BEFORE THE MAHARASHTRA REAL ESTATE

APPELLATE TRIBUNAL, MUMBAI

Appeal No. AT006000000134117 of 2022
In
Complaint No.CC006000000193772

M/s. Idea International Pvt. Ltd.]
Through its Authorised Representative]
Vide Board Resolution dated 12/08/20]
Mr. Akash Agarwal,]
61/A, Anita Apartments, Mount]
Pleasant Road, Near Varsha Bungalow]
Malabar Hill, Mumbai-400 006.] .. Appellant.

Versus

M/s. Kalpataru Limited]
Kalpataru Synergy, Vakola,]
Opposite Grand Hyatt, Santacruz(East)]
Andheri, Mumbai Suburban,]
Mumbai-400 055.] .. Respondent.

Along with
Appeal No. AT006000000134118 of 2022
In
Complaint No.CC006000000193775

M/s. Idea International Pvt. Ltd.]
Through its Authorised Representative]
Vide Board Resolution dated 12/08/20]
Mr. Akash Agarwal,]
61/A, Anita Apartments, Mount]
Pleasant Road, Near Varsha Bungalow]
Malabar Hill, Mumbai-400 006.] .. Appellant.

Versus

M/s. Kalpataru Limited]
Kalpataru Synergy, Vakola,]
Opposite Grand Hyatt, Santacruz(East)]

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Andheri, Mumbai Suburban,]
Mumbai-400 055.] .. Respondent.

Along with
Appeal No. AT006000000134119 of 2022
In
Complaint No.CC006000000193776

M/s. Idea International Pvt. Ltd.]
Through its Authorised Representative]
Vide Board Resolution dated 12/08/20]
Mr. Akash Agarwal,]
61/A, Anita Apartments, Mount]
Pleasant Road, Near Varsha Bungalow]
Malabar Hill, Mumbai-400 006.] .. Appellant.

Versus

M/s. Kalpataru Limited]
Kalpataru Synergy, Vakola,]
Opposite Grand Hyatt, Santacruz(East)]
Andheri, Mumbai Suburban,]
Mumbai-400 055.] .. Respondent.

Along with
Appeal No. AT006000000134120 of 2022
In
Complaint No.CC006000000193777

M/s. Idea International Pvt. Ltd.]
Through its Authorised Representative]
Vide Board Resolution dated 12/08/20]
Mr. Akash Agarwal,]
61/A, Anita Apartments, Mount]
Pleasant Road, Near Varsha Bungalow]
Malabar Hill, Mumbai-400 006.] .. Appellant.

Versus

M/s. Kalpataru Limited]
Kalpataru Synergy, Vakola,]
Opposite Grand Hyatt, Santacruz(East)]

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Andheri, Mumbai Suburban,]
Mumbai-400 055.] .. Respondent.

Along with
Appeal No. AT006000000134121 of 2022
In
Complaint No.CC006000000193778

Mr. Sandeep Anil Agarwal]
Mrs. Chitra Anil Agarwal]
R/a. 30/40, Mahalaxmi Bridge Arcade,]
Mumbai-400 034.] .. Appellants.

Versus

M/s. Kalpataru Limited]
Kalpataru Synergy, Vakola,]
Opposite Grand Hyatt, Santacruz(East)]
Andheri, Mumbai Suburban,]
Mumbai-400 055.] .. Respondent.

Along with
Appeal No. AT006000000134122 of 2022
In
Complaint No.CC006000000193780

Mr. Sandeep Anil Agarwal]
Mrs. Chitra Anil Agarwal]
R/a. 30/40, Mahalaxmi Bridge Arcade,]
Mumbai-400 034.] .. Appellants.

Versus

M/s. Kalpataru Limited]
Kalpataru Synergy, Vakola,]
Opposite Grand Hyatt, Santacruz(East)]
Andheri, Mumbai Suburban,]
Mumbai-400 055.] .. Respondent.

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Adv. Mr. Mahesh Deshmukh a/w. Adv. Anshuman Deshmukh for Appellants in all appeals.

Senior Adv. Mr. Naushad Engineer a/w. Adv. Mr. Subit Chakrabarti, Adv. Ms. Khushnumah Banerjee and Adv. Mr. Yohann Limathwalia i/b Vidhi Partners for Respondent in Appeal No. AT006000000134117/2022.

Adv. Mr. Vikramjit Garewal a/w. Adv. Mr. Aniket Deshmukh, Adv. Ms. Pavitra Pillay and Adv. Ms. Rajvi Choksi i/b Adv. Mr. Suneet Tyagi for Respondent in Appeal No.AT006/000000134118/2022.

Adv. Mr. Suneet Tyagi a/w. Adv. Mr. Aniket Deshmukh, Adv. Ms. Pavitra Pillay and Adv. Ms. Rajvi Choksi for Respondent in Appeal Nos. AT006/000000134119/134120/134121/2022.

Adv. Mr. Subit Chakrabarti, Adv. Ms. Khushnumah Banerjee i/b Vidhi Partners for Respondent in Appeal No.AT006/000000 134122/2022.

CORAM : SHRI S.S. SHINDE (J), CHAIRPERSON &
SHRIKANT M. DESHPANDE, MEMBER (A)

RESERVED ON : 6th October, 2026

PRONOUNCED ON : 12th October, 2026

(THROUGH VIDEO CONFERENCING)

JUDGEMENT

[PER: SHRIKANT M. DESHPANDE, MEMBER (A)]

1. The captioned appeals arise from the common order dated 22.08.2022 passed by the learned Member-I, Maharashtra Real Estate Regulatory Authority (for short "the Authority") in the captioned complaints.
2. The respondent herein is the promoter of the project in the name and style "Kalpataru Avana" bearing MahaRERA Project Registration No. P51900000793, situated at C.S.No.1/296 Pt. of

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Parel-Sewree Division, Mumbai-400 012 (for short 'the said project'). The appellants herein are the allottees of the said project, who have purchased their respective flats in the said project.

3. The captioned appeals arise from the identical project and have almost identical facts as well as the law points involved being identical, these appeals were heard together and have been decided by this common judgment with the consent of the learned Advocates, appearing for the parties.

4. For the sake of convenience, the parties to the appeals will be hereinafter referred to as "appellants/allottees" and "promoter" respectively.

5. The brief facts gathered from the pleadings, the documents on record, and the impugned order reveal that the appellants approached the sales team of the promoter for purchase of flats in the said project sometime in the year 2015. The promoter launched the said project in the year 2015 when the Maharashtra Ownership Flats (Regulation of The Promotion of Construction, Sale, Management and Transfer) Act, 1963 (for short 'the MOFA') was in force. The said project was later got registered by the promoter with the MahaRERA as an ongoing project after the Real Estate (Regulation and Development) Act, 2016 [for short 'the RERA Act, 2016'] came into force. The project got registered vide registration certificate dated 23.07.2017. The payment terms as fixed by the promoter were 30:70 scheme, wherein 30% of the consideration amount was to be paid at the time of booking of the flats and remaining 70%

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was payable on completion of the said project and offering of fit out possession.

6. The appellants booked their respective flats vide letters of intent (for short 'the LOIs') all dated 19.03.2015 in the captioned appeals on payment of 30% of sale consideration of the respective flats as per the 30:70 scheme of the promoter. The appellants made payments during the period March-April 2015 to the promoter, which were duly acknowledged by the promoter by issuing payment receipts. The details of the flats, consideration amount, total paid amount inclusive of all taxes, amount paid towards consideration including taxes paid to the government on behalf of the promoter (flat cost + TDS paid + earnest money, etc.) are given below.

Appeal No.	Flat No.	Total Consideration (Rs.)	Total amounts paid (Rs.)	Amount paid towards consideration (Rs.)	Date of letter of Intent
AT006/134117	B151	9,23,30,320	2,88,07,041	2,75,02,406	19.03.15
AT006/134118	B181	9,38,41,140	2,92,95,306	2,79,68,192	19.03.15
AT006/134119	B152	1,32,60,150	41,66,907	39,78,045	19.03.15
AT006/134120	B182	1,34,85,300	42,37,556	40,45,590	19.03.15
AT006/134121	A282	1,41,99,760	44,62,065	42,59,928	19.03.15
AT006/134122	A181	13,52,87,600	4,25,12,131	4,05,86,280	19.03.15

7. Further, details of the payments with dates of payments by individual appellants in the captioned appeals is given below.

Appeal No.134117/2022 Flat No.151 Wing-"B"

M/s. Idea International Pvt. Ltd.

Sr. No.	Date of Receipt	Purpose	Amount (Rs.)
1	31/03/2015	Service Tax	59,328/-

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2	31/03/2015	TDS	16,593/-
3	19/03/2015	Earnest Money	15,83,407/-
4	27/04/2015	Flat Cost	2,56,33,421/-
5	27/04/2015	Service Tax	9,60,448/-
6	27/04/2015	TDS	2,68,625/-
		VAT	2,85,219/-
		Total	2,88,07,041/-

Appeal No.134118/2022 Flat No.181 Wing-"B"

M/s. Idea International Pvt. Ltd.

Sr. No.	Date of Receipt	Purpose	Amount (Rs.)
1	19/03/2015	Earnest Money	15,83,407/-
2	31/03/2015	Service Tax	59,325/-
3	27/04/2015	Flat Cost	2,60,94,733/-
4	27/04/2015	Service Tax	9,77,733/-
5	27/04/2015	TDS	2,73,459/-
6		TDS	16,593/-
		VAT	2,90,053/-
		Total	2,92,95,306/-

Appeal No.134119/2022 Flat No.152 Wing-"B"

M/s. Idea International Pvt. Ltd.

Sr. No.	Date of Receipt	Purpose	Amount (Rs.)
1	31/03/2015	TDS	5,185/-
2	19/03/2015	Earnest Money	4,94,815/-
3	31/03/2015	Service Tax	18,540/-

4	20/03/2015	Flat Cost	34,41,975/-
5	20/03/2015	Service Tax	1,29,066/-
6	31/03/2015	TDS	36,070/-
		VAT	41,256/-
		Total	41,66,907/-

Appeal No.134120/2022 Flat No.182 Wing-"B"

M/s. Idea International Pvt. Ltd.

Sr. No.	Date of Receipt	Purpose	Amount (Rs.)
1	19/03/2015	Earnest Money	4,94,815/-
2	31/03/2015	Service Tax	18,540/-
3	31/03/2015	TDS	5,185/-
4	20/03/2015	Flat Cost	35,08,819/-
5	20/03/2015	Service Tax	1,31,470/-
6	31/03/2015	TDS	36,771/-
		VAT	41,956/-
		Total	42,37,556/-

Appeal No.134121/2022 Flat No.282 Wing-"A"

Mr. Sandeep Anil Agarwal & Mrs. Chitra Anil Agarwal

Sr. No.	Date of Receipt	Purpose	Amount (Rs.)
1	19/03/2015	Earnest Money	4,94,815/-
2	19/03/2015	Service Tax	18,540/-
3	31/03/2015	TDS	5,185/-
4	20/03/2015	Flat Cost	37,20,935/-
5	20/03/2015	Service Tax	1,39,418/-

6	31/03/2015	TDS	38,993/-
		VAT	44,179/-
		Total	44,62,065/-

Appeal No.134122/2022 Flat No.281 Wing-"A"

Mr. Sandeep Anil Agarwal & Mrs. Chitra Anil Agarwal

Sr. No.	Date of Receipt	Purpose	Amount (Rs.)
1	19/03/2015	Earnest Money	15,83,407/-
2	19/03/2015	Service Tax	59,328/-
3	31/03/2015	TDS	16,593/-
4	20/03/2015	Flat Cost	3,85,81,961/-
5	20/03/2015	Service Tax	14,45,611/-
6	31/03/2015	TDS	4,04,319/-
		VAT	4,20,912/-
		Total	4,25,12,131/-

8. The letters of intents were issued for the subject flats in all appeals on 19.03.2015. The promoter, however, did not specify the date of possession of flats in the said letters of intent. According to the appellants, upon enquiry by the appellants to the promoter, the promoter verbally mentioned that the project would be completed within 3 years. Upon this representation from the promoter, the appellants purchased their respective subject flats. Admittedly, the promoter did not execute agreement for sale with the appellants even though the promoter received 30% of the consideration amount and the only document that is available on record is the said letters of

intent dated 19.03.2015. The promoter failed to complete construction of the project and hand over possession of the respective flats within the verbally assured period of construction of 3 years i.e. on or before 19.03.2018. Therefore, appellants sought to withdraw from the project and demanded the refund of paid amounts along with interest under Section 18 of the RERA Act, 2016 vide notice dated 06.07.2020. The promoter replied to the said notice on 13.07.2020, however, did not address issues/concerns raised by the appellants, rather sought some time in dealing with the matter. Thereafter, the appellants issued another letter dated 17.07.2020, however, the promoter failed to refund the paid amounts along with interest under section 18 of the RERA Act, 2016.

