BEFORE THE MAHARASHTRA REAL ESTATE APPELLATE TRIBUNAL MUMBAI

Appeal No. AT006000000063838 of 2022
IN
Complaint No. CC006000000196401

1. Ms. Shabnam Singh, and)
2. Mr. Yuvraj Singh)
Through their Authorized Signatory,)
Mr. Devanshu Sharma.)
5904, Duplex Modern HSG Complex,)
Manimajra, Chandigarh - 160101)

Address for the service of all notices:)
C-224, Defence Colony,)
New Delhi - 110024.) ... *Appellants*

: Versus :

a) M/s Omkar Realtors & Developers Pvt.)
Ltd.)

b) Mr. Rajendra Mulchand Varma,)
Director of Respondent No.1 Company)

c) Mr. Babulal Mulchand Varma,)
Director of Respondent No.1 Company)

d) Mr. Gaurav Vishnukumar Gupta,)
Director of Respondent No.1 Company)

e) Mr. Kamal Kishore Gupta Gokalchand,)
Director of Respondent No.1 Company)

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f) Mr. Kaushik Narayan More,)
Director of Respondent No.1 Company)

g) Mr Bhanupratap Ramdhar Singh,)
Director of Respondent No.1 Company)

h) Mr. Rushabh Anantrai Desai,)
Director of Respondent No.1 Company)

i) Mr. Rahul Maroo,)
Chief Executive Officer of Respondent)
No.1 Company)

j) Mr. Tarachand Verma,)
Authorized Signatory of Respondent)
No.1 Company)
Omkar House, Off Eastern Express)
Highway, Opp Sion Chunnabhatti)
Signal, Sion (East), Mumbai,)
Maharashtra - 400022) *... Respondents*

Appearances:
Adv. Ms. Ritwika Nanda for Appellants
Adv. Ms. Sonali Jain for Respondent Nos. 1(a) to 1(i)

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

RESERVE ON : 09TH JULY, 2026

PRONOUNCED ON : 06TH OCTOBER, 2026

(THROUGH VIDEO CONFERENCE)

JUDGMENT

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

1. Being dissatisfied with the impugned order dated 22.02.2022, passed by the learned Member I, Maharashtra Real Estate Regulatory Authority (for short, "the Authority") in Complaint No. CC006000000196401 filed by the Appellants/Allottees, the Allottees have preferred the captioned appeal, thereby challenging the impugned order on the grounds set out in the appeal memo.

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 Respondents are the Promoters of the real estate project known as 'Omkar 1973 Worli' bearing MahaRERA Registration No. P51900003316, situated at Worli, Mumbai.

4. The brief facts, as culled out from the pleadings of the parties, impugned order and material placed on record, revealed that the Appellants/Allottees have booked Flat No. 2901, situated on the 29th Floor of Tower C in the aforesaid project, for a total consideration of ₹38,46,25,000/- (Rupees Thirty-Eight Crore Forty-Six Lakh Twenty-Five Thousand Only) in the year 2014. Pursuant thereto, the Respondents/Promoters have issued a provisional Booking Letter/Allotment Letter dated 16.03.2015, against which the Allottees made a payment of ₹8,01,72,277/- (Rupees Eight Crore One Lakh

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Seventy-Two Thousand Two Hundred and Seventy-Seven Only) being 19.9% of the total consideration value.

5. Learned Advocate Ms. Ritwika Nanda, appearing for the Appellants/Allottees, submitted that the Respondents/Promoters have represented that the Commencement Certificate (CC) for the project had been obtained on 20.10.2011 from the Slum Rehabilitation Authority (SRA). It was further submitted that, as per Clause 19(e) of the Allotment Letter, the possession of the subject flat was to be handed over to the Appellants/Allottees on or before 30.06.2018 and at the latest by 31.12.2018.

6. Learned Advocate appearing for the Appellants/Allottees further submitted that, despite repeated enquiries regarding the progress of construction of the project, the Respondents/Promoters have failed to provide any positive and satisfactory response. Instead, the officials of the Respondents/Promoters attributed the undue delay to various reasons, like liquidity crunch due to demonetisation, changes in tax regime, introduction of GST, and stricter lending norms adopted by banks, etc. It was submitted that, despite having paid ₹8,01,72,277/- towards part consideration, the Respondents/Promoters have neither executed a registered Agreement for Sale nor handed over possession of the subject flat within the agreed period.

