APPEAL No.(K-REAT) 118/2025

IN THE KARNATAKA REAL ESTATE APPELLATE TRIBUNAL, BENGALURU

DATED THIS THE 13th DAY OF OCTOBER, 2026

PRESENT

HON'BLE JUSTICE Ms. J.M. KHAZI,
CHAIRPERSON

AND

HON'BLE SRI SANTHOSH KUMAR SHETTY N.
JUDICIAL MEMBER

APPEAL NO. (K-REAT) 118/2025

BETWEEN:

Sri.Bheemesh Reddy,
S/o. Venkata Reddy,
Aged about 56 years,
R/at No.A-91,
Purvankara Sound of Water,
Bannerghatta Road,
Chikkamanahalli,
Bengaluru 560 083. **...APPELLANT**

(Sri.R.Venkatesh and Smt. Ifrana Nazeer, Advocates)

AND:

1. M/s. Purvankara Limited,
No.130/1, Ulsoor Road,
Bengaluru – 560 042.
Reptd.by Prem Chand Naidu.

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2. Karnataka Real Estate
Regulatory Authority,
Reptd. by Secretary,
No.1/14, Silver Jubilee Block,
Unity Building, CSI Compound,
3rd Cross, Mission Road,
Bengaluru-560 027. **..RESPONDENTS**

(JSM Law Partners, Advocates for R.1. Sri. Rajashekhara K., Advocate for R-2 RERA.)

This Appeal is filed under Section 44 of the Real Estate (Regulation and Development) Act, 2016, seeking to set aside the impugned order dated 26.05.2025, passed by the 2nd Respondent-RERA, whereby Complaint No.CMP/00012/2023 came to be dismissed as not maintainable.

This appeal having been heard and reserved for Judgment, coming up for pronouncement of Judgment, this day, the **Hon'ble Judicial Member** delivered the following:

JUDGMENT

The facts leading to this appeal, in brief, are that the appellant, (hereinafter referred to as the "allottee" for short), booked two water-villa-type semi-detached villas bearing No.TSOW-4-EWS-E91 and TSOWA-4-E91 in the project "Sound of Water – Phase 1", developed by respondent No.1, (hereinafter referred to as the "promoter" for short), for a total sale consideration of Rs.4,10,080/-

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and Rs.1,56,35,130/-, respectively and entered into an Agreement for Sale and Construction Agreement with the promoter on 04.08.2015. Under the Construction Agreement, the promoter agreed to hand over possession of the villas within 36 months from the date of the Construction Agreement or from the date of receipt of the Commencement Certificate from the BBMP, whichever was later, with a maximum grace period of six months. The promoter had also agreed to pay a sum of Rs.7,500/- per month towards compensation until delivery of possession, in case of delay beyond the outer limit which, according to the allottee, was due from 04.04.2018. However, possession was not delivered even by 04.02.2019 and consequently, the allottee stopped making further payments on account of the failure of the promoter to deliver possession. In turn, the promoter levied a fine of Rs.6,00,000/- against the allottee, alleging default in payment and further compelled the allottee to pay an additional sum of Rs.2,50,000/- in February 2020, besides Rs.1,05,000/- already paid by the allottee during 2019.

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Thereafter, the promoter executed the sale deed and handed over possession of the villas to the allottee on 07.07.2021. Aggrieved by the levy of the aforesaid fine and penalty for the alleged default in payment and seeking interest for the period of delay in handing over possession, the allottee filed a complaint before the Authority.

2. Upon issuance of summons, the promoter appeared before the Authority and filed objections. In the objections, except admitting the execution of the Agreement for Sale and the Construction Agreement between the parties, the promoter denied all the other averments made in the complaint. It was contended that the promoter had completed the project in accordance with the terms of the agreements and that the allottee had failed to make the installment payments within the stipulated time as agreed under the Construction Agreement. It was further contended that the promoter had executed a Declaration-cum-Undertaking dated 07.07.2021, duly acknowledged by the allottee, which clearly established that the allottee had no further claim against the promoter and that possession

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had been taken by the allottee only after being fully satisfied with the concerns raised by him. On these grounds, the promoter sought dismissal of the complaint.