9. Aggrieved by the above, the appellants filed the captioned complaints on 19.08.2020 before the Authority on the grounds stated therein seeking relief of refund of the paid amounts along with interest and compensation under Section 18 of the RERA Act, 2016. During the pendency of the complaints, the promoter completed the construction and obtained occupation certificate on 28.10.2021. The promoter also filed the cross complaints against the appellants herein before the Authority seeking relief of direction to the allottees to execute and register the agreement for sale under Section 13 of the RERA Act, 2016 and also pay the balance consideration amounts along with interest for delayed payments under section 19 (6) of the RERA Act, 2016. All the complaints filed by appellants and promoter were heard together by the Authority and decided by the common impugned order.

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10. The promoter appeared in the complaints before the Authority and contended that admittedly there is only letters of intent which do not mention specific date of possession. Subsequently, there were 8 letters issued by the promoter to the allottees calling upon the appellants to pay stamp duty and registration charges in order to register the agreements for sale both prior to RERA Act, 2016 coming into force and even after RERA Act, 2016 came into force. However, the allottees failed to come forward and execute and register the agreements for sale. Therefore, the provisions of Section 18 of the RERA Act, 2016 do not apply in these cases as there is no contractual stipulations about the date of possession and no documentary evidence is produced by the allottees on the date of possession. Further, the allottees are investors and period of three years cannot be presumed for handing over the flats as contended by the allottees. Withdrawal from the project should therefore be only in accordance with the terms and conditions provided in the said allotment letters. With these submissions promotor prayed to dismiss the complaints filed by the allottees and allow the complaints filed by the promoter.

11. After hearing the parties, the Authority passed the impugned order. In the impugned order, the Authority observed that there are no registered agreements for sale entered into between the allottees and promoter showing any agreed date of possession, which is also already lapsed. Further, there are no allotment letters also issued in favour of the allottees showing any agreed date of possession. Mere oral submissions made by the allottees that the promoter has agreed to hand over possession of their

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flats in 3 years i.e. on or 31.12.2018 has no substance under the provisions of law since the same is made without any cogent and documentary evidence. The Authority further observed that the contention of the allottees that 3 years is a reasonable period for completion of project to hand over possession could have been considered if the allottees would have come with their fair case that they have complied with their statutory liability and obligations and promoter itself was at fault. However, in the present cases, the allottees have not acted or responded to any of the letters issued by the promoter calling upon the allottees to pay stamp duty and registration charges and register the agreement for sale. Hence, the parties who are at fault cannot be permitted to take such defense to get a favourable orders under the RERA Act, 2016. The Authority further observed that as far as the contention of the allottees that the promoter has not shared any draft agreement for sale to them, said contention has no meaning after commencement of RERA Act, 2016 since the promoter has already uploaded a copy of the draft agreement for sale on MahaRERA webpage while registering the said project with MahaRERA. With these observations, the Authority held that the allottees are not entitled to the relief under Section 18 of the RERA Act, 2016 since there is no violation by the promoter of Section 18 of the RERA Act, 2016 and therefore rejected the complaints filed by the allottees. The Authority further held that in absence of registered agreements for sale or allotment letters, the parties are governed by the provisions of booking applications/letters of intent. With these observations, the Authority directed the promoter to refund

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monies paid by the allottees towards consideration of the flats without interest in accordance with the terms of the said booking form/letter of intent after deducting 2% of the total consideration value of the respective flats.

12. Aggrieved by the said impugned order, the appellants/allottees have filed the captioned appeals on the grounds set out in the respective memorandums of appeals, seeking following reliefs:
    i) Refund of the paid amount without any deductions along with interest from the date of respective payments,
    ii) Compensation for contravention of the provisions of RERA Act, 2016,
    iii) Penalty under Section 61 of the RERA Act, 2016 for violation of Section 11(4) (e) and Section 12 of the RERA Act, 2016,
    iv) Costs, and
    v) Any other directions in the interest of justice as it may deed fit.
13. We have heard the learned Advocates for the parties. Their submissions are entirely based on the contents of the memorandums of appeals, reply, rejoinder, and written submissions.
14. The learned Advocate for the appellants has submitted that the flats were booked in the year 2015 vide letters of intent dated 19.03.2015 upon payment of 30% of the consideration amounts for the respective flats. After lapse of 3 years of reasonable period for handing over of possession, the promoter failed to hand over possession of the respective flats. In the absence of date of possession in the letters of intent, the date of possession

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perceptively be considered as 19.03.2018 i.e. reasonable period of 3 years. The appellants yet accommodated the delay and waited further two years after lapse of said 3-year reasonable period for handing over of possession before filing the captioned complaints before the Authority on 19.03.2020. Further, the fact that the promoter obtained occupation certificate on 28.10.2021 demonstrates that the promoter failed to hand over possession within the reasonable period of 3 years. Further, the promoter obtained occupation certificate after six and a half year of executing letters of intent. Once there is delay in completing the project and handing over of possession within the reasonable period of 3 years, the appellants are entitled to the relief of refund with interest under Section 18 of the RERA Act, 2016.

15. The learned Advocate further submitted that, with regard to not executing the agreements for sale as alleged by the promoter, the rights of the appellants are crystalized by the Clauses of the said letters of intent which have all essential ingredients of valid and concluded contract between the parties. Section 13 of the RERA Act, 2016 cannot stand as defense for denying the entitlement of the appellants under Section 18 of RERA Act, 2016 by virtue of both these sections are exclusively different responsibilities independent of each other. Section 18 of the RERA Act, 2016 does not cast an embargo on the allottees with regard to the registration of the agreements for sale. The said provision is silent on the mandate with regard to registration of the agreements for sale as is the case in Section 13 of the RERA Act, 2016. Section 13 of the RERA Act, 2016 mandates the promoter to execute and register the agreements for sale before

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accepting more than 10% of the consideration amount. Not executing the agreements for sale under Section 13 of the RERA Act, 2016 cannot be defense for the promoter of their non-performance of duties cast upon them under Section 18 of the RERA Act, 2016 nor disentitles the allottees to seek relief under Section 18 of the RERA Act, 2016. Section 13 of the RERA Act, 2016 casts specific statutorily requirement exclusively on the promoter and not on the allottees as the statutory objective is to keep the allottees secured against all such advance payments made against the purchase of real estate. The promoter cannot be allowed to take advantage of their own wrong whilst violating Section 4 of the MOFA and Section 13 of the RERA Act, 2016 in order to deny the entitlement of allottees under Section 18 of the RERA Act, 2016. Consideration of Section 8 of the MOFA and Section 18 of the RERA there is no reference as to the mandate for the agreements for sale must be "written" or "registered". Thus, the scope and spirit of the agreement for sale under Section 4 of the MOFA and in Section 13 of the RERA Act, 2016 is different than Section 8 of the MOFA and Section 18 of the RERA Act. 2016. The learned Advocate placed reliance on the judgement of the Hon'ble Bombay High Court in the case of *G. Swaminathan V/s. Shivram Co-operative Housing Society and others* [1983(2) Bom CR 548] wherein the Hon'ble High Court has observed that:

> *"Not all sections of Maharashtra Ownership Flats Act, however, talk about the execution of such agreements.... There is no reference to any agreement executed under Section 4 in Section I of the said Act. Section 8 is meant*

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to give protection to persons who have paid with monies for the purchase of flats in the event of the not giving them flats as promised. There is nothing in the provisions of Section I which would indicate that this statutory charge is conditional upon the agreement being registered under Section 4.... Moreover, there is no provision under the said Act to the effect that an agreement for sale which is not registered under Section 4 is void for all purposes."

16. With regard to the contentions of that the promoter that sending several reminders to pay stamp duty calling upon the appellants to come forward to execute and register the agreement for sale, the learned Advocate further submitted that the promoter never shared the draft agreement for sale with the appellants. Further, even in the model draft agreement for sale uploaded on the MahaRERA portal the date of possession therein is blank. The promoter deliberately did not commit any date of possession in the letters of intent thereby creating an upper hand for itself as promoter can take as much time as needed to deliver the possession avoiding possible consequences under the provisions of the Act. It is the duty of the promoter to draft an agreement for sale specifying therein the date of possession. Not disclosing the date of possession is a clear deception and misrepresentation by the promoter under Section 4 of the MOFA whereby it is statutory for promoter to mention the exact date of possession in the agreement for sale/letter of intent/ allotment letter. The learned Advocate placed reliance on the judgment of the Hon'ble Supreme Court in the case of *M/s. Fortune Infrastructure V/s. Trevor D'lima* [(2018) 5 SCC 442],

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wherein it has been held that allottee cannot be asked to wait indefinitely for possession and there must be some reasonable time for possession. The Hon'ble Supreme Court in the said case has held that 3 years to be the reasonable period. In the present cases, the appellants have waited for more than five years for possession before filing the captioned complaints. The promoter accepted 30% of the consideration amount from the allottees without first executing and registering the agreements for sale. This is violation of section 4 of the MOFA as well as section 13 of the RERA Act, 2016. Further, statutorily the promoter was required to disclose the date of possession in the letters of intent but failed to do so. This is also violation of Section 4 of the MOFA and Section 13 of the RERA Act, 2016. The promoter cannot be allowed to benefit from its own wrong to contend that the allottees have not produced documentary evidence to substantiate agreed date of possession. Further, not executing the agreements for sale under Section 13 of the RERA Act, 2016 by the allottees has no bearing on their entitlement under Section 18 of the RERA Act, 2016.

17. The learned Advocate further submitted that the Authority grossly erred in dismissing the claims of the allottees under Section 18 of the RERA Act, 2016 on the ground that there were no agreements for sale or allotment letters in favour of the allottees. Such a view is perverse and *ex-facie* contrary to the documentary evidence on record in as much as the letters of intent are nothing but allotment letters and cover all ingredients of the agreements for sale/allotment letters. Hence, denying the entitlement under Section 18 of the RERA Act, 2016 on the

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above ground is legally not sustainable. The Authority has also erred in holding that the appellant is a company and therefore not an end user of the flats. There is no such statutory distinction contained in the RERA Act, 2016 of an allottee from that of an investor, rather both are instead categorized as end users irrespective of whether the allottee is an individual or a company. The Authority has created in non-existent distinction contrary to the provisions of the RERA Act, 2016 by holding appellants not as end users of the flats without corroborated evidence. Further, the Authority has erroneously held that the appellants were not entitled to rely upon the judgement as those are related to individual allottees, which is perverse and contrary to the law.

18. The learned Advocate submitted that it is trite law under the Contract Act for a contract having unreasonable and unfair terms to be unenforceable in cases where there is no chance of equal bargaining power by either party. In the present cases, the Authority granted an unfair advantage to the promoter to dictate the terms of letters of intent. Clause 20 of the letter of intent that gives right to promoter to forfeit 10% consideration amount in case the allottee withdraw from the project is unreasonable, arbitrary and biased. There is no similar provision with regard to the consequences of default on the part of the promoter in non-completion of the project within the required timeline. The clauses are constructed in such a way to only be applicable to the allottee in case of default, however, remains silent and not applicable to the promoter, when it is in default on the part of

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the promoter due to delay in completion of the project. Such unfair clauses are not binding on the allottees.

19. With these submissions, the learned Advocate for the appellants prayed to allow the appeals and grant relief of refund of paid amounts with interest from the respective dates of payment till realization of the amounts to the appellants.

