiraj Developers Private Limited, is a company engaged in the business of real estate development and registered its project namely "Pearl Crest" under Section 5 of the Real Estate (Regulation and Development) Act, 2016, bearing Registration No. P51900002961.

3. For the sake of convenience, the "Appellants" will hereinafter be referred to as the "Allottees" and the "Respondent" will hereinafter be referred to as the "Promoter", respectively.

4. The brief facts, culled out from the pleadings, documents placed on record, and the impugned order reveal that the Respondent/Promoter undertook the development of a real estate project known as "Pearl Crest", situated at Dadar, Mumbai. The Appellants/Allottees have entered into an Agreement for Sale dated 21st November 2017 with the Respondent/Promoter for purchase of the subject flat for a total consideration of Rs.2,88,75,950/- (Rupees Two Crores Eighty-Eight Lakhs Seventy-Five Thousand Nine Hundred Fifty Only).

5. As per Clause 12.1 of the Agreement for Sale, the Respondent/Promoter had undertaken to hand over possession of the said flat on or before December 2019. The Appellants/Allottees paid a sum of Rs.2,43,87,477/- which is more than 80% of the total sale consideration amount, in addition to Rs.14,74,000/- towards stamp duty and registration charges.

6. Clause 5.1(r) of the Agreement for Sale stipulated that an instalment of Rs.14,43,798/- plus GST, was payable within seven days of the completion of staircase, liftwells, doors, and windows of the said new building. However, the Respondent/Promoter raised a demand for the said amount vide demand letters dated 14th October 2020 and 9th November 2020.

7. According to the Appellants/Allottees, on physical verification of the construction site, it was found that the doors and windows work had not been completed for the entire building. Despite the said status of work, the Respondent/Promoter persisted in wrongful demand of payment. The Respondent/Promoter thereafter issued further demand letters dated 20th October 2020 and 22nd January 2021 seeking payment under the said Agreement for Sale. The Appellants/Allottees submitted that they were always ready and willing to pay all amounts rightfully due and payable to the Promoter. But they asserted that the amount payable by them ought to have

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been appropriately adjusted against the interest amount payable by the Respondent/Promoter on account of delay in handing over possession of the subject flat.

8. Being aggrieved by the conduct of the Respondent/Promoter, the Appellants/Allottees have filed present complaint before the Authority on 11th May 2021, seeking possession of the said flat, interest for the delay in handing over possession of the said flat and a direction to the Respondent to withdraw wrongful demand letters dated 14th October 2020 and 9th November 2020 including other reliefs.

9. The Respondent/Promoter appeared before the Authority and contested the said complaint. It is not in dispute that there was a delay on the part of the Respondent/Promoter in handing over possession of the subject flat together with Occupation Certificate (OC) as per the said Agreement for Sale. The Authority, in the impugned order, observed that the Respondent/Promoter has offered various reasons to justify delay in handing over possession which were beyond their control and constituted *force majeure* events. With these observations, the Authority partly allowed the complaint and held that the Allottees were entitled to claim interest for delay in handing over possession from 1st January 2020 to 15th February 2022 at the rate as prescribed under Rule 18 of

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. However, the Authority further directed that the moratorium period granted under Notifications issued by MahaRERA be excluded while computing the period for which interest was payable.

10. Being aggrieved and dissatisfied by the said impugned order, the Appellants/Allottees have preferred the present Appeal on the grounds set out in the memorandum of appeal.

11. Learned Advocate Ms. Sneha Phene appearing for the Appellants/Allottees submitted that in terms of Clause 12.1 of the Agreement for Sale, the Respondent/Promoter had undertaken to hand over possession on or before December 2019, whereas the outbreak of Covid-19 pandemic, and consequent nationwide lockdown happened only in March 2020 i.e. subsequent to the agreed date of possession. It is further submitted that, as of May 2021, the Appellants/Allottees had already paid Rs.2,43,87,477/-, being around 80% of the total consideration amount, yet possession of the subject flat had not been handed over as promised in the Agreement for sale.

