

**BEFORE MAHARASHTRA REAL ESTATE APPELLATE TRIBUNAL,
MUMBAI**

APPEAL NO. AT00600000010940 OF 2019

IN

Complaint No. CC00600000054617

Veena Realcon Pvt. Ltd.

Through its Authorized Representative/ Director
Mr. Nikunj Haresh Sanghavi
Having its Office at:- A/901,
Kaledonia, HDIL Tower,
Sahar Road, Andheri (E),
Mumbai.

... Appellant

~ versus ~

1. Mr. Shivkumar Inamdar

2. Mrs. Vijayalaxmi S. Inamdar

"Sanskriti" 37/60, Opp. St. Lawrence
High School, 90 feet Road,
Kandivali (East), Mumbai-400 101.

... Respondents

-ALONG WITH-

APPEAL NO. AT00600000053448 OF 2021

IN

Complaint No. CC00600000054617

1. Mr. Shivkumar Inamdar

2. Mrs. Vijayalaxmi S. Inamdar

"Sanskriti" 37/60, Opp. St. Lawrence
High School, 90 feet Road,
Kandivali (East), Mumbai-400 101.

... Appellants

~ versus ~

Veena Realcon Pvt. Ltd.

Through its Authorized Representative/ Director
Mr. Nikunj Haresh Sanghavi
Having its Office at:- A/901,
Kaledonia, HDIL Tower,

... Respondent

Mr. Viraj Jadhav, Advocate for M/s. Veena Realcon Pvt. Ltd./ Promoter.
Mr. Harshad Bhadbhade, Advocate for Allottees/ Complainants.

**CORAM : SHRI SHRIRAM R. JAGTAP, MEMBER (J)
& DR. K. SHIVAJI, MEMBER (A)**

DATE : 28th MARCH 2024

(THROUGH VIDEO CONFERENCE)

JUDGEMENT

[PER: DR. K. SHIVAJI, MEMBER (A)]

Captioned Appeals (for convenience, Appeals No.10940 and Appeal No.53448 will be addressed as Appeal and Cross Appeal respectively,) have been preferred under The Maharashtra Real Estate (Regulation and Development) Act, 2016 (in short, the Act) by challenging the Order dated 26th October 2018 passed by learned Chairperson, Maharashtra Real Estate Regulatory Authority (MahaRERA), in Complaint No.CC00600000054617.

2. The captioned appeals are arising out of similar facts and are raising identical questions of law. Accordingly, these appeals are heard together and are being disposed of by this common order as hereunder.
3. Appellant in Appeal No. 10940 is promoter, who is developing and constructing a duly registered project known as "**Veena Serenity**" located at Chembur, Mumbai (in short " the said project"). Respondents in appeal no. 10940 are flat purchasers of a flat in promoter's said project and are complainants before MahaRERA. For convenience, appellant and respondents in Appeal No. 10940 will be addressed hereinafter as promoter and complainants (allottees) respectively in their original status before MahaRERA.
4. Brief background giving rise to the present appeals is as under; -



- a. Complainants case:** Complainants have booked flat no. 501-C in the said project of promoter by executing agreement for sale dated 22nd March, 2015 for total consideration of ₹ 1,31,93,985/-, wherein Clause No. 30 of the said agreement stipulates that the possession of the subject flat will be handed over by the Promoter on or before 30 months from the date of the agreement (i.e. by 21st September 2017) subject to reasonable extension based on certain factors beyond the control of promoter as enumerated in the agreement.
- b.** On account of the delay in delivery of possession of the subject flat, captioned complaint came to be filed by complainants before MahaRERA seeking various reliefs *inter alia* direction to the promoter for possession of the subject flat and to pay interest on account of delay in giving the possession of the subject flat from September 2017 on the paid amounts till the date of possession together with compensations.
- c.** Respondent promoter appeared before MahaRERA and opposed the said complaint by submitting before MahaRERA that agreement for sale provides for reasonable extension of time for delivery of possession due to factors beyond the control of the promoter. Whereas construction of the said project got delayed primarily on account of factors beyond the control of the promoter, more particularly because of internal disputes between Maharashtra Housing and Development Authority (MHADA) and Municipal Corporation of Greater Mumbai (MCGM/ BMC). As a result, thereof, certain sanctions and approvals required for the said project got delayed despite promoter having done all compliances in time. Even then, promoter has received the Occupancy Certificate of the project in October 2018.