20. In support of the above contentions, the learned Advocate for the appellants placed reliance on the following judgments:

    i. *G. Swaminathan V/s. Shivram Co-operative Housing Society and others [1983(2) Bom CR 548] ,*

    ii. *Fortune Infrastructure (now known as M/s. Hicon Infrastructure) & Anr. V/s. Trevor D'lima [(2018) 5 SCC 442],*

    iii. *Mr. Vijay Jayaram Salian V/s. Kneepad Real Estate Pvt. Ltd. [Appeal No.AT006000000109251 decided by the Maharashtra Real Estate Tribunal],*

    iv. *Monika Agarwal Rajesh Agarwal V/s. Forum Homes Private Limited [Appeal No.AT006000000052322 decided by the Maharashtra Real Estate Appellant Tribunal Mumbai on 04.05.2022],*

    v. *Mrs. Amrita Kaur & Anr. V/s. M/s. East West Builders [Appeal No.AT006000000010977 of 2019 decided by the Maharashtra Real Estate Appellant Tribunal Mumbai on 06.02.2020],*

    vi. *Manjit Singh V/s. JVPD Properties Pvt. Ltd. [Appeal No.AT006000000000017 of 2019 decided by the Maharashtra Real Estate Appellant Tribunal Mumbai on 12.04.2018],*

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vii. *M/s. Siddhitech Homes Pvt. Ltd. & Anr. V/s. Karanveer Singh Sachdev & Ors. [Appeal No.AT006000000021137 decided by the Maharashtra Real Estate Appellant Tribunal Mumbai on 29.10.2021],*

viii. *Rohit Chawla V/s. Bombay Dyeing & Mfg. Co. Ltd. [Appeal No.AT006000000011016 of 2019 decided by the Maharashtra Real Estate Appellant Tribunal Mumbai on 31.12.2019],*

ix. *Shikha Ganguli V/s. Bhupeshbabu Karappan Nilliparambil [Appeal No.AT006000000052848 decided by the Maharashtra Real Estate Appellant Tribunal Mumbai on 22.07.2021],*

x. *Newtech Promoters and Developers Pvt. Ltd. V/s. State of UP and others [2021 SCC Online SC 1044]*

xi. *Suryakant Yashwant Jadhav and Ors. V/s. Bellissimo Hi-Rise Builders Pvt. Ltd and Ors. [Appeal No.AT006000000021407 decided by the Maharashtra Real Estate Appellant Tribunal Mumbai on 12.01.2021],*

xii. *Bombay Dying & Manufacturing Co. Ltd. V/s. Ashok Narang, [2021 SCC Online Bom 12330]*

xiii. *M/s. Srushti Sangam Developers V/s. Sarvapriya Leasing [Appeal No.AT006000000010557 decided by the Maharashtra Real Estate Appellant Tribunal Mumbai on 29.01.2019],*

xiv. *Balaji Construction Company V/s. Suresh Ramchand Varlani [Appeal No.AT006000000010828 decided by the Maharashtra Real Estate Appellant Tribunal Mumbai on 22.02.2019],*

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xv. *Mr. Bijon Dhirendra Tatukdar & Mrs. Shanta Talukdar V/s. Dhruva Woolen Mills Pvt. Ltd. [Appeal No.AT006000000053405 decided by the Maharashtra Real Estate Appellant Tribunal Mumbai on 14.11.2022],*

xvi. *Aparajita Babbar V/s. Kindle Infraheights Pvt. Ltd. 92022 SCC Online RERA (UP) 130],*

xvii. *Krishna Rai (Dead) through Legal Representative and others V/s. Banaras Hindu University through Registrar and others [(2022) 8 SCC 713],*

xviii. *P.R. Deshpande V/s. Maruti Balaram Haibatti [(1998) 6 SCC 507],*

xix. *Senniappa Gounder V/s. V.K. Venkataraman [1981 SCC Online Mad 6].*

21. The learned Senior Advocate Mr. Naushad Engineer advanced arguments on behalf of the promoter. The said arguments are also adopted by the other Advocates representing the promoter in other appeals viz: Adv. Mr. Vikramjit Garewal, Adv. Mr. Suneet Tyagi and Adv. Mr. Subit Chakrabarti for promoter.

22. The learned Senior Advocate Mr. Naushad Engineer has submitted that the gravamen of the case of the appellants is that at the time of booking of the said flats, the date of possession had been allegedly orally committed to the appellants and in view of alleged failure to hand over possession by such date, the appellants became entitled to refund along with interest under Section 18 of the RERA Act, 2016. It is the case of the appellants that the promoter has failed to hand over possession of the said flats with occupation certificate by the alleged oral committed date of possession. However, no document/evidence has been

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produced by the appellants to prove that any date of possession was at any point in time committed to the appellants by the promoter. The allegations and contentions regarding oral commitment of a date of possession are false and are borne out from the fact that the appellants have never recorded such date, at the relevant time, in the extensive correspondence between the parties.

23. The learned Senior Advocate further submitted that there is admitted position that no agreements for sale have been executed in respect of the said flats owing to the failure of the appellants to come forward and do the needful despite admittedly on receipt of at least 8 to 10 letters from the promoter in this regard from the period 2015 to 2020. In absence of agreements, the only document evidencing the allotments and containing the material terms of the allotments is the letters of intent dated 19.03.2015. The said letters of intent contain the contractual terms governing the allotment of the said flats. Such documents also do not contain any committed date of possession. However, in the present cases the appellant being a legal entity and an experienced corporate not only did not execute an agreements for sale but did not even bother to respond to the several letters, requests and reminders from the promoter. Therefore, the Authority has rightly held that "*no agreement for sale was executed by the allottee and the terms of the letter of intent would govern and be applicable*". Further, the appellants' contention of retrospective and retroactive enforceability of the RERA Act, 2016 has no bearing in the facts and circumstances of the present case.

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24. The learned Senior Advocate submitted that the appellants have completely failed to explain this silence in the period between 2015 to 2020 before the Authority and has merely made a passing remark in their rejoinder to the present appeal that "*the appellant only waited for some time to see whether or not the promoter was going to make amends and rectify the situation by handing over the said possession*". The learned Senior Advocate submitted that the appellants have failed to address the multiple correspondence of the promoter requesting them to come forth and execute agreements for sale, whereafter possession would be granted. The appellants even now have failed to give any cogent reasons/explanations about their own admitted default and breach and taking shelter of Section 18 of the RERA Act, 2016, which is otherwise not made out, and alleging that the promoter has violated provisions of MOFA and RERA Act. It is settled law that in absence of committed date of possession and documentary evidence of such commitment, as admittedly there is no violation of law and hence there can be no question of reliefs under Section 18 of the RERA Act, 2016.
25. The learned Senior Advocate submitted that the entire case of the appellants is based on afterthought and unsubstantiated assertion, never asserted in contemporaneous correspondence, that a date of possession had been orally committed to them and that there was breach of the same, this assertion of being completely belied by the fact that the letters of intent that were issued, which contained the other material terms of the transaction, which the appellants had agreed to. As such, the

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appellants cannot today attempt to paint a different picture when the documents speak otherwise.

26. The learned Senior Advocate further submitted that the appellants have sought to submit during oral arguments before the Authority that the Authority should reckon a notional date of possession of 3 years from the date on which the allotment was made, such period of 3 years being a reasonable time to hand over possession of the flat in question. The learned Senior Advocate further submitted that one cannot take a blanket period of 3 years as reasonable period for handover of possession without considering the admitted violation of the appellants by not executing the agreements for sale from, 2015 to 2020 despite repeated requests and reminders. Further, keeping in mind the magnitude of the project and the unique features it would be illogical and would militate against the law laid down in the case law mentioned above, all of which interpret section 18 of RERA and hold that there must be some committed date of possession for there to be a breach of Section 18 of the RERA on account of delay. In any event, this is not a case where the allottees had to wait indefinitely for possession. The allottees/appellants had been offered possession after receipt of occupation certificate for their flats well before the date of completion as per RERA and the allottees have willingly and consciously not taken possession and not even executed an agreements for sale, ostensibly to avoid making the balance payments as per the letters of intent and the statutory payments. Thus, the argument of a blanket period of 3 years as being the period to be presumed as being the period for

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handover of possession cannot and ought not to be accepted by the Tribunal. The promoters vide letters dated 08.12.2021 and 13.05.2022, informed the appellants about the receipt of part occupation certificate and once again called upon them to execute agreements for sale, pay the outstanding amounts, and take possession of their flats, however, to no avail. In these premises, no case has been made out for any reliefs under Section 18 of RERA Act, 2016 as prayed for; the complaint filed by the appellants did not and does not meet the threshold parameters for reliefs under Section 18 of RERA Act, *ex facie*, and as such, the reliefs sought under Section 18 of the RERA Act were rightly rejected vide the impugned order.

27. The learned Senior Advocate further submitted that the threshold parameters required to be met for filing the original complaints seeking relief under section 18 of RERA are not met in these cases namely i) any date of possession having been committed and violation thereof, ii) any agreement for sale having been executed and violation of any terms thereof, iii) any reliance on any advertisement, prospectus, model form, etc. and loss suffered as a consequence of such reliance. Therefore, seeking the reliefs under Section 18 of RERA is misconceived and the Authority has rightly not granted any interest or full refund on account of there being no violations of Section 18, whatsoever.

28. The learned Advocate submitted that without prejudice to the above, the promoter has duly complied with the impugned order dated 22.08.2022 and made the payments as per the details below strictly in accordance with the impugned order.

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Appeal No.	Flat No.	Total Consideration Refund Amount (Rs.)	Date of Refund	Mode of Payment
AT006/134117/22	B-151	2,49,35,050	13.10.2022	NEEFT
AT006/134118/22	B-181	2,53,58,031	13.10.2022	NEEFT
AT006/134119/22	B-152	36,09,677	13.10.2022	NEEFT
AT006/134120/22	B-182	36,70,968	13.10.2022	NEEFT
AT006/134121/22	A-282	38,65,457	13.10.2022	NEEFT
AT006/134122/22	A-181	3,68,27,989	13.10.2022	NEEFT

However, the appellants have alleged that out of the aforesaid amounts refunded by the promoter, the amounts remains to be paid by the promoter which is a false and unsubstantiated statement made by the appellants based on frivolous calculations.

29. The learned Senior Advocate further submitted that the appellants have sought to contend that promoter violated the mandate of Section 13 of the RERA Act, to execute agreement for sale before accepting advance monies. Mandate under Section 13 of the RERA Act was not in place when the deposits were accepted in the year 2015 and that the promoter had taken steps towards seeking execution of an agreement for sale. However, the appellants were not forthcoming forward to execute agreements for sale. The appellants have sought to contend that the promoter's submissions *qua* section 13 of the RERA Act, 2016 were raised as a defense to the appellants' claim for relief under Section 18 of the RERA Act. This is a patent misconceived/ misrepresentation of the case of the promoter. It

is and has always been the case of the promoter that jurisdiction of the Authority under Section 31 of the RERA Act, covers only violations of the provisions of the Section of the RERA Act. The appellants have sought to allege a statutory violation of the provisions of Section 18 of RERA on the ground of purported delay in handing over of possession. The promoters defense *qua* the same has been clear and unambiguous that delay pre-supposes commitment of a contractual date, there is no question of delay in hand over of possession as there is no committed date of possession by the promoter and consequently, no question of any violation of Section 18 of the RERA Act.

30. The learned Senior Advocate submitted that on the other hand, the promoter had filed independent complaints under Section 13, seeking directions to the appellants to execute the agreements for sale by making balance payments as contemplated under the letters of intent. The appellants' defense to these complaints was that it had withdrawn from the project under Section 18 of RERA. It is reiterated that the right to withdraw under Section 18 would only arise if any of the threshold circumstances had occurred and since there was no commitment of a date of possession, there could be no delayed possession. In such facts and circumstances, it was the promoter's case that there is no statutory withdrawal under Section 18 of RERA on the part of the appellants and that there never could have been such Section 18 withdrawal by the appellants. Nowhere Section 13 is used as a defense to the reliefs claimed under Section 18 of the RERA Act.