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7. It was further submitted that the Appellants/Allottees, having been left with no other option, issued a legal notice dated 27.01.2021 and thereafter approached the Authority by filing the aforesaid complaint.

8. Learned Advocate appearing for the Appellants/Allottees further submitted that the Allotment Letter dated 16.03.2015 had been issued and executed by Respondent No. 10 on behalf of Respondent No. 1, i.e., Company, in favour of the Appellants/Allottees. According to the Allottees, the said Allotment Letter contains the essential terms and conditions of the transaction, including the description of the real estate project, particulars of the subject flat unit number, consideration amount, payment schedule, obligations of the parties, and the stipulated date of possession.

9. It was therefore submitted that, notwithstanding the nomenclature as an 'Allotment Letter', the document contains the essential elements of an Agreement for Sale and records the mutual understanding between the parties. The learned Advocate submitted that the said document substantially satisfies the requirements contemplated under Section 13 of the Real Estate (Regulation and Development) Act, 2016 (for short, "the RERA"). Therefore, it cannot be disregarded merely because it was named as an 'Allotment Letter.'

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10. Learned Advocate appearing for the Appellants/Allottees further submitted that the Allottees have repeatedly followed up with the officials of Respondents/Promoters and have attempted to resolve the matter amicably. However, lack of cooperation by Respondents/Promoters, no effective resolution had arrived.

11. It was submitted that the Authority, in the impugned order, erred in directing the parties to execute a registered Agreement for Sale and providing that, in the event of failure to do so within one month, the amount would become refundable with interest, within a period of three months. According to the Allottees, the principal relief sought before the Authority was refund of the amount paid along with interest, under Sections 12 and 18 (1)(a) of the RERA Act, 2016.

12. Learned Advocate appearing for the Appellants/Allottees further submitted that the project remained incomplete even after the expiry of extended due date of 31.12.2018. Consequently, the Appellants/Allottees have exercised their statutory right to seek refund under Section 18 (1)(a) of the RERA Act on account of the Respondents/Promoters' failure to fulfil their obligation to hand over possession within the agreed period.

13. Learned Advocate appearing for the Appellants/Allottees further submitted that the Authority erred in holding that the Allotment Letter dated 16.03.2015 executed between the parties did

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not qualify as an Agreement for Sale for the purposes of Section 18 (1)(a) of the RERA Act, 2016. According to the Allottees, the said Allotment Letter contained all essential terms of a valid agreement, including identification of the flat, consideration amount, payment schedule, possession date, obligations of the parties and consequences of default. Therefore, it was contended that the said document, though titled as Allotment Letter, fulfils all substantive requirements under Section 13 of the RERA Act and embodies a clear meeting of minds between the parties. The Authority, instead of merely going by nomenclature of the said document, ought to have considered the substance of the document, which was a binding Agreement for Sale in law.

14. Learned Advocate appearing for the Appellants/Allottees further submitted that the Authority failed to properly appreciate the material facts of the instant case and proceeded on the basis of defences raised by the Respondents/Promoters, which according to the Allottees, were vague and unsupported by material facts.

15. It was also further submitted that the Authority failed to consider that the Affidavit-in-Reply was filed only on behalf of the Respondent No.1, i.e. Company, and was signed by a deponent who was not duly authorized by a board resolution. It was further submitted that no separate response was filed by the remaining

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Respondents, including those directly connected with the representations made to the Appellants/Allottees. Despite the aforesaid objections, the Authority proceeded to consider the reply, which according to the Allottees, resulted in an apparent error on the face of the record.

16. Learned Advocate appearing for the Appellants/Allottees further submitted that the Authority failed to adjudicate the main issue raised in the complaint by the Appellants/Allottees, that the Allottees entitlement to refund under Sections 12 and 18 (1)(a) of the RERA Act, 2016. According to the Allottees, instead of granting the main relief sought by the Allottees, the Authority granted consequential/ancillary relief by directing execution of a registered Agreement for Sale, thereby failing to adjudicate the reliefs sought in the complaint.

17. *Per contra*, learned Advocate Ms. Sonali Jain appearing for the Respondent/Promoter Nos. 1(a) and 1(i) submitted that the Affidavit-in-Reply on behalf of Respondents may be treated as their written arguments. It was submitted that, under Clause 19(e) of the Allotment Letter dated 16.03.2015, the dates stipulated therein were merely indicative and not exhaustive. According to the Respondents/Promoters, the due date and extended due date for

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handing over possession were subject to extension in the event of *force majeure* circumstances beyond their control.