3. After hearing both sides, the Authority dismissed the complaint as not maintainable.

4. Being aggrieved by the impugned order dated 26.05.2025, the allottee has preferred this appeal, contending that the impugned order is devoid of valid reasons and is liable to be set aside. It is contended that the Authority failed to consider that, despite the expiry of the period stipulated under the Agreement, the promoter did not hand over possession of the property within the agreed time and contrary to the terms of the Agreement, delivered possession only on 07.07.2021, resulting in a delay of approximately 29 months. The allottee further contends that the Authority failed to consider the documents produced by him, including bank transfer records, booking documents and registered agreements and that dismissal of the complaint on a narrow technical ground, without considering the other material evidence on

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record, reflects an improper appreciation of the facts. It is also contended that the Authority failed to appreciate that the allottee had withheld the balance instalments of the sale consideration, due to the promoter's failure to perform its obligations within the stipulated time and failed to consider the memorandum of calculations furnished by the allottee. The allottee further contends that the levy of a penalty of Rs.6,00,000/- by the promoter was neither authorised under the Agreement nor permissible in law and that the Authority failed to consider his claim for interest for the period of delay in handing over possession. It is further contended that the Authority erred in relying upon the alleged Declaration-cum-Undertaking dated 07.07.2021 as recording full and final satisfaction of the transaction, particularly when the allottee had specifically disputed its execution and authenticity. In the appeal, the allottee has therefore sought to set aside the impugned order and prayed for a direction to the promoter to pay compensation for the delay in handing over possession and impose a

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penalty equivalent to 10% of the estimated cost of the project under Section 59 of the Act.

5. In response to the notice issued by this Tribunal, the promoter appeared through its counsel and filed statement of objections, supporting the findings recorded by the Authority. It is contended that, having accepted possession, executed the sale deed and failed to raise any contemporaneous objection, the allottee is estopped from subsequently asserting any claim under Section 18 of the RERA Act. It is further contended that the conduct of the allottee attracts the principle that a party who has accepted the benefits flowing from a transaction without demur cannot subsequently approbate and reprobate by raising inconsistent or contradictory claims. The promoter further contends that, on 07.07.2021, the allottee voluntarily and consciously executed the Declaration-cum-Undertaking, without any coercion or protest, thereby waiving all further claims and accepting possession on the terms contained therein. It is also contended that the allottee failed to adhere to the payment schedule stipulated under the

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Construction Agreement and failed to produce the foundational documents necessary to substantiate the alleged delay in handing over possession. Hence, according to the promoter, the claim for compensation is untenable and devoid of merit. On these and other grounds, the promoter prayed for dismissal of the appeal.

6. We have heard the arguments of the learned counsel appearing for the allottee and respondent No.1–promoter. The learned counsel appearing for respondent No.2 has supported the findings recorded by the Authority. The learned counsel for the allottee as well as the promoter have also filed their respective written synopses. In view of the rival contentions urged by the parties and the material available on record, the following points arise for our consideration:

1. Whether the allottee proves that the impugned order passed by the second respondent–Authority is arbitrary, contrary to law, unsustainable and liable to be set aside and that he is entitled to the reliefs sought in the appeal?

2. What order?

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7. Our findings on point No.1 in partly affirmative for the following:

REASONS

8. Point No.1: Before adverting to the point in controversy, it would be appropriate to recapitulate certain undisputed facts relevant for consideration of the appeal. The Sale and Construction Agreements were executed on 4-08-2015, under which the promoter was required to deliver possession of the villas within 36 months from the date of the Construction Agreement or from the date of receipt of the commencement certificate from BBMP, whichever was later, with a maximum grace period of six months. The pleadings do not disclose the date of receipt of the commencement certificate and both parties have proceeded on the basis of the Construction Agreement. Accordingly, the promoter was required to deliver possession on or before 4-08-2018, or, after taking into account the maximum grace period, in any event on or before 4-02-2019. However, the Sale Deed was executed and

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possession of the villas was ultimately delivered to the allottee only on 7-07-2021.

