BEFORE THE MAHARASHTRA REAL ESTATE APPELLATE TRIBUNAL, MUMBAI

Appeal No. AT006000000123942 of 2022
In
COMPLAINT NO.CC006000000197696

1. Mr. Modilal Bapna]
2. Mrs. Sushiladevi M. Bapna]
   Both Senior Citizens, Lawful owners]
   of Flat No.704, B-Wing, 7th Floor,]
   Levels/Kanakia Levels, Rani Sati]
   Road, Off Western Express Highway]
   Malad (East), Mumbai-400 097.]
   Currently residing at Flat No.2,]
   Sapatarshi Building, Daftary Road,] .. Appellants/Original
   Malad (East), Mumbai-400 097.] Complainants)

Versus

1. Kanakia Residential Private Limited]
   Kanakia Future City, CTS No.101,]
   Behind Dr. L.H. Hiranandani,]
   Hospital, Tirandaz, Powai,]
   Mumbai-400 076.]

2. Shah Housecon Private Limited,]
   Office No.1 & 2, 8th Floor,]
   Shah Trade Centre, Rani Sati Marg,]
   Malad (East), Mumbai-400 097.]

3. Parth Developers,]
   5, Satsang Complex, Upper Govind]
   Nagar, Malad (East),]
   Mumbai-400 051.]

4. JLL India,]
   ONE BKC, Tower A-1502,]
   Level 15 Bandra Kurla Complex]
   Bandra (East), Mumbai-400 051.].. Respondent.

Adv. Mr. Rahul Kedar for Appellant.
Adv. Mr. Sunilraja Nadar for respondent no.1.
Adv. Mr. Dhrumil Shah for respondent no.2.
None for respondent no.3.

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

RESERVED ON : 19th June, 2026

PRONOUNCED ON : 5th August, 2026

(THROUGH VIDEO CONFERENCING)

JUDGEMENT

[PER: S. S. SHINDE (J), CHAIRPERSON]

1. The captioned appeal arises from the common order dated 12.05.2022 passed by the learned Member-1 Maharashtra Real Estate Regulatory Authority (for short "the Authority") in the captioned complaint filed by the appellant/allottee.
2. The respondents Nos. 1 to 3 are the promoter of the project in the name and style as "Kanakia Levels" having MahaRERA Project Registration No. P51800000223.
3. For the sake of convenience, the parties to the appeal will be hereinafter referred to as "appellants/allottees" and "promoters" respectively.
4. The brief facts culled out from the pleadings, the impugned order, and material on record, reveal that the appellant is allottee within the meaning of Section 2(d) of the RERA Act, 2016, who has purchased a flat bearing no.704, B Wing, 7th Floor, Levels, known as "Kanakia Levels", in the said project, admeasuring 1768 sq.ft alongwith one covered car parking space. Despite of receiving the entire consideration for the said apartment and the said car parking, the Respondents No. 1 to 3

had jointly and severally refused to incorporate the peculiar car parking number in the agreement dated 31.12.2013, duly registered on 07.01 2014. The Respondent No. 2 had vide its letter dated 01.03.2019, offered possession of the said apartment and allotment of the said car parking to the appellants. The appellants had after due inspection of the said apartment and the said car parking, accepted the possession and allotment of the same and subsequently executed an Undertaking cum Indemnity dated 02.03.2019 in favour of the Respondent No. 2 inter-alia recording acceptance of possession of the said apartment and the allotment of the said car parking. Despite of all that is stated in the present paragraph, the Respondent No. 4 is deliberately and forcefully refusing the Appellants to park their car in the said car parking as allotted by the Respondents No. 1 to 3 in the said project. The Respondent No. 1 to 3 jointly and/or severally refused to incorporate the peculiar car parking number in the agreement.

5. Being aggrieved by the conduct of the respondents the complainant filed complaint before the Authority praying therein the following reliefs:

   A. That this Hon'ble Authority may be pleased to direct the Respondents No. 1 to 3, jointly and/or severally, at their own cost/s, to execute and/or register such deeds and documents including but not limited to Deed of Rectification etc. and incorporate the allotment of the said car parking in the agreement and/or in favour of the Complainants.

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B. That this Hon'ble Authority may be pleased to direct the Respondents No. 1 to 3, jointly and/or severally, pay the complainants interest at such prescribed rate on an amount of Rs. 8,00,000/- for not handing of the said car parking to the Complainants from 01 March 2019 until payment and realization.

C Pending the hearing and final disposal of the present application, this Hon'ble Authority be pleased to restraint the Respondents No. 1 to 3, jointly and/or severally from selling, transferring, allotting, assigning, alienating and/or creating third party rights of any nature whatsoever with regard to the said car parking.

D Pending the hearing and final disposal of the present application, this Hon'ble Authority be pleased to direct the Respondents No. 1 to 4, jointly and/or severally, to allow the complainants to park their car at the said car parking.

E. Costs for the present application.

F Such other reliefs as this Hon'ble Authority may deem fit and necessary."

6. The respondent no.1 had refuted the claim of the complainant by filing their detailed reply stating that vide agreement for sale dated 31.12.2013 the complainants agreed to purchase the said flat from respondent nos. 2 and by virtue of agreement dated 26.09.2012 and supplemental agreement dated 06.03.2013 development agreement flat owned by complainants has been earmarked to respondent no.2 i.e. Shah Housecon Pvt. Ltd. and hence no claim can be raised against respondent no.1 and therefore this complaint suffers from misjoinder of parties and

is liable to be dismissed on this ground. The said agreement for sale dated 31.12.2013 is executed by and between Shah Housecon being the promoters therein of the first part and Kanakia Residential Pvt.Ltd. being the confirming party therein of the second part and the complainants being purchasers therein of the third part which clearly envisions the fact that the confirming party is merely a party to fulfil the procedural requirement and no obligations or liability can be cast upon respondent no.1. The complainants are aware of the fact that this respondent is only a confirming party to the said agreement for sale not the promoter. Further contractual and legal obligations of respondent no.1 was only limited to the flats that were allocated for respondent no.1 in the said development agreement. Further, the respondent no.1 can not be held liable for any legal obligation and or any consequences arising out of the agreement for sale as it has not made any representations or warranties in the capacity of a promoter/developer. Therefore, the complainant should amend the complaint to the extent that it should not be made party to the complaint and no several or joint liability exists against respondent no.1 or the MahaRERA and prayed for rejection of the complaint.

7. The Authority has observed that the complainants by filing complaint are mainly seeking covered car parking space. Admittedly, no car parking space is mentioned in the registered agreement for sale dated 31.12.2013. The said document i.e. agreement for sale was executed in the year 2013 and after lapse of about 8 years and after a period of 2 years from taking possession of their flat, the complainants have approached

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Authority agitating their claim at belated stage, which is hopelessly time barred. The Authority of the view that if the terms and conditions mentioned in the said agreement for sale for non-mentioning of the car parking space were not agreeable to the complainants, they should have taken appropriate action in this regard at the relevant time before taking possession of their flat.

8. The Authority further observed that on perusal of the supporting documents uploaded by the complainant alongwith the online complaint, the Authority has notice that the complainant have not produced any letter issued by the respondent nos. 1 and 2 who are the promoters of this project. Hence, the Authority observed that the Authority can not issue any direction to the respondent no.3 who has issued the alleged allotment letter in favour of the complainant and dismissed the complaint.