12. The learned Counsel for Appellants/Allottees further submitted that the learned Authority erred in excluding the moratorium period while

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computing interest payable for delayed possession. According to the Appellants/Allottees, since the agreed date of possession has expired prior to onset of Covid-19 pandemic, the Respondent/Promoter could not claim the benefit of force majeure notifications issued by MahaRERA, so as to curtail the statutory entitlement of Appellants to interest under Section 18 of RERA Act, 2016. Therefore, the Promoter was responsible for the delay in completion of the project and was merely using the pandemic as an excuse to evade its statutory liability to pay interest. In support of said submissions, learned Advocate appearing for the Appellants/Allottees contended that the Authority ignored the following binding decisions of this Tribunal:

I. In the case of *Rajesh Kumar Chaudhary v. CCI Projects Pvt. Ltd. & Ors.* [Appeal No. AT006000000010733] dated 10.03.2021 passed by the Maharashtra Real Estate Appellate Tribunal.

II. In the case of *Mrs. Bharti Arvind Modi and Ors. vs. SSSC Escatics Pvt. Ltd. & Anr.* [Appeal No. AT006000000031703] dated 15.06.2021 passed by the Maharashtra Real Estate Appellate Tribunal.

III. In the case of *Mrs. Jyoti K. Narang & Anr. vs. CCI Projects Pvt. Ltd.* [Appeal No. AT006000000010841] dated 24.11.2020 passed by the Maharashtra Real Estate Appellate Tribunal.

IV. In the case of M/s. *G. T. Developers & Ors. vs. Mr. Brahmanand Shinajirao Kadam* [Appeal No.

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AT005000000031780] dated 20.08.2021 passed by the Maharashtra Real Estate Appellate Tribunal.

V. In the case of *M/s Halliburton Offshore Services Inc. vs Vedanta Limited & Anr.* [O.M.P. (I) (COMM.) No. 88/2020 & I.As. 3696-3697/2020] dated 29.05.2020 passed by the Hon'ble Delhi High Court.

VI. In the case of *Mr. Rajesh Motiram Chhabria & Anr. vs. Neelkamal Realtors Suburban Pvt. Ltd.* [Appeal No. AT006000000052367] dated 16.12.2022 passed by the Maharashtra Real Estate Appellate Tribunal.

VII. In the case of *Shakshi Agrawal & Anr. vs. Dilipkumar B. Agrawal* [Appeal No. AT006000000053186] dated 08.09.2022 passed by the Maharashtra Real Estate Appellate Tribunal.

VIII. In the case of *Ashoka Developers & Ors. vs. Santosh Dhanawade & Ors.* [Appeal No. AT006000000052143] dated 10.10.2022 passed by the Maharashtra Real Estate Appellate Tribunal.

IX. In the case of *Mr. Ishaque Qasimali Shaikh vs. M/s. Jangid Properties* [Appeal No. AT006000000052806] dated 10.03.2022 passed by the Maharashtra Real Estate Appellate Tribunal.

13. The learned Counsel for the Appellants/Allottees further submitted that the Respondent/Promoter was not entitled to demand interest from the Allottees as a pre-condition to handover possession while offering possession on 16th February 2022. It is contended that the demand for instalment of Rs.14,43,798/- under Clause 5.1 (r) of the Agreement for Sale was made contrary to the terms thereof and

therefore, the said instalment was not legally payable on the date when the demand was raised. Clause 5.1 (r) of the Agreement for Sale clearly specified that the aforesaid instalment would become payable only upon "completion of staircase, lift wells, doors and windows of the said new building". Since the Respondent/Promoter had neither completed the said stage of construction for the entire building nor certified such completion in accordance with the Agreement for Sale, the Appellants/Allottee were fully justified in withholding the payment of the said instalment. As a consequence, the Respondent/Promoter was not entitled to claim any interest on the said instalment amount.