9. When the allottee raised the dispute and sought compensation for the period of delay, the foremost defence advanced by the promoter was that the allottee himself had committed delay in payment of the instalments. Placing reliance on Clause 9(a) of the Construction Agreement, the promoter contended that, in the event of delay in payment, the allottee was liable to pay interest at the rate of 1.5% per month from the date of default and in fact, the allottee, acknowledging such delay, had paid a sum of ₹5,00,000 towards interest on delayed payments. On this basis, the promoter contended that the allottee was not entitled to claim compensation for delayed possession. On the other hand, the principal contention of the allottee was that, owing to the substantial delay in construction and the absence of any satisfactory response from the promoter regarding the likely date of delivery, he was left with no alternative but to stop making the balance payments.

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10. Reiterating the contentions urged in the pleadings, the learned counsel for the allottee vehemently argued that the payment history placed before the Authority demonstrates the substantial financial involvement of the allottee in the transaction. As set out in the appeal memorandum, the allottee made 15 payments through cheques, NEFT and RTGS between 17-07-2015 and 07-07-2021, aggregating to Rs.3,88,01,012/-, all of which were duly acknowledged by the promoter through separate receipts. Notwithstanding these payments, the promoter levied a fine of Rs.6,00,000/- and obtained substantial further payments from the allottee. It was therefore contended that, the promoter having undertaken to deliver possession within the time stipulated in the Construction Agreement, the contractual date for delivery cannot be diluted merely because possession was ultimately handed over on 07-07-2021. The grievance of the allottee is confined to the period during which possession ought to have been delivered but was not and the appeal expressly seeks compensation only for such

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period of delay. Consequently, the subsequent execution of the Sale Deed and delivery of possession on 07-07-2021 cannot retrospectively efface the delay during which the promoter remained in default of its obligation to deliver possession within the stipulated time.

11. To substantiate her contention, the learned counsel for the allottee placed reliance on the law laid down by the Hon'ble Supreme Court in Pioneer Urban Land and Infrastructure Ltd. v. Govindan Raghavan and Pioneer Urban Land and Infrastructure Ltd. v. Geetu Gidwani Verma and Others[1]. The learned counsel submitted that the principles laid down in the said decisions, particularly the observations contained in paragraph 6.8, support the appellant's claim and demonstrate that the contractual terms cannot be construed so as to defeat the allottee's statutory remedies arising from delayed possession. The substance of the said decisions, as relied upon by the learned counsel, is contained in paragraph 6.8, which is reproduced herein below.

[1] (2019) 5 SCC 725

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> *"A term of contract will not be final and binding if it is shown that the flat purchasers had no option but to sign on the dotted line, on a contract framed by the builder. The contractual terms of the agreement date 08.05.2012 are exfacie one-sided, unfair and unreasonable. The incorporation of such one-sided unfair clauses in an agreement constitutes an unfair trade practice as per Sec.2(1)(r) of the Consumer Protection Act, 1986 since it adopts unfair methods or practices for the purpose of selling the flat by the builder."*

12. As stated supra, the other defence advanced by the promoter was that, on 07-07-2021, after fully satisfying the allottee's claims, the allottee had voluntarily executed a declaration-cum-undertaking and therefore, was estopped from subsequently asserting any claim under Section 18 of the RERA Act. However, stoutly disputing the execution, authenticity and evidentiary value of the alleged declaration-cum-undertaking, the learned counsel for the allottee argued that, once the execution and genuineness of the document were specifically denied, the same could not

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be treated as an admission or as constituting a conclusive waiver of the allottee's statutory and contractual rights without first determining the evidentiary controversy surrounding the document. It was further argued that the Authority ought not to have permitted an alleged unilateral document to defeat the contractual obligations arising under the Agreements for Sale and Construction, particularly when the claim related to a period of delay that had already accrued. In support of these contentions, as well as the other pleas urged on behalf of the allottee, the learned counsel placed reliance on the decision of the Hon'ble Supreme Court in Ireo Grace Realtech Private Limited v. Abhishek Khanna and Others[2], the substance of which is set out hereinbelow.

