BEFORE THE MAHARASHTRA REAL ESTATE APPELLATE TRIBUNAL MUMBAI

Appeal No. AT006000000134063 of 2022

IN

Complaint No. CC006000000192464

Vikas Bhauwala)
403/404, Building-J,)
Palm Court Complex, Link Road,)
Malad (West), Mumbai - 400064.) ... Appellants

~VS~

1. Sahyog Homes Limited)
Limited Company incorporated)
As per the provision of Indian Companies)
Act 1956, having address At)
321 Morya Estate, New link Road,)
Opp. Infinity Mall, Andheri West,)
Mumbai 400 053.)

2. Sankalp Siddhi Developers Private Limited)
Private Limited Company)
Incorporated as per the provision of)
Indian companies Act 1956, having)
their office at A-3 Rajpipla,)
Opp Standard Charted Bank,)
Linking Road, Santacruz (West),)
Mumbai- 400 054.) ... Respondents

ALONGWITH

Appeal No. AT006000000134074 of 2022

IN

Complaint No. CC006000000192380

Mr. Shushil Rajpal)
D1/16, Flat no. 402, Yamuna Magar,)
Link Road, Andheri (West),)
Mumbai 400053.) ... Appellant

~VS~

1. Sahyog Homes Limited)
Limited Company incorporated)
As per the provision of Indian Companies)
Act 1956, having address At)
321 Morya Estate, New link Road,)
Opp. Infinity Mall, Andheri West,)
Mumbai 400 053.)

2. Sankalp Siddhi Developers Private Limited)
Private Limited Company)
Incorporated as per the provision of)
Indian companies Act 1956, having)
their office at A-3 Rajpipla,)
Opp Standard Charted Bank,)
Linking Road, Santacruz (West),)
Mumbai - 400 054.) ... Respondents

Adv. Mr. Sanjeev R. Singh for the Appellants in both the matters

Adv. Mr. Makarand Raut for Respondent No.1 in both the matters

None for Respondent No.2 in both the matters (ex-parte)

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

RESERVED ON : 30th June 2026
PRONOUNCED ON : 31st August 2026

(THROUGH VIDEO CONFERENCE)

JUDGMENT

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

1. Being dissatisfied with the common impugned order dated 29.08.2022 passed by the learned Member-1, Maharashtra Real Estate Regulatory Authority (for short, "learned Authority") in Complaint Nos. CC006000000192464 and CC006000000192380 filed by the Complainants/Allottees, the Allottees have preferred the captioned Appeals, thereby challenging the impugned order on the grounds set out in the Appeals.

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".

3. The Respondent Nos. 1 and 2 are the 'Promoters' of the project known as 'Verona', bearing Project Registration No. P51800003040, situated at Oshiwara, Andheri, Mumbai.

4. The brief facts culled out from the pleadings of the parties, impugned order and material on record reveal that the Appellants/

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Allottees, relying upon the advertisements and representations made by the Respondents/Promoters, have booked flats admeasuring 1,000 sq. ft and 1,001 sq. ft., respectively, in the building known as 'BBJ Roma' proposed to be constructed on the said property. The Appellants/Allottees have paid consideration amounts of ₹20,00,000/- and ₹19,30,500/-, respectively, towards total consideration of ₹92,23,500/- and ₹57,20,000/-. Allotment Letters dated 12.10.2010 and 15.12.2007 were executed by and between the parties. It was agreed between the parties that the Respondents/Promoters would execute Agreements for Sale at a later date upon receipt of the Title Certificate and Commencement Certificate in respect of the sale building of the said project.

5. Learned Advocate Mr. Sanjeev R. Singh, appearing for the Appellants/Allottees, submitted that sometime in the year 2007, the Respondents/Promoters have promoted a real estate project for construction of a building known as 'BBJ Roma' on the land bearing CTS No. 1/c(pt), 397, 3971 to 12, 398, 398/1, 399(pt), 400(pt), 405(pt), 406, 407(pt), 408(pt), 410C(pt), 218(pt), 219(pt), 220 & 376, 377, 379, 380 of Village Oshiwara, Taluka Andheri, Registration District and Sub-district of Mumbai Suburban. It was submitted that, at the relevant time, the Respondents/Promoters had obtained

Letter of Intent (LOI) dated 08.12.2006 from the Slum Rehabilitation Authority (SRA) for development of the said property.

