BEFORE THE MAHARASHTRA REAL ESTATE APPELLATE TRIBUNAL MUMBAI

Misc. Application No. 260/23 (Urgent Relief /Possession)
Appeal No. AT006000000134007 of 2022
IN
(Complaint No. CC006000000089896 of 2019)

1. Mr. Aditya Sachdeva)

2. Mrs. Vrishali Mahindroo Sachdeva)
Both residing at B- 1802, Eternity,)
Raheja Reflections, Thakur Village Road,)
Borivali (East), Mumbai 400066.) ... Appellants

-Versus-

1. Acme Housing India Private Limited)
having its registered office address at)
Acme Ghar, 19, K.D. Road, Off. V. M.)
Road, Vile Parle (W),)
Mumbai 400056.)

2. Mr. Pravin Himatlal Doshi)

3. Mr. Munish Pravin Doshi)

4. Mr. Ketan Jayantilal Mehta)

5. Mr. Rajesh Pravin Doshi)

6. Mr. Bhupendra Madhusudhan Doshi)
All (2) to (6) above directors of)
Respondent No. 1 and all having their)
address at Acme Ghar, 19, K.D.)
Road, Off. V. M. Road, Ville Parle (W),)
Mumbai 400056.

7. M/s. Glomore Constructions	)	
A partnership firm, having its place of	)	
business at Vasundhara Building, 4th	)	
Floor, Above Indu Art & Frames, Opp.	)	
Sony Mony, S.V. Road, Vile Parle (W),	)	
Mumbai - 4000056.	)	... Respondents

Adv. Mr. Pranav Khatkul i/b Adv. Janu Gulati for Appellants
Adv. Mr. Harshad Bhadbhade for Respondents

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

RESERVED ON : 24th June 2026
PRONOUNCED ON : 19th August 2026

(THROUGH VIDEO CONFERENCE)

JUDGMENT

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

1. The present Appeal arises from the impugned order dated 08.04.2022 passed by Member-1, Maharashtra Real Estate Regulatory Authority (for short, "the Authority") in Complaint No. CC006000000089896 of 2019. By the said order, the learned Authority directed the Respondent/Promoter to hand over the possession of the subject flat to the Appellants/Allottees and to pay interest for the delayed possession from the agreed date of possession, i.e. 01.01.2019, till the date of full Occupancy Certificate, i.e. 27.03.2021.

2. For the sake of convenience, Appellants will hereinafter be referred to as the "Allottees" and Respondents will hereinafter be referred to as the "Promoters" respectively.

Facts of the Case:

3. The Appellants firstly booked a residential premises Flat/Unit No. 2606 on 26th Floor in 'Oasis Tower-I' and paid a sum of ₹5,00,000/- to Respondent No.7 towards booking amount. Upon seeking cancellation due to personal reasons, the Respondents refused to refund the booking amount and therefore, Appellants were compelled to purchase another flat in the same project by adjusting the said amount. Pursuant thereto, the Appellants agreed to purchase Flat No. 3103, admeasuring 85.55 sq. meters carpet area on 31st Floor, with two car parking spaces, situated in the real estate project known as 'Oasis Tower-II' for a total consideration of ₹1,98,25,757/-.

4. Learned Counsel Mr. Pranav Khatkul appearing for the Appellants/Allottees submitted that the parties executed an Agreement for Sale dated 08.12.2017, wherein agreed date of possession of the subject flat was on or before June 2018, with grace period of six months i.e. 31.12.2018. Respondents/Promoters have failed to hand over possession of the subject flat on the agreed date of Possession. Although the Respondents have obtained Occupation

Certificate on 27.03.2021, possession was not handed over to the Appellants/Allottees until 23.10.2023.

5. Learned Counsel for the Appellants/Allottees further submitted that, the learned Authority erred in recording that possession of the said flat has been offered by the Promoters on 30.03.2021. According to the Appellants/Allottees, the exchange of communication between the parties from 30.03.2021 onwards demonstrated that it was the Appellants who repeatedly sought possession of the said flat, whereas the Respondents/Promoters failed and refused to hand over the said flat.

6. Learned Counsel for the Appellants/Allottees further submitted that, during the pendency of the present Appeal, this Tribunal, by order dated 03.07.2023, directed the Appellants to deposit the balance amount of ₹37,04,497/-, including ₹91,166/- towards one year's advance maintenance charges and the Appellants complied with the said directions on 10.08.2023. Thereafter, further follow-ups by the Appellants, possession of the subject flat was finally handed over on 23.10.2023.