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31. The learned Senior Advocate submitted that the appellants sought to contend that Clause 20 of the letters of intent was a clause of unequal bargaining power and that no deduction was permissible under Section 18 of RERA to the refund awarded. This argument of the appellants is patently erroneous and self-defeating as first and foremost the refund awarded by the learned Authority is not under Section 18 of the RERA Act. This is made clear from paragraph 35 of the impugned order where the claim of the appellants for refund along with interest under Section 18 of RERA has been held to have no substance and has been rejected in explicit terms. Therefore, the refund awarded by the impugned order is not a refund under Section 18 of RERA and therefore, whether any deduction is permissible under Section 18 while awarding refund is moot and has no bearing on the examination of the impugned order. Secondly, the appellants' entire case is based on the letters of intent and the contractual relationship it establishes, owing to which the appellants cannot on the one hand conveniently rely on the letters of intent and on the other hand call into question the validity and enforceability of the letters of intent. Without prejudice and in any event, the Authority in the impugned order has not even strictly enforced Clause 20 as is evident on a conjoint reading of paragraphs 36, 37 and 38(c) of the impugned order. The learned Senior Advocate further submitted that the appellants have sought to contend that there is a failure to consider various aspects on the part of the Authority and that the impugned order is perverse. It is submitted that the impugned order speaks for itself; it is a reasoned speaking order,

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taking into account all the record and proceedings before the Authority and the same rejects the complaints filed by the appellants on cogent, compelling and reasoned grounds. Further, as regards the reliefs sought for by the appellants ought to be rejected on the ground that firstly no case has been made out for the relief sought for entitlement of interest and full refund under Section 18 of the RERA Act. Secondly the appellants had not pressed for reliefs under Section 11 & 12 of the RERA Act in the complaint proceedings and in any event such reliefs cannot be granted in the facts and circumstances of the present cases and further the alleged violations have been dealt with in the impugned order and the Authority in its wisdom though it fit to not grant such reliefs as prayed. Thirdly, the relief sought for the refund has already been paid by the promoter in terms of the impugned order. With regards to the differential amount, the same is based upon improper and baseless calculations for which clarifications have already been provided to the appellants. With these submissions the learned Senior Advocate for promoter prayed to dismiss the appeals with costs.

32. In addition, the learned Advocate Mr. Vikramjt Garewal has submitted that the case of the appellants before the Authority was that the promoter had promised period of three years for handing over possession. However, in the captioned appeals the appellants have come up with new pleadings that "reasonable time" of 3 years instead of "promised time". The appellants did not plead reasonable time for handing over of possession in the complaint proceedings. Therefore, they cannot now take a different ground of "reasonable time" for handing over of

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possession. Once they failed to establish that the promoter had promised three years for possession as contended by them, therefore, the appellants cannot now take recourse to the judgment of the Hon'ble Supreme Court in the case of *Fortune Infrastructure (supra).*

33. The learned Advocate further submitted that Section 46 of the Indian Contract Act, 1872 stipulates time for performance of promise, where no application is to be made and no time is specified in the contract. The said provisions read as under:

> *"46. Time for performance of promise, where no application is to be made and no time is specified:- Where, by the contract, a promisor is to perform his promise without application by the promise, and no time for performance is specified, the engagement must be performed within a reasonable time.*
>
> *Explanation:- The question "what is a reasonable time" is, in each particular case, a question of fact."*

34. As per the explanation to Section 46, the question of "what is a reasonable time" is, in each particular case, is a question of fact. In the instant cases, the appellants have not demonstrated any evidence to substantiate what is a reasonable time for completion of the project.

35. The learned Advocate further submitted that Section 19(3) of the RERA Act, 2016 stipulates that the allottee shall be entitled to claim the possession of apartment, plot or building, as the case may be, as per the declaration given by the promoter under sub-Clause (C) of Clause (i) of sub-section (2) of Clause (4). Thus, the possession is linked to the disclosure of date of

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possession in the contract. In the instant cases, there is no specific date mentioned in the contract. Therefore, the appeals deserve to be dismissed.

36. In addition to adopting the arguments advanced by the Senior Advocate Mr. Naushad Engineer, the learned Advocate Mr. Subit Chakrabarti has submitted that the Authority in the impugned order in para-35 has made observations regarding Section 18 of the RERA Act, 2016. The Authority has categorically recorded that there is no violation of Section 18 of the RERA Act, 2016, as alleged by the allottees. Further, unless there is committed date of possession, Section 18 of the RERA Act, 2016 has no applicability and therefore the Authority has rightly rejected the relief to the appellants under Section 18 of the RERA Act, 2016.
37. In addition to the arguments advanced by Senior Advocate Mr. Naushad Engineer, Advocate Mr. Suneet Tyagi has submitted that the case laws relied upon by the appellants are not relevant since the said case laws, the date of possession has been specified in those cases whereas in the instant cases there is no date of possession specified in the letters of intent. Further, the promoter has sold all the subject flats by incurring huge losses. Therefore, there is no equity for granting relief of interest on the refund as prayed for by the appellants.
38. With these submissions the learned Advocates for promoter prayed to dismiss the appeals with costs.
39. In support of the above contention, the learned Senior Advocate has placed reliance on the following judgments:

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i. *Mohit Melwani V/s. A.A. Estates Pvt. Ltd. [Appeal No.AT/06/10873 decided by the Maharashtra Real Estate Appellant Tribunal, Mumbai on 08.11.2019]*

ii. *M/s. Imperia Structures Ltd. V/s. Anil Patni & Anr.[Civil Appeal No.3581-3590 of 2020 Supreme Court decided on 02.11.2020],*

iii. *Newtech Promoters and Developers Pvt. Ltd. V/s. State of UP and others [Civil Appeal No.(S). 6745-6749 of 2021 (arising out of SLP (Civil) No.(s).3711-3715 of 2021]*

iv. *Grasim Industries Ltd. & Anr. V/s. Agarwal Steel [(2010) 1 SCC 83].*

v. *Bombay Dying & Manufacturing Co. Ltd. V/s. Ashok Narang, [Second Appeal (ST) No.4996 of 2020 with Interim Application No.3383 of 2020 decided by the Hon'ble Bombay High Court on 30.08.2021],*

vi. *Pioneer Urban Land & Infrastructure Ltd. & Anr. V/s. Union of India & Ors.[(2019) 8 SCC 416],*

vii. *Roger Shashoua and others V/s. Mukesh Sharma and others [(2017) 14 Supreme Court Cases 722],*

viii. *Prakash Chandra Pathak V/s. State of Uttar Pradesh [AIR 1960 SC 195],*

ix. *Secundrabad Club and others V/s. CIT-V and others [(2024) 18 Supreme Court Cases 310],*

x. *Fortune Infrastructure (now known as M/s. Hicon Infrastructure) & Anr. V/s. Trevor D'lima [(2018) 5 SCC 442],*

xi. *Rana Pratap Singh V/s. Darshan Developers [2020 SCC Online MahRERA 17],*

xii. *Padma Sundara Rao & Ors. V/s. State of T.N. & Ors.[(2002) 3 SCC 533],*

xiii. *Sumtibai & Ors. V/s. Paras Finance Co. & Ors. [(2007) 10 SCC 82],*

xiv. *Godrej Projects Development Ltd. V/s. Anil Karlekar & Ors. [Civil Appeal No.3334 of 2023 decided by the Hon'ble Supreme Court of India on 03.02.2025],*

xv. *Rajasthan State Industrial Development and Investment Corporation & Anr. V/s. Diamond & Gems Development Corporation Ltd & Anr.[(2013) 5 SCC 470],*

xvi. *Bhagwat Sharan V/s. Purshottam & Ors. [(2020) 6 SCC 387],*

xvii. *R.C.Chandiok and another V/s. Chuni Lal Sabharwal & others [1970 (3) Supreme Court Cases 140]*

xviii. *Wander Ltd. & Anr. V/s. Antox India P. Ltd. [1990 (Supp) SCC 727],*

xix. *Mohd. Mehta Khan V/s. Khushnuma Ibrahim Khan [2013 (9) SCC 221],*

xx. *Shyam Sel and Power Ltd. & Anr. V/s. Shyam Steel Industries Ltd. [(2023) 1 SCC 634],*

xxi. *Neelkanth Devansh Developers Pvt. Ltd. V/s. Urban Infrastructures Venture Capital Ltd. [(2016) 195 COMP CAS 236],*

xxii. *World Crest Advisors LLP V/s. Catalyst Trusteeship Ltd. & Ors.[2022 SCC Online Bom. 1409],*

xxiii. *USV Private Ltd. V/s. Hindustan Unilever Ltd. & Ant. [2022 SCC Online Bom 1471],*

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40. We have heard the learned Advocate for the parties at length. The submissions made by the learned Advocates for the parties are primarily based the contents of the memorandums of appeals, reply, rejoinder and written submissions. We have carefully considered the arguments advanced by the learned Advocates for the parties. On examination of the pleadings of the parties, submissions advanced by the learned Advocates, the impugned order, and material placed on record, the following points arise for our consideration, and we have recorded our findings thereupon, for the reasons to follow, as under.

Sr.No.	Points	Findings
1.	Whether the appellants are entitled to relief of refund on the paid amounts towards consideration along with interest under section 18 of RERA Act, 2016?	In the Affirmative
2.	Whether the impugned order passed by the Authority warrants interference in these appeals?	In the affirmative.
3.	What order?	As per final order.

REASONS

Point No.1

41. On ensemble of the facts as submitted by the parties above, it is not in dispute that the appellants have purchased their respective subject flats vide letters of intent dated 19.03.2015. It is also not in dispute that the appellants purchased the said

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flats under 30:70 scheme of the promoter, whereby the 30% of the consideration amount to be paid at the booking of the flats and 70% was payable on completion of the project and at the stage of offering fit out possession of the respective flats. It is not in dispute that the appellants paid 30% of the consideration amount towards their respective flats as per the table given in para-6 and 7 of this judgment. The payments made by the appellants towards consideration of the said flats, and other taxes is detailed out in para-7 of this judgment. It is also not in dispute that the detailed terms and conditions were mentioned in the respective letters of intent. However, the promoter did not specify the date of possession of the flats in the said letters of intent. It is not in dispute that pursuant to the said letters of intent, the promoter did not issue any allotment letters nor executed the agreements for sale with the appellants. It is the case of the appellants that the promoter verbally assured them that the construction would be completed within 3 years of the signing of the letters of intent i.e. before 19.03.2018. The appellants sought to be withdrawn from the project by sending the notice to the promoter on 06.07.2020, however the promoter failed to refund the paid amounts with interest which redounded the appellants to file complaints on 19.08.2020 i.e. after 5 years of signing the letters of intent.

42. Closer examination of the said letters of intent reveal that they disclose the respective flat number, carper area of the flat, name of the project, project land, list of the amenities, etc. Further, the said letters of intent represented that the plans were approved by competent authority and that promoter obtained

required permissions from the concerned authorities. The letters of intent further disclose consideration value of the respective flats and also acknowledged the receipt of the earnest money towards part consideration of the flats. The appellants paid the various amounts towards consideration and taxes during the period between March 2015 to April 2015 and the promoter has also issued receipts of those payments to the allottees. The said letters of intent also disclose that the appellants have purchased the said flats under 30:70 scheme, whereby 70% of the remaining consideration is to be paid to the promoter only at the time of offering fit out possession of the flats after completing the construction of the project. Clause 7 in the said letters of intent stipulates that upon confirmation of the terms and conditions and assurance to execute the agreement for sale and registration thereof that the deposits made by the appellants will be adjusted towards consideration in respect of the cost of the respective flats. The said letters of intent have been signed by the promoter and the appellants/allottees. The letters of intent also disclose applicable interest for any delayed payments. Clause 17 of the letters of intent stipulates that the copy of the agreement for sale shall be handed over to the allottees. The said letters of intent also stipulate various other terms and conditions governing the said sale and purchase transactions. The receipts of the payments issued by the promoter are signed by customer services executive/sales office of the promoter. The promoter has not disputed the factum of payments made by the appellants towards the purchase of the said flats including taxes as detailed out in the para-7 of this judgment. Closer look

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at these documents viz: letters of intent, payment receipts etc. disclose all the elements of valid and concluded sale purchase contract between the parties.