6. Learned Counsel for the Appellants/Allottees further submitted that, during the years 2008-2009 and 2010-2011, the Allottees had approached the Respondents/Promoters on numerous occasions to ascertain the progress of work on the said project. However, on each occasion, the Respondents and their representatives assured the Allottees that they had obtained the requisite permissions and approvals for construction of the said building and that the construction work would resume shortly. It was submitted that, the Respondents have given false assurances and made promises which were never fulfilled, and the Appellants, being innocent flat purchasers, had relied upon such representations. However, the Appellants/Allottees were shocked and surprised to receive letters dated 26.07.2017 and 27.07.2017 from the Respondents stating that, it was difficult to proceed with the project as the plot on which the project was proposed to be constructed was occupied by various slum dwellers. By the said letters, the Respondents/Promoters purportedly sought to cancel the said Allotment Letters, which, according to the Appellants/Allottees, was contrary to the provisions of the Real Estate (Regulation and Development) Act, 2016.

7. The Appellants/Allottees alleged that the Respondents/Promoters' contention that the project land was occupied by slum dwellers was false and frivolous, as the very same landed property was being developed under the name of 'BBJ Verona' 'BBJ Lamor' and 'Sahyog Oshi'. Upon further inquiry, the Appellants came to know that the Respondents have executed Development Agreement dated 09.07.2012 in respect of the very same property upon which the flats have been allotted to the Appellants/Allottees pursuant to the Allotment Letters dated 12.10.2010 and 15.12.2007, respectively. The said Development Agreement was executed between Respondent No.1 and Respondent No.2.

8. Learned Counsel for the Appellants/Allottees further submitted that a perusal of the said Development Agreement revealed that the said documents were executed in respect of the sale buildings bearing Nos. S1 to S4. The Development Agreement further disclosed that buildings No. S1 and S2 comprised approximately 2,17,000 sq. ft., whereas building Nos. S3 and S4 comprised approximately 1,95,869 sq. ft. of free-sale area. It was further submitted that the Respondents have commenced construction of more than four buildings known as 'BBJ Lamor'.

9. Learned Counsel for the Appellants/Allottees further submitted that the Appellants/Allottees have issued a legal notice dated 24.07.2018

to the Respondents and their Directors, seeking details regarding the project and the likely date of handing over possession of the subject flats to the Appellants/Allottees. In response to the said legal notice, Respondent No.1, through its Advocate's notice dated 24.09.2018, stated that, it was making efforts to obtain various permissions and approvals for construction of the project 'BBJ Roma' and the permissions could not be obtained for various reasons. It was further stated that the plot on which the building was proposed to be constructed was occupied by slum dwellers and that there appeared to be no likelihood of the plot being vacated in the near future. In fact, the Respondents/Promoters also sought to cancel the Allotment Letters dated 12.10.2010 and 15.12.2007, respectively.

10. Learned Counsel for the Appellants/Allottees further submitted that the Respondents/Promoters have remained silent with regard to the sale-component buildings which were already being constructed along with rehabilitation buildings. It was submitted that the Respondents/Promoters have started construction of buildings S1 to S4 as per the Development Agreement dated 09.07.2012, by utilizing the FSI of the very same plot. According to the Appellants/Allottees, with a view to avoiding the obligations arising from the Allotment Letters dated 12.10.2010 and 15.12.2007, respectively, issued to the Appellants/Allottees and other flat

purchasers, the Respondents have merely changed the name of the building from 'BBJ Roma' to 'BBJ Verona', 'BBJ Lamor & Sahyog Osho', which projects were being constructed and the very same property in respect of which the Allotment Letters have been issued.