18. Learned Advocate appearing for the Respondents/Promoters further submitted that, in accordance with Section 4 of the RERA Act, 2016 read with Rule 4 of the Maharashtra Real Estate (Regulation and Development) (Registration of Real Estate Projects, Registration of Real Estate Agents, Rates of Interest and Disclosures on Website) Rules, 2017, the completion date committed on the MahaRERA website was 30.06.2021. It was therefore contended that the complaint filed by the Appellants/Allottees was premature and the Appellants/Allottees were not entitled to any relief under Section 18 of the RERA Act, 2016.

19. Learned Advocate appearing for the Respondents/Promoters further submitted that, under Clause 19(e) of the said Allotment Letter, extension of possession date in circumstances beyond the control of the Respondents/Promoters. The relevant portion of Clause 19(e) of the aforesaid Allotment Letter is reproduced hereinbelow:

> *"Clause 19(e): "We shall endeavor to handover the possession of the said unit on or before 30th June, 2018 (Due Date') and latest by 31st December,2018 ('Extended Due Date'). The Due Date and the Extended Due Date are merely estimates and shall always stand extended if the completion of the said Project/the said Unit/the said Building or any part thereof is delayed on account of occurrence of events of force majeure or any circumstances beyond our control including but not limited to nay of the following*

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- *Non availability of steel, cement, other building material water or electric supp and/or.*
- *War, civil commotion or any terrorist attack/threat, and/or.*
- *Any notice, order, rule, notification of the Government and/or other public or local or competent authority and/or any other change in law, and/or*
- *Any strike, lock-out bandh or other like cause; and/or*
- *Act of god, which includes earthquake, cyclone, tsunami, flooding and any other natural disaster or unforeseen naturally accruing event and/or*
- *Any change in law and/or changes in the policies of the Government on time to time and/or*
- *Any restraint and/or injunction and/or prohibition order of ay court and/or any other judicial or quasi-judicial authority and/or any statutory or competent authority."*

20. Learned Advocate appearing for the Respondents/Promoters further relied upon Clause 20 of the Allotment Letter and submitted that the parties had expressly contemplated the consequences of failure to handover possession. According to the Respondents/Promoters, subject to *force majeure* circumstances beyond their control, if possession was not handed over by the extended due date and the Allottees have fulfilled their obligations, the Respondents/Promoters were liable to refund on demand the earnest money received, along with interest at the rate of 9% per annum from the date of receipt of such payment till the date of repayment. Clause 20 of the Allotment Letter is reproduced hereinbelow:

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> *"Clause 20: Subject to force majeure circumstances and/or other circumstances beyond our control, ifwe fail to handover the said Unit to you by the Extended Due Date and you have paid all the amounts payable by you hereunder including, interest, if any and performed all your obligations then and in such case, the Developer shall be liable on demand to refund to the Purchaser earnest money paid till that date together with interest at the rate of 9% p.a., on the date of receipt till the date of payment. Upon such refund this Letter of Allotment shall stand cancelled and thereafter neither party shall claim or demand any right against other party under this Letter of Allotment and we shall be able to deal with and dispose of the said Unit to any other person/s as we at deem fit".*

21. Learned Advocate appearing for the Respondents/Promoters further submitted that, the outbreak of COVID-19 pandemic constituted unforeseen circumstance beyond the control of the Respondents/Promoters, due to which the said real estate project was adversely affected. It was further submitted that the Respondent's account became NPA (Non-Performing Asset) resulting in accentuated difficulties in completing the project. It was, therefore, submitted that the Appellants/Allottees were not entitled to claim refund or compensation with interest.

22. Learned Advocate appearing for the Respondents/Promoters further submitted that under Section 18 of the RERA Act, the Appellants were not entitled to claim refund along with interest as the Agreement for Sale was not registered and executed between the parties, therefore, the present Appeal sought to be dismissed.

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23. Learned Advocate appearing for the Respondents/Promoters further submitted that subsequent to the COVID-19 pandemic, the loan accounts of Respondents remained unpaid and were classified as NPA. Thereafter, the Lenders under the Amnesty Scheme initiated proceedings for change of developer and restructuring the project before the appropriate Authorities. It was further submitted that, in accordance with the Rules, the amounts collected from the Allottees were deposited in an escrow account and were not retained by the Respondents/Promoters.