9. Being aggrieved by the said dismissal order dated 12.05.2022 the appellants filed the present appeal praying to quash and set aside the impugned order dated 12.05.2023 passed by the Authority. Further sought directions to the respondents nos. 1 to 3, jointly and/or severally, pay the appellants interest at such prescribed rate on an amount of Rs.8,00,000/- for not handing over possession of the said car parking, also sought relief of restraining the respondent nos. 1 to 3 jointly and/or severally from selling, transferring, allotting, assigning, alienating and/or creating third party rights of any nature whatsoever with regard to the said car parking.

10. The learned Advocate for the appellants submits that the allotment letter was issued by the Respondent No. 3 who was/is acting as an

assignee of the Respondents No. 1 & 2. By virtue of the said allotment letter, the Respondent No. 3 had also sold the said car parking in the said project for the said sum to the appellants. The said allotment letter categorically records that the said sum was the total consideration towards the sale of the said car parking in the said project. The said allotment letter clearly records that the Respondent No. 3 has acknowledged and/or received the said sum from the appellants towards the sale of the said car parking. The appellants have also produced the photocopy of the bank passbook' interalia substantiating that a sum of Rs. 12,00,100/- (Rupees Twelve Lakhs and One Hundred Only) which is inclusive of the said sum is paid by the appellants towards the said car parking to the respondent no. 3. The respondent no. 3 was/is a promoter of the said project and/or to say to the least, was/is an assignee of said project qua the respondents no. 1 & 2 and had thus issued the said allotment letter and hence liable for all the functions and responsibilities of the promoter of the said project as envisaged under the said Act and the said rules (defined hereinafter). Hence, it cannot be stated that the above complaint and/or the above appeal is bad and/or not maintainable for misjoinder of parties.

11. Similarly, it can never be assumed that the said allotment letter issued by the Respondent No. 3 (on behalf of the Respondents No. 1 & 2) can never be binding upon the Respondents No. 1 & 2 as sought to have alleged in the affidavit in Reply of the Respondent No. 2 ("reply"). Moreover, the description of the said project, apartment and other peculiar details pertaining to the said project in the said agreement and the said allotment letter is identical and

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hence it can be safely concluded that the Respondent No. 3 is the assignee of the Respondents No. 1 & 2 and/or the Respondent No. 3 along with the Respondents No. 1 & 2 collectively are the promoters of the said project. Therefore, the said allotment letter is binding upon all the Respondents.

12. The learned Advocate submits that the respondent No. 3 had acted as a developer/promoter and/or an assignee of the respondents no. 1 & 2 while executing the said allotment letter in favor of the appellants. The respondent no. 3 on behalf of the Respondents No. 1 and 2 had accepted the said sum towards the sale of the said car parking. It has now become significant to place emphasis and/or reliance upon the definition of promoter as provided under The Real Estate (Regulation and Development) Act, 2016 ("said Act") which is reciprocated hereinafter

2 (zk). "promoter" means, -

(i) a person who constructs or causes to be constructed an independent building or a building consisting of apartments, or converts an existing building or a part thereof into apartments, for the purpose of selling all or some of the apartments to other persons and includes his assignees; or

(ii) a person who develops land into a project, whether or not the person also constructs structures on any of the plots, for the purpose of selling to other persons all or some of the plots in the said project, whether with or without structures thereon; or

(iii) any development authority or any other public body in respect of allottees of-

(a) buildings or apartments, as the case may be, constructed by such authority or body on lands owned by them or placed at their disposal by the Government; or

(b) plots owned by such authority or body or placed at their disposal by the Government, for the purpose of selling all or some of the apartments or plots, or

(iv) an apex State level co-operative housing finance society and a primary co-operative housing society which constructs apartments or buildings for its Members or in respect of the allottees of such apartments or buildings, or

(v) any other person who acts himself as a builder, coloniser, contractor, developer, estate developer or by any other name or claims to be acting as the holder of a power of attorney from the owner of the land on which the building or apartment is constructed or plot is developed for sale; or

(vi) such other person who constructs any building or apartment for sale to the general public.

13. The learned Advocate submits that a careful perusal of the definition of promoter as envisaged under the said Act shall make it amply clear that the Respondent No. 3 is the Promoter of the said project and/or to say the least is a person who is an assignee of the promoters for the said project and/or is a person who has acted as a builder and developer of the said project.

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Most importantly, the explanation as provided in the above definition shall also make it amply clear that the Respondent No. 3 is the Promoter of the said project as the same categorically includes such persons to be Promoters of a project who sells apartments and in fact makes them jointly liable as such for the functions and responsibilities specified under the Act or the Rules made under the said Act. In view of the deeming fiction as provided in the explanation of the definition of Promoter in the said Act, the Respondent No. 3 is deemed to be the Promoter along with the Respondents No. 1 & 2 and that the Respondents No. 1 to 3 are now jointly and severally liable for the functions and responsibilities as specified under the said Act or the said rules. Hence the Respondents No. 1 to 3, jointly and severally are the Promoters of the said project and ought to provide the said car parking in the said project to the appellants. Further, the respondent no. 1, admittedly, is a promoter of the said Project. Even as on date, the name of the respondent no. 1 is appearing as a "promoter" on the official website of MahaRERA qua the said project. The respondent No. 1 although arrayed as a confirming party in the said agreement cannot be absolved of the obligations under the same or be absolved from its functions, duties etc. as envisaged under the said Act. The alleged agreement between the Respondent No. 1 and the Respondent No. 2 inter-alia sharing the flats to be sold in the said project cannot override the provisions of the said Act and the said rules. Therefore, the stand adopted by the respondent no. 1 that the above appeal ought to be dismissed for misjoinder of respondent No. 1 is absolutely illegal and deserves no consideration.

14. The learned Advocate for the appellants submits that the appellants have already paid the said sum towards the said car parking and the same is recorded in the said allotment letter issued by the Respondent No. 3. Admittedly, the Respondent No. 2 had offered inspection of the apartment and the said car parking to the appellants in the month of March 2019. The appellants had inspected the apartment and the said car parking and after being completely satisfied with the same, accepted the possession of the apartment. However, whenever the appellants attempted to park their car in the said car parking, the respondent no. 4 had forcefully and/or deliberately restrained the appellants from parking their car at the said car parking as offered by the respondents No. 1 to 3. In fact, the respondent no. 4 had categorically informed the Appellants that since the said agreement bears no specific allotment details/number of the said car parking, the said car parking does not belong to the appellants. It is in the light of these circumstances that the respondents no. 1 to 3 have failed and neglected to handover the possession of the said car parking to the appellants. It is now more than established law that a said car parking is a part of the apartment and/or deemed to be an apartment and any delay in handing over possession of the said car parking amounts to delay in handing over possession of the apartment. The Respondents No. 1 to 3 have failed to give possession of the said car parking to Appellants since March 2019 and hence the Respondents No. 1 to 3 jointly and severally

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are liable to pay the Appellants interest on delayed possession of the same. Reliance may be placed upon the definitions of "apartment" in the said Act and "covered parking space" as defined in The Maharashtra Real Estate (Regulation and Development) (Registration of Real Estate Projects, Registration of Real Estate Agents, Rate of Interest and Disclosures) Rules 2017 ("said rules") and the same is reciprocated hereinafter :-

Definition of apartment as per the said Act :-

> *2(e) "apartment" whether called block, chamber, dwelling unit, flat, office, showroom, shop, godown, premises, suit, tenement, unit or by any other name, means a separate and self-contained part of any immovable property, including one or more rooms or enclosed spaces, located on one or more floors or any part thereof, in a building or on a plot of land, used or intended to be used for any residential or commercial use such as residence, office, shop, showroom or godown or for carrying on any business, occupation, profession or trade, or for any other type of use ancillary to the purpose specified,*