11. Learned Counsel for the Appellants/Allottees further submitted that, under the provisions of Section 13 of Real Estate (Regulation and Development) Act, 2016 (for short, "RERA Act"), a promoter is prohibited from accepting a sum exceeding 10% of the cost of flat/apartment from a purchaser without first entering into written Agreement for Sale. It was submitted that, admittedly, the Respondents/Promoters have received more than 20% of the consideration amount but have failed to execute registered Agreement for Sale. It was further submitted that, as per the provisions of Section 61 of the RERA Act, a promoter who contravenes any provision of the Act is liable to a penalty which may extend to 5% of the estimated cost of the real estate project, as determined by the Authority. Further, the Respondents/Promoters have also failed and neglected to inform the Appellants/Allottees of the likely date on which peaceful possession of the subject flats would be handed over.

12. Learned Counsel for the Appellants/Allottees further submitted that, the Authority had erroneously recorded that the complaints had

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been filed in respect of the project 'BBJ Verona' and had granted liberty to the Appellants/Allottees to approach MahaRERA as and when the project known as 'BBJ Roma' was registered with MahaRERA in future. On that basis, the Authority allowed the applications filed by the Respondents/Promoters questioning the maintainability of the complaints. It is further submitted that, in earlier Complaint No. CC006000000057433, titled *Viloo Keki Italia vs. M/s. Sahyog Homes Ltd. & 18 Ors.,* the Authority had held and accepted that the Complainants therein were Allottees of project 'BBJ Roma'.

13. Per contra, Advocate Mr. Makarand V. Raut, appearing for the Respondent No.1/Promoter, submitted that the Appellants/Allottees have failed to demonstrate any infirmity in the impugned order dated 29.08.2022 passed by the MahaRERA or to place on record any documentary evidence establishing maintainability of the complaints in the absence of registration of the project. The Authority has rightly held that the project 'BBJ Roma' was not registered with MahaRERA and did not bear any RERA registration number. As a result, the complaints filed by the Appellants as Allottees of the project 'Verona' bearing Registration No.P51800003040 were misconceived.

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14. Learned Counsel for the Respondent No.1/Promoter further submitted that, during the early planning stage, the project 'BBI Roma' formed part of the proposed development of lands bearing CTS Nos. 1/C(3)(pt), 385(pt), 396, 396/1 to 5, 397, 397/1 to 12, 398, 398/1, 399(pt), 400(pt), 405(pt), 406, 407(pt), 408(pt), 410/C(pt), 376, 376/1, 377, 379, 380, 381 and 218 Survey No.24/4, 24/6 and 24/6 of Village Oshiwara, Jogeshwari (W), Taluka Andheri, Mumbai. It was further submitted that the Respondents had initially proposed to develop the said property along with adjoining lands and had planned to construct seven (7) rehabilitation buildings and six (6) sale component buildings thereon. The Slum Rehabilitation Authority (SRA) has approved layout plans for development of the said property from time to time. The Appellants/Allottees, being aware of the aforesaid facts and having understood the nature of the proposed development, have signed and executed the Reservation Letters.

15. Learned Counsel for the Respondent No.1/Promoter further submitted that, the project 'BBJ Roma' was one of the sale building, along with other sale buildings viz. 'Verona', 'Sahyog Oshi', 'Ahuja' Lamor' each having a separate registration certificate. Admittedly, the project 'BBJ Roma' was not registered with MahaRERA and did not have any registration certificate. The Appellants/Allottees have

filed the complaints with MahaRERA, under the project registration number of 'Verona' i.e. No. P51800003040, which was entirely different from the project 'BBJ Roma'.

16. Learned Counsel for the Respondent No.1/Promoter further submitted that, Section 4 of the RERA Act, 2016, prescribes mandatory requirements for registration of a real estate project, including submission of layout plans, sanctioned plan, commencement certificate, and specifications of the proposed project sanctioned by the competent Authority. Unless the requisite mandatory requirements are fulfilled by the Promoters, an application for registration cannot be entertained by MahaRERA. It was submitted that the Respondents/Promoters have not obtained the requisite permissions from the concerned authorities for development and construction of the buildings forming part of the project 'BBJ Roma' and therefore, the mandatory requirements under Section 4 of the RERA Act had not been fulfilled. Consequently, according to the Respondents/Promoters, 'BBJ Roma' could not be treated as a real estate project as defined under Section 2(zn) of the RERA Act, 2016.