14. Per contra, learned Advocate Mr. Yash Balle appearing for the Respondent/Promoter submitted that despite not having received the full consideration amount till date, the Respondent completed the project and obtained Occupancy Certificate on 16th February 2022. It was submitted that the grant of Occupancy Certificate was delayed due to inordinate time taken by the concerned authorities in shifting a BEST (Brihanmumbai Electric Supply & Transport) bus stop. According to the Respondent/Promoter, the process of shifting the said bus stop has commenced on 12th February 2016, however, obtaining approvals from Dy. Chief Engineer (Traffic) MCGM, AE (Maintenance) MCGM and Asst. Commissioner of Police (Traffic

Planning) took were received after considerable delay, thereby obtaining the Occupancy Certificate was delayed.

15. It is further submitted that the Respondent, despite knowing the genuine difficulties faced by the Respondent/Promoter including shifting the BEST bus station, difficulties faced by the entire real estate industry, the Allottees failed to appreciate the challenges. Despite the existence of Clause 12.2 of the Agreement for Sale, which entitles the Respondent/Promoter to seek an extension of time under exceptional circumstances, the Appellants/Allottees have declined to grant any such extension. According to the Respondent/Promoter such refusal defeated the very intent, letter and spirit of Clause 12.2 of the Agreement for Sale.

16. It is further submitted that Clause 12.3 of the Agreement for Sale contemplated extension of time on account of *force majeure* events. The outbreak of Covid-19 pandemic, followed by nationwide lockdown, was acknowledged by MahaRERA through various notifications issued from time to time, constituting *force majeure*. Consequently, it is submitted that the period of 15th April 2021 to 14th October 2021 ought to be excluded while computing the delay for the purpose of determining interest payable on account of delay in possession.

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17. Further, it was submitted that various consequential proceedings challenging the aforesaid are pending before the Hon'ble Bombay High Court and therefore the said orders ought not to be treated as binding precedents.

18. In conclusion, the Respondent/Promoter submitted that the impugned order is well reasoned and based on proper appreciation of facts and applicable law. According to the Respondent/Promoter, no case has been made out by the Appellants/Allottees warranting interference with the impugned order dated 11th April 2022. It is further submitted that the learned Authority has rightly held that although there was a delay in handing over possession from 1st January 2020 till 15th February 2022, the benefit of moratorium period granted under the various notifications issued by MahaRERA was available to all projects registered with MahaRERA. Therefore, the Respondent/Promoter was entitled to exclusion of the said period while computing the interest payable for delayed possession.

19. Learned Counsel Ms. Sneha Phene, appearing for the Appellants/Allottees placed reliance on the following judgments/orders:

    1. In the case of *Abhishek Anuj Sukhadia & Anr. vs. M/s Pragatej Builders & Developers Pvt. Ltd.* [Appeal No. AT006000000053317 of 2021] dated 07.02.2023 passed by the Maharashtra Real Estate Appellate Tribunal, Mumbai.

2. In the case of *Mr. Bijon Dhirendra Talukdar & Anr vs Dhruva Woolen Mills Pvt. Ltd.* [in Appeal No. AT006000000053405] dated 11.11.2022 passed by the Maharashtra Real Estate Appellate Tribunal, Mumbai.
3. In the case of *Chaula Yagneshkumar Desai and Anr. vs Skystar Buildcon Private Limited* [in Appeal No. AT006000000052593] passed by the Maharashtra Real Estate Appellate Tribunal, Mumbai.

20. Learned Counsel Mr. Yash Balle, appearing for the Respondent/Promoter, placed reliance on the following orders:
    1. In the case of *Mr. Deepesh S Singh vs M/s. Neelkanth Constructions* [Complaint No. CC006000000089761] dated 30.07.2020 passed by the Maharashtra Real Estate Regulatory Authority, Mumbai.
    2. In the case of *Saji Mathew vs. Rare Township Pvt. Ltd.* [Complaint No. CC006000000196938] dated 17.12.2021 passed by the Maharashtra Real Estate Regulatory Authority, Mumbai.