15. Definition of covered parking space reproduced below:

> *2(0) Covered Parking Space means an enclosed or covered area as approved by the Competent Authority as per the applicable Development Control Regulations for parking of vehicles of the allottees which may be in basements and/or stilt and/or podium and/or space provided by mechanised parking arrangements but shall not include a garage and/or open parking.*

16. The learned Advocate further submits that a bare reading of the definitions of "apartment" as per the said Act read with the "covered parking space" as per the said rules shall make it amply clear that the said car parking as allotted and/or sold by the Respondents No. 1 to 3 to the Appellants is a part of the apartment and that the Respondents No. 1 to 3 have deliberately failed and/or neglected to handover the possession of the said car parking to the Appellants. It is pertinent to note that the definition of covered parking space as envisaged under the rules means an enclosed or covered area as approved by the Competent Authority as per the applicable Development Control Regulations for parking of vehicles of the allottees which may be in basements and/or stilt and/or podium and/or space provided by mechanized parking arrangements and that the definition of apartment as envisaged under the said Act means and includes enclosed spaces, located on one or more floors or any part thereof, in a building or on a plot of land. A harmonious reading of both these definitions shall make it amply clear that the said car parking is nothing but a part of the apartment and/or an amenity which is provided by the Respondents No. 1 to 3 and that the possession of the same is deliberately delayed and/or neglected by the Respondents No. 1 to 3. Moreover, a bare reading of the relevant clauses of the said agreement shall make it amply clear that the said car parking is a part of the apartment. Therefore, not only are the Respondents No. 1 to 3 guilty of violating and/or contradicting various provisions of the Act, but are also guilty of delaying of handing over possession of the said car parking (apartment). Hence, the Respondents

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No. 1 to 3 ought to pay the Appellants, compensation payable as per section 18 of the said Act read with Rule 18 of the said rules. Reliance is placed by the Appellants upon a judgement dated 10 February 2020 passed by the Hon'ble Tamil Nadu Real Estate Appellate Tribunal (TNREAT) in Appeal No. 11 of 2020 T. Aananthi vs GKS Technology Park Ltd & Ors which is factually similar to the present case.

17. The learned Advocate for appellants submits that the respondents no. 1 to 3, never bothered to share the draft of the said agreement with the appellants. The respondent no. 2 had merely provided the said agreement with the appellants at the time of registration of the same and had asked the appellants to execute the same. When the appellants had inquired with the respondents no. 1 and 2 about the peculiar car parking number to be provided in the said agreement, the authorised signatory of the respondent no. 1 and the Director of the respondent no. 2 had informed that they are yet to provide peculiar car parking numbers to all the allottees in the said project and that same shall be provided no sooner the possession of the same is offered to the appellants. At that time, the appellants had believed the authorised signatory of the Respondent No. 1 and the Director of the Respondent No. 2. At the time of registration of the said agreement, it was also represented by the respondents no. 1 & 2 that since the construction of the said project was going on, they had not finalised the allotment of peculiar numbers to the said car parking's in the said project and the same shall be done at a later stage. The appellants had believed the representations and patiently waited for the

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completion of the said project. However, till date, the respondents no. 1 to 3 have failed and neglected to provide a peculiar number to the said car parking bought by the Appellants. The Respondents No. 1 to 3 have deliberately avoided to fill up the peculiar number qua the said car parking in the said agreement and are now taking undue and/or unfair advantage of the same. As stated above, the Appellants have already paid the said sum to the Respondents No. 1 to 3 for the sale of the said car parking in lieu of which the said allotment letter was issued followed by the execution of the said agreement, said possession letter and the said undertaking. In any circumstances, the said agreement also records that the Respondents No. 1 & 2 have, as an amenity, exclusively provided and reserved for the Appellants one car parking in the basement/stilt/podium in the said project. In the said agreement it is also recorded in various clauses (supra) that the said car parking is provided as an irrevocable amenity and that the Appellants shall be bound to abide by the rules and regulations as may be framed in regard to the said car parkings.

18. The learned Advocate further submitted that in the said agreement it is wrongly recorded that the Respondents No. 1 and 2 have not received separate consideration for the said car parking and that the same is being provided as an additional amenity free of costs. In any circumstances and in view of all that is stated hereinabove, the said car parking as stated in the above complaint belongs to the Appellants. The Respondents No. 1 to 3 cannot at one hand accept consideration of the said sum from the appellants towards the sale of the said car parking

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and then on the other hand deliberately avoid mentioning the same in the said agreement and now take the benefit of such avoidance and harass the appellants. The respondent's no. 1 to 3 are guilty of playing mischief and committing unfair practice and irregularities with the Appellants.

19. The learned Advocate further submitted that the respondents no. 1 to 3 cannot read the various clauses of the said agreement only to suit their own case. It is important to gather the intention of the parties from the various clauses of the said agreement. In the event the respondents No. 1 to 3 never intended to provide the said car parking to the appellants, the said agreement would specifically bear such a clause. On the contrary, not only the said agreement bears all the clauses (supra) pertaining to the allotment of the said car parking to the Appellants but also the said allotment letter, said undertaking and the said possession letter only proves that the Respondents No. 1 to 3 intended to sell and allot the said car parking t the Appellants. Further, it is also well settled law that in the event. there arises any ambiguity or if terms of documents are capable of two interpretations, the one beneficial to the beneficiary of such documents should be accepted consistent with the purpose for which such documents were entered into. Admittedly, the drafts of the said allotment letter, said agreement, said possession letter and the said undertaking was never shared with the Appellants in advance. Admittedly, the drats of the said agreement, said allotment letter, said undertaking and the said possession letter were prepared/drafted by the Respondents No. 1 to 3. Had the drafts of the said documents been shared

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with the Appellants, they would have got the same vetted by an Advocate and/or sought appropriate legal assistance to incorporate the necessary details with regard to the said car parking. The fact that the drafts of the said documents were never shared with the Appellants, it is now not open to the Respondents No. 1 to 3 to construe it illegally to suit their own purpose. Further it is also more than settled law that where the words of a document are ambiguous they shall be construed against the party who prepared the document. The appellants seeks to place reliance upon a judgment passed by the Hon'ble Supreme Court in *United India Assurance Co. Ltd. V's Pushpalaya Printers* reported in [(2004) 3 SCC 694] wherein it was held as follows:

> "6. *The only point that arises for consideration is whether the word "Impact" contained in clause 5 of the insurance policy covers the damage caused to the building and machinery due to driving of the bulldozer on the road close to the building. It is evident from the terms of the insurance policy that the property was insured as against destruction or damage to whole or part. The appellant company agreed to pay towards destruction or damage to the property insured to the extent of its liability on account of various happenings. In the present case both the parties relied on clause 5 of the insurance policy. Clause 5 is also subject to exclusions contained in the insurance policy. That a damage caused to the building or machinery on account of driving of vehicle on the road close to the building is not excluded. Clause 5 speaks of "impact" by*

