# BEFORE THE MAHARASHTRA REAL ESTATE APPELLATE TRIBUNAL MUMBAI

Appeal No. AT006000000053721 of 2022
IN
(Complaint Nos. CC006000000194670 and CC006000000195568)

Jamir Ibrahim Kazi )
Residing at B-23, )
Flat No. 401, Vaishali Nagar )
S. V. Road, Jogeshwari (W), )
Mumbai - 400102 ) ... Appellant

*-Versus-*

M/s Balaji Symphony )
through its proprietor Mr. Vinay S Agarwal )
Survey No. 45/4, Village Shiltoer Raichur, )
Panvel-Matheran Road, )
Sukhapur, Taluka Panvel, )
District Raigad, Panvel- 410206 ) ... Respondent

*Adv. Mr. Sainath Pawar for Appellant*
*Adv. Mr. Parth Chande for Respondent*

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

RESERVED ON : 19TH AUGUST 2026
PRONOUNCED ON : 23RD OCTOBER 2026

(THROUGH VIDEO CONFERENCE)

JUDGMENT

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



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1. The present Appeal arises from the impugned order dated 28.02.2022 passed by Member - 1, Maharashtra Real Estate Regulatory Authority (for short, "the Authority") in cross Complaints No. CC006000000194670 and CC006000000195568, filed by the Appellant/Allottee and Complainant/Promoter, whereby the learned Authority directed payment of interest on account of delay in handing over the possession. The Appellant/Allottee has preferred the present Appeal and assailed the impugned order on the grounds enumerated in the Memorandum of Appeal.

2. For the sake of convenience, the Appellant will hereinafter be referred to as the "Allottee", and the Respondent will hereinafter be referred to as the "Promoter".

3. The brief facts, as gathered from the pleadings of the parties, the impugned order and material placed on record reveal that the Appellant/Allottee booked a Flat No. F-502, admeasuring carpet area of 53 sq. mtrs. (571 sq. ft.) in the project known as "Balaji Symphony phase 2". The booking terms were revised in August 2014. Thereafter, upon payment of substantial consideration amount, the parties executed Agreement for Sale dated 27.04.2017. The total consideration amount stipulated under the Agreement for Sale was ₹51,44,180/- (Rupees Fifty-One Lakh Forty-Four Thousand One Hundred and Eighty Only). The Agreement for Sale records



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payment of ₹46,29,374/- (Rupees Forty-Six Lakh Twenty-Nine Thousand Three Hundred and Seventy-Four Only) by the Appellant/Allottee towards part consideration amount, with the balance amount of ₹5,14,806/- (Rupees Five Lakh Fourteen Thousand Eight Hundred and Six Only) payable in accordance with the schedule given in the Agreement for Sale. It is pertinent to note that the possession of the subject flat was to be handed over on or before 31.12.2017, subject to an extension of six months.

4. The Appellant/Allottee, through email dated July 2018, requested the Respondent/Promoter to allot a parking space in respect of the said flat. The Appellant/Allottee alleges that, despite repeated follow-ups, the Respondent/Promoter failed to allot parking space. It is not in dispute that the said project obtained Occupancy Certificate dated 23.07.2020. However, according to the Appellant/Allottee, possession was not handed over, despite grant of Occupancy Certificate, as the flat was incomplete and the Respondent/Promoter insisted upon execution of documents allegedly affecting the legal rights of Appellant/Allottee. Having failed to obtain possession of the said flat, the Appellant/Allottee filed a complaint before the MahaRERA on 06.11.2020, seeking interest for delay in handing over possession, allotment of parking space and multiple other reliefs.



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5. Learned Counsel Mr. Sainath Pawar, appearing for the Appellant/Allottee, submitted that the learned Authority neither granted nor rejected the reliefs relating to allotment of parking space, compensation, costs of the complaint, and determination of possession date in accordance with Agreement for Sale, without granting grace period, as prayed for in the complaint.