17. Learned Counsel for the Respondent No.1/Promoter further submitted that, the Appellants/Allottees have made misleading statements before MahaRERA regarding the project 'BBJ Verona'

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being registered with MahaRERA under Project Registration No. P51800003040. According to the Respondents, the said statement was false and incorrect, as the said project registration number pertained to another project, namely 'Verona'. Since the Appellants were admittedly not Allottees of the project 'Verona', the complaints were not maintainable. It was therefore submitted that MahaRERA has rightly dismissed the complaints of the Appellants by the impugned order.

18. We have heard learned Advocate Mr. Sanjeev R. Singh, appearing for the Appellants/Allottees, and learned Advocate Mr. Makarand V. Raut, appearing for Respondent No.1/Promoter. Respondent No.2 has been proceeded against *ex parte*. The submissions advanced by the learned Advocates appearing for respective parties are nothing but reiterations of the contents of the complaints, Affidavit-in-Replies, Appeal Memos and Written Submissions.

19. Learned Advocate Mr. Sanjeev R. Singh appearing for the Appellants/Allottees placed reliance upon the following judgment:

In the case of *M/s Newtech Promoters and Developers Pvt. Ltd. vs. State of UP & Ors.* [2021 SCC OnLine SC 1044], dated 11.11.2021, passed by the Hon'ble Supreme Court.

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20. Learned Advocate Mr. Makarand V. Raut, appearing for the Respondent No.1/Promoter, placed reliance upon the following judgments:

    i. In the case of *Mangal Murti Foundation vs. Shree Mahavir Patwa Developers & Construction Pvt. Ltd* [Appeal No. U-15 in SC10000593] dated 13.07.2020 passed by the Maharashtra Real Estate Appellate Tribunal, Mumbai.

    ii. In the case of *Macrotech Developers Limited (earlier known as Lodha Developers Ltd.) vs. The State of Maharashtra & Ors.* [2021 SCC OnLine Bom 3718] dated 01.03.2021 passed by the Hon'ble Bombay High Court.

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

Sr. Nos.	Points	Findings
1.	Whether the Appellants are Allottees of the project 'Verona'?	In the affirmative
2.	Whether the Appellants/Allottees are entitled to the reliefs sought in their respective Complaints and Appeals?	In the affirmative

3.	Does the common impugned order warrants interference in the captioned Appeals?	In the affirmative
4.	What Order?	As per final Order

REASONS

22. Upon careful consideration of pleadings of the parties, submissions advanced by the learned Counsel appearing for the respective parties and the material placed on record, revealed that the Appellants/Allottees have booked flats in the real estate project known as 'BBJ Roma', situated at Village Oshiwara, Andheri, developed by the Respondents/Promoters. Allotment Letters dated 12.10.2010 and 15.12.2007, respectively, were executed between the parties, wherein the total consideration of ₹92,23,500/- and ₹57,20,000/-, respectively, was agreed upon by the parties. It is pertinent to note that, pursuant to the execution of the said Allotment Letters, the Appellants/Allottees have paid part consideration of ₹20,00,000/- and ₹19,30,500/-, respectively, towards consideration of the subject flats. However, the said Allotment Letters did not specify any date for handing over possession of the subject flats. It is further pertinent to note that the Allotment Letters recorded that the Respondents/Promoters had

agreed to execute Agreements for Sale at a later date upon receipt of the Commencement Certificate in relation to the said project.

23. The Appellants/Allottees, sometime in the year 2007, were looking for residential accommodation and came across the Respondents' advertisement and representation in respect of the real estate project known as 'BBJ Roma'. Thereafter, pursuant to the negotiations between the parties, the Appellants/Allottees agreed to purchase the subject flats in the real estate project 'BBJ Roma', proposed to be constructed on land bearing CTS No. 1/c(pt), 397, 3971 to 12, 398, 398/1, 399(pt), 400(pt), 405(pt), 406, 407(pt), 408(pt), 410C(pt), 218(pt), 219(pt), 220 & 376, 377, 379, 380 situated at Village Oshiwara, Andheri.