24. Learned Advocate appearing for the Respondents/Promoters further submitted that the Lender, namely "M/s. JC Flowers Asset Reconstruction Pvt. Ltd. (Financial Institution) approached the Slum Rehabilitation Authority (SRA), Mumbai and Member Secretary, Mantralaya, Mumbai, seeking appropriate directions under Section 13(2) of the Slum Act. Pursuant thereto. On 01.04.2025, the Learned Deputy Collector, SRA passed an Order under Section 13(2) whereby Memphis (Omkar) was terminated as Developer in respect of the said scheme and 'M/s Kashyap Buildcon LLP' was appointed as New Developer for implementation of the said scheme.

25. Learned Advocate appearing for the Respondents/Promoters further submitted that subsequent to the aforesaid order dated 01.04.2025, the Respondents/Promoters submitted an application

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seeking cancellation of MahaRERA Project Registration No. P51900003316. It was therefore contended that, in view of the subsequent change, the Respondents/Promoters having ceased to be in the developers of the project, were no longer in a position to execute and register the Agreement for Sale in favour of the Appellants/Allottees or otherwise comply with the impugned order dated 22.02.2022.

26. Learned Advocate appearing for the Respondents/Promoters also submitted that the subsequent events have rendered the present appeal infructuous, and that in view of the order dated 01.04.2025 and change of Promoter, the appeal was liable to be dismissed.

27. Learned Advocate Ms. Ritwika Nanda, appearing for the Appellants/Allottees has placed her reliance on the following judgments/orders of this Tribunal:

a. In the case of *Ruma Mehta and Anr. v. Parorch Developers LLP* [Appeal No. AT006000000053518 of 2021], passed by the Maharashtra Real Estate Appellate Tribunal, decided on 09.06.2026.
b. In the case of *Mr. Mahendra Mehta and Ors. Vs. Omkar Realtors and Developers Private Limited* [Appeal No. AT006000000144304 of 2023], passed by the Maharashtra Real Estate Appellate Tribunal, decided on 08.04.2026.
c. In the case of *Malkeet Singh G. Matharu HUF Vs. Mount Mary Builders and Anr.* [Appeal No. AT006000000063797

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of 2022], passed by the Maharashtra Real Estate Appellate Tribunal, decided on 18.09.2024.

d. In the case of *Mrs. Jyoti K. Narang & Anr. Vs. CCI Projects Pvt. Ltd.* [Appeal No.006000000010841], passed by the Maharashtra Real Estate Appellate Tribunal, decided on 20.03.2019.

e. In the case of *Mr. Jervis Anthony Creado & Anr. Vs. Aishwarya Light Construction Company* [Appeal No. AT006000000052415], passed by the Maharashtra Real Estate Appellate Tribunal, decided on 17.06.2022.

28. After considering the submissions advanced by the learned Advocates appearing for the respective parties, the pleadings of the parties, impugned order, and material placed on record, 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 impugned order dated 22.02.2022 passed by the learned Member I, MahaRERA in complaint No. CC006000000196401, warrants interference in the captioned Appeal?	In the affirmative
2.	Whether the Appellants/Allottees are entitled to the reliefs sought in the captioned Appeal?	In the affirmative
3.	What Order?	As per final Order

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REASONS

29. 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, it is clearly established that the Appellants/Allottees have paid a substantial amount of ₹8,01,72,277/- (Rupees Eight Crore One Lakh Seventy-Two Thousand Two Hundred and Seventy-Seven Only) towards consideration of the subject flat. It is also not in dispute that, under Clause 19 (e) of the said Allotment Letter, the Respondents/Promoters had undertaken to handover possession on or before 30.06.2018 and, at the latest, by 30.12.2018. Admittedly, the said real estate project was not yet completed, and possession was not handed over even by the extended date, i.e. 31.12.2018. It is also not in dispute that, despite receiving part consideration from the Appellants/Allottees, the Respondents/Promoters did not execute an agreement in respect of the subject flat.