43. Clause (a) of Section 2 of Contract Act, 1872 talks about the proposal and Clause (b) of Section 2 of the Contract Act, 1872 speaks about the promise. Clause (a) of Section 2 lays down that when one person signified 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 states that when the 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. On careful examination of the letters of intent, receipts of payments issued by the promoter revealing the payments made by the appellants from time to time reveal that those documents depict a clear picture of the fulfilment of the Clause (a) and (b) of Section 2 of the Contract Act, 1872. All receipts of the payments show that there was an offer to purchase the said flats by the allottees, the offer was accepted by the promoter and in furtherance of the same did act of accepting the payments from the allottees towards part consideration. There is specific mention in the receipts issued by the promoter that the said amounts are towards part payments of the consideration in respect of the allotted flat to the allottees.

44. Therefore, these documents clearly depict the picture of fulfillment of requirement of law. In other words, both the receipts as well as the letters of intent disclose that there was an offer to purchase by appellants and promoter acted in

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furtherance of the said offer by allotting the subject flats and by accepting part payments towards consideration. Section 8 of the Contract Act, 1872 mentions about acceptance by performing conditions or receiving consideration. The said provision is reproduced below:

> "8. ***Acceptance by performing conditions, or receiving consideration-*** *Performance of the conditions of a proposal, or the acceptance of any consideration for a reciprocal promise which may be offered with a proposal, is an acceptance of the proposal."*

45. Therefore, from the above discussion fulfilling the requirement of the Section 2(a) and Section 2(b) read with Section 8 of the Contract Act, 1872, we have no hesitation in concluding that there were valid and concluded contracts between the parties fulfilling the requirement of law. Since the project is registered as an ongoing project under the provisions of RERA Act, 2016, we are of the considered view that the said sale purchase agreements vide the letters of intent are valid and concluded contracts, which are enforceable under the RERA Act, 2016.

46. It is pertinent that the said letters of intent/sale purchase agreements were executed prior to coming into force of the RERA Act, 2016. It is pertinent to note that the RERA Act, 2016 is retroactive in operation. The Hon'ble Supreme Court of India in case of *M/s. Newtech Promoters and Developers Pvt. Ltd. V/s. State of U.P. & Others* [Civil Appeal No(s). 6745-6749 of 2021 (arising out of SLP (Civil) No(s). 3711-3715 of 2021 decided on 21st November, 2021] in Para-37, 41 and 45 has held as under:

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"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."

47. The subject project was launched in the year 2015 when MOFA was in force and was ongoing when the RERA Act, 2016 came into force. The said project is therefore registered with the MahaRERA under the provisions of RERA Act, 2016. In the light of above exposition of law in *M/s. Newtech Promoters and Developers (supra)* the agreements for sale/letters of intent which were executed prior to coming into force the RERA Act, 2016 can be enforced under the provisions of RERA Act, 2016. Hence, we are of the considered view that the appellants/allottees are entitled to seek relief under the provisions of RERA Act, 2016 even though the agreements for

sale/letters of intent are executed prior to RERA Act, 2016 coming into force.

48. As observed above, that the said letters of intent executed by the promoter with the allottees are enforceable under the provisions of RERA Act, 2016. However, the said letters of intent do not disclose any specific date of possession. It is the contention of the appellants that the promoter orally promised them that the project would be completed within 3 years. Therefore, the date of possession agreed to the appellants should be taken as on or before 19.03.2018. Since the project was not completed and possession of the flats was not handed over to the appellants by that date of 19.03.2018, the appellants/allottees are entitled to seek relief under section 18 of the RERA Act, 2016. The appellants further contended that in absence of any specific date of possession in the letters of intent, which are valid contracts between the parties, 3 years should be taken as reasonable period of time to hand over the possession.

49. In support of the above contention, the learned Advocate for the appellants placed reliance on the judgment of Hon'ble Supreme Court in case of *Fortune Infrastructure & Anr. Versus Trevor D'Lima & Ors* (supra). The Hon'ble Supreme Court in para-15 has held as under:

> *15. Moreover, a person cannot be made to wait indefinitely for the possession of the flats allotted to them and they are entitled to seek the refund of the amount paid by them, along with compensation. Although we are aware of the fact that when there was no delivery period*

stipulated in the agreement, a reasonable time has to be taken into consideration. In the facts and circumstances of this case, a time period of 3 years would have been reasonable for completion of the contract i.e., the possession was required to be given by last quarter of 2014. Further there is no dispute as to the fact that until now there is no redevelopment of the property. Hence, in view of the above discussion, which draw us to an irresistible conclusion that there is deficiency of service on the part of the appellants and accordingly the issue is answered. When once this Court comes to the conclusion that, there is deficiency of services, then the question is what compensation the respondents/complainants is entitled to ?"

50. Thus, the contention of the appellants/allottees is that the allottees cannot be made to wait indefinitely for the possession of their flats, and they are entitled to seek relief of refund of paid amounts along with interest and compensation. Further, in the event no specific delivery period is stipulated in the agreements, reasonable time has to be taken into consideration and 3 years has been held by the Hon'ble Supreme Court in the above judgment to be a reasonable period for completion of the project.

51. Per contra, it is the contention of the promoter that the promoter had never orally committed that the project would be completed within the period of 3 years and hand over possession of the flats to the appellants/allottees, as contended by the appellants. Further, the appellants have not produced on record any

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evidence indicating that such verbal assurance was indeed given by the promoter. The learned Senior Advocate placed reliance on the judgment of the Hon'ble Supreme Court in case of *Rangammal V/s. Kuppuswami and another* [(2011) 12 Supreme Court Cases 2020]. The Hon'ble Supreme Court in para-21 of the said judgement has held that:

> *21. Section 101 of the Evidence Act, 1872 defines "burden of proof" which clearly lays down that:*
>
> *"101. Burden of proof. Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist.*
>
> *When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person."*
>
> *Thus, the Evidence Act has clearly laid down that the burden of proving a fact always lies upon the person who asserts it. Until such burden is discharged, the other party is not required to be called upon to prove his case. The court has to examine as to whether the person upon whom the burden lies has been able to discharge his burden. Until he arrives at such conclusion, he cannot proceed on the basis of weakness of the other party.*

52. Promoter has contended that it was the duty of the appellants allottees to produce on record an evidence of any promised date of completion of project and handing over of possession to produce or any communication in this regard from the promoter,

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if they sought to contend that promoter had verbally promised that the project would be completed in 3 years. However, we note that the appellants allottees have not placed on record any evidence to suggest that the promoter has promised that the project would be completed in 3 years. In absence of such evidence, we are not able to give any credence to the contention of the appellants allottees that the promoter in his verbal assurance promised to complete the construction and hand over the possession within 3 years of signing the letters of intent.

53. It is also contention of the promoter that there is no communication with the appellants which demonstrates that there was any agreed date of possession. Also the said letters of intent do not disclose any specific date of possession. Therefore, in absence of committed date of possession there is no violation of Section 18 of the RERA Act, 2016. It is also the contention of the promoter that 3 years of a reasonable period in the said judgment of the Hon'ble Supreme Court in *Fortune Infrastructure* (supra) cannot be taken as a binding law. The time for completion of project of 3 years was taken in the said judgment in facts and circumstances of that case and cannot be universally applicable to all the projects. Further, reasonable period should also be considered by taking into account various other factors such as magnitude of project, unique features and circumstances and the said ratio of 3 years in the judgment relied upon by the appellants cannot be applied as binding law. Further, it is not the case of the appellants/allottees that they were made to wait indefinitely for possession of their flats. The promoter completed the project and obtained occupation

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certificate on 28.10.2021 and vide letters dated 08.12.2021 and 13.05.2022 informed the appellants about receipt of the occupation certificate and called upon them to execute the agreements for sale, paid outstanding amounts and take possession of their flats. Therefore, the said judgment of the Hon'ble Supreme Court in *Fortune Infrastructure* (supra) is not applicable in the facts and circumstances of these cases.

54. To strengthen the above arguments, the learned Advocate for the promoter has placed reliance on the judgment of the Hon'ble Supreme Court in case of *Prakash Pathak* (supra), wherein the Hon'ble Supreme Court has held in para-8 as under:

> *"8.Learned counsel for the appellant cited before us a number of reported decisions of this Court bearing on the appreciation of circumstantial evidence. We need not refer to those authorities. It is enough to say that decisions even of the highest court on questions which are essentially questions of fact, cannot be cited as precedents governing the decision of other cases which must rest in the ultimate analysis upon their own particular facts. The general principles governing appreciation of circumstantial evidence are well-established and beyond doubt or controversy. The more difficult question is one of applying those principles to the facts and circumstances of a particular case coming before the Court. That question has to be determined by the Court as and when it arises with reference to the particular facts and circumstances of that individual case. It is no use, therefore, appealing to precedents in such matters. No case on facts can be on all*

fours with those of another. Therefore, it will serve no useful purpose to decide this case with reference to the decisions of this Court in previous cases. We have to determine whether on the facts and circumstances disclosed in the evidence which has been accepted by the courts below, the crime charged against the appellant has been made out. We have carefully weighed the facts and circumstances pro and con forcefully brought to our notice by the learned counsel for the appellant and, in our opinion, no grounds have been made out for differing from the conclusions arrived at by the courts below. In our opinion, the facts and circumstances proved in this case establish the guilt of the appellant beyond all reasonable doubt. The appeal is accordingly dismissed."

55. Further, the learned Senior Advocate relied on the judgment of the Hon'ble Supreme Court in case of *Secunderabad Club & Ors.* (supra) wherein the Hon'ble Supreme Court in in para-65 of the said judgment has held as under:

"65. Reliance could also be placed on the dissenting judgment of A.P. Sen, J. in Dalbir Singh v. State of Punjab[(1979) 3 SCC 745], wherein his Lordship observed that a decision on a question of sentence depending upon the facts and circumstances of a particular case, can never be regarded as a binding precedent, much less "law declared" within the meaning of Article 141 of the Constitution so as to bind all courts within the territory of India. According to the well-settled theory of precedents, every decision contains three basic ingredients:

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(i) findings of material facts, direct and inferential. An inferential finding of fact is the inference which the Judge draws from the direct or perceptible facts;

(ii) statements of the principles of law applicable to the legal problems disclosed by the facts; and

(iii) judgment based on the combined effect of (i) and (ii) above.

For the purposes of the parties themselves and their privies, ingredient (iii) is the material element in the decision, for, it determines finally their rights and liabilities in relation to the subject-matter of the action. It is the judgment that estops the parties from reopening the dispute. However, for the purpose of the doctrine of precedent, ingredient (ii) is the vital element in the decision. This is the ratio decidendi. It is not everything said by a Judge when giving a judgment that constitutes a precedent. The only thing in a Judge's decision binding a party is the principle upon which the case is decided and for this reason it is important to analyse a decision and isolate from it the ratio decidendi."

56. The learned Advocate for the promoter has also placed reliance on the judgment of the Hon'ble Supreme Court in case of *Roger Shashoua & Ors.* (supra), wherein the Hon'ble Supreme Court in paras 57,58 and 59 has held as under:

"57. In this context, a passage from CIT v. Sun Engg. Works (P) Ltd.[(1992) 4 SCC 363] would be absolutely apt: (SCC pp. 385-86, para 39)

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39. ... It is neither desirable nor permissible to pick out a word or a sentence from the judgment of this Court, divorced from the context of the question under consideration and treat it to be the complete "law" declared by this Court. The judgment must be read as a whole and the observations from the judgment have to be considered in the light of the questions which were before this Court. A decision of this Court takes its colour from the questions involved in the case in which it is rendered and while applying the decision to a later case, the courts must carefully try to ascertain the true principle laid down by the decision of this Court and not to pick out words or sentences from the judgment, divorced from the context of the questions under consideration by this Court, to support their reasonings.

58. In this context, we recapitulate what the Court had said in Ambica Quarry Works v. State of Gujarat [(1987) 1 SCC 213] (SCC p. 221, para 18).