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any rail/road vehicle or animal. If the appellant company wanted to exclude any damage or destruction caused on account of driving of vehicle on the road close to the building, it could have expressly excluded. The insured possibly did not understand and expect that the destruction and damage to the building and machinery is confined only to the direct collusion by vehicle moving on the road to the building or machinery. In the ordinary course, the question of a vehicle directly dashing the building or the machinery inside the building does not arise. Further, "impact" by road vehicle found in the company of other words in the same clause 5 normally indicates that damage caused to the building on account of vibration by driving of vehicle close to the road is also included. In order to interpret this clause, it is also necessary to gather the intention of the parties from the words used in the policy. If the word "impact" is interpreted narrowly the question of impact by any rail would not arise as the question of a rail forcibly coming to the contact of a building or machinery would not arise. In the absence of specific exclusion and the word "impact" having more meanings in the context, it cannot be confined to forcible contact alone when it includes the meanings "to drive close", "effective action of one thing upon another" and "the effect of such action", it is reasonable and fair to hold in the context that the word "impact" contained in clause 5 of the insurance policy covers the case of the respondent to say that damage *caused to the building and machinery on account of the bulldozer moving closely on the road was on account of its "impact" It is also settled position in law that if there is any ambiguity or a term is capable of two possible interpretations one beneficial to the insured should be accepted consistent with the purpose for which the policy is taken, namely, to cover the risk on the happening of certain event. Although there is no ambiguity in the expression "impact", even otherwise applying the rule of contra proferentem, the use of the word "impact" in clause 5 in the instant policy must be construed against the appellant. Where the words of a document are ambiguous, they shall be construed against the party who prepared the document. This rule applies to contracts of insurance and clause 5 of the insurance policy even after reading the entire policy in the present case should be construed against the insurer. A Constitution Bench of this Court in General Assurance Society Ltd. vs. Chandumull Jain & Anr. (AIR P.1649, Para-6) has expressed that:*

> *"in a contract of insurance, there is requirement of uberrima fides, i.e. good faith on the part of the assured and the contract is likely to be construed contra proferentem i.e. against the company in case of ambiguity or doubt."*

20. Therefore, neither of the respondents can now claim that the said clauses as contained in the said agreement and/or contents of the allotment letter, said undertaking and the said

possession letter are mere standard formats as allegedly stated in various pleadings as filed before this Hon'ble Court.

21. The learned Advocate further submitted that it is pertinent to note that no sooner, the above complaint was served upon the respondents, the respondent No. 2, with a view to create false record and/or controversy and most importantly to escape the obligations as recorded in the said agreement and as envisaged under the said Act and the said rules, issued various illegal letters inter-alia demanding alleged amounts from the appellants. Since these alleged amounts were/are not payable to the Respondents, the Appellants had responded to these various illegal letters appropriately. Moreover, it is unfathomable that the respondent no. 1 to 3 had handed over the possession of the apartment to the appellants without receiving the entire consideration for the same.

22. The learned Advocate further submitted that it is also worthy to mention that the Respondents no. 1 to 3 have till date have not taken any steps to recover the alleged monies from the Appellants. Therefore, it is now more than obvious that the alleged issue pertaining to the outstanding monies as raised by the Respondent No. 2 is nothing but a case of afterthought and illegal and hence deserves no consideration of this Hon'ble Court Admittedly, various clauses of the said agreement, contents of the said allotment letter, said possession letter and the said undertaking clearly establish the intentions of the parties with regard to the said car parking to be allotted and/or sold to the Appellants. All of these documents cannot be read in isolation. On the contrary, all of the said documents have to be read

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together harmoniously as a whole to gather the intention of the parties which is/was to allot and/or sell the said car parking to the Appellants. Reliance is placed by the Appellants on a judgement passed by the Hon'ble Bombay High Court in *Mumbai Metropolitan Region Development Authority v/s Unity Infra Ltd 2008 SCC Online Bom 1906* wherein it was held as follows:-

> "15. *In interpreting a contract, the court cannot place emphasis on an isolated provision divorced from the context and unrelated to the other provisions which govern contractual obligations. Contracts represent business understandings between the parties. Commercial dealings between persons who are well versed in the transaction of business are regulated by contracts which parties opt to govern themselves. The law regulates those contracts and provides an ordered framework in which business dealings can be implemented. The duty of the court when called upon to assess where the balance lies in a contract dispute, is to read the contract as a whole in order to understand the business meaning which the parties attributed to the obligations. Interpretation in law must ensure in commercial matters that the view which the court takes records the sense, which the parties to an arms length transaction attribute to the terms which they incorporate stop the law is not divorced from business realities nor can the vision of the judge who interprets the law be disjointed from the modern necessities to make business sense to business dealings."*

23. The learned Advocate has placed reliance on the judgment of the Hon'ble Supreme Court in S. Chattanatha Kurayalar vs Central Bank of India (1965) 3SCR 3187 wherein it is held as follows :-

> *"3... The principle is well established that if the transaction is contained in more than one document between the same parties they must be read and interpreted together and they have the same legal effect for all purposes as if they are one document. In Manks vs. Whiteley Moulton, L. J stated*
>
> *Where several deeds form part of one transaction and are contemporaneously executed they have the same effect for all purposes such as are relevant to this case as if they were one deed. Each is executed on the fate of all the others being executed also and is intended to speak only as part of the one transaction, and if one is seeking to make equity apply to the parties they must be equity arising out of the transaction as a whole*".

24. Reliance is also placed upon a judgement passed by the Hon'ble Supreme Court in Delhi Development Authority vs Karamdeep Finance And Investment (India) Private Limited & Ors (2020) 4 SCC 136 wherein it is held as follows:-

> "*22. The principles of construction of documents are well settled. While construing the documents, intention of the parties has to be a certain. In this context, reference is made to the judgement of this Court in Mohd. Kamgarh Shah vs Jagish Chandra In paras 12 and 13, the following was laid down (AIR pp. 956-57)*

"12. In his attempt to establish that by this later lease the lessor granted a lease even of these minerals which had been excluded specifically by Clause 16 of the earlier lease, Mr Jha has arrayed in his said several well-established principles of construction. The first of these is that the intention of the parties to a document of grant must be ascertained first and foremost from the words used in the disposition clause, understanding the words used in their strict, natural grammatical sense and that once the intention can be clearly understood from the words in the disposition clause thus interpreted it is no business of the courts to examine what the parties may have said in other portions of the document. Next it is urged that if it does appear that the later clauses of the document purport to restrict or cut down in any way the effect of the earlier clause disposing of property the earlier clause must prevail. Thirdly it is said that if there be any ambiguity in the disposition clause taken by itself, the benefit of that ambiguity must be given to the grantee, the rule being that all documents of grants must be interpreted strictly as against the grantor. Lastly it was urged that where the operative portion of the document can be interpreted without the aid of the preamble, the preamble ought not and must not be looked into.

13. The correctness of these principles is too well established by authorities to justify any detailed discussion. The task being to ascertain the intention of the parties, the cases have laid down that that intention has *to be gathered by the words used by the parties themselves. In doing so the parties must be presumed to have used the words in their strict grammatical sense. If and when the parties have first expressed themselves in one way and then go on saying something, which is irreconcilable with what has gone before, the courts have evolved the principle on the theory that what once had been granted cannot next be taken away, that the clear disposition by an earlier clause will not be allowed to be cut down by a later clause. Where there is ambiguity, it is the duty of the Court to look at all the parts of the document to ascertain what was really intended by the parties. But even here the rule has to be borne in mind that the document being the grantor's document it has to be interpreted strictly against him and in favour of the grantee."*

26. Learned counsel for the writ petitioner has submitted that Clause 3 being clearly contradictory to Clauses 1 and 2 has to give way to earlier clauses in the Sale Deed. He has placed reliance on judgment of this Court in Radha Sundar Dutta Vs. Mohd. Jahadur Rahim & Ors., AIR 1959 SC 24. In Paragraph Nos. 11 and 13, following was laid down:-

"11. Now, it is a settled rule of interpretation that if there be admissible two constructions of a document, one of which will give effect to all the clauses therein while the other will render one or more of them nugatory, it is the former that should be adopted on the principle expressed

in the maxim "ut res magis valeat quam pereat" What has to be considered therefore is whether it is possible to give effect to the clause in question, which can only be by construing Exhibit B as creating a separate Patni, and at the same time reconcile the last two clauses with that construction. Taking first the provision that if there be other persons entitled to the Patni of lot Ahiyapur they are to have the same rights in the land comprised in Exhibit B, that no doubt posits the continuance in those persons of the title under the original Patni. But the true purpose of this clause is, in our opinion, not so much to declare the rights of those other persons which rest on statutory recognition, but to provide that the grantees under the document should take subject to those rights. That that is the purpose of the clause is clear from the provision for indemnity which is contained therein. Moreover, if on an interpretation of the other clauses in the grant, the correct conclusion to come to is that it creates a new Patni in favour of the grantees thereunder, it is difficult to see how the reservation of the rights of the other Patnidars of lot.