21. Having considered the details of comprehensive submissions of the respective parties, supported by various documents placed on record, the points that arise for our consideration and findings thereupon for the reasons to follow are as below:

Sr. Nos.	Points	Findings
1.	Whether the impugned order dated 11th April 2022 passed by the Chairperson, MahaRERA in the	In the affirmative

	Complaint No. CC006000000196969 of 2021 filed by the Appellants/Allottees, warrants interference in the captioned Appeal?	
2.	Whether the Appellants/Allottees are entitled to reliefs sought in the captioned Appeal?	In the affirmative
3.	What order?	As per final order

REASONS

22. Upon examination of pleadings of the parties, the material placed on record and the submissions advanced by the learned Counsel appearing for the respective parties revealed that the Appellants/Allottees have purchased flat in project known as "Pearl Crest" for a total consideration of Rs.2,88,75,950/- and have admittedly paid approximately 80% of the agreed consideration amount, together with Rs.14,74,000/- towards stamp duty and registration charges. It is not in dispute that the Allottees have paid approximately 80% of the consideration amount to the Respondent/Promoter.

23. The controversy relates to demand letters dated 14th October 2020 and 9th November 2020 whereby the Respondent/Promoter demanded payment of instalment by the Allottees as per Clause 5.1(r) of the Agreement for Sale. A perusal of Clause 5.1(r) of the

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Agreement for Sale revealed that an instalment of Rs.14,43,798/- plus GST was payable within seven days upon completion of staircase, lift wells, doors, and windows of the said new building. Allegedly, the said amount was demanded though the construction stage specified in the agreement has not been achieved. As a result thereof, the Appellants/Allottees have declined to make payment of the said instalment. Further, the Allottees have maintained that they were always willing to pay the amounts rightfully due and payable to the Promoter under the Agreement for Sale. But their grievance was that the amount payable by them ought to have been appropriately adjusted against the interest amount payable by the Respondent/Promoter on account of delay in handing over possession of the subject flat.

24. It is contended by the Respondent/Promoter that the delay in completion of the project and handing over possession of the flat was on account of *force majeure* events arising from the outbreak of Covid-19 pandemic and the nationwide lockdown imposed thereafter. It was further contended that the notifications issued by the MahaRERA extending the project completion period and granting moratorium period applicable even in cases where the date of completion of the project and handover of possession was prior to onset of Covid-19 pandemic. We do not agree with the contentions

of the Respondent/Promoter. The promised date of completion of the project was on or before December 2019, much before the outbreak of Covid-19 and issue of notifications on *force majeure* by MahaRERA.

25. The Respondent/Promoter further contended that the delay in obtaining Occupancy Certificate was attributable to the inordinate time taken in shifting BEST (Brihanmumbai Electric Supply & Transport) bus stop and obtaining approvals from competent authorities. Reliance was also placed on Clause 12.2 and 12.3 of the Agreement for Sale to contend that the Promoter was entitled to an extension of time on account of such unforeseen difficulties or challenges faced in timely completion of project and the Appellants/Allottees have unreasonably refused to grant extension, though agreed mutually upon and consented by the Allottees in the Agreement for Sale. It is pertinent to note that, as per paragraph 10 of the impugned order, the learned Chairperson recorded a finding that the Respondent/Promoter had furnished various reasons for delay in handing over possession, which were beyond their control and were *force majeure* events. The learned Chairperson further observed that the provisions of Section 18 of RERA Act, 2016, do not provide for any waiver, relaxation or exception on account of *force majeure,* while determining the liability of the Promoter to pay

interest for delayed possession. The reasons for delay stated by the Respondent/Promoter may constitute ground for consideration while seeking extension of project completion period before MahaRERA. It is pertinent to note that such extension of the completion date shall not affect or curtail the statutory right of Allottees to claim compensation for delay in possession, under Section 18 of RERA Act 2016. We do concur with the observations of the learned Chairperson in the impugned order.