7. Learned Counsel for the Appellants/Allottees further submitted that upon taking possession, the Appellants discovered that the Promoters had failed to clear maintenance charges for the period from the date of Occupancy Certificate until the date of actual

possession. The Appellants/Allottees were consequently required to pay ₹36,349/- towards maintenance for the period from the date of possession up to 31.03.2024 and have continued to pay maintenance charges thereafter.

8. Learned Counsel for the Appellants/Allottees further submitted that the provisions of Section 18 of the RERA Act, 2016 mandate payment of interest where the Promoter fails to hand over possession within the agreed date as per the Agreement for Sale. The statutory entitlement of interest for delay in handing over possession by the Promoter is not subject to any waiver or exception where the delay is not attributable to the Allottee. Therefore, the Promoter cannot avoid its contractual and statutory liabilities under the Agreement for Sale and Sections 18 and 19 of the RERA Act, 2016.

9. In support of the above submissions, the learned Counsel for the Appellants/Allottees relied upon the judgment of the Hon'ble Supreme Court in *M/s Newtech Promoters and Developers Pvt. Ltd. vs. State of UP & Ors.* [2021 SCC OnLine SC 1044], dated 11.11.2021.

10. Learned Counsel for the Appellants/Allottees further submitted that the Respondents have relied upon the MahaRERA Circular dated 18.05.2020, granting extension on account of the COVID-19

pandemic, to claim benefit of moratorium and seek extension of the project completion date. It was submitted that the agreed possession date in the present case was June 2018, whereas the pandemic and consequent nationwide lockdown commenced only in March 2020. The alleged COVID-19 *force majeure* event, therefore, occurred substantially after the contractual possession date expired.

11. Learned Counsel for the Appellants/Allottees further relied upon paragraph 33 of the judgment of the Hon'ble Supreme Court in *M/s. Imperia Structures Ltd. v. Anil Patni and Anr.* [(2020) 10 SCC 783] dated 02.11.2020, wherein it was held that the entitlement of Allottee under Section 18 of the RERA Act 2016, is to be determined with reference to the terms of the Agreement for Sale and is not deferred merely because the project registration with RERA is further extended. Learned Counsel for the Appellants/Allottees also relied upon the judgment of the Hon'ble Bombay High Court in *Neelkamal Realtors Suburban Pvt. Ltd. and Anr. vs. Union of India & Ors.* [(2017) SCC OnLine Bom 9302], dated 06.12.2017 and submitted that extension of the project timeline under RERA does not absolve the Promoter from its contractual liabilities under the Agreement for Sale.

12. Learned Counsel for the Appellants/Allottees further submitted that, the Respondents/Promoters have raised, for the first time in appeal,

a claim of ₹11,26,789/- towards alleged delayed payment by the Appellants/Allottees. It was contended that the Respondents never pleaded or argued before the Authority that the Appellants had delayed payments towards the flat consideration. In this regard, the reliance was placed on the judgment of the Hon'ble Supreme Court in *Ram Sarup Gupta (Dead) through LRs vs. Bishun Narain Inter College & Ors.* [(1987) 2 SCC 555], dated 08.04.1987, wherein it was held that a party cannot be permitted to travel beyond its pleadings, and therefore, the Respondents/Promoters cannot be allowed to raise new grounds at the appellate stage.

13. Without prejudice, the learned Counsel further submitted that the Appellants had not committed any default in payment. According to the Appellants, the Promoters' email dated 05.04.2019 acknowledged receipt of an excess amount of ₹22,88,192/- towards flat consideration and seeking adjustment against the outstanding GST liability of ₹17,59,366/-. As such, all payments were made within the stipulated time and the Respondents' claim for delayed payment interest is denied as it is incorrect.

14. Learned Counsel for the Appellants/Allottees further submitted that the Appellants are entitled to seek interest for the period of delayed possession and reimbursement of maintenance charges and other amounts paid by the Allottees on account of Promoters' default.

Accordingly, the Appellants claimed total amount of ₹67,81,137/-, which includes ₹65,70,365/- towards interest for delayed possession, ₹1,19,606/- towards maintenance charges from the date of Occupancy Certificate i.e. 27.03.2021, until possession, and ₹91,166/- towards advance maintenance and outgoings for one year.