6. Learned Counsel appearing for the Appellant/Allottee further submitted that, as per paragraph 18 of CIDCO General Development Control Regulation (GDCR) for Navi Mumbai, 1975 as amended up to October 2016, the Respondent/Promoter was required to provide one (1) covered parking space for every tenement admeasuring built-up area of 60 sq. mtrs. He also replied upon paragraph 44 of Part V of the Development Control Regulations for Navi Mumbai Municipal Corporation, 1994, relating to parking requirements for tenements admeasuring 45 sq. mtrs. to 60 sq. mtrs. It was further submitted that the Respondent/Promoter had not replied to the Allottee's prayer for allotment of parking space before the Authority. According to the Appellant/Allottee, the Respondent/Promote, for the first time in its reply to the Appeal, contended that the issue of parking could not be adjudicated upon because the Agreement for Sale did not specifically record allotment of parking space.



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7. Learned Counsel appearing for the Appellant/Allottee further submitted that, the learned Authority neither granted nor rejected the claim of compensation on account of delay in handing over possession. It is submitted that the possession date mentioned in the Agreement for Sale was binding upon the Respondent/Promoter and that the benefit of grace period could not be granted without an appropriate contractual basis. It was further submitted that, in the absence of circumstances legally justifying an extension, the Respondent/Promoter could not be absolved of its obligation to pay interest for the period of delay.

8. Learned Counsel appearing for the Appellant/Allottee further submitted that, the learned Authority had failed to appreciate the prolonged delay in handing over possession. According to the Appellant/Allottee, although the Occupancy Certificate was obtained on 23.07.2020, possession was actually handed over only on 19.03.2022 pursuant to the impugned order. It was contended that the flat was not complete when possession was offered and the Respondent/Promoter insisted upon the execution of documents allegedly requiring the Appellant/Allottee to waive his legal rights. The Appellant/Allottee relied upon photographs of incomplete work and documents placed on record in support of these allegations.



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9. Learned Counsel appearing for the Appellant/Allottee further submitted that, the learned Authority had granted the benefit of moratorium period to the Respondent/Promoter, despite the absence of a specific plea seeking such relief. It was submitted that the learned Authority could not grant relief beyond the pleadings of the parties and that the period of delay for which interest was payable ought to have been determined in accordance with the Agreement for Sale and relevant sections of the Act.

10. Learned Counsel Mr. Sainath Pawar appearing for the Appellant/Allottee, in support of his submissions, placed reliance on the following judgments:

    i. *Pankaj Kishore Agarwal & Anr. V/s Real Gem Buildtech Pvt. Ltd. & Ors.* [Appeal No. AT006000000052542 & AT006000000052543] decided on 31.08.2020 by the Maharashtra Real Estate Appellate Tribunal, Mumbai.

    ii. *Newtech Promoters and Developers Pvt.* Ltd. *V/s State of UP and Ors.* [2021 SCC OnLine SC 1044] decided on 11.11.2021 by the Hon'ble Supreme Court of India.

    iii. *Wing Commander Arifur Rahman Khan and Aleya Sultana and Ors. V/s DLF Southern Homes Private Limited (Now known as Begur OMR Homes Private Limited) and Ors.*



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[(2010) 16 SCC 512] decided on 24.08.2020 by the Hon'ble Supreme Court of India.

iv. *Vikas Mittal V/s DLF Universal Limited and Another* [2022 SCC OnLine NCDRC 104] decided on 12.01.2022 by the National Consumer Disputes Redressal Commission.

v. *Mrs. Akella Lalitha V/s Sri Konda Hanumantha Rao & Anr.* [(2022) SCC OnLine SC 928] decided on 28.07.2022 by the Hon'ble Supreme Court of India.

vi. *Bharat Amratlal Kothari & Anr. V/s Dosukhan Samadkhan Sindhi & Ors.,* [(2010) 1 SCC 234] decided on 04.11.2009 by the Hon'ble Supreme Court of India.