30. Learned Advocate Ms. Sonali Jain, appearing for the Respondents/Promoters, contended that the possession date mentioned in the Allotment Letter dated 16.03.2015 was merely indicative and Clause 19(e) of said Allotment Letter permitted extension of due date upon occurrence of specific events beyond the control of the Respondents/Promoters. It was further contended that

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the complaint was premature, as the date of possession, in respect of the subject real estate project, reflected on the MahaRERA website was 30.06.2021 and the complaint had been filed prior to the said date. It was, therefore, submitted that the Appellants/Allottees were not entitled to the relief under Section 18 of the RERA Act, 2016.

31. Learned Advocate appearing for the Respondents/Promoters further contended that the Allotment Letter was merely provisional and did not constitute a concluded contract and, therefore, its terms could not be relied upon by the Appellants/Allottees. The said contention of the Respondents/Promoters is devoid of merit. The mere fact that the parties were required to execute a formal Agreement for Sale would not *ipso facto* efface the rights and obligations created under the Allotment Letter. Section 2(a) of the Indian Contract Act, 1872, defines a 'proposal', while Section 2(b) provides that when the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted and becomes a 'promise'. Further, Section 8 of the Indian Contract Act, 1872, provides that performance of conditions of a proposal, or acceptance of consideration offered with a proposal, constitutes acceptance thereof.

32. In the present case, the Allotment Letter dated 16.03.2015 identifies the subject flat and the project, stipulates the consideration

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amount payable, payment obligations and the possession date. The Respondents/Promoters have not disputed either the issuance of the Allotment Letter or receipt of a substantial amount as consideration from the Appellants/Allottees. Therefore, we are of the view that, irrespective of the nomenclature given to the document, the transaction between the parties had crystallized into enforceable obligations in respect of the subject flat. The subsequent failure of the Respondents/Promoters to execute a registered Agreement for Sale cannot be permitted to defeat the rights arising from the Allotment Letter and financial transaction thereof. We, therefore, find that the Allotment Letter together with the financial transaction constitute sufficient ground to establish the contractual relationship between the parties for the purpose of determining the rights of the Appellants/Allottees under RERA Act, 2016.

33. Learned Advocate appearing for the Respondents/Promoters further contended that in the absence of a registered Agreement for Sale, the Appellants/Allottees cannot invoke Section 18 of the RERA Act, 2016. We do not find merit in the said contention. The Allotment Letter dated 16.03.2015 records the identity of the project, the consideration payable, the payment obligations and the stipulated period for handing over of possession. Therefore, the contractual obligations arising out of the Allotment Letter cannot be simply

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ignored on the basis of the nomenclature of the document. The fact that the said Allotment Letter contains several essential terms establishes the contract entered into by the parties. The Authority was therefore required to examine the rights of Allottees arising out from the transaction and obligations undertaken by the Respondents/Promoters rather than disposing of the complaint by merely directing execution of fresh Agreement for Sale. It is pertinent to note that the main relief sought by the Appellants/Allotees was refund of the amount paid together with interest.

34. A perusal of the impugned order dated 22.02.2022 clearly establishes that the Authority recognized the entitlement of Appellants/Allottees compensation on account of delay. However, instead of granting reliefs sought by the Appellants/Allottees, the Authority committed an error by directing execution of fresh Agreement for Sale and made refund contingent thereupon failure to execute registered Agreement for Sale within a stipulated period. Once the Authority had accepted the entitlement of the Appellants/Allottees to seek refund, such entitlement could not have been made subject to a further condition requiring execution of an Agreement for Sale. The impugned order suffers from inherent contradiction insofar as it recognizes the right of Allottees to refund

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while making it contingent to execution of a fresh registered Agreement for Sale.

35. While explaining the scope of Section 18 of the RERA Act, 2016, the Hon'ble Supreme Court, in case of *M/s Newtech Promoters and Developers Pvt. Ltd. v. State of Uttar Pradesh & Ors.,* [2021 SCC OnLine SC 1044], decided on 11 November 2021, has held in paragraph 25 as under:

> *"Para 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."*

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In the present case, the Respondents/Promoters, having accepted substantial consideration amount from Appellants/Allottees, failed to execute the registered Agreement for Sale and failed to handover possession of the subject flat on the agreed date of delivery, and violated the provisions of MOFA, 1963 and RERA Act, 2016. It is not the case of the Promoters that the Allottees in any way caused delay in handing over the possession of the said flat.