"18.... The ratio of any decision must be understood in the background of the facts of that case. It has been said long time ago that a case is only an authority for what it actually decides, and not what logically follows from it. (See Lord Halsbury in Quinn v. Leathem [1901 AC 495(HL)],

59. From the aforesaid authorities, it is quite vivid that a ratio of a judgment has the precedential value and it is

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obligatory on the part of the court to cogitate on the judgment regard being had to the facts exposited therein and the context in which the questions had arisen and the law has been declared. It is also necessary to read the judgment in entirety and if any principle has been laid down, it has to be considered keeping in view the questions that arose for consideration in the case. One is not expected to pick up a word or a sentence from a judgment dehors from the context and understand the ratio decidendi which has the precedential value. That apart, the court before whom an authority is cited is required to consider what has been decided therein but not what can be deduced by following a syllogistic process."

57. The learned Senior Advocate also placed reliance on case of *Padma Sundara Rao & Ors.* (supra), the Hon'ble Supreme Court has held that court should not place reliance on the decision without discussing the factual situation of the proceeding before it with the factual situation of the decision. The Hon'ble Supreme Court in the said judgment in para-9 has held as under:

9. Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the f facts of a particular case, said Lord Morris in Herrington v. British

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Railways Board [(1972) 2 WLR 537] Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases.

58. The learned Advocate also placed reliance on the judgement of the Hon'ble Supreme Court in the case of *Sumtibai and Others* (supra) wherein it has held that what is the essence in a decision is its ratio and not every observation found therein and the ratio of every decision must be understood in the background of the facts of that case. The Hon'ble Supreme Court in paras-10, 11, 12 and 13 has held as under:

> *10. As observed by this Court in State of Orissa v. Sudhansu Sekhar Misra [AIR 1968 SC 647] vide para 13:*
>
> > *"13... A decision is only an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically follows from the various observations made in it. On this topic this is what Earl of Halsbury, L.C. said in Quinn v. Leathem [1901 AC 495]:*
> >
> > *'Now before discussing the case of Allen v. Flood[1898 AC 1 : and what was decided therein, there are two observations of a general character which I wish to make, and one is to repeat what I have very often said before, that every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expressions which may be found there are not intended to be expositions of the whole law, but governed and qualified by the*

particular facts of the case in which such expressions are to be found. The other is that a case is only an authority for what it actually decides. I entirely deny that it can be quoted for a proposition that may seem to follow logically from it. Such a mode of reasoning assumes that the law is necessarily a logical code, whereas every lawyer must acknowledge that the law is not always logical at all."

(emphasis supplied)

11. In Ambica Quarry Works v. State of Gujarat [(1987) 1 SCC 213] vide para 18 this Court observed:

"18.....The ratio of any decision must be understood in the background of the facts of that case. It has been said long time ago that a case is only an authority for what it actually decides, and not what logically follows from it."

12. In Bhavnagar University v. Palitana Sugar Mill (P) Ltd. [(2003) 2 SCC 111] vide para 59 this Court observed:

"59. It is also well settled that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision." (emphasis supplied)

13. As held in Bharat Petroleum Corpn. Ltd. v. N.R. Vairamani [(2004) 8 SCC 579] decision cannot be relied on

without disclosing the factual situation. In the same judgment this Court also observed: in paras 9-12).

> *"9. Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of courts are neither to be read as Euclid's theorems nor as provisions of a statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgments of courts are not to f be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions, but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes. In London Graving Dock Co. Ltd. v. Hortons (AC at p. 761) Lord g MacDermott observed. (All ER p. 14 C-D)*
>
> *"The matter cannot, of course, be settled merely by treating the ipsissima verba of Willes, J. as though they were part of an Act of Parliament and applying the rules of interpretation appropriate thereto. This is not to detract from the great weight to be given to the language actually used by that most distinguished judge,*

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10. In Home Office v. Dorset Yacht Co. [1970 AC 1004] (All ER p. 297 g-h) Lord Reid said, 'Lord Atkin's speech is not to be treated as if it were a statutory definition. It will require qualification in new circumstances Megarry, J. in Shepherd Homes Ltd. v. Sandham (No. 2) [(1971) 1 WLR 1062] observed. 'One must not, of course, construe even a reserved judgment of Russell, L.J. as if it were an Act of Parliament. And, in Herrington v. British Railways Board [1972 AC 877] Lord Morris said: (All ER p. 761c)

'There is always peril in treating the words of a speech or a judgment as though they were words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case.'

11 Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper.

12. The following words of Hidayatullah, J. in the matter of applying precedents have become locus classicus: (Abdul Kayoom v. CIT [AIR 1962 SC 680]

> *19.... Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect, in deciding*

such cases, one should avoid the temptation to decide cases (as said by Cardozo) by matching the colour of one case against the colour of another. To decide therefore on which side of the line a case falls, the broad resemblance to another case is not at all decisive.

'Precedent should be followed only so far as it marks the path of justice, but you must cut the dead wood and trim off the side branches else you will find yourself lost in thickets and branches. My plea is to keep the path to justice clear of obstructions which could impede it"

59. In the light of the above judgments, the learned Senior Advocate for promoter has sought to contend that the contention of the appellants that the 3 years of reasonable period held by the Hon'ble Supreme Court in the case of *Fortune Infrastructure* (supra), should not be applied in these cases as the binding precedent or binding law. In view of the above judgements relied upon by the promoter, the contention of the promoter is that decision in *Fortune Infrastructure* (supra) was in the facts and circumstances of that case and cannot be applied to the present cases as the facts and circumstances in these cases are not identical to that in the case of *Fortune Infrastructure* (supra). Since the appellants have not established their case of having any specific date of possession and in absence of such date of possession, there can be no violation of Section 18 of the RERA Act, 2016.

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60. The ratio laid down by the Hon'ble Supreme Court in the case of *Fortune Infrastructure* (supra) is that the allottees cannot be made to wait indefinitely for possession and that when there is no delivery period stipulated in the agreement, a reasonable time has to be taken into consideration. However, reasonable period for possession depends on the facts and circumstances of each case. We are of the view that it is, however, unreasonable for the allottees to wait for the possession of more than five years. The letters of intent were executed on 19.03.2015 and the appellants filed complaints before the Authority on 19.08.2020 i.e. more than five years and five months. We are of the view that such a long period of five years and five months would be unreasonable for the allottees to wait for promoter to hand over possession of their flats. Pertinently, the promoter obtained occupation certificate on 28.10.2021 for the subject flats i.e. after more than 6 and a half years, which is certainly unreasonable period for getting possession. Nonetheless, it would be pertinent to examine if there is any date committed by the promoter to complete the construction of the said project, from the documents available on record, which would have bearing on the reasonable date of possession of the flats to the appellants.

61. It is not in dispute that the said project is registered under the provisions of RERA Act, 2016 as an "ongoing project". While registering the said project with the MahaRERA, the promoter has disclosed original date of completion of project as 31.03.2019 and disclosed revised proposed date of completion of project as 31.12.2021. It is thus clear that by its own

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admission the original date of completion of the project was 31.03.2019. The letter dated 23.09.2020 addressed by the Advocate of the promoter to the Advocate of the appellants in response to the demand notice dated 06.07.2020 issued by the appellants, holding reply from the promoter dated 13.07.2020, and thereafter subsequent reply from the appellants dated 17.07.2020 also discloses the original completion date of the project. In the said letter, in para-10 it has been stated that "*my clients states that after Real Estate Regulatory Authority Act, 2016 ("RERA") came into effect from 1st May 2017, all the ongoing projects which had not obtained occupation certificates as on 1st August 2017 were required to be registered before the Maharashtra Real Estate Regulatory Authority ("MahaRERA"). Accordingly, in compliance thereof, my client registered the said project in July 2017 before MahaRERA bearing registration no. P51900000793. As per the provisions of RERA, a promoter is allowed to mention the earlier proposed dates of completion of the project and give a revised date of completion. Accordingly, the earlier proposed date of completion of project was/is mentioned as 31st March 2019....*"

62. The above correspondence from the promoter addressed to the appellants as well as the application form submitted by the promoter to that MahaRERA for registering the said project as "ongoing project" clearly shows that the earlier project completion date as committed by the promoter was **31.03.2019**. Therefore, it is reasonable to expect that the possession of the flats was required to be handed over to appellants in any event not later than 31.03.2019. It is admitted

fact that as on the date of 31.03.2019 the project was incomplete and while registering the said project with the MahaRERA the promoter revised the project completion date to 31.12.2021. Admittedly, the promoter obtained occupation certificate of the project covering the subject flats only on 28.10.2021. This sufficiently demonstrates that the promoter failed to hand over possession of the flats to the appellants even by the original date of completion of the project i.e. 31.03.2019. In our view, by promoter's own admission of original completion date of the project, the reasonable date of possession should be taken to be 31.03.2019 for the purpose of determining the entitlements of the appellants under the provisions of RERA Act, 2016. Thus, the promoter failed to hand over possession of the flats to appellants on or before the abovementioned date of possession. Pertinently, when the promoter revised the project completion date to 31.12.2021 at the time of registration of the project with the MahaRERA, there is nothing on record to indicate that the appellants have agreed to the said revised date of completion of project or possession date. So, the revised date of 31.12.2021 for completion of project has no bearing on determining the entitlement of the appellants under the provisions of RERA Act, 2016. There are also no averments of the promoter on any *force majeure* reasons for delay in construction of the project which warrants extension in date of possession. Once there is a delay in handing over of possession, the appellants/allottees are entitled to seek relief under section 18 of the RERA Act, 2016. We are of the view that we should not be oblivious to the fact that a RERA as a welfare legislation

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has been enacted mainly to safeguard the interest of allottees. Mere non mentioning of date of possession or non-execution of the agreement for sale cannot be allowed to operate in favour of allottees, who like appellants, is not responsive to cause of the allottees

63. The Hon'ble Bombay High Court, in the case of *Neelkamal Realtors Suburban Pvt. & Anr. Vs. Union of India & Ors.* [(2017)] SCC Online Bom 9302] in para 119 has held that "*while the proposal is submitted, the promoter is supposed to be conscious of the consequences of getting the project registered under RERA. Having sufficient experience in the open market, the Promoter is expected to have a fair assessment of the time required for completing the project...*". As an experienced promoter in the market, it is the promoter who is well aware of the factors that may endanger the prospects of timely completion of the project. So being domain expert and considering likely time to be consumed by various activities and approvals, Promoter is the best judge to estimate the likely timeline for completion of the project. Accordingly, the promoter had set project completion date as **31.03.2019.** On the contrary, the purchasers have no domain knowledge, neither aware nor expected to be aware of the nature of mitigating factors which may delay the project. The allottees entered into agreement of sale purchase transaction based on the commitment given by the promoter to hand over possession by a certain date as specified in the agreement or the reasonable period as we

discussed above in absence of any specific date of possession mentioned in the agreement.

64. Considering the liability of promoter to assess the likely date of completion of the project, allottees have very limited liability of discharging of the project, allottees have very limited liability of discharging their own obligations as per the terms of the agreement *inter alia* relating of primarily to make payments from time to time so that the project is not starved of funds to cause delay in completion. It is not in dispute that the allottees have made payment of 30% of consideration value as per the terms of the letters of intent under 30:70 scheme of the promoter, whereby the 70% of the remaining consideration was due for payments only at the time of fit out possession, the stage never arrived at in these cases. The promoter failed to hand over the possession by the due date as discussed above. If the allottees are not responsible for the reasons for the delay, they is entitled to relief under Section 18 of RERA and cannot be saddled with consequences for delay in completing the project. The language employed in Section 18(1)(a) makes it clear that the Promoter is obligated to handover the possession of flat as per the agreement by the date specified therein. The ratio laid down by the Hon'ble Supreme Court in *M/s. Imperia Structures Ltd. Vs. Anil Patni & Ors.* [in Civil Appeal No.3581-3590 of 2020] is that-

> *"In terms of Section 18 of the RERA Act, if a promoter fails to complete or is unable to give possession of an*

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

65. While explaining the scope of Section 18 of RERA, the Hon'ble Supreme Court in *M/s. Newtech Promoter and Developers Pvt. Ltd. V/s. State of Uttar Pradesh* [2021 SCC Online 1044] dated 11 November, 2021 held that;

"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, if the promoter fails to give possession of the apartment, plot or building

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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."