> *"Failure of developer to comply with contractual obligation to provide flats within contractually stipulated period, held would amount to deficiency of service – Given one-sided nature of apartment buyers' agreement, Consumer Fora had jurisdiction to award just and reasonable compensation as an incident of*

[2] (2021) 3 SCC 241

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power to direct removal of deficiency in service – In present case, incorporation of one-sided and unreasonable clauses in apartment buyers' agreement constitutes an unfair trace practice under S.2(1)(r) of the CPA, 1986 – Developer cannot compel apartment buyers to be bound by one-sided contractual terms contained in apartment buyers' agreement – Consumer Protection Act, 1986, Ss.2(1)(r), (g) and 14."

13. The learned counsel for the allottee further argued before this Tribunal that the Authority, in its subsequent order dated 10-06-2025 passed in Complaint No. CMP/1075/2023 concerning the very same project, namely, "Sound of Water, Phase-1", developed by the promoter herein, had held that the allottees therein were entitled to delay-period interest under Section 18 of the RERA Act at the rate of SBI MCLR plus 2%, for the period from 09-07-2018 to 07-10-2021, quantified at Rs.47,32,573/-. Though the said order arose out of a different complaint involving different allottees, it concerned materially comparable issues relating to the same project, the same promoter and delayed delivery of

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possession and therefore, according to the learned counsel, constituted a relevant circumstance which ought to be taken into consideration while examining the present grievance, particularly as to whether the Authority had properly appreciated the contractual obligation relating to possession and the allottee's entitlement to compensation for the period of delay. In support of her argument, the learned counsel placed reliance on the decision of the Hon'ble Bombay High Court in CCI Projects Private Limited v. Rajesh Kumar Choudhary and Others[3], wherein, taking note of the principles laid down by the Hon'ble Supreme Court in Imperia Structures Limited v. Anil Patni [4]and M/s Newtech Promoters and Developers Private Limited v. State of Uttar Pradesh and Others[5], it was held as under:

> *"Under the provisions of Section 18 of RERA Act, the handing over possession as per terms of agreement or as per the date specified is sacrosanct remaining unqualified by any contingencies outside the terms of the*

[3] (2026) SCC online Bombay 9520
[4] (2010) 10 SCC 783
[5] (2021) 18 SCC 01

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agreement and is not affected by the acceptance of delayed performance. The allottee would be well within their statutory right to claim interest for every month of delayed possession for the period specified in the flat purchaser's agreement till the date of handing over possession.

Whereas Section 18 of RERA Act gives an unqualified absolute statutory right to claim interest unimpeded by any condition, Section 55 of Contract Act lays fetters on that right making it subject to giving notice of intention to claim compensation. The inconsistency between the two provisions is on the aspect of claim of compensation. RERA Act being a special enactment will prevail over Contract Act, a general law. Section 89 of RERA Act gives it an overriding effect over anything inconsistent with the other laws and the retroactive application of RERA Act would impose an obligation on the promoter to pay interest for the delayed possession computed from the date of handing over possession as specified in the agreement even in the absence of any notice to the promoter by the allottee of its intention to do so."

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14. It was further argued that, when the date stipulated for delivery of possession under the Construction Agreement is compared with the date of execution of the Sale Deed and delivery of possession on 07-07-2021, there is manifest and inordinate delay on the part of the promoter. The learned counsel submitted that the Authority, proceeding on an erroneous premise, dismissed the complaint on the ground that, in the absence of the fundamental document, there was no conclusive evidence to establish the period of delay. According to the allottee, such finding is contrary to the material on record and the admitted factual circumstances and the impugned order is therefore arbitrary, unsustainable and contrary to the ground reality. Consequently, the allottee contended that the impugned order is liable to be set aside and the reliefs sought in the appeal ought to be granted.