25. The learned Advocate for the appellants last submitted that the appellants have been grappling to park their car in the said car parking. The respondent no. 4 is forcefully and/or deliberately restraining the appellants from parking their car in the said car parking. The said car parking is an integral part of the apartment. Therefore, this Hon'ble Tribunal may be pleased to direct the Respondent No. 1 & 2 jointly and/or severally, at their own costs, to execute and/or register such deeds and

documents including but not limited to Deed of Rectification etc. and incorporate the allotment of the said car parking in the said agreement and/or in favour of the Appellants. The Respondents No. 1 to 3 have jointly and/or severally failed to give the possession of the said car parking at the time of handing over the possession of the apartment. There is an inordinate delay by the Respondents No. 1 to 3 in handing over the possession of the said car parking to the Appellants. Therefore, this Hon'ble Authority may be pleased to direct the Respondents No. 1 to 3, jointly and/or severally to pay the Appellants interest on delayed possession of the said car parking as per the provisions of the Act and rules. On account of the unfair practices and/or irregularities committed by the Respondents No. 1 to 3, it is now become imperative that this Hon'ble Authority may, by an order, injunct Respondents No. 1 to 3 from selling, transferring, allotting, assigning, alienating and/or creating third-party rights of any nature whatsoever with regard to the said car parking in the said project. Therefore, the appellants prayed to set aside the impugned order and allow the appeal.

26. The leaned Advocate for the appellants in support of their contention has produced on record the following judgments:

   1) *T. Aananthi V/.s GKS Technology Park Ltd. & Ors. [Appeal no.11 of 2020 decided by RERA Appellate Tribunal Tamil Nadu on 10.02.2020]*
   2) *United India Assurance Co.Ltd., V/s. Pushpalaya Printers [(2004) 3 SCC 694],*
   3) *Mumbai Metropolitan Region Development authority V/s. Unity Infra Ltd., [2008 SCC Online Bom 190],*

4) S. Chattanath Kurayalar V/s. Central Bank of India [1965) 3 SCR 318]'

5) Delhi Development Authority V/s. Karandeep Finance and Investment (India) Private Limited & Ors. (2020) 4 SCC 136].

6) Circular dated 30th July, 2021 issued by MahaRERA]

27. The Advocate for the Respondent No.1 contended that the Agreement for Sale dated 31.12.2013 bearing registration no. 234/2014 ("Agreement for Sale") is executed by and between Shah Housecon Private Limited being the Promoter therein of the First Part and Kanakia Residential Private Limited being the confirming party therein of the second part and Mr. Modilal Bapna and Mrs. Sushila Modilal Bapna being the purchaser therein of the third part.

28. The learned Advocate for the Respondent No.1 submits that the complainant agreed to purchase Flat no 704 on the 7th Floor in wing B of a building known as "Levels" ("The Said Flat") from Respondent No. 2 who had agreed to sell the flat as per the said Agreement for Sale. By the Virtue of Agreement dated 26.09.2012 bearing registration No. BDR-16/8735 of 2012 and Supplemental Agreement dated 06.03.2013 bearing registration No.BRL-5/2071 of 2013 "Development Agreement" flat purchased by the Applicants has been earmarked to Respondent No. 2 i.e. Shah Housecon Private Limited; hence, no claim can be raised against Respondent No 1. The Respondent No. 1 has not accepted any consideration towards the said flat let alone any consideration for car parking space, from the Applicant. The said Agreement of Sale clearly envisage that the Respondent No.1 is merely a Confirming Party and the transaction was done

only between Respondent No.2 and the Applicant. Therefore, no obligation or liability can be casted upon Respondent No.1 of any nature whatsoever.

29. The learned Advocate further submits that the Applicant herein, despite having clear understanding that no cause of action lies against respondent no.1, has inducted respondent no.1 to harass and arm-twist Respondent No.1. The respondent no.1 submits that the applicant was well aware of the fact that Respondent No. 1 is merely a confirming party to the said Agreement for sale to fulfill the procedural requirement and no obligation or liability can be casted upon Respondent No. 1 in spite of having the said knowledge the Respondent No.1 intentionally has inducted Respondent No.1 as a party to the proceedings. The Applicant is well aware that the contractual and legal obligations of Respondent No.1 were only limited to the flat that was earmarked to them and no obligation that is casted upon the Respondent No.2 can be enforced upon Respondent No.1.

30. The learned Advocate submits that the Respondent No.1 has not entered into Agreement for Sale with the complainant under the capacity of developer and that the Respondent No. 1 is merely a confirming party to the Agreement for sale entered between the Applicant and the Promoter who is respondent No. 2. Hence, by no stretch of the imagination, can the respondent no. 1 absorb the obligations casted upon the developer i.e. respondent no. 2 by the virtue of Agreement for sale. The Respondent No.1 cannot and should not be held liable for any legal obligation and/or any consequences arising out of the

Agreement for sale as Respondent No. 1 has not made any representations or warranties to the Complainant in the capacity of a Promoter/Developer.

31. The Advocate for the Respondent No.1 lastly submits that the the Appeal filed herein suffers from misjoinder of parties as Respondent No.1 cannot be held liable either jointly or severally as Respondent No.1 is not obligated to provide car parking to the applicant herein Thus, the Respondent No.1 submits that either the applicant should amend the Appeal to the extent that Respondent No.1 should not be made a party to the Appeal and that no several or joint liabilities exist against Respondent No.1 or that the Hon'ble Authority reject the Appeal for misjoinder of parties.

32. The learned Advocate for Respondent No. 2 submits that, the appellants are aggrieved by the order dated 12.05.2022 ("impugned order") passed by the Hon'ble Authority of the Hon'ble Maharashtra Real Estate and Regulatory Authority in Complaint No. CC006000000197696, the Appellants has preferred the Appeal before this Hon'ble Maharashtra Real Estate Appellate Tribunal inter-alia to quash/ set aside the impugned order dated 12.05.2022 passed by the Hon'ble Authority and seeking a car parking space in the project "Kanakia Levels". The Respondent No. 2 has filed an Affidavit in reply dated 14.07.2023 in the captioned Appeal, the Respondent No. 2 repeats, reiterates, confirms and adopts seriatim whatever is stated therein. The Respondent No. 2 submits that the appellants have suppressed the true and correct facts from this Tribunal and have made false allegations

which otherwise are false and untrue to their own knowledge and thus the present Appeal is not maintainable and is ought to be dismissed on the ground of suppression of facts. The Respondent No. 2 states that the Hon'ble Authority has rightly decided the complaint vide its order dated 12.05.2022. Thus the Appeal has no merits on this ground alone and the same is ought to be dismissed with costs.