vii. *MESSRS. Trojan & Company V/s R.M.N.N. Nagappa Chettiar* [AIR 1953 SC 235] decided on 20.03.1953 by the Hon'ble Supreme Court of India.

viii. *Nahalchand Laloochand Private Limited V/s Panchali Cooperative Housing Society Limited* [(2010) 9 SCC 536] decided on 31.08.2010 by the Hon'ble Supreme Court of India.

ix. *Venkataraman Krishnamurthy and Anr. V/s Lodha Crown Buildmart Private Limited* [(2024) 4 SCC 230] decided on 22.02.2024 by the Hon'ble Supreme Court of India.

x. *Vaishali Sharad Katkar V/s S. D. Bhalerao Constructions Pvt. Ltd. & Anr.* [Appeal No. AT006000000053244/2021] decided on 14.11.2024 by the Maharashtra Real Estate Appellate Tribunal, Mumbai.

xi. *Jagdish Bhoja Shetty & Anr. V/s Neelkamal Realtors Suburban Pvt. Ltd.,* [Appeal No. AT006000000052557] decided on 19.10.2023 by the Maharashtra Real Estate Appellate Tribunal, Mumbai.

xii. *NBCC (India) Limited V/s Shri Ram Trivedi* [(2021) 5 SCC 273] decided on 08.03.2021 by the Hon'ble Supreme Court of India.

xiii. *Experion Developers Pvt. Ltd. V/s Sushma Ashok Shiroor* [2022 SCC OnLine SC 416] decided on 07.04.2022 by the Hon'ble Supreme Court of India.

11. *Per contra*, learned Counsel Mr. Parth Chande appearing for the Respondent/Promoter submitted that, the Appellant/Allottee had accepted possession of the said flat on 19.03.2022 by signing possession letter and an undertaking recording that the possession had been accepted in full satisfaction of the terms of the Agreement for Sale dated 27.04.2017. It is submitted that the possession of the said flat to the full satisfaction acted as a waiver of delay and, as such, no cause of action arises in terms of Section 18 of the Real



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Estate (Regulation and Development) Act, 2016 (for short "RERA Act". Reliance was placed upon point No.2 of the Undertaking dated 19.03.2022, which reads as follows:

> "*I am pleased to accept today vacant and peaceful possession of the said unit in sufficient compliance to your obligations as mentioned in the Agreement for Sale dated 27.04.2017*".

Learned Counsel appearing for the Appellant/Allottee contended that, by accepting possession without protest and recording full satisfaction with the completion of the flat by the Promoter, the Appellant/Allottee had waived his right to claim interest under Section 18 of the Act. In support of this contention, he placed reliance upon the judgment of this Tribunal dated 15.07.2020, in the case of *M/s Leela Buildcon & Infrastructure v/s Macrotech Developers Limited*, wherein it was held that execution of a possession letter without protest may prima facie indicate waiver of the Allottee's right to claim interest. It was submitted that the language of undertaking in the present case demonstrated a clear intention to waive such a claim.

12. Learned Counsel appearing for the Respondent/Promoter submitted further that, any delay in offering possession was attributable to the circumstances beyond its control. In this regard, learned Counsel referred to the loans availed from DHFL, subsequently from ICICI Bank, the Architect's Completion Certificate in respect of 'F' Wing



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and Club House, extension of project registration by MahaRERA, and the Occupancy Certificate granted by MMRDA for rental building Nos. 1 and 2 and by CIDCO for sale buildings. It was submitted that the Respondent/Promoter had made bona fide efforts to complete the project and imposition of financial liability upon Promoter would adversely affect the interests of the Allottees in the project. It was submitted that the Respondent/ Promoter was a performing builder and that the delay, if any, deserved to be condoned.