15. Refuting the contentions advanced by the allottee and supporting the findings of the Authority, the learned counsel for the promoter strenuously argued that the

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allottee had taken inconsistent stands with regard to the declaration-cum-undertaking dated 07-07-2021. According to the learned counsel, while the allottee, on the one hand, pleaded that the said undertaking was void, on the other hand, he contended that, even assuming it to be genuine, it was unilateral and therefore not binding upon him. It was argued that these pleas are mutually inconsistent and cannot be permitted to coexist, as the allottee cannot be allowed to approbate and reprobate by taking contradictory stands. It was further argued that the allottee cannot, at the appellate stage, introduce a new set of pleadings or set up a new case which was not pleaded or urged before the Authority. In support of the said contention, the learned counsel placed reliance on the judgment of the Hon'ble Supreme Court in Union of India v. Ibrahim Uddin[6], wherein the principles governing the raising of new pleas and production of additional evidence at the appellate stage have been enunciated.

[6] (2012) 8 SCC 148

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16. The learned counsel for the promoter further argued that the Hon'ble Supreme Court in R.V.E. Venkatachala Gounder v. Arulmigu Visheshwara Swami and V.P. Temple[7] has drawn a clear distinction between two classes of objections relating to documents: an objection as to the inherent inadmissibility of a document, which may be raised even at a later stage notwithstanding that the document was marked without objection and an objection relating merely to the mode or manner of proof, which must be raised at the time when the document is tendered, failing which the objection is deemed to have been waived. According to the learned counsel, the governing test is whether a timely objection would have enabled the party producing the document to cure the defect or adduce further evidence. Once a document is allowed to be marked without objection, the opposing party is entitled to proceed on the assumption that its genuineness and mode of proof are not in dispute and it would be inequitable to permit such objection to be raised

[7] (2003) 8 SCC 752

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after the proceedings have substantially progressed. The learned counsel therefore contended that, applying this distinction to the appellant's own case, the objection raised by the allottee regarding the declaration-cum-undertaking is untenable.

17. The learned counsel for the promoter further argued that, once a presumption arises, the burden of rebutting the same lies upon the person who seeks to displace it by leading cogent evidence. According to the learned counsel, the allottee has failed to discharge such burden and has offered nothing beyond a bare assertion that the declaration-cum-undertaking was forged. It was pointed out that the allottee neither lodged any complaint of forgery before the competent authority nor produced any expert opinion or sought comparison of the disputed signature, either before the Authority, where such plea was admittedly not raised, or before this Tribunal, where the allegation has been raised for the first time in the memorandum of appeal. Hence, it was argued that an unsubstantiated allegation of forgery, unsupported by any

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cogent evidence, cannot constitute proof of forgery. In support of the said contention, the learned counsel placed reliance on the judgment of the Hon'ble Supreme Court in Rathan Singh Vs. Nirmal Gill[8].

18. In view of the aforesaid factual scenario and in order to arrive at a just and proper conclusion in the matter, we deem it appropriate to examine certain clauses incorporated in the Agreement for Sale executed between the parties. In this regard, Para XVI(6) of the Agreement for Sale reads as under:

> *"6. In the event of there being any breach of any of the terms of this Agreement or any default by the Purchaser in payment of the sale consideration or any installment thereof on the due dates for whatsoever reasons, it shall be construed as the breach of contract committed by the Purchaser and without prejudice to any other rights, the Purchaser agrees that the Developer at its discretion/option may;*
>
> *A) Either continues with this contract and claims the amounts in default/arrears with*

[8] (2021) 15 SCC 300

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interest on the defaulted installments at the rate of 18% per annum from the date of default to the date of payment. In such an event, even after the amounts with interest are paid, the Purchaser will not be entitled to timely possession of the Schedule 'C' Property. In case of the Purchaser becoming due to pay the interest as set out in this clause, the Purchaser agrees that amounts paid by the Purchaser would be first adjusted towards the interest payable by the Purchaser and the balance amount will be adjusted towards the installment due and if there is any shortfall of the installment the Purchaser will be required to pay such shortfall immediately to make up the installment/s which are due and payable. The Purchaser has agreed that acceptance of any delayed installment with interest due thereon shall not be considered as the waiver of the right of the Developer to terminate this Agreement for this breach or any subsequent breach of the Purchaser.