15. Per contra, learned Advocate Mr. Harshad Bhadbhade appearing for the Respondents/Promoters submitted that, the Authority, by the impugned order dated 08.04.2022, directed the Respondents to pay interest on the actual consideration paid by the Appellants from the agreed date of possession, i.e. 01.01.2019 until the date of Occupation Certificate, i.e. 27.03.2021, at the rate of SBI MCLR plus 2% under Section 18 of the RERA Act. The Respondents/Promoters were also granted the benefit of the moratorium period in terms of relevant Notifications/Orders dated 02.04.2020 and 18.05.2020.

16. Learned Counsel for the Respondents/Promoters further submitted that, the Appellants/Allottees had initially intended to purchase Flat No. 2606 in 'Oasis Tower-I' and, at their request, were subsequently allotted Flat No. 3103 in 'Oasis Tower-II' for a total consideration of ₹1,83,26,730/-, out of which ₹1,52,11,187/- has been paid. According to the Respondents, under Clauses 12.1 and 12.5 of the Agreement for Sale, the possession period was extended up to

31.12.2018. It was contended that the delay occurred due to circumstances beyond the control of Respondents/Promoters and covered by the *force majeure* provisions of the Agreement for Sale.

17. Learned Counsel for the Respondents/Promoters further submitted that the delay in completion of the project was attributable to various circumstances, including delays in obtaining TDR approvals, restrictions on development permissions, demonetisation, implementation of GST, shortages of sand, amendments to Development Control Regulations, delays in statutory approvals and the COVID-19 pandemic.

18. Learned Counsel for the Respondents/Promoters further submitted that, according to the Promoters' books of accounts, ₹48,38,400/- remained payable by the Appellants/Allottees, including ₹11,33,903/- towards interest for delayed payment period, in accordance with the Agreement for Sale. So, there was no illegal demand on the part of the Respondents.

19. Learned Counsel for the Respondents/Promoters further submitted that the Promoters had acted in accordance with the Agreement for Sale and the delay, to the extent attributable to the circumstances beyond their control, ought to be excluded while determining the liability under Section 18 of RERA Act, 2016.

20. We have heard learned Advocates appearing for the respective parties. The submissions advanced by the learned Advocates appearing for the respective parties are nothing but reiterations of the contents of the complaint, Affidavit-in-Reply, Appeal Memo and Written Submissions/Arguments.

21. After considering the submissions advanced by the learned Advocates appearing for respective parties, the pleadings of the parties, material placed on record and impugned order, the following points arise for our consideration, and we have recorded our findings thereupon for the reasons as follows.

Sr. Nos.	Points	Findings
1.	Whether the impugned order dated 08.04.2022 passed by Member-1, MahaRERA, in the complaint No. CC006000000089896 of 2019 filed by the Appellants/Allottees, warrants interference in the captioned appeal?	In the affirmative
2.	Whether the Appellants/Allottees are entitled to relief sought in the captioned appeal?	In the affirmative
3.	What order?	As per final order

<u>R E A S O N S</u>

22. Upon examination of the pleadings of the parties, the material placed on record, and the submissions advanced by the learned Counsel appearing for the respective parties, it is revealed that the Appellants/Allottees have booked flat in the real estate project known as 'Oasis Tower-II' and executed an Agreement for Sale dated 08.12.2017 for a total consideration of ₹1,98,25,757/-. It is not in dispute that the Appellants/Allottees have paid an amount of ₹1,51,74,534/- towards the sale consideration, in addition to ₹9,46,400/- towards stamp duty and registration charges. It is also not in dispute that, under the Agreement for Sale, the Respondents/Promoters were required to hand over possession of the subject flat on or before June 2018. However, actual possession was handed over on 23.10.2023. It is pertinent to note that, pursuant to the order dated 03.07.2023 passed by this Tribunal, the Appellants/Allottees have deposited an amount of ₹37,04,497/-, including one year's advance maintenance charges of ₹91,166/-, thereafter possession of the subject flat was handed over to the Allottees.