13. Learned Counsel appearing for the Respondent/Promoter further submitted that, the Appellant/Allottee had not purchased any parking space at the time of booking of the flat. According to the Respondent/Promoter, the booking form dated 05.12.2010, did not indicate that the Appellant/Allottee had elected to purchase a parking space, and no specific clause for allotment of parking space was incorporated in the Agreement for Sale. It was further submitted that the Respondent/Promoter had "covered parking space" which were available for sale and in terms of FAQ No.9 read with Rule 2(j) of MahaRERA Rules, 2017, the expression "covered parking space" included 'space provided by mechanised parking arrangements. On this basis, the Respondent/Promoter submitted that the Appellant/Allottee could not claim allotment of a parking space in



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the absence of a specific clause to that effect in the Agreement for Sale.

14. Learned Counsel appearing for the Respondent/Promoter further submitted that, the Appellant/Allottee had violated Section 19(7) and 19(10) of the RERA Act by failing to take physical possession within the prescribed period. Reliance was placed upon Section 19(10) of the Act, which provides that "*Every allottee shall take physical possession of the apartment, plot or building as the case may be, within a period of two months of the occupancy certificate issued for the said apartment, plot or building, as the case may be.*" In the present case, despite the Occupancy Certificate and offer of possession, the Appellant/Allottee took possession only on 19.03.2022, after a delay of approximately 20 months. On this ground, the Respondent/Promoter contended that the Appellant/Allottee was not entitled to any relief.

15. Learned Counsel Mr. Parth Chande appearing for the Respondent/Promoter, in support of his submissions, placed reliance on the following judgments:

    i. *Sachin Tomar & Anr. V/s. Ensaara Metropark Luxora Infrastructure Pvt. Ltd.* [Appeal No.AT004000000031625 of 2019] decided on 01.03.2024 by the Maharashtra Real Estate Appellate Tribunal, Mumbai.

    ii. *Mr. Mogalipuri Kranthi Kumar & Anr. V/s Balaji Symphony* [Appeal No. AT006000000010505 (main)] decided on



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09.01.2023 by the Maharashtra Real Estate Appellate Tribunal, Mumbai.

iii. *M/s. Leela Buildcon & Infrastructure V/s. Macrotech Developers Limited & Ors.* [Appeal No.AT00600000005281] decided on 15.07.2022 by the Maharashtra Real Estate Appellate Tribunal, Mumbai.

iv. *Neelkamal Realtors Suburban Pvt.* Ltd. & Anr. Vs. Union of India & Ors., [2018 (1) ABR 558] decided on 06.12.2017 by the Hon'ble Bombay High Court.

16. We have heard learned Counsel Mr. Sainath Pawar and Mr. Parth Chande appearing for the respective parties. We have also considered the submissions advanced by them are nothing but reiterations of the contents of the complaints, Affidavit-in-Reply, Appeal Memo and Written Submissions/Arguments.

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

| Sr. Nos. | Points | Findings |
|---|---|---|
| 1. | Whether the impugned order dated 28.02.2022 passed by Member-1, MahaRERA, in the Complaints No. CC006000000194670 and CC006000000195568 filed by the Allottee and Promoter, warrants interference in the captioned Appeal? | In the Affirmative |
| 2. | Whether the Appellant/Allottee is entitled to relief sought in the captioned appeal? | In the Affirmative |
| 3. | What Order? | As per final Order |



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REASONS

18. Upon careful consideration of the pleadings of the parties, the material placed on record, and the submissions advanced by the learned Counsels appearing for the respective parties, it is revealed that the Appellant/Allottee had booked flat No. F-502 in the "Balaji Symphony phase 2" for a total consideration of ₹51,44,180/- (Rupees Fifty-One Lakh Forty-Four Thousand One Hundred and Eighty Only). It is not in dispute that the Appellant/Allottee had paid an amount of ₹46,29,374/- (Rupees Forty-Six Lakh Twenty-Nine Thousand Three Hundred and Seventy-Four Only), which is approximately 90% of the amount towards part consideration, with the balance payable in accordance with the stipulated payment schedule. It is also not in dispute that, the Agreement for Sale stipulated that the Respondent/Promoter handover possession of the subject flat on or before 31.12.2017, subject to an extension by six months, i.e. 30.06.2018. It is pertinent to note that pursuant to the impugned order dated 28.02.2022, possession was handed over on 19.03.2022 and the Appellant/Allottee executed an undertaking on the date of possession wherein it was recorded that the Appellant/Allottee had accepted the flat in full satisfaction of his rights. The main disputes requiring consideration are whether the undertaking extinguishes the Appellant/Allottee's right to claim