33. The learned Advocate for Respondent No. 2 submits that vide an Agreement for Sale dated 31.12.2013 executed by and between the Respondent No. 2 ie. Shah Housecon Pvt. Ltd, being the Promoter therein, the Respondent No. 1 ie. Kanakia Residency Pvt. Ltd, being the Confirming Party therein. The Appellants i.e. Mr. Modilal Bapna and Mrs. Sushila Modilal Bapna being the purchaser therein. The Appellants had agreed to purchase the said flat from the Respondent No. 2 and the Respondent No. 2 had agreed to sell to the Appellants s being the Flat Premises No. 704 on the 7th Floor in Wing B having total carpet area admeasuring about 1,105 sq. ft in the building known as LEVELS situated on all that piece and parcel of land admeasuring around 27,000.20 sq. mtrs, and bearing Survey No. 288, Village Malad. Taluka Borivali, Mumbai Suburban District situated at Rani Sati Marg, Malad East, Mumbai-400 097 ("said flat") and for lump sum price consideration of Rs. 1,05,85,000/- (Rupees One Crore Five Lakhs Eighty-Five Thousand only). Admittedly, the Respondent No. 3 and 4 are not a party to the said agreement nor there is any reference and/or relation whatsoever between Respondent No. 2. the

appellants and or the respondent No. 3 or 4 on plain perusal of the said Agreement.

34. The learned Advocate for submits that, the appellants had agreed to pay to the respondent no. 2 by way of Demand Draft of cheques or a combination of both RTGS in the name of the Respondent No. 2 i.e. Shah Housecon Pvt. Ltd.. for a total lumpsum consideration of Rs. 1,05,85,000/- (Rupees One Crore Five Lakhs Eighty-Five Thousand Only) as per clause 4 of the said agreement. It was further agreed by the Appellants s under clause 4 of the said agreement that at the time of payment of each of the installments was of the essence and hence the Appellants s shall be liable pay interests @ 24% p.a. for the delayed payment from due date till the date of payment, in addition to the other consequences in respect of the non-payment or delayed payments as specified in clause 9 of the agreement. Further, on the appellants request and on specific assurances that they needed to carryout interior work and on further assurances of the appellants that, they shall carryout interior work and they shall pay the balance consideration before they actually occupy said flat, the respondent no. 2 in a good faith and for the convenience of the appellants handed over the possession of the said flat vide letter dated 01.03.2019.

35. The learned Advocate submits that, the as per the records of the Respondent No.2 out of the total consideration of Rs. 1,05,85,000/-(Rupees One Crore Five Lakhs Eighty-Five Thousand Only) the Respondent No. 2 had received a payment only a sum of Rs.57,42,000/- (Fifty-Seven Lakhs Forty-Two Thousand Only) from 2013 till 2019 towards the consideration

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of the said flat and since 2019 there is still an outstanding of principal amount of Rs.48,43,000/- (Forty-Eight Lakhs Forty-Three Thousand Only) towards the consideration of the said flat. As per clause 4 and 9 of the said agreement interest chargeable was of 24% p.a. and hence outstanding interest payable on the said amount is Rs.33.90,100/-(interest @24% p.a. for 1.3.2019 till 31.1.2011) thus total sum of Rs.82.33.100/- (Rupees Eighty-Two Lakhs Thirty-Three Thousand One Hundred Only) (principal interest) is still payable by Appellants s to the Respondents No.2 towards consideration of the said flat as on 31.01.2022 and further interest thereon. As per clause 21(ix), the Appellants s had agreed to pay GST as applicable on the said agreement and hence an amount Rs.11,50,200/- (Rupees Eleven Lakhs Fifty Thousand Two Hundred Only) is still outstanding and payable by the appellants towards GST. As per clause 21 of the said Agreement, a sum of Rs.13.70.507/-(Rupees Thirteen Lakhs Seventy Thousand Five Hundred and Seven Only) was payable/to be deposited by the Appellants s to the Respondent No.2 on or before the delivery of possession of the said flat. The Appellants s till date have made a payment of Rs.3,07,697/- (Rupees Three Lakhs Seven Thousand Six Hundred and Ninety-Seven) and therefore, there is an amount outstanding a sum of Rs.10.62,810/- (Rupees Ten Lakhs Sixty-Two Thousand Fight Hundred and Ten Only) towards the following heads:-

i) Rs. 5,000/- Service tax (Rupees Five Thousand and service tax only) for legal charges.

ii) Rs.700/- (Rs. Seven Hundred Only) for share money and entrance fees.

iii) Rs. 5,000/-Service Tax (Rupees Five Thousand Only) on formation and registration of the Common Organization.

iv) 12 (Twelve) months monthly ad hoc outgoings which shall calculated @ Rs.10/- per sq. ft+ sq. ft (Rupees Ten Only per sq ft.+ Service Tax only) per month on the carpet area for taxes and maintenance.

v) Rs. 40,000/- + Tax (Rupees Forty Thousand only) tax deposit for water meter and electric meter and costs of sub-station and cables.

vi) Rs.88/- (Rupees Eighty-Eight per Sq. ft only Service carpet area towards proportionate share of development charger and L.U.C taxes Rs. 120/- (Rupees One Hundred and Twenty Only) per sq ft. on carpet area by way of contribution towards corpus of the society or a new society of the purchasers of the said free building o be formed.

vii) Rs.594/- per sq. ft. (Rupees Five Hundred and Ninety per sq. ft. Only) on carpet area by way of Club House charges.

36. Thus as on 31.01.2022 there is a total outstanding due amount of Rs. 1,19,95,217/-(Rupees One Crore Eighteen Lakhs One Thousand Hundred and Ninety-seven Only) payable by the Appellants s to the Respondent No. 2 as per the said agreement. The breakup of which is as follows: -

Sr. No.	Outstanding towards		Outstanding Amount (Rs.)
1.	Consideration of the said flat (clause 4) of the said Agreement.	:	48,43,000/-

2.	Interest @ 24% p.a. on outstanding consideration of the said flat (clause 4 of the said agreement)	:	33,90,100/-
3	Goods and Service Tax (clause 21 (ix))	:	11,50,200/-
4	Deposit/charges (clause 21) of the said Agreement.	:	10,62,810/-
5	Interest on Sr.no.3 & 4 (above @ 24% p.a.)	:	15,49,107/-
	Total	:	1,19,95,218/-

37. The learned Advocate submits that a notice dated 16.09.2021 was issued by the Respondent No.2 to the Appellants demanding the amount of Rs. 1,12,89,615/- (Rupees One Crore Twelve Lakhs Eighty-Nine Thousand Six Hundred and Fifty Only) but the said amount has not yet been paid by the Appellants s to this Respondent. The Respondent No.2 reserves its right to initiate appropriate action against the Appellants s for recovering of the said amounting dues. The Respondent No. 2 had issued a reminder letter dated 01.12.2021 seeking outstanding amounts as per the said Agreement. The appellants vide its letter dated 09.10.2021 and 18.12.2021 gave evasive reply and have avoided to make the payments as demanded. The Respondent No. 2 are in the process of issuance of the termination of the said Agreement for Sale dated 13.12.2013 for the reasons of default committed by the Appellants s. The Respondent No. 2 reserves its rights to initiate appropriate action in furtherance same. The letters dated 16.09.2021, 09.10.2021, 01.12.2021, and 18.12.2021 as marked as

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"EXHIBITA" to the Affidavit in reply dated 02.02.2022 filed by the Respondent before the Hon'ble MAHA RERA Authority.

38. The learned Advocate submits with regards to the Parking, that clause 5 of the said Agreement enumerates the provisions for the parking to be provided to the appellants. The Respondent No.2 humbly submits that on a plain perusal of the clause 5 the said Agreement exhibited at "EXHIBIT–B to the complaint it is clear that no parking was allotted to the Appellants as the number of parking lot provided to the Appellants was struck out at the time of signing of the said Agreement and the Appellants had knowledge about the same. The Respondent No. 2 humbly submit that on further reading of the clause 5 (ii) of the said Agreement it is made very clear that no separate consideration for the said car parking (if any allotted) was payable by the Appellants to the Respondent No. 2 under the said Agreement as the same was being provided as an additional amenity free of cost. Hence, it is humbly submitted that the Respondent No. 2 has not provided a car parking space to the Complainant, nor has had demanded and/ or received any consideration for such a parking space from the Appellant. This Respondent has categorically dealt with the alleged notice dated 27.07.2021 of the Complainant vide its reply letter dated 23.08.2021 with regards to alleged contentions of parking.