26. While explaining the scope of an Allottee's right under Section 18 of the Real Estate (Regulation and Development) Act, 2016, the Hon'ble Supreme Court, in *M/s Newtech Promoters and Developers Pvt. Ltd. Vs. State of UP & Anr* [Civil Appeal No(s). 6745-6749 of 2021(Arising out SLP(Civil) No(s). 3711-3715 of 2021] dated 11.11.2021 observed in paragraph 25 as under:

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

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> *withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed."*

27. The Hon'ble Supreme Court in *M/s. Imperia Structures Ltd. Vs. Anil Patni & Anr.* [in Civil Appeal No. 3581-3590 of 2020] has held as under:

> *"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)."*

The ratio laid down in the aforesaid decisions unequivocally establishes that the statutory right of an Allottee to claim interest under proviso to Section 18(1) of RERA Act 2016, is absolute and cannot be defeated by reasons which are not attributable to the Allottee.

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28. The Respondent/Promoter further contended that the learned Authority has rightly extended the benefit of moratorium period while computing interest for the period of delay from 1st January 2020 till 15th February 2022, and the same benefit shall be available to the Respondent/Promoter while calculating the interest payable for delayed possession. We do not agree with the contention of the Respondent/Promoter as the same is devoid of merit. It is an admitted position that under the Agreement for Sale, the Respondent/Promoter had undertaken to handover possession on or before December 2019. It is not in dispute that the outbreak of Covid-19 pandemic and subsequent nationwide lockdown happened only thereafter, i.e. March 2020. Therefore, the Respondent/Promoter had already committed default in fulfilling contractual obligation prior to the occurrence of alleged *force majeure* event. In our considered view, the benefit of moratorium period granted under various notifications of MahaRERA cannot be made applicable to the Promoter who was already in breach of contractual obligation to deliver possession before the outbreak of Covid-19 pandemic. The statutory liability under Section 18 of RERA Act, 2016 has already accrued in favour of Appellants/Allottees on account of Promoter's failure to handover possession within the agreed timeline.

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29. We further find that the observations recorded by the learned Authority in paragraph 10 of the said impugned order and the operative directions contained in the final order are inconsistent and incongruous to each other. On the one hand, the learned Authority has categorically held that the extension of the project completion period on account of various factors shall not curtail the statutory right of the Allottees to claim interest for delayed possession from the agreed date of possession mentioned in the Agreement for Sale. On the other hand, in the operative part of the impugned order, the learned Chairperson directed exclusion of moratorium period while computing such interest. In our considered opinion, the aforesaid findings cannot stand together. The agreed date of possession was on or before December 2019, whereas Covid-19 pandemic and lockdown happened thereafter. Once it is held that the statutory right of the Allottees under Section 18 remains unaffected by extension of project completion period, there is no legal basis for excluding moratorium period while calculating the interest payable for the period of delay in handing over possession. Since the agreed date of possession has admittedly expired prior to outbreak of Covid-19 pandemic, the Respondent/Promoter cannot claim benefit the subsequent *force majeure* notifications.

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30. In view of the foregoing reasons, we have concluded that the Appellants/Allottees are entitled to interest on the amounts paid to the Respondent/Promoter from 1st January 2020 till the date of actual possession i.e. 15th February 2022. As a result, the impugned order warrants inference in this Appeal. Consequently, we answer point Nos. 1 and 2 in the affirmative and accordingly proceed to pass the following order.

ORDER

1. Appeal No. AT006000000093910 of 2022 is partly allowed.
2. The impugned order dated 11th April 2022 passed by the learned Chairperson, MahaRERA in Complaint No. CC006000000196969 of 2021 is modified to the following extent.
3. The Respondent/Promoter is directed to pay interest on the amounts paid by Appellants/Allottees at the rate of State Bank of India's Marginal Cost Lending Rate (MCLR) plus 2% (simple interest) for the period from 1st January 2020 till 15th February 2022, within a period of one month from the date of this order.
4. In the event of failure to comply with the aforesaid direction within the stipulated period, the amount so payable shall

carry further interest at the aforesaid rate until realization of the amount.

5. The Respondent/Promoter is directed to pay cost of Rs.25,000/- to the Appellants/Allottees.

6. Copy of this order be communicated to the learned Authority and respective parties as per Section 44(4) of the RERA Act, 2016.

(DR. RAJAGOPAL DEVARA) **(S. S. SHINDE, J)**

V. K. Bhople_

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