24. Learned Advocate Mr. Makarand V. Raut, appearing for the Respondent No.1/Promoter contended that the said project 'BBJ Roma' was not registered with MahaRERA and the Appellants/Allottees had filed the complaints claiming themselves to be Allottees of the project 'Verona', bearing Registration No. P51800003040. It was contended that 'BBJ Roma' and 'Verona' were two distinct projects and, therefore, the Appellants/Allottees could not be considered as Allottees of the real estate project known as 'Verona' which was registered with MahaRERA.

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25. It is worthy to note that, in its advertisements and Allotment Letters, Respondent No.1/Promoter has mentioned that the project 'BBJ Roma' was being developed on land bearing CTS Nos. 1/C(pt), 397, 3971 to 12, 398, 398/1, 399(pt), 400(pt), 405(pt), 406, 407(pt), 408(pt), 410C(pt), 218(pt), 219(pt), 220 & 376, 377, 379, 380 situated at Village Oshiwara, Andheri.

26. A close scrutiny of the Registration Certificates of the projects 'Verona' and 'BBJ Roma' reveals that both projects pertain to the same parcels of land. Further, the Commencement Certificate dated 11.03.2011 mentions the project land as being situated at Oshiwara, Andheri.

27. A perusal of the particulars of the project land in the real estate project registered with MahaRERA as 'Verona' and the project land specified in the Allotment Letters reveals that they are identical to the project land represented in respect of 'BBJ Roma'. Therefore, we are of the view that the project land pertaining to 'Verona' is the very same land as represented in the Allotment Letters dated 12.10.2010 and 15.12.2007, respectively, issued by Respondent No.1, wherein the project was represented as 'BBJ Roma'. It is pertinent to note that registration of a real project is linked to the project land and not merely to the name of the building. In the present case, the requisite permissions, RERA registration and

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commencement certificate have been issued in respect of the same project land. Merely because the name of the project or building may be different, the underlying project land remains one and the same. Therefore, the identity of the project is required to be determined with reference to the underlying project land and not merely by the name of the building.

28. We, therefore, conclude that the project land shown in the registration of the project 'Verona' is identical to the project land described in the Allotment Letters and the Commencement Certificate issued in respect of the project 'BBJ Roma'. Hence, the said Allotment Letters pertain to the said project 'Verona,' which is registered with MahaRERA, irrespective of whether the project is referred to as 'BBJ Roma' or 'Verona', since the underlying project land is one and the same. Accordingly, changing the name of the building cannot defeat the statutory rights accrued to the Allottees by virtue of the Allotment Letters and the various provisions of the RERA Act, 2016.

29. It is worthy to note that the order dated 05.12.2019 passed by the Authority, having identical factors and which have been referred and reproduced in paragraph 17 of the impugned order, specifically records that "the SRA, being planning authority/competent authority, has sanctioned layout plan in which same project has been

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shown and sell buildings have been mentioned as 'S2', 'S4', etc. The aforesaid observation makes it clear that the name of the buildings is not a material factor for determining the identity of the project. What assumes significance is the underlying project land on which the project is registered. Resultantly, the status of the Appellants as 'Allottees' is required to be determined with reference to the project land and the Allotment Letters issued to them.

30. Since the project land recorded in the Project Registration Certificate of the real estate project 'Verona' is the same land as represented to the Appellants/Allottees in the Allotment Letters and the Commencement Certificate issued in the year 2010, we are of the considered view that the Appellants are 'Allottees' of the project 'Verona' registered with MahaRERA under Project Registration No. P51800003040. The material placed on record establishes beyond doubt that the said project land is the same as that mentioned in the Allotment Letters.

31. A scrutiny of the said Allotment Letters reveals that the name of the project, particulars of the project land, area of the flats, consideration amounts, payment schedules and other terms and conditions have been specifically set out therein. Thus, the said Allotment Letters contain all the essential ingredients of a valid and

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concluded contract. The said Allotment Letters also fulfil the requirements contemplated under Section 2(c), (d) and (e) of the RERA Act, 2016, wherein the terms 'Agreement for Sale' and the 'Allottee' are defined.