-OR-

B) In the event of the Purchaser not rectifying any breach within 21 days of the notice to rectify the breach, the Developer at its discretion/option will be entitled to terminate

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this Agreement and treat a sum equivalent to 15% of the entire sale consideration as forfeited and adjust it as pre-estimated liquidated damages which the Parties agree is the true and reasonable pre-estimated damages that will be suffered by the Developer as the result of the Purchaser's default. In addition to the pre-estimated liquidated damages, the Developer shall also be entitled to and the Purchaser shall be liable to pay the over due interest paid or payable. All statutory payments namely VAT, service tax, etc., till the date of such termination shall not be refundable. The pre-estimated liquidated damages and the statutory payments alongwith the applicable taxes will be deducted from and out of the money paid by the Purchaser and the Developer shall be entitled to deal with the Schedule 'B' Property, including selling the same to anybody, without any further reference to the Purchaser from the date of termination. The balance money, if any, due to the Purchaser shall be paid within four weeks of the disposal of the Schedule 'B' Property. Against the cancellation of this Agreement by the Developer, the Purchaser's rights under this Agreement and also the construction agreement for the

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construction of the semi detached Villa set out in the Schedule 'C' executed on the same date, (hereinafter referred to as the Construction Agreement) shall stand terminated immediately without any requirement of execution of any further documents.

C) If the amount of the liquidated damages under clause 6(b) is more than the amount paid by the Purchaser under this sale Agreement, then the Developer shall have the right to claim the difference between the amounts paid and the balance of the liquidated damages from the Purchaser.

D) If the Purchaser/s desire to terminate this agreement for no cause, the Purchaser/s shall notify the Vendors and the Developer of their intent to terminate in writing with acknowledgement and at the sole option of the Vendor / Developer, this Agreement shall stand terminated and an amount equivalent to 15% of the entire sale consideration amount plus applicable taxes shall be forfeited by the Developer. On such notification by the Purchasers, the Vendor / Developer will be able to sell the undivided share herein under the Scheme to any other purchaser/s and on the receipt of the sale consideration, the amounts

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that is paid by the Purchaser/s shall be refunded after deducting all such amounts that is due and payable by the Purchaser/s including cancellation fees. In case the sale consideration is less than the amounts received from the Purchaser/s, then in that event the Purchaser/s will be entitled to that amount only. The amounts paid as statutory payments namely VAT, service tax, etc., if any, till the date of such termination will be non-refundable and is not payable to the Purchaser/s under this clause."

19. In the case on hand, though the Sale Agreement and Construction Agreement were executed about one year prior to the enactment of the RERA Act, the construction of the project was not completed within the stipulated period and consequently, the project assumed the status of an ongoing project, thereby attracting the provisions of the RERA Act. On a careful examination of the terms and conditions incorporated in the Sale Agreement and Construction Agreement, it is apparent that most of the clauses are one-sided and operate predominantly to the benefit of the promoter. Having regard to the dominant

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position occupied by the promoter in the transaction, it is not unreasonable to infer that the allottee had little or no bargaining power and was constrained to execute the agreements containing such one-sided terms, which were detrimental to his legitimate interests and could not be permitted to defeat the statutory remedies available under the RERA Act and the Consumer Protection Act. Significantly, under the Construction Agreement, the promoter had expressly undertaken to deliver possession within 36 months from the date of receipt of the commencement certificate, with a further grace period of six months. However, as noticed hereinabove, the promoter failed to deliver possession within the stipulated period and possession was ultimately delivered only on 07-07-2021.