66. It is therefore clear that there are no shackles or limitations on the exercise of the right of allottees to withdraw from the project once there is delay in possession. As we have already observed that the promoter has failed to adhere to its obligation to hand over possession of the subject flat to the appellant by the reasonable due date i.e. 31.03.2019 (original date of completion of project) as we have elaborately discussed above. Therefore, we are of the considered view that the appellants/allottees are entitled to withdraw from the project and seek refund of the paid amount towards consideration along with interest from the respective dates of payment till the amounts are realized to the appellants as per Section 18 of the RERA Act, 2016.

67. In view of the above, we are of the view that the appellants are entitled to seek relief of refund of paid amounts towards consideration of the respective flats along with interest from the date of respective payments. It is also pertinent that the promoter has also duly complied with the impugned order and

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made payments to the appellants/allottees on 13.10.2022. The summary of the amounts paid by the appellants towards consideration of the flats (including cost of the flats + TDS + earnest money, etc.), the principal amount refunded by the promoter, and the balance principal amount is shown in the table below:

Appeal No.	Flat No.	Paid amount towards consideration (Rs.)	Amount refunded (Rs.)	Date of Refund	Balance principal amount (Rs.)
AT006/134117/22	B151	2,88,07,041	2,49,35,050	13.10.22	38,71,991
AT006/134118/22	B181	2,92,95,306	2,53,58,031	13.10.22	39,37,275
AT006/134119/22	B152	41,66,907	36,09,677	13.10.22	3,27,113
AT006/134120/22	B182	42,37,556	36,70,968	13.10.22	5,57,230
AT006/134121/22	A282	44,62,065	38,65,457	13.10.22	5,96,608
AT006/134122/22	A181	4,25,12,131	3,68,27,989	13.10.22	56,84,142

68. In view of the above, we are of the considered view that the appellants/allottees are entitled to the interest on the consideration paid to the promoter with effect from the respective dates of payments till 13.10.2022 in respective appeals. Further, the appellants are also entitled for refund of the balance principal amount of consideration paid to the promoter as indicated in above table in respective appeals along with interest with effect from 14.10.2022 till the amounts are realized to the appellants/allottees. Accordingly, we answer point no.1 in the affirmative.

69. We now briefly deal with the other cases on which the learned Senior Advocate for promoter has placed reliance upon in terms of relevance of those judgements in the present appeals. The learned Senior Advocate has placed reliance on the case of

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Mohit Melwani (supra) of this Tribunal, by contending that absence of any evidence of a formal date of possession, there can be no question of reliefs under Section 18 of the RERA Act, 2016. In the said case, the allottee therein relied on newspaper article to claim the date of possession in absence of any committed date of possession in the allotment letter. In that context the view was taken that the newspaper article has no evidential value, and the revised date of completion was taken as date of possession. The facts in that case are different from the facts and the context of the present cases. Hence, the said judgment is not relevant.

70. The learned Senior Advocate has also placed reliance on the judgment of *M/s. Imperia Structures* (supra) particularly para-33 of the said judgment to argue that for the purpose of section 18 of RERA, the period contemplated therein must be reckoned with in terms of the agreement and not the registration of project. In the said case, the date of possession is mentioned in the agreement for sale and hence it is held that the period for the purpose of section 18 of the RERA Act, must be reckoned in terms of the agreement for sale and not the date mentioned in the registration of the project. The facts in the said case are different from the present cases, where the date of possession is not mentioned in the agreement.

71. The learned Senior Advocate has also placed reliance on the case of *Grasim Industries Limited and another* (supra) of the Hon'ble Supreme Court specifically relying on para-6 of the judgment to argue that when a person signs a document there is a presumption that the person had read the documents and

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properly understood, such presumption being higher for businessman; party would be bound by the terms of such document he has signed. In the instant cases, the agreements do not disclose the term specifying the date of possession. Therefore, the said judgment does not come to the assistance of the promoter. In absence of specific date of possession, the same is required to be inferred from the other evidence, as we have elaborately dealt with above.

72. The learned Senior Advocate has also placed reliance on the judgment in the case of *Pioneer Urban & Infrastructure and Others* (supra) of the Hon'ble Supreme Court specifically placing reliance on the para-56 of the judgment, contending that speculative investors who are not persons genuinely interested in purchasing the flats must not get the benefit of beneficial legislation. In the said judgment the context is where the allottee invoking Section 7 of the Insolvency and Bankruptcy Code, 2016 (for short 'IBC'), the Hon'ble Supreme Court in the said decision has observed that once an allottee in the application under Section 7 of the IBC has to establish prima-facie case of default regarding the amounts due and payable to the allottee, then the burden shifts on the promoter to establish that the allottee himself is a defaulter and would, on a reading the agreement and the applicable RERA Rules and Regulations is not entitled to any relief including payment of compensation and/or refund, entailing a dismissal of the application under Section 7 of the IBC. Further, the promoter is also required to make out case that allottee has invoked insolvency resolution process under the IBC fraudulently with malafide intent, or for

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any purpose than the resolution of insolvency. Further, the promoter has to establish that an allottee who has knocked at the door or NCLT, is a just speculative investor and not a person genuinely interesting in purchase of flat/apartment. Thus, the reference to "speculative investor" allottee is used in the in the said judgment in contest of invoking insolvency resolution process by allottee under section 7 of the IPC. This is not relevant to the applicability of provisions of RERA in the instant cases. The RERA does not distinguish an allottee as a "speculative allottee" or "investor allottee" etc. Hence, the said judgment is not relevant in the present facts and context of these cases.

73. The learned Senior Advocate has placed reliance on several other judgments particularly *Wander Ltd. & Anr.* (supra), *Mohd. Mehta Khan* (supra), *Shyam Sel and Power Ltd. & Anr.* (supra), *Neelkanth Devansh Developers Pvt. Ltd.* (supra), *World Crest Advisors LLP* (supra) and *USV Pvt. Ltd.* (supra) to contend that the appellate court ought not to interfere with the exercise of discretion of the court of first instance. Further, the appellate court ought not to reassess materials and seek to reach a conclusion different from the court below, if the one reached by that court was reasonably possible on the material. The appellate court can not interfere with the lower court's order when the view taken by the lower court is a possible view, unless such view was either perverse or impermissible. The said judgments have dealt with cases in the context of appeal preferred against a discretionary order, in which context the courts have observed the limitations on the powers of the

appellate court to substitute its own discretion in the appeal preferred against a discretionary order. This context is entirely different from the present appeals. In the present appeals the order passed by the Authority is not under its discretionary powers, but under the statutory substantive provisions of Section 18 of the RERA Act, 2016. Hence, the said judgments on which the learned Senior Advocate has placed reliance are not relevant to these cases.

Point no.2

74. The Authority in the impugned order has held that there is no violation of Section 18 of the RERA Act, 2016, since there is no registered agreement for sale entered into between the parties showing any agreed date of possession, which has already passed. Further, there is no allotment letters also issued in favour of the allottees showing any agreed date of possession. As we have already observed that the letters of intent fulfill all the requirement of law, to be construed as valid and concluded sale purchase contract between the parties, which are enforceable under the provisions of RERA Act, 2016. Further, we have also dealt with what would be reasonable date of possession in these appeal based on the material on record. Therefore the above observations of the Authority are not sustainable in law.

75. The Authority also observed that the contention of the allottees that 3 years is a reasonable period for completion of project and for hand over of possession had been considered if the allottees would have come with their fair case that they had complied with their statutory liability and promoter itself is at the default.

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However, the allottees have not acted and responded to any of the letters issued by the promoter for execution of the agreements for sale. Hence, the party who is at default cannot be permitted to take such defense to get a favourable order under RERA. In our view, the said observation is not sustainable in law. Non-execution of the agreements for sale or registering the same would not disentitle the appellants/allottees from seeking relief under section 18 of the RERA Act, 2016.

76. The Hon'ble Bombay High Court in the case of *Bombay Dyeing and Manufacturing Company Limited* (supra) in para-7 had framed, among others, following substantial question of law.

> "7. *On 19 January 2021, these appeals were admitted on the following substantial questions of law:*
>
> *(i)to(viii).....*
>
> *(ix) Whether an application for refund and for compensation under Section 18 of RERA Act, can be filed only on the basis of a proper Agreement for sale, which records all material terms and conditions of the bargain including inter alia, the date for completion of the construction/project?*
>
> *(x) Whether the project completion date, originally notified at the time of registration under RERA Act, can be termed as the date specified in the agreement for sale for the purposes of an application for refund and for compensation made under Section 18 of the said Act of 2016?"*

77. While decided upon those questions of law, in the said judgment of the Hon'ble Bombay High Court in para-33, 34, 35, 36, 37, 38, 39, 40, 41 and 42 has held as under:

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"33. **Question Nos. (ix) and (x)** - These questions can be taken up together for consideration. The issue is short whether operation of section 18 requires a written agreement for sale. On behalf of the appellant, reliance is placed on Section 2(c) of the Act of 2016 which defines an agreement for sale along with Section 13 and Rule 10 of the 2017 Rules. It is submitted that as per Rule 10 of the 2017 Rules, for the purpose of Subsection 2 of Section 13, an agreement for sale, shall be in conformity with the provisions and rules and regulations made thereunder and shall be in accordance with the model form of agreement at Annexure A. It is thus submitted that the complaints could not have been brought under Section 18 in the absence of the agreement for sale and only on the basis of alleged representations made in a brochure.

34. On the contrary, it is contended on behalf of Respondents that the contention as sought to be raised in the appeal was not raised before the Authority or the Appellate Tribunal. It is pointed out that quite to the contrary, in the written submissions dated 22 October 2019, it was claimed on behalf of respondents that this question was not germane and did not arise in the appeals. It is submitted that in such circumstances, the Appellate Tribunal has not rendered a finding on said issue. Thus, the appellants cannot be allowed to raise the contention for the first time in the second appeal. Reliance is placed on the decision in Maharaj Singh and Others Vs. Hukum Singh 28 in this regard. It is submitted that the

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appellants by their conduct has waived their right to raise this issue and the appellants cannot be permitted to approbate and reprobate.

35. It is submitted that Section 2(c) defines an 'Agreement for Sale' and does not specifically refer to a formal "written agreement for sale", unlike in Section 13 of the said Act of 2016 which makes a specific reference to a written agreement for sale. It is submitted that Section 13 is in the context of a prohibition against the promoter from accepting the sum more than 10% of the cost of apartment, without first entering into an agreement for sale. It is thus submitted that the object of Section 13 is limited and Section 13 cannot be used or relied upon to reckon the definition of an agreement for sale as defined in Section 2(c) of the Act of 2016. It is submitted that there are several sections such as Section 11, 12, 14, 15, 19, 31, 32 and 71 which refer to the rights of the allottees which is defined under Section 2(d) of the Act of 2016 and none of these provisions set out a requirement of a formal written agreement for sale in order to enable the allottees to enforce the rights. It is submitted that Section 8 of the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act of 2016, 1963 ('MOFA', for short) also casts an obligation on the promoter to refund amount received with interest, in the event of failure to give possession in accordance with the terms of the agreement. It is submitted that Section 18 of the Act of

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2016 is similar to Section 8 of MOFA. Reliance is placed on the decision in G. Swaminathan Vs. Shivram Co-operative Housing Society and Ors. [Writ Petition No.1869 of 1982 decided on 24/02/1983 & 25/02/1983] and Neena Sudarshan Wadia Vs. M/s. Venus Enterprises [(1984) 2 Bom. C.R. 505] in order to submit that in similar provisions under the MOFA, there is no requirement of a written and registered agreement as contemplated under Section 4 for invocation of Section 7 of MOFA.