32. Clause (a) of Section 2 of the Contract Act, 1872, deals with a proposal, whereas Clause (b) of Section 2 thereof speaks of a promise. Clause (a) of Section 2 provides that when one person signifies to another his willingness to do or to abstain from doing anything, with a view to obtaining the assent of that other to such act or abstinence, he is said to make a proposal. Clause (b) of Section 2 provides that when a person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted. A proposal, when accepted, becomes a promise.

33. On careful examination of the Allotment Letters, the acceptance of payments by the Promoters pursuant thereto and the receipts of such payments reveal a clear picture as contemplated under Clauses (a) and (b) of Section 2 of the Contract Act, 1872. Therefore, we are of the view that the said Allotment Letters constitute valid and concluded contracts and enforceable in law, including the provisions of RERA Act, 2016.

34. It is pertinent that the Allotment Letters were issued prior to the enactment and coming into force of the RERA Act, 2016. However,

merely because the Allotment Letters were executed prior to the coming into force of the RERA Act, 2016, their enforceability is not thereby extinguished. In view of the settled position that the RERA Act is retroactive in its operation in respect of ongoing projects, and since the subject project is registered with MahaRERA under the provisions of RERA Act, 2016, the said Allotment Letters are enforceable under the provisions of the said Act.

35. The Hon'ble Supreme Court in *M/s. Newtech Promoters and Developers Pvt. Ltd. V/s. State of U.P. & Ors.* (supra) has held that the RERA Act, 2016 is retroactive in its operation and held in paragraph Nos. 37, 41 and 45 as under:

> *"37. Looking to the scheme of Act 2016 and Section 3 in particular the of which a detailed discussion has been made, all "ongoing projects" that commence prior to the Act and in respect to which completion certificate has not been issued are covered under the Act. It manifests that the legislative intent is to make the Act applicable not only to the projects which were yet to commence after the Act became operational but also to bring under its fold the ongoing projects and to protect from its inception the inter se rights of the stake holders, including allottees/home buyers, promoters and real estate agents while imposing certain duties and responsibilities on each of them and to regulate, administer and supervise the unregulated real estate sector within the fold of the real estate authority.....*
> *41. The clear and unambiguous language of the statute is retroactive in operation and by applying purposive interpretation rule of statutory construction, only one result is possible, i.e. the legislature consciously enacted a retroactive statute to ensure sale of plot, apartment or*

building, real estate project is done in an efficient and transparent manner so that the interest of consumers in the real estate sector is protected by all means and Sections 13, 18(1) and 19(4) are all beneficial provisions for safeguarding the pecuniary interest of the consumers/allottees. In the given circumstances, if the Act is held prospective then the adjudicatory mechanism under Section 31 would not be available to any of the allottee for an on-going project. Thus, it negates the contention of the promoters regarding the contractual terms having an overriding effect over the retrospective applicability of the Act, even on facts of this case.....

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

The subject project was ongoing when the RERA Act, 2016 came into force and the said project is therefore registered with MahaRERA under the provisions of RERA Act, 2016. In the light of the above exposition of law in the case of *M/s. Newtech Promoters and Developers Pvt. Ltd. V/s. State of U.P. & Ors.* (supra) and Allotment Letters which were executed prior to coming into force of the RERA Act, 2016 can be enforced under the provisions of RERA



Act, 2016. Hence, we are of the considered view that the Appellants are entitled to seek relief under the provisions of RERA Act, 2016 even though the said Allotment Letters were executed prior to RERA Act, 2016 coming into force.

36. The Allotment Letters reveal that the Promoter has not specified any date of possession. In the case of *M/s. Fortune Infrastructure (Now known as M/s. Hicon Infrastructure) & Anr. V/s. Trevor D'Lima & Ors.* [(2018) 5 SCR 273] wherein the Hon'ble Apex Court in the facts of that case held that if the date of possession is not mentioned in the agreement, the Promoter is expected to hand over the possession of the unit within a reasonable time and the period of three years is held to be reasonable time. In the present case, the Allotment Letters are dated 12.10.2010 and 15.12.2007 respectively. Therefore, we are of the view that the due date of possession would reasonably be three years from the respective dates of Allotment Letters i.e. 12.10.2013 and 15.12.2010 respectively.