20. As discussed earlier, the principal defence of the promoter is that, since the allottee had failed to make certain installment payments within the stipulated time, he was disentitled to claim compensation under Section 18 of the RERA Act. It is further contended that, in view of the declaration-cum-undertaking executed by the allottee, he

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is estopped from claiming any further relief. However, it is not in dispute that the promoter had received substantial amounts from the allottee even while alleging delay in payment of installments. In such circumstances, the right to claim interest for the period of delay cannot operate unilaterally in favour of the promoter while denying a corresponding statutory remedy to the allottee. The contractual obligations and consequences arising from delay must necessarily operate reciprocally and the promoter cannot rely upon the alleged delay in payment by the allottee as a means to defeat the allottee's legitimate claim for delay-period interest, particularly when the promoter itself failed to fulfill its fundamental obligation of delivering possession within the agreed period.

21. It is also relevant to note that, from the records secured from the office of Respondent No. 2, only a xerox copy of the alleged Declaration-cum-Undertaking is forthcoming and there is no reference to or production of the original document. It is pertinent that, on 03-08-2026, the learned counsel for the allottee filed I.A. No. 1 under

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Section 151 of the Code of Civil Procedure, seeking a direction to the promoter to produce the alleged Declaration-cum-Undertaking. However, for reasons best known to the promoter, the original document was not produced despite such specific request. Further, on perusal of the xerox copy placed on record, it prima facie appears that the signature of the allottee was obtained on a printed form, wherein the name of the allottee appears to have been subsequently filled in. Significantly, although the said declaration-cum-undertaking contains a specific column meant for the particulars and signatures of witnesses, the same has been left blank. These circumstances, taken cumulatively, cast a serious doubt on the authenticity and execution of the alleged Declaration-cum-Undertaking and lend some support to the stand taken by the allottee regarding the genuineness and evidentiary value of the said document.

22. A perusal of the copy of the judgment passed in CMP No. 1075/2023 dated 10-06-2025 makes it clear that two other allottees in respect of the very same project had

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instituted a similar complaint against the promoter herein, seeking interest for the period of delay in handing over possession. The only distinguishing feature is that, in the said complaint, there was no reference to the alleged declaration-cum-undertaking relied upon by the promoter in the present case. Upon consideration of the matter, the said complaint came to be allowed and the promoter was directed to pay interest for the period of delay at the rate of SBI MCLR plus 2% per annum, calculated from 09-07-2018 till 07-10-2021, being the date on which the Sale Deed was executed in favour of the allottees therein.

23. It is also relevant to note that the project referred to in the case on hand and the project involved in CMP No. 1075 of 2023 are one and the same. Therefore, there is sufficient reason to believe that the clauses incorporated in the Sale Agreement and Construction Agreement executed between the respective parties are also similar in substance. In such circumstances, the principle of parity assumes significance and similarly situated allottees cannot be treated differently without any justifiable basis.

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In CMP No. 1075 of 2023, the complaint came to be allowed and the allottees therein were granted the relief of interest for the period of delay. However, in the case on hand, despite the similarity in the project and the contractual terms, the very same relief has been flatly refused. Such divergent treatment, in the absence of any distinguishing circumstance, cannot be sustained. Viewed from this perspective also, the defense set up by the promoter is devoid of merit and the case of the promoter cannot be accepted.

24. As discussed hereinabove, in the absence of production of the original alleged Declaration-cum-Undertaking, the Authority, merely relying upon the xerox copy thereof, proceeded to pass the impugned order resulting in dismissal of the complaint. In view of the aforesaid factual and evidentiary circumstances, none of the grounds urged by the promoter can be accepted and consequently, the principles laid down in the decisions relied upon by the learned counsel for the promoter are not applicable to the facts and circumstances of the case on