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interest, whether the Respondent/Promoter is entitled to the benefit of the moratorium period, and whether the Appellant/Allottee has established his claim for allotment of parking space.

19. Learned Counsel Mr. Sainath Pawar, appearing for the Appellant/Allottee, contended that physical possession was handed over after substantial delay and notwithstanding the grant of Occupancy Certificate dated 23.07.2020, the subject flat was not handed over until 19.03.2022. It was further contended that the subject flat was incomplete, and the Appellant/Allottee was required to execute documents allegedly affecting his rights before possession could be obtained. On the other hand, the Respondent/Promoter relied upon the Occupancy Certificate and its efforts to complete the project and the undertaking given by the Appellant/Allottee at the time of taking possession.

20. Section 18 of the RERA Act, 2016 entitles an Allottee to interest on account of delayed possession. Where an Allottee does not intend to withdraw from the project, the proviso to Section 18(1) of the RERA Act, 2016, entitles the Allottee to interest for every month of delay until the handing over of possession, at the prescribed rate. The right to claim such interest arises from the Promoter's failure to handover possession within the period stipulated in the Agreement for Sale. The Hon'ble Supreme Court, in *M/s Newtech Promoters and*



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*Developers Pvt. Ltd. V/s State of UP & Ors.,* (supra), observed in Paragraph 25 as under:

> *"25. The unqualified right of the allottee to seek refund referred under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottee, if the promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the allottee/home buyer, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act with the proviso that if the allottee does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed."*

The aforesaid pronouncement makes it clear that the statutory entitlement to interest under Section 18 of the RERA Act arises upon the Promoter's failure to handover possession within the stipulated period under the Agreement for Sale. Such entitlement is not extinguished because possession is subsequently offered or because the project completion date stands revised by the Regulatory Authority. Thus, the subsequent extension of the project's registration or completion period does not take away the accrued



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right of the Allottee to claim interest for the period of delay. Any exclusion of a particular period must be supported by applicable legal provisions and facts of the case.

21. In the present case, the agreed date of possession under the Agreement for Sale was on or before 31.12.2017, subject to extension of six months period, i.e. 30.06.2018, and the period of delay would commence from 01.07.2018. However, the actual date of possession was 19.03.2022. Accordingly, the Allottee's claim for interest would have to be considered with reference to the period from 01.07.2018 till 19.03.2022.

The Respondent/Promoter's contention that the Appellant/Allottee waived his right to interest by signing an undertaking dated 19.03.2022 cannot be accepted merely on the ground that possession was acknowledged as peaceful and fully satisfactory. The undertaking was executed when the Appellant/Allottee finally obtained possession of the said flat. The undertaking must be considered in the context of its time and execution and also the statutory rights asserted by the Appellant/Allottee. An acknowledgement of possession or satisfaction with the physical delivery of the flat does not necessarily amount to a waiver of his right to claim interest on account of delay.

22. In the present case, the Appellant/Allottee had already instituted



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complaint before MahaRERA on 06.11.2020, seeking relief on account of delayed possession. The claim was, therefore, not raised for the first time after the execution of undertaking dated 19.03.2022. The Respondent/Promoter has not demonstrated that the said undertaking expressly relinquished the statutory claim for interest. We, therefore, find that the undertaking in the circumstances of the present case does not by itself disentitle the Appellant/Allottee from claiming interest for the period of delay.