36. It is pertinent to note that Section 4(1) of the Maharashtra Ownership Flats Act, 1963 (for short, "MOFA") requires the Promoter, before accepting any sum of money as advance or deposit, to enter into a written agreement for sale with the Allottee. In the instant case, the Appellants/Allottees have paid 19.9% of the consideration amount, but the Respondents/Promoters failed to execute registered Agreement for Sale as prescribed under Section 4(1) of MOFA. Therefore, we are of the view that the Respondents/Promoters have contravened Section 4(1) of MOFA, 1963.

37. It is also pertinent to note that the RERA Act, 2016 safeguards the rights of flat purchasers and ensures certainty in contractual obligations between Promoters and flat buyers. Section 18 of the RERA Act, 2016 safeguards the rights of an Allottee, where the Promoter fails to complete the real estate project or is unable to give possession in accordance with the terms of the agreement for sale.

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In the instant case, the material placed on record clearly establishes that the Appellants/Allottees paid ₹8,01,72,277/- towards consideration of the subject flat, whereas the Respondents/Promoters failed to complete the project as agreed and handover possession within the stipulated period. The Appellants/Allottees, aggrieved with the undue delay, have elected to withdraw from the project and sought refund of the consideration amount paid to the Respondents/Promoters. Therefore, Respondents/Promoters are liable to refund the amount received from the Appellants/Allottees, along with interest under Section 18 of the RERA Act, 2016.

38. Learned Advocate appearing for the Respondents/Promoters sought to justify the delay by relying upon the COVID-19 pandemic, classification of their account as NPA (Non-performing Asset), financial difficulties and restructuring of the project. We do not see merit in the said contention. The COVID-19 pandemic occurred much after the expiry of the stipulated extended due date of 31.12.2018. Thus, the pandemic cannot justify the delay that occurred in completion of the project. Similarly, the subsequent classification of Respondents' account as NPA, the financial difficulties, and restructuring of the project cannot be accepted as justification for

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delay in project completion and deny the rights of Appellants/Allottes under Section 18 of RERA Act, 2016.

39. Even assuming that the 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 an unqualified right to get interest under Section 18 of the RERA Act, 2016 for delay in possession.

40. It is therefore clear that there are no shackles or limitations on the exercise of the right of Allottees to seek interest once there is violation of provisions of the 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 the terms of the Agreement for Sale. The Respondents/Promoters, being responsible for completion of the project and handing over possession of flat, were required to ascertain and stipulate reasonable and realistic date for handing over possession. The Promoters, having

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sufficient experience in the real estate market are expected to be prepared beforehand, not only to deal with any 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 handover possession. The Respondents/Promoters cannot, after accepting substantial consideration from the Appellants/Allottees, rely upon its own financial difficulties and restructuring issues to indefinitely postpone the agreed date of possession. In the absence of any default attributable to the Appellants/Allottees, the delay in completion and handing over of possession is only attributable to the Respondents/Promoters. If the Appellants/Allottees are not responsible for delay, they are entitled to avail the remedy of withdrawal and refund under Section 18 of the RERA Act, 2016.

41. For the foregoing reasons, we are of the view that the impugned order dated 22.02.2022 passed by Member I, MahaRERA warrants interference in the captioned Appeal. The Appellants/Allottees have demonstrated their right to withdraw from the project and seek refund of the part consideration amount paid, together with interest on account of failure of the Respondents/Promoters to hand over possession within the stipulated period. Admittedly, as recorded in paragraph 16 of the impugned

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order, the Appellants/Allottees have paid ₹8,01,72,277/-. We, therefore, answer Point Nos. 1 and 2 accordingly and we proceed to pass the following order:

O R D E R

1. Appeal No. AT006000000063838 of 2022 is partly allowed.
2. The impugned order dated 22.02.2022, passed by the Member I, MahaRERA, in Complaint No. CC006000000196401, is set aside.
3. The Respondents/Promoters are directed to refund the part consideration amount of ₹8,01,72,277/- (Rupees Eight Crore One Lakh Seventy-Two Thousand Two Hundred and Seventy-Seven Only) together with interest from the date of payment till the date of realization, at State Bank of India's highest Marginal Cost of Lending Rate (MCLR) plus 2% per annum, within thirty (30) days from the date of this order.
4. The Respondents/Promoters are directed to pay costs of ₹50,000/- (Rupees Fifty Thousand Only) to the Appellants/Allottees.

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5. Accordingly, Appeal No. AT006000000063838 of 2022 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_*

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