39. The learned Advocate submits that to his shock and surprise and have for the first time under the complaint came to know about alleged allotment letter dated 21.06.2013 as allegedly issued by Respondent No. 3. It is most respectfully submitted that Respondent No. 3 is not an assignee of the Respondent No.

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2 and as such the Respondent No. 3 had no right and or authority whatsoever to issue the alleged allotment letter to the Appellants s. furthermore the Respondent No. 2 was never a party to the said Allotment letter hence the Respondent No. 2 is not bound by the terms of the allotment letter as exhibited at "EXHIBIT-A" to the said complaint. Without prejudice to above and without admitting for the sake of argument perusal of the said allotment letter it appears that The alleged consideration agreed under the said Allotment Letter was Rs. 1,77,02.080/- whereas as in the said Agreement for Sale the consideration for the said Flat No.704 is Rs. 1,05,85,000/- thus there is vast difference in both the amounts there is no explanation whatsoever for the same. In the said Allotment letter, the Respondent No.3 has acknowledged the receipt of Rs. 1,24,00,000/- from the Appellants. However, in the said Agreement for sale the Appellant have further promised to pay a sum of Rs. 1,05,85,000/- (Rupees One Crore Five lakhs and Eighty-Five Thousand Only) to the Respondent towards the said Flat. This by itself means that there is no nexus between the said Agreement for Sale and the said Allotment letter and the said Agreement for sale is a standalone document in itself. iii. The Area of the said Flat no.704 as per the alleged allotment letter is 1,768 Sq. Ft. (Saleable) whereas as per the said Agreement for Sale the area of the said Flat no. 704 is 1,105 Sq. Ft Area only. Moreover, the appellants s in paragraph 1 of the Appeal are alleging that the Area of the Flat No. 704 to be 1,768 Sq. Ft. (Saleable) despite admittedly the area of said Flat being 1,105 Sq. Ft Carpet Area, for the reasons best known to

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them. The Respondent No.2 submits that, the appellants are trying to confuse this Hon'ble Tribunal by somehow creating a nexus between the Allotment Letter dated 21.06.2013 issued by the Respondent No. 3 and Agreement for sale dated 31.12.2023 executed by and between the Appellants s and the Respondents No. 2 and Respondent No. The Respondent No. 2 submits that the said agreement for sale is a new agreement in itself and has no nexus with the said Allotment letter. The Respondent No. 2 submits that, no parking as alleged by the Appellants was ever allotted to them by the Respondent No. 2 vide the said Agreement for Sale. The appellants are claiming the parking promised to them under the said Allotment letter by Respondent No. 3 for which they had paid a sum of 8,00,000/- (Rupees Eight Lakhs Only) to the Respondent No. 3. from Respondent No. 2. The Respondent No. 2 has never agreed to provide any parking to the Appellants under the said Agreement for Sale nor has the Respondent No. 2 ever received any consideration from the Appellants towards any such parking. The Respondent No. 2 further states that the Respondent No. 2 was not a party to the allotment letter allegedly issued by the Respondent No. 3, hence there is no privity of contract and the same is not binding upon the Respondent No. 2.

40. The learned Advocate further submits that the said Agreement for Sale is a new contract in its entirety and not a contract entered in furtherance of the said Allotment letter This is clear from the fact that there is no mention of the money allegedly paid by the Appellants s to the Respondent No. 3 towards the said Allotment letter i.e. Rs. 1,24,00,000/- (One Crore and

Twenty-Four Lakhs Only) in the agreement for sale and in fact the Appellants agreed to pay a sum of Rs. 1,05,85,000/- (One Crore Five Lakhs and Eighty-Five Thousand Only) to the Respondent No. 2 under the said Agreement for Sale, which as on date has not been entirely paid by the Appellants to the Respondent No.2. The Respondent No. 2 submits that, the Respondent No. 3 and 4 are not the promoters under the RERA Act, nor are the landlords or otherwise and therefore the said Appeal deserves to be dismissed on the ground of misjoinder of parties. The Respondent No. 2 submits that, the allegations alleged by the Appellants are against the Respondent No.3. The Respondent No. 2 is unable to understand as to if the Agreement for Sale dated 31.12.2012 is entered into and registered by and between Appellants s, Respondent No. 1 and Respondent No. 2 then on what basis the alleged consideration was ever paid by the Appellants to the Respondent No. 3. The Respondent No. 2 further submits that, the Respondent No. 3 never had any authority to issue the alleged allotment letter or to receive any consideration on behalf of the Respondent No. 2 and hence the alleged allotment letter and/ or receipts if any issued by Respondents No. 3 are not binding upon Respondent No. 2. The transaction between the Appellants and the Respondent No. 3 is a separate dispute amongst themselves and the Respondent No. 2 should not have been dragged into the same. No cause of action lies as against the Respondent No. 2 and on this ground alone the Appeal is ought to be dismissed. The Respondent No. 2 submits that, the Appellants are defaulters and has not paid the balance consideration as per the

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said agreement. The respondent no.2 had already issued a demand notice dated 16.09.2021 and a reminder letter dated 01.12.2021 seeking the payment of outstanding amount as per the said agreement. The appellants have miserably failed to furnish bank statement and/or particulars showing the payments of the entire consideration as agreed to be paid by the Appellants to the Respondent No. 2 under the Agreement for Sale. The Respondent No. 2 submits that the entire consideration is not paid by the Appellants to the Respondent No. 2, but only to harass and to shy away from payment of the same, the appellants have filed the frivolous complaint and thereafter this frivolous Appeal. The respondent no. 2 humbly submits that, the said Agreement for sale dated 31.12.2013 entered upon by and between the Respondent No. 2 and the appellants is a valid and a concluded contract and the terms of the said agreement are final and binding upon the Appellants and the Respondent No. 2. Further, no parking as alleged by the appellants was ever allotted to them by the respondent no. 2 nor any consideration for the same was ever received by the Respondent No. 2.

41. The learned Advocate lastly submits that the respondent no. 2 submits that, the appeal is just an afterthought of the Appellants and appears to be a desperate attempt to shy away from payment of their lawful liability of Rs. 1,19,95,217/- (Rupees One Crore Nineteen Lakhs Ninety-Five Thousand Two Hundred and Seven Only) as on 31.01.2022 and further interest thereon which otherwise is due and payable by the Appellants to the Respondent No.2. The Possession letter as exhibited at

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"EXHIBIT-D" and "EXHIBIT-E" of the Complaint are concerned they are standard format and the same are issued and obtained in normal course to/from the flat purchasers irrespective of whether the flat purchasers have been allotted parking or not. The Parking space blanks at clause 5 of the said Agreement for Sale at page No. 69 is intentionally cancelled, which prima facie shows that there was never any intention of the respondent no.2 to provide a parking space to the appellant nor was it ever agreed to be taken by the appellant.

42. The Respondent No. 2 humbly submit that no cause of Action lies against the Respondent No. 2 and for the same reasons the said Appeal is ought to be dismissed with costs.

43. Having heard the learned Advocates for the parties at length and with due regard to the contents of the memorandum of appeal, reply, rejoinder and written submissions and material placed on record, the following points arise for our consideration and determination and we have recorded our findings thereupon, for the reasons to follow, as under.