23. The Respondent/Promoter contended that the COVID-19 pandemic, the extension of the project registration and the difficulties faced during construction were beyond its control. However, an extension of the project registration period does not automatically establish that the Respondent/Promoter is exempt from payment of interest for the period of delay under Section 18 of the RERA Act.

24. A perusal of Section 18 of the RERA Act, 2016, makes it evident that the Promoter is obligated to handover possession on the agreed date as per the Agreement for Sale. The date of possession specified in the Agreement for Sale, or in any other manner or form is sacrosanct and neither RERA nor the Promoter can rewrite the same without the consent of the Allottees. This signifies that Section 18 of RERA would operate only when possession is not handed over within the specified date. However, where possession is handed over



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beyond the agreed and specified date, the consequences contemplated under Section 18 automatically follow. The Hon'ble Supreme Court in *M/s. Imperia Structures Ltd. V/s Anil Patni & Anr.*, [(2021) 10 SCC 783], decided on 02.11.2020, has held as under:

> *"23. In terms of Section 18 of the RERA Act, if a promoter fails to complete or is unable to give possession of an apartment duly completed..... by the date specified in the agreement, the Promoter would be liable, on demand, to return the amount received by him in respect of that apartment if the allottee wishes to withdraw from the Project. Such right of an allottee is specifically made "without prejudice to any other remedy available to him". The right so given to the allottee is unqualified and if availed, the money deposited by the allottee has to be refunded with interest at such rate as may be prescribed. The proviso to Section 18(1) contemplates a situation where the allottee does not intend to withdraw from the Project. In that case he is entitled to and must be paid interest for every month of delay till the handing over of the possession. It is upto the allottee to proceed either under Section 18(1) or under proviso to Section 18(1)."*

25. Learned Counsel appearing for the Appellant/Allottee further contended that the Respondent/Promoter was obligated to provide a covered parking space in accordance with applicable Development Control Regulations for Navi Mumbai. Reliance was placed upon CIDCO General Development Control Regulations for Navi Mumbai, 1975 as amended, and the Development Control Regulations for



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Navi Mumbai Municipal Corporation, 1994. On the other hand, the Respondent/Promoter disputed the claim that the Appellant/Allottee had neither purchased parking space nor obtained any contractual obligation for parking allotment.

26. We have considered the rival submissions on the issue of parking space. The Allottee's request for allotment of a parking space by email dated 20.06.2018 is not in dispute. It is also not in dispute that the Respondent/Promoter conveyed non-availability of saleable parking space. It is worthy to note that a regulatory requirement relating to provision of parking space and an Allottee's claim to specific parking space are distinct from each other. Providing parking space concerns compliance with existing Development Control Regulations, whereas allotment of parking space is to be considered in the context of contractual terms as agreed in the Agreement for Sale.

27. A perusal of the Agreement for Sale dated 27.04.2017 does not disclose a specific allotment of a designated parking space to the Appellant/Allottee. Although Clauses 5(g) and 5(m) of the Agreement for Sale refer to car parking spaces being provisionally allotted to purchasers, the scrutiny of the Agreement for Sale demonstrates that there is no specific clause providing provisional allotment of a parking space to the Appellant/Allottee. In the present



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case, the material placed on record does not establish a contractual obligation to provide a particular parking space in favour of the Allottee. Therefore, the prayer for allotment of parking space cannot be granted on the basis of Agreement for Sale.