23. Learned Counsel Mr. Pranav Khatkul, appearing for the Appellants/Allottees, contended that Section 18 of the Real Estate (Regulation and Development) Act, 2016, confers a statutory right upon the Allottee to claim interest for the period of delay, where the

Promoter fails to hand over possession of the subject flat on the agreed date as per the Agreement for Sale. The Promoter is liable to pay interest to the Allottee for the period of delay in handing over possession. We agree with the contention of the Appellants/Allottees. While explaining the scope of Allottee's statutory right under Section 18 of RERA Act, 2016, the Hon'ble Supreme Court, in *M/s Newtech Promoters and Developers Pvt. Ltd. vs. State of UP & Ors.* (supra), 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 withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed."*

It is clearly indicated that the statutory entitlement under Section 18 of the RERA Act arises upon the Promoter's failure to hand over possession within the stipulated period under the Agreement for Sale. Such entitlement is not extinguished because possession is subsequently offered or because the project completion date stands revised by the Regulatory Authority. Thus, the subsequent receipt of Occupancy Certificate or extension of the project's registration and completion period does not take away the accrued right of the Allottee to claim interest for the period of delay.

24. Learned Counsel for the Appellants/Allottees further contended that the Respondents/Promoters' claim for the benefit of moratorium period or any extension granted in respect of the project completion period has no bearing on the agreed date of possession stipulated in the Agreement for Sale. It was contended that the Promoters cannot be absolved of their contractual liability under the Agreement for Sale, merely because the project registration period was subsequently extended or revised. We find considerable merit in the said contention of the Appellants/Allottees. The statutory right accrued to the Allottees under Section 18 of the RERA Act, 2016, on account of delayed possession remains unaffected, despite extension granted to the project registration or completion period.

It is now settled law that if the delay in handing over possession is not attributable to the Allottees/Homebuyers, they are entitled to claim reliefs contemplated under Section 18 of the RERA Act, 2016. The Hon'ble Supreme Court, in *M/s. Imperia Structures Ltd. Vs. Anil Patni & Anr.* (supra), has held that:

> *"In terms of Section 18 of the RERA Act, if a promoter fails to complete or is unable to give possession of an apartment duly completed by the date specified in the agreement, the Promoter would be liable, on demand, to return the amount received by him in respect of that apartment if the allottee wishes to withdraw from the Project. Such right of an allottee is specifically made "without prejudice to any other remedy available to him". The right so given to the allottee is unqualified and if availed, the money deposited by the allottee has to be refunded with interest at such rate as may be prescribed. The proviso to Section 18(1) contemplates a situation where the allottee does not intend to withdraw from the Project. In that case he is entitled to and must be paid interest for every month of delay till the handing over of the possession. It is upto the allottee to proceed either under Section 18(1) or under proviso to Section 18(1)."*

25. In the present case, the agreed date of possession under the Agreement for Sale was on or before June 2018, with grace period of six months, i.e. 31.12.2018. The outbreak of the COVID-19 pandemic and the subsequent nationwide lockdown commenced only in March 2020 and thereafter. Thus, the COVID-19 pandemic occurred substantially after the expiry of the agreed date for handing over possession. Therefore, the Respondents/Promoters cannot claim the COVID-19 pandemic as a force majeure event so as to exclude the period of delay and take benefit of setting-off of interest against the entire period of delay preceding the outbreak of the pandemic.

26. Learned counsel for the Appellants/Allottees further contended that Respondents/Promoters, for the first time in the present appeal, have raised a claim of ₹11,26,789/- towards alleged delayed payment by the Appellants/Allottees. It was contended that no such claim was raised or pleaded by the Respondents/Promoters before the learned Authority. In support of the said contention, reliance was placed upon the judgment of the Hon'ble Supreme Court in *Ram Sarup Gupta (Dead) by LRs vs. Bishun Narain Inter College & Ors.* (supra), wherein it has been held as under:

> *"No party should be permitted to travel beyond its pleadings and all necessary and material facts should be pleaded by the party in support of the case set up by it. The object and purpose of pleading is to enable the adversary party to know the case it has to meet. In order to have a fair trial it is imperative that the party should state the essential material facts so that other party may not be taken by surprise. The pleadings, however, should receive a liberal construction, no pedantic approach should be adopted to defeat justice on hair-splitting technicalities."*

The aforesaid principle is directly applicable to the present case. A plea which was neither raised before the Authority nor formed part of the pleadings, cannot be introduced for the first time at the appellate stage. In such a situation, the opposite party has no opportunity to meet such a plea on facts and evidence.

27. Learned Advocate Mr. Harshad Bhadbhade appearing for the Respondents/Promoters pleaded that the delay in completion of the

project was due to circumstances beyond the control of the Respondents/Promoters. It was contended that the delay was attributable, inter alia, to delay in obtaining TDR approvals, PIL-related restrictions on development permissions, demonetisation, shortages of sand, and implementation of new GST regime. These elements constituted force majeure events under the Agreement for Sale.