Sr.No.	Points	Findings
1.	Whether the appellants prove that along with flat he booked the car parking space?	In the Affirmative.
2.	Whether the appellants have made out a case for interference in the impugned order and setting aside the same and to	In the affirmative.

	grant relief as prayed for in the said complaint?	
3.	What order?	As per final order.

REASONS

Point No.1 and 2

44. In order to appreciate the controversy involved in the appeal, we have carefully gone through the pleadings and grounds taken in the appeal memo, so also annexures and replies filed by the respective respondents.

45. The controversy involved in the appeal is limited and restricted to the car parking space only and nothing beyond. However, unnecessarily, the parties have travelled beyond the controversy and incorporated pleadings, grounds and documents in extenso, which are absolutely not necessary to decide the controversy, except the few documents.

46. Upon perusal of the contents of the allotment letter dated 21.06.2013 issued in the name of the appellants by and on behalf of the respondent no.3 Parth Developers, makes it abundantly clear that, the Flat No.704, on 7th Floor, B-Wing, having approximate area 1768 sq.fts. saleable area at the rate of Rs.9650/- per sq.ft. including floor rise and one parking at the rate of Rs.8,00,000/- total amounting to Rs.1,77,02,080/- was booked by the appellants alongwith car parking. The fact that the said letter was issued by one of the respondents is not in dispute. The respondents are shifting the burden from one respondent to another and vice versa and denying that the car

parking space was not sold/allotted in favour of the appellants. On the face of the contents of the said letter, it is abundantly clear that the flat was booked alongwith one car parking. The fact that in a very same flat of which description is given in the said letter and property the appellants have been subsequently put in possession, pursuant to the agreement for sale entered into between the parties makes it clear that respondent no.3 and other respondents are hand in gloves and working together. It is the assertion of the appellant that while executing agreement for sale, the appellant did raise the issue about allotment of space for car parking. However, he was given to understand that the said space would be allotted only after building is completely ready for occupation and thereafter parking spaces would be earmarked to be given to the allottees.

47. Upon careful perusal of the agreement for sale, it appears that the inspection of documents and sanctioned plan etc. was shown to the appellant. There is also mention in the agreement for sale about said flat no.704 on 7th floor in B-Wing which is mentioned in the allotment letter. Having been mentioned very same flat number, floor and other details, of which there is mention in the allotment letter, now respondents can not deny that the said allotment letter was not issued at their instance. There is complete match of the description of the subject flat in the allotment letter and in the agreement for sale in clause (jj). It is evident from the reading of clause 5(ii) of the agreement for sale that "no separate consideration for the said car parking is/are payable by the purchaser/s to the promoters under this agreement and the same was being provided as an additional

amenity free of costs. It is further mentioned that, the purchaser/s shall be entitled to exclusively possess, use, occupy and enjoy the said car parking/s in any manner permissible under the rules and regulations of the concerned local authorities, as may be framed by the new society/association to be formed by them.

48. It would be relevant to produce here in below clause 5(ii) of the agreement for sale:

> *"5(ii) No separate consideration for the said Car Parking payable by the Purchaser/s to the Promoters under this Agreement the same being provided as an additional amenity free of costs. The purchaser/s shall be entitled to exclusively possess, use, occupy and enjoy the said Car Parking/s in any manner permissible under the rules and regulations of the concerned local authorities, as may be framed by the new society/association to be formed by them."*

49. During the course of hearing our attention was invited to the contents of the possession letter dated 01.03.2019 by the Advocate appearing for the appellant, wherein it appears that liberty to inspect the building and the said flat was afforded to the appellants. In the said letter it is mentioned that the amenities like main gate and other amenities are presently not available and the entire project was not fully completed at the relevant time. Importantly, in clause 10 of the said letter there is mention of car parking space. It would be relevant to reproduce here in below the clause 10 of the said letter:

"10. You have visited the parking space of the building and you are fine with the parking allotted to you and in future you will not object to the said car parking space in any manner whatsoever including size and type of arrangement and etc."

50. Perusal of the contents of said clause 10 makes it abundantly clear that there is reference to the visit of the appellants to the car parking space of the building and further it is observed that the appellant is fine with the parking allotted to them.

51. In reply to the said possession letter the appellant had filed undertaking cum indemnity. It would be relevant to reproduce herein below clause 2(g) and clause 6 of the said letter addressed by the appellant to the respondent no.2:

"2(g) I/We state that Developer has allotted the parking space and I/We shall not object and I/we shall not enclose any parking spaces earmarked to us, in any manner whatsoever."

"6. I/We have visited the parking space of the building and I/We are fine with the parking allotted to me/us and in future I/we undertake not to object to the said car parking space in any manner whatsoever including size and type of arrangement and etc."

52. The appellant has placed on record in the compilation of the annexures Exhibit-C i.e the extract from the bank statement to demonstrate that, as a matter of fact that the appellant did pay Rs.1,00,100/- on 16.10.2012 and Rs.11,00,000/- on 15.11.2012

to Parth Developers i.e. Respondent No.3 towards purchase of car parking space in the said building.

53. The respondents are trying to shift the burden inter-se amongst themselves from one to another and have created artificial dispute that the person who issued allotment letter does not fall within the definition of promoter. In our opinion, as it is evident from the documents placed on record, the respondents are inter-se related with the said project and genuine claim of the appellant of said parking space can not be denied, and appellant can not be deprived from enjoying the car parking space allotted to them for which the respondent no.4 is creating hindrance.

54. The contention of one of the respondents is that the total consideration amount has not been paid by the appellant towards flat. From the record, it appears that the issue of outstanding payment is raised by the respondent no.2 after the appellant filed complaint with the Authority praying for direction to hand over possession of car parking and interest on the amount allegedly paid towards card parking. The claim of the respondent regarding outstanding dues is an afterthought and is an attempt to counter the genuine prayer/claim of the appellant for enjoyment of car parking. It appears that, the possession of the said flat is already handed over to the appellant by the respondent no.2 on 01.03.2019 and the demand is raised by the respondent no.2 about outstanding dues first time on 16.09.2021 and, therefore it is difficult to accept the contention that the entire consideration has not been paid by the appellant. It is difficult to understand that, why the respondent no.2 waited for about two and half years

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after giving possession to the appellants about their outstanding dues. Be that it may, the appeal is filed by the allottees seeking directions to the respondents to clear the obstacle/hindrance created by the respondent no.4 in continuous use and enjoyment of the car parking space given to the appellants.

55. In the light of discussion in foregoing paragraphs, we answer point nos. 1 and 2 in the affirmative and we proceed to pass the following order.

ORDER

1. The caption appeal No.AT006000000123942 of 2022 in complaint no. CC006000000197696 is allowed and the impugned order is quashed and set aside.
2. The respondent nos. 1 and 2/promoters are directed to jointly and/or severally, at their own cost/s to execute and/or register such deeds and documents including but not limited to Deed of Rectification etc. and incorporate the allotment of the said car parking in the agreement and/or in favour of the appellants/complainants within four weeks from today.
3. The respondent nos. 1 and 2/promoters are directed to jointly and/or severally pay the complainants interest at the rate of SBI's Highest Marginal Cost Lending Rate (MCLR) plus 2% on an amount of Rs.8,00,000/- (Rs. Eight Lakhs Only) for not handing over clear, vacant and enjoyable possession of the said car parking to the appellants/complainants from 01.03.2019 till the date of handing over of the car parking space, within four weeks from today, failing which show cause notice will be issued

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as to, why action under section 64 of the Real Estate (Regulation and Development) Act, 2016 should not be initiated against the respondents.

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

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

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