28. Learned Counsel appearing for the Appellant/Allottee further contended that the learned Authority erred in granting the benefit of COVID 19 moratorium period, although no specific relief to that effect was sought by the Respondent/Promoter. In the absence of such a specific plea, the learned Authority was not justified in excluding the COVID period merely because the project registration period had been extended. It is not in dispute that the MahaRERA circulars, in relation to force majeure, are applicable to ongoing real estate projects. However, applicability of the said circulars has to be examined in the context of contractual obligations arising out of Agreement for Sale. An extension of project registration cannot automatically be treated as an extension of contractual possession date. In this context, the judgment of the Hon'ble Supreme Court in *Ram Sarup Gupta (Dead) by LRs vs. Bishun Narain Inter College & Ors.* [(1987) 2 SCC 555], decided on 08.04.1987, wherein it was held:

> *"No party should be permitted to travel beyond its pleadings and all necessary and material facts should be pleaded by the party in support of the case set up by it. The object and purpose of*



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> *pleading is to enable the adversary party to know the case it has to meet. In order to have a fair trial it is imperative that the party should state the essential material facts so that other party may not be taken by surprise. The pleadings, however, should receive a liberal construction, no pedantic approach should be adopted to defeat justice on hair-splitting technicalities."*

The aforesaid principle is directly applicable to the present case. A plea which was neither raised before the Authority nor formed part of the pleadings, cannot be introduced for the first time at the appellate stage. In such a situation, the opposite party has no opportunity to meet such a plea on facts and evidence. Admittedly, the contractual date of handing over possession of the subject flat was 30.06.2018, whereas the COVID-19 pandemic and the consequent regulatory measures arose much later. Thus, the Respondent/Promoter's obligation to handover possession had become due and delay commenced, much before the onset of the COVID pandemic. Therefore, we find that the benefit of the COVID-19 moratorium, not specifically sought by the Respondent/Promoter, could not have been granted to reduce the Respondent/Promoter's liability for delay in handing over possession.

29. The Respondent/Promoter has also contended that the Appellant/Allottee failed to take possession of the subject flat within



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a period of two months of issuance of the Occupancy Certificate, thereby contravening Section 19(10) of the RERA Act. We are unable to accept the contention of the Respondent/Promoter. Section 19(10) obligates the Allottee to take physical possession after issuance of the Occupancy Certificate. However, in the present case, the Appellant/Allottee has specifically demonstrated that the flat was incomplete, and the possession was not effectively handed over until 19.03.2022. The Respondent/Promoter, on the other hand, relied upon the Occupancy Certificate and offer of possession. The fact of issuance of Occupancy Certificate does not, in any case, establish that possession was duly offered and made available to the Allottee in accordance with the Agreement for Sale.

30. For the foregoing reasons, the impugned order dated 28.02.2022 passed by Member-1, MahaRERA warrants interference in the captioned Appeal to the extent that the Appellant/Allottee's entitlement for interest for delayed possession requires to be determined in accordance with the contractual date of possession and Section 18 of RERA Act. The execution of the undertaking dated 19.03.2022 does not extinguish the Allottee's statutory claim for interest on delayed possession. Also, the material placed on record does not establish a contractual entitlement to a designated parking space under the Agreement for Sale.



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31. We, therefore, answer point Nos. 1 and 2 in the affirmative, and accordingly, we proceed to pass the following order: -

O R D E R

1. Appeal No. AT006000000053721 of 2022 is partly allowed.
2. The impugned order dated 28.02.2022 is modified as under:
    a. The Respondent/Promoter is directed to pay interest for delayed possession to the Appellant/Allottee from the agreed date of possession, i.e. 01.07.2019 until the actual date of possession, i.e. 19.03.2022, on the actual amount paid by the Appellant/Allottee at the highest rate of State Bank of India's Marginal Cost of Lending Rate (MCLR) plus 2% as prescribed under the provisions of Section 18 of the RERA Act, 2016 and Rules made thereunder, within a period of four (4) weeks from the date of this order.
    b. In the event of failure on the part of the Respondent/Promoter to comply with the aforesaid direction within the stipulated period, the amount so payable shall carry further interest at the aforesaid rate until realization.
3. The Respondent/Promoter is directed to pay costs of ₹25,000/- (Rupees Twenty-Five Thousand Only) to the



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Appellant/Allottee within a period of four (4) weeks from the date of this order.

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

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

V. K. Bhople_



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