37. It is pertinent to note that the Allotment Letters were issued in the year 2010 and 2007 respectively, however the Respondents/Promoters failed to execute Agreements for Sale. Section 4 of the Maharashtra Ownership Flats Act, 1963 (for short "MOFA") casts an obligation on the Promoter that the Promoter shall not accept the sum of money as advance part consideration or

deposit which will be more than 20% of the sale price without entering into a written agreement for sale and Agreement for Sale shall be registered under the Registration Act, 1908. Section 13 of the RERA Act, 2016 also casts a similar obligation that the Promoter shall not accept any sum of more than 10% of the purchase price from the Allottees without first entering into registered Agreement for Sale. Therefore, the Promoter violated the provisions of Section 4 of MOFA, 1963 and Section 13 of the RERA Act, 2016. The Allotment Letters also reveal that there is no specific date of possession mentioned. As per Section 4(A)(a)(ii) of MOFA, the Promoter is obligated to mention the date of possession of the flat by which the Promoter would be handing over possession to the Allottees. Therefore, there is contravention of the said provisions by the Respondents/Promoters.

38. It is worthy to note that, in the prayer clause, the Appellants/Allottees, *inter alia*, sought to quash and set aside the impugned order dated 29.08.2022 and to restore the complaints to learned Member-1, MahaRERA, for hearing and disposal on merits within a time-bound period.

Admittedly, in the complaints filed before the learned Authority, the Appellants/Allottees have sought a direction to the Respondents to execute and register Agreements for Sale in respect of 3BHK Flats

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admeasuring 1,000 sq. ft and 1,001 sq. ft., respectively, on the basis of the Allotment Letters dated 12.10.2010 and 15.12.2007, respectively, in any of the buildings namely "BBJ Verona", "BBJ Lamor" and "Sahyog Oshi", under construction on the said property, in compliance with the statutory obligation under Section 13 of RERA Act, 2016.

It is further pertinent to note that, apart from seeking remand of the Appeals to the learned Authority, the Appellants/Allottees, in their complaints, have also sought reliefs, including execution of Agreements for Sale and payment of balance consideration amounts on handing over possession of the subject flats upon completion of construction and delivery of physical possession thereof. In the aforesaid circumstances, the moot question that arises for our consideration is whether this Tribunal, in exercise of its appellate jurisdiction, can grant substantive reliefs sought by the Appellants/Allottees in their original complaints, notwithstanding that such reliefs have not been specifically sought in the prayer clauses of the present appeals.

39. Order 41 Rule 24 of the Code of Civil Procedure, 1908 (for short "CPC"), empowers the Appellate Court to determine the matter finally where the evidence upon the record is sufficient to enable the Appellate Court to pronounce judgment, notwithstanding that the

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judgment of the Court from whose decree the appeal is preferred has proceeded wholly upon some ground other than that on which the Appellate Court proceeds.

40. Order 41 Rule 33 of the Code of Civil Procedure, 1908 deals with the Powers of Court of Appeal. It provides as under:-

> *"33. **Power of Court of Appeal**.-The Appellate Court shall have power to pass any decree and make any order which ought to have been passed or made and to pass or make such further or other decree or order as the case may require, and this power may be exercised by the Court notwithstanding that the appeal is as to part only of the decree and may be exercised in favour of all or any of the respondents or parties, although such respondents or parties may not have failed any appeal or objection, [and may, where there have been decrees in cross-suits or where two or more decrees are passed in one suit, be exercised in respect of all or any of the decrees, although an appeal may not have been failed against such decrees]:*
> *[Provided that the Appellate Court shall not make any order under section 35-A, in pursuance of any objection on which the Court from whose decree the appeal is preferred has omitted or refused to make such order.]"*

41. The language employed in Rule 33 of Order 41 of CPC is wide enough to cover the case. Order 41 Rule 33 vests the Appellate Court with powers to pass any decree and make any order which ought to have been passed or made and to pass or make such further or other decree or the order, as the case may require. The object of Rule 33 of Order 41 is to empower the Appellate Court to do complete justice between the parties. The Appellate Court can

exercise this power in favour of all or any of the respondents, even though such respondent may not have filed any appeal or objection. The sweep of the power under Rule 33 of Order 41 of the Code of Civil Procedure is sufficiently wide to determine any question not only between Appellants and the Respondents, but also between Respondents and Co-respondents. The Appellate Court can pass any decree or order which ought to have been passed in the circumstances of the case. The Appellate Court could also pass such other decree or order as the case may require. The words "as the case may require" used in Rule 33 of Order 41 have been employed in wide terms so as to enable the Appellate Court to pass any order or decree to meet the ends of justice. The Court, however, is required to exercise judicial discretion in determining the questions arising for consideration so as to render complete justice between the parties.