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hand. Having regard to the factual matrix, we deem it appropriate to refer to the recent decision of the Hon'ble Supreme Court in Parsvnath Developers Limited v. Mohit Khirbat and Another[9], wherein it has been reiterated that standard-form buyer-builder clauses cannot be permitted to bind a purchaser in a manner that defeats the statutory remedies available to him. The said decision reaffirms the settled legal position that contractual stipulations cannot be invoked to curtail or defeat statutory remedies, particularly where the contractual terms are one-sided, oppressive and operate predominantly to the detriment of the purchaser. In view of the aforesaid legal position, the principles laid down in the various decisions relied upon by the learned counsel for the allottee are squarely applicable to the facts of the present case. Consequently, we are constrained to hold that the impugned order passed by the Authority is not sustainable in law and on facts and that the allottee is entitled to interest for the period of delay from 05-02-2019 till 07-07-2021, being the date of

[9] 2026 Live Law(SC) 178

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execution of the Sale Deed, calculated on the principal amount paid by the allottee from time to time, at the rate applicable under the provisions of the RERA Act.

25. As rightly contended by the learned counsel for the promoter, the allottee has sought certain additional reliefs in the memorandum of appeal which were not claimed before the Authority. However, during the course of arguments, the allottee has confined his claim to interest for the period of delay. Since the claim for delay-period interest was made by the allottee from the inception and formed part of the relief sought before the Authority, there is no legal impediment to consider and grant the said relief in the present appeal.

26. Though it was contended in paragraph 2(viii) of the Memorandum of Appeal that, in all, the allottee had paid a sum of Rs.4,27,12,598/-, it is specifically admitted in paragraph 2(vii) that, between 17-07-2015 and 07-07-2025, the allottee had paid a sum of Rs.3,88,01,012/- in periodical installments. Further, the payments referred to in paragraph 2(vii) are duly supported by the voluminous

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receipts issued by the promoter as well as the bank statements of the allottee.

27. In the preceding paragraph, this Tribunal has held that the allottee is entitled to delay-period interest from 5-2-2019 to 7-7-2021. On a consideration of the payment chart set out at paragraph 2(vii) of the Memorandum of Appeal, it is evident that, as on 5-2-2019, the allottee had paid a sum of Rs.99,78,113/-. Thereafter, a sum of Rs.2,01,45,190/- was paid on 30-1-2020 and a further sum of Rs.62,85,415/- was paid on 21-6-2021. The remaining payments were made on the date of execution of the Sale Deed. Consequently, the sum of Rs.99,78,113/- shall carry interest at the rate of SBI MCLR + 2% per annum from 5-2-2019 to 7-7-2021; the sum of Rs.2,01,45,190/- shall carry interest at the said rate from 30-1-2020 to 7-7-2021; and the sum of Rs.62,85,415/- shall carry interest at the said rate from 21-6-2021 to 7-7-2021. The remaining amounts paid on the date of execution of the Sale Deed shall not carry any interest. Accordingly, having regard to the facts and circumstances

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of the case and the findings recorded hereinabove, Point No.1 is answered partly in the affirmative and we proceed to pass the following order.

ORDER

(a) The Appeal No.(K-REAT) 118/2025 is hereby allowed in part.

(b) Consequently, the impugned judgment dated 26.05.2025 passed by the Authority in complaint No.CMP/00012/2023 is hereby set aside.

(c) The Promoter is hereby directed to pay to the allottee, interest at the rate of SBI MCLR Plus 2% per annum on the sum of Rs.99,78,113/- for the period from 5-2-2019 to 7-7-2021, on the sum of Rs.2,01,45,190/- for the period from 30-1-2020 to 7-7-2021 and on the sum of Rs.62,85,415/- for the period from 21-6-2021 to 7-7-2021, within 30 days from the date of this order.

(d) In view of disposal of the main appeal, pending I.As., if any, shall stand disposed of, as they do not survive for consideration;

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(e) Registry is directed to comply with the provisions of Section 44(4) of the Act and to return the records to RERA, if any received.

There shall be no order as to costs.

Sd/-
(JUSTICE Ms. J.M. KHAZI)
HON'BLE CHAIRPERSON

Sd/-
(SRI SANTHOSH KUMAR SHETTY N.)
HON'BLE JUDICIAL MEMBER

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