36. It is submitted that this Court in Neelkamal Realtors has held RERA Act to be a beneficial legislation devised to protect the purchasers in the real estate sector who are adversely affected financially and otherwise by unregulated delays in projects. Reliance is placed on (i) Lanco Anpara Power Ltd. Vs. State of U.P. and Ors.[2016 10 SCC 329], (ii) Regional Provident Fund Commissioner Vs. Hooghly Mills Co. Ltd. and Ors.[2012 2 SCC 489], (iii) National Insurance Co. Ltd. Vs. Laxmi Narain Dhut [2007 3 SCC 700] in order to submit that the Act of 2016 being a beneficial legislation to be given due weightage and is free to resort to historical, contextual and purposive interpretation and not textual one. Reliance is also placed on a decision of this Court in Lavasa Corporation Ltd Vs. Jitendra Jagdish Tulsiani and Anr.[(2018) 6 Bom C.R. 172]. It is submitted that in the absence of a specific date, a reasonable period should be applied as held by the Supreme Court in Fortune Infrastructure & Anr. Vs. Trevor D'lima and Ors.[(2018) 5 SCC 442] and Kolkata West

International City Pvt. Ltd. Vs. Devasis Rudra [2019 SCC Online SC 438]. Reliance is also placed on the decision of the Supreme Court in Pioneer Urban Land and Infrastructure Ltd. Vs. Govindan Raghavan [(2019) 5 SCC 725]. It is submitted that the Appellate Tribunal has rightly found that the booking of the flats being made in year 2012-13, it was reasonable to expect delivery of possession within three years and in any event not beyond 2017.

37. That apart from Section 18, the respondents are entitled to seek refund together with interest even under Section 12 of the said Act of 2016 based on the false and incorrect representations made. It is submitted that there is correspondence, in which the respondents have stated that the possession was agreed to be delivered by 2017 and said aspect was never controverted.

38. In reply, it is submitted on behalf of the appellants that there is failure on the part of the respondents to execute the agreement although the Authority had asked the parties to execute the agreement inspite of attempts by the appellants to require the respondents to execute the agreement. It is submitted that the Appellate Tribunal in paragraph 35, 73 and 78 has recorded a finding and has dwelt upon the contention about the requirement of a written agreement for application of Section 12 and thus, the appellants cannot be precluded from raising the same more so when the issue goes to the root of the matter. It is submitted that the respondents cannot place reliance on

the authorities under the MOFA nor support its case for application of Section 12 of the said Act of 2016. It is submitted that the Tribunal was not right in finding that there was discrepancy in the matter of the agreement circulated vis-a-vis the model Annexure A, under the Rules of 2017. It is submitted that even otherwise the Act of 2016 provides for appropriate modification and alterations in the model agreement subject to the condition that they are not in derogation of the provisions of the Act of 2016 and the rules and regulations framed thereunder. It is submitted that the decisions relied upon by the respondents are distinguishable on facts.

39. I have carefully considered the rival submissions made on the said issue. It is a matter of record that the formal agreements for sale has not been executed in the present case. It is not necessary to go into the question of the reasons for such non execution in as much as the question is whether in the absence of a written agreement whether the provisions of Section 18 can be invoked. At the outset, it is necessary to note that in the written submissions dated 22 October 2019 the appellants claimed that the only issue which arose in the appeal was whether the complaint was maintainable under Section 12 and 18 of the said Act of 2016. It was specifically claimed that the various contentions raised by the Respondents namely Section 18 of the Act of 2016 would apply even in the absence of a registered agreement and are not germane and do not arise in the Appeal before the

Appellate Tribunal. It is on account of such a stand being taken, it is contended on behalf of the respondents that the appellants cannot be permitted raise said issue for the first time in the second appeal. The said aspect is countered on behalf of the appellants, primarily on two grounds. Firstly that the Appellate Tribunal has dealt with this aspect and secondly the issue which goes to the root of the matter can otherwise be allowed to be raised for the first time in the appeal. It is contended on behalf of the respondents that the findings in para 35, 73 and 78 of the impugned judgment are rendered in different context.

40. I have gone through the paragraphs 35, 73 and 78. In para 35, the Tribunal has noted that in the brochure the date of possession was shown as 2017. The Tribunal has found that if the booking is done in the year 2013, it is quite possible and probable that the possession might have been agreed to be delivered within reasonable time i.e. by the year 2017. The Tribunal has then referred to the decision of the Supreme Court in Kolkata West International City and Fortune Infrastructure (supra) in order to find that the appellants having failed to give possession in the year 2017, it committed breach of Section 18 of the Act of 2016. Even in para 73 and 78, the Tribunal has held that Section 12 and 18 are applicable to the contractual arrangements between the parties. In para 35 the Tribunal has found that there is sufficient evidence on record to substantiate that the promoter had agreed to hand over possession by 2013 which is a finding of fact.

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Although there is no specific reference to the requirement of a written agreement, so as to attract Section 18 of the Act of 2016, the Appellate Tribunal has found that on the basis of the contractual arrangement, the respondents have established the case of breach of Section 18. In my considered view, apart from aforesaid findings the issue being a question of law, which goes to the root of the matter, can be allowed to be raised in the second appeal. It is well settled that normally the Court would allow a pure question of law, which goes to the root of the matter to be raised in the second appeal although not specifically raised earlier. In that view of the matter, it is not necessary to dwell on the various cases on which reliance is placed by either of the parties, on the point of the permissibility of the said ground being raised in the Second Appeal.

41. Section 2(c) defines an agreement for sale entered into between the promoter and the allottee. It is necessary to note that Section (c) does not say that an agreement has to be in writing entered between the promoter and the allottee. Section 13 provides that no deposit or advance shall be taken by the promoter, without first entering into the agreement for sale. Thus, the learned counsel for the respondent is right that Section 13 has to be read in the context of prohibition against the promoter from accepting the sum in excess of 10% of the cost of the flat as an advance payment or an application fee etc. Rule 10 of the 2017 Rules, specifically says that for the

purpose of sub-section (2) of Section 13 of the Act of 2016, the agreement for sale shall be in conformity with the provisions, rules and regulations made thereunder and shall be in accordance with the model form of agreement at Annexure A. Thus, the requirement of the agreement for sale being in conformity with Annexure A of the 2017 Rules has also to be read in the context and for the purposes of Section 13. Thus, there is a considerable force in the argument on behalf of the respondents that Section 18 read with Section 2(c) of the Act of 2016 which defines an agreement for sale in terms do not provide for the requirement of a written agreement of sale. It is necessary to emphasise that Section 13 which provides for a prohibition against the promoter from accepting the sum in excess of 10% of the cost of the apartment in explicit terms refers to a written agreement for sale read with Rule 10 of 2017 Rules and also prescribes the model agreement of sale. Had the legislature intended the agreement referred to in Section 18 also to be in writing, nothing prevented it from doing so.

42. Thus, in my considered view, the reliance placed on Section 13 read with Rule 10 of the 2017 Rules, in order to import the requirement of a written agreement under Rule 18 read with Section 2(c) of the Act of 2016 is misplaced....."

From the above judgment, it is clear that non-execution of the agreements for sale and registering the same will not deprive or

disentitle the appellants/allottees seeking relief under Section 18 of the RERA Act, 2016.

78. In the context of MOFA, the Hon'ble Bombay High Court in the case of *G. Swaminathan V/s. Shivram Co-operative Housing Society and others* [1983(2) Bom CR 548] has observed that:

> *"Not all sections of Maharashtra Ownership Flats Act, however, talk about the execution of such agreements.... There is no reference to any agreement executed under Section 4 in Section I of the said Act. Section 8 is meant to give protection to persons who have paid with monies for the purchase of flats in the event of the not giving them flats as promised. There is nothing in the provisions of Section I which would indicate that this statutory charge is conditional upon the agreement being registered under Section 4.... Moreover, there is no provision under the said Act to the effect that an agreement for sale which is not registered under Section 4 is void for all purposes."*

79. In view of the above, the view taken by the Authority that since there is no registered agreement for sale and therefore the allottees are not entailed to relief under section 18 of RERA is not sustainable in the eyes of law. In view of the above, the impugned order warrants interference in these appeals. Accordingly, we answer point no.2 in the affirmative.

80. With regard to the violation of Section 4 of the MOFA and Section 13 of the RERA Act, 2016 we are of the view that soon after issuing the letters of intent to the appellants, the promoter in the earnest took steps to call upon the appellants to pay registration charges and stamp duty and execute agreement for

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sale. The promoter sent 8 to 10 letters calling upon the appellants to execute the agreements for sale, however the appellants neither responded to the said letters nor came forward to execute the agreements for sale. The appellants contended that the promoter did not share the draft of the agreement with the appellants. However, there is no correspondence from the appellants pointing out this to the promoter and requesting the promoter to provide with draft of the agreement for sale. In view of this, we are of the considered view that although there is technical violation of Section 4 of the MOFA and Section 13 of the RERA Act, 2016 by accepting the 30% of consideration amount without first executing and registering the agreements for sale, promoter however earnestly and Bonafide manners took steps to call upon the appellants to execute the agreements for sale. Therefore, we are not inclined to allow the prayer with regard to the penalty in regard to the violation of the provisions of MOFA and RERA and therefore the same is rejected.

81. Appellants have contended that they are entitled to get refund of all paid amounts including the consideration towards the flats and the taxes paid to the government on behalf of the appellants. We are of the view that the taxes and duties that were paid to the government on behalf of the appellants allottees, the said amounts are not towards the consideration amount for the subject flats. Further, the promoter has not benefited from the said amounts of taxes paid by allottees. Section 18(1) of the RERA Act clearly stipulates that in case the allottee wishes to withdraw from the project, the promoter is obligated to refund the amount "received by him in respect of that apartment, plot, building, as the case

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may be". We are therefore of the view that taxes paid to the government on behalf of the allottees such as VAT, stamp duty, registration charges cannot be termed as the amount received by the promoter towards consideration in respect of the subject flats. Appellants may approach the concerned government authorities to seek the refund of such taxes paid to the government. The promoters however can be directed to extend all the cooperation enabling the appellants to seek such refund from the government authorities.

82. However, we clarify that the TDS amounts paid to the government are part of the consideration amounts. TDS is the tax of the promoter that allottees deduct and pay to government on behalf of the promoter. As per section 198 of Income Tax Act, tax deducted at source shall be deemed to be income received by the deducted. Thus, TDS is paid by allottee as the agent of the promoter and paid to the government authority on behalf of the promoter. Hence the consideration amounts would include cost of the flats, TDS, earnest money etc.

83. In view of the aforesaid discussion, we proceed to pass the following order:

ORDER

1. The captioned Appeal No. AT006000000134117 of 2022 in Complaint No.CC006000000193772, Appeal No. AT006000000134118 of 2022 in Complaint No.CC006000000193775, Appeal No. 006000000134119 of 2022 in Complaint No.CC006000000193776, Appeal No. AT006000000134120 of 2022 in Complaint

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No.CC006000000193777, Appeal No. AT006000000134121 of 2022 in Complaint No.CC006000000193778 and Appeal No. AT006000000134122 of 2022 in Complaint No.CC006000000193780 are partly allowed and the impugned common order dated 22.08.2022 in the captioned complaints is set aside.

2. The promoter is directed to pay interest on the amounts paid by the respective appellants towards consideration (cost of flats + TDS + earnest money, etc.) till 13.10.2022 at the rate of 2% above the State Bank of India's Highest Marginal Cost Lending Rate (MCLR) from the respective dates of payment as per the details given in para-6 and 7 of this judgment.
3. The promoter is also directed to refund the balance principal amount of the consideration paid towards the cost of the flats as per the details given in table in para-67 of the judgment in the respective appeals, along with interest at the rate of 2% above the State Bank of India's Highest Marginal Cost Lending Rate (MCLR) with effect from 14.10.2022 till the date of the order.
4. The promoter shall pay the amount as mentioned in Clause-2 and 3 above within 30 days of this order, failing which the promoter shall also pay interest at the same rate as prescribed above on the outstanding amounts, as on 12.11,2026 till the amounts are realized to the appellants.

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5. The promoter shall render all co-operation to the appellants in order to get refund of the taxes paid to the government, which essentially are liability of the allottees. In the event the promoter fails to pay the amounts as mentioned in clause 2 and 3 above within the period of 30 days of this order, the promoter shall also pay the amounts paid by the appellants towards taxes to the government within further period of 30 days.
6. Parties to bear their own costs.
7. Copy of this Order be communicated to the Authority and the respective parties as per Section 44(4) of RERA Act, 2016.
8. Accordingly, all the appeals stand disposed of in above terms.

(SHRIKANT M. DESHPANDE) **(S.S. SHINDE, J.)**

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