28. We have considered the aforesaid contentions. The Respondents/ Promoters have sought to rely upon the COVID-19 pandemic as one of the reasons for the delay. In our considered view, such reliance is far-fetched and misplaced in the facts of the present case. Considering that the possession date as agreed by the parties expired much prior to the COVID-19 pandemic in March 2020. It is not in dispute that, since the project was ongoing on the date of commencement of the RERA Act, 2016, the Promoters have registered the project with MahaRERA and declared the revised possession date as June 2018. It is pertinent to note that, even thereafter, the Promoters have failed to hand over possession of the subject flat by June 2018. Therefore, the COVID-19 pandemic cannot be relied upon to explain or excuse the delay which had occurred prior to March 2020. We, therefore, find no justification to

grant any benefit to the Respondents/Promoters in respect of the delay attributable to the aforesaid grounds.

29. Therefore, for the foregoing reasons, we have come to the conclusion that the Respondents/Promoters are not entitled to claim any extension of the agreed date of possession on account of the alleged revision of DCRs, financial difficulties, and COVID-19 pandemic. Even assuming that the aforementioned grounds are valid and have some substance, then also, as per the settled position of law in *M/s Newtech Promoter and Developers Pvt. Ltd. vs. State of UP & Ors.* (supra), the promoters are not entitled to escape from the liability to pay interest for delayed possession on the basis of these grounds. The Hon'ble Supreme Court has held that if the delay in possession is not attributable to the allottees, they have unqualified right to get interest under Section 18 of RERA Act, 2016 for delay in possession.

30. It is therefore clear that there are no shackles or limitations on the exercise of right of allottees to seek interest once there is violation of provisions of RERA Act, 2016. Moreover, there is nothing on record to establish that delay is attributable to the allottees in the present case under consideration. Apart from this, it is not the case of Respondents/Promoters that Allottees have committed default in paying instalments in accordance with terms of the Agreement for

Sale. The Appellants/Allottees have not committed default in paying the amounts towards consideration value to the Promoters. The promoter fixes date of handing over possession of flats after ascertaining all favourable and unfavourable circumstances for completing construction of the project and post-compliance, i.e. for obtaining the Occupation Certificate. So, the promoter is required to fix due date in anticipation of such adverse circumstances to complete the project. The Promoters, having sufficient experience in the real estate market are expected to be prepared beforehand, not only to deal with such eventualities, but also to act professionally by assessing the time by which the promoters after overcoming likely mitigating factors, would be able to complete the project and give possession. The promoters accordingly have to mention reasonable date of possession while issuing allotment letters or by executing the Agreement for Sale. In our opinion, it is the Promoters who have the ability to assess the likely date of completion of subject project considering all likely factors that could delay the completion of the project. Considering the liability of Promoters in the above situation, it is made clear that the allottees have very limited liability of discharging their own obligations as per the terms of the Agreement for Sale *inter alia* relating primarily to make payments from time to time so that project should not be starved of funds to cause delay in completion of the project. The Allottees can be held responsible only if they fail to discharge their obligations as per the Agreement for Sale. If the Allottees are not responsible for delay, they are entitled to get reliefs under Section 18 of RERA Act, 2016 and cannot be saddled with the consequences for delay in completing the project.

31. For the foregoing reasons, the impugned order dated 08.04.2022 passed by Member-1, MahaRERA warrants interference in the captioned appeal. We therefore answer point Nos. 1 and 2, and accordingly, we proceed to pass following order: -

O R D E R

1. Appeal No. AT006000000134007 of 2022 is partly allowed.
2. The Respondents/Promoters are directed to pay interest for delayed possession to the Appellants/Allottees from the agreed date of possession i.e. 01.01.2019, until the actual date of possession i.e. 23.10.2023, on the actual amount paid by the Appellants/Allottees towards consideration of the said flat, within one month from the date of this order, at the rate of Marginal Cost of Lending Rate (MCLR) of SBI plus 2%, as prescribed under the provisions of Section 18 of RERA Act, 2016 and Rules made thereunder.

3. In the event of failure on the part of Respondents/Promoters 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.
4. The Respondents/Promoters are directed to pay cost of Rs.25,000/- to the Appellants/Allottees.
5. Pending Miscellaneous application, if any, stands disposed of.
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