42. If the evidence upon the record is sufficient to enable the Appellate Court to pronounce judgment on all issues or to determine the controversy between the parties finally, the Appellate Court is empowered to pass any decree and make any order which ought to have been passed. It means the Appellate Court has plenary powers to decide all the issues arising in the appeal and, when and where warranted, may grant appropriate reliefs to the parties. It has been

held by the Hon'ble Apex Court in paragraphs 14 and 15 of the judgment in *Mahendra Prasad Agarwal vs. Arvind Kumar Singh & Ors.,* [2026 INSC 175], as under:-

> *"14. There is no doubt about the fact that the "consider jurisprudence", so routinely adopted these days and if we may use the expression - to throw the ball out of the Court, is counterproductive and harms the system. 15. When a claim of a right is legal and justified, relief must follow. The Constitutional or statutory remedies are not intended for academic discourse. If a case deserves relief, it must be granted then and there, unflinchingly if need be. Balancing of equities is not to be confused with avoiding or postponing the relief. These are not matters of law, but of its working and practice. Unlike law and its procedures, good practices that evolve over a period of time are far more precious than written laws, as it is in this practice that we see acceptance and internalization of the spirit of law. It is necessary to recognize, nurture and develop good practices which become habits. These habits come from the shared belief, values and attitudes that breathe vitality into rule of law. Legal culture integrates collective beliefs, fostering habits. It is necessary and in fact compelling to keep our remedies simple, effective and efficient."*

In the present case, the material available on record is sufficient enough to enable this Tribunal to adjudicate the controversy finally. We would like to reiterate that the observations made by learned Member clearly indicate that there is sufficient evidence on record to determine the matter finally. However, the learned Member, instead of examining and appreciating the material available on

record to determine the rights of parties on the merits, proceeded to dismiss the complaints on the grounds of maintainability. This approach in the facts and circumstances of the case would result in prolonging the litigation and compelling the parties to undergo another round of proceedings.

43. In view of the above, we hold that the impugned order dated 29.08.2022, whereby the complaints were dismissed without adjudication of substantive claims of Appellants/Allottees on merits, cannot be sustained in law.

44. Accordingly, the impugned order is unsustainable in the eyes of law and hence warrants interference in these Appeals, and we answer Point Nos. 1, 2 and 3 in the affirmative.

45. For the foregoing reasons, we proceed to pass the following order:

ORDER

1. The Appeal Nos. AT006000000134063 of 2022 and AT006000000134074 of 2022 are partly allowed.
2. The impugned order dated 29.08.2022 passed by the learned Member 1, MahaRERA, is hereby set aside.
3. The Appellants/Allottees are directed to pay the remaining balance consideration amounts within 90 days from the date of this order. In the event of failure to pay the balance consideration amounts within the aforesaid period, the

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Appellants/Allottees shall be liable to pay interest on the outstanding balance consideration amounts at the rate of SBI's Marginal Cost Lending Rate (MCLR) plus 2% per annum to the Respondent No.1/Promoter.

4. The Respondent No.1/Promoter is directed to execute and register Agreements for Sale, in favour of the respective Appellants/Allottees, within 30 days from the date of payment of balance consideration amounts by the Appellants in both the Appeals.

5. The Respondent No.1/Promoter is directed to pay interest on part consideration amounts paid by the Appellants/Allottees from 12.10.2013 and 15.12.2010 respectively, till the date of actual possession of the said flats, at the rate of SBI's Marginal Cost Lending Rate (MCLR) plus 2% per annum.

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

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

V. K. Bhople_

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