- d. Upon hearing the parties, learned Chairperson, MahaRERA passed the impugned order dated 26th October 2018 and directed promoter *inter alia* to pay interest at prescribed rate to complainants for the period from 1st August 2018 till October 2018 on the paid amounts. MahaRERA further advised the complainants to take possession of the subject flat after making balance payment as agreed between the parties after adjusting the interest to be received at the earliest.
- e. Aggrieved by this order of MahaRERA, promoter has preferred the captioned appeal no.10940 seeking various reliefs *inter alia* to quash and set aside the impugned order dated 26th October 2018, direction to Complainants to pay balance consideration along with interest for delay in making the payments and opposed the cross appeal filed by complainants.
- f. Aggrieved by this order of MahaRERA, Complainants have also filed the captioned cross appeal, seeking various reliefs including to modify the impugned order 26th dated October 2018 and for direction to promoter to pay interest on the entire paid amount from 1st August 2018 till the actual date of delivery of possession.
5. Heard learned counsel for parties *in extenso*.
6. Promoter has filed the captioned appeal and opposed the cross appeal by submitting as follows; -

 - a. Learned counsel for the promoter submits that the said project land was owned by MHADA and as required therein, promoter obtained NOC from MHADA on 17th June 2014 for redevelopment of the said property and submitted proposal to MCGM for redevelopment and construction of the said project, namely the "**Veena Serenity**". Complainants/ allottees are required to make payments as per the payment schedule mentioned in the agreement. Out of total



consideration of the subject flat of ₹ 1,31,93,985/-, complainants have paid ₹ 01,19,06,527/- and were required to pay balance amount of ₹ 12,87,458/- within 7 days from the date of intimation of the fit-out possession as per the agreement for sale. However, complainants have failed and neglected to make these balance payments despite reminders.

- b.** The said project land is owned by MHADA, and promoter was required to take NOC from MHADA for getting occupation certificate. Accordingly, applied for occupation certificate on 17th January 2018. However, it appears that there were some internal disputes and differences between MHADA and MCGM regarding the issuance of approvals. Therefore, the entire process of approval/ issuance of the occupation certificate got delayed despite the said building being complete in all respect and was ready for inhabitation in time. Therefore, promoter cannot be held at fault for the said delay and the said delay was due to factors beyond the control of the promoter. Eventually, after the clarification of the State Government and permitting MHADA to exercise the powers of Planning Authority, part-occupation certificate was granted on 12th October 2018.
- c.** Even then, promoter has completed the said building within the stipulated time without any delay in January 2018. This has been certified by the promoter's architect, vide its certificate dated 01st September 2017. Moreover, complainants were already offered for fit-out possessions by communication dated 26th March 2018 after making the balance outstanding amounts of ₹ 12,87,458 within 7 days as required under the agreement. In addition to the balance payment of ₹ 12,87,458/-, complainants were to pay further amount of ₹ 5,13,100/- towards the society charges, ₹1,94,880/- towards maintenance charges before taking possession of the said flat as per



clause 40 and 42 of the agreement. But complainants have failed to make payment of this amount within 7 days.

- d.** Complainants had booked the subject flat under the 10:80:10 subvention scheme for availing loan facility from financial institution, i.e. Dewan Housing Finance Corporation Limited "DHFL" by executing tripartite agreement, wherein as per clause nos. 6 and 7, promoter had agreed to pay pre-EMI for a period of 24 months (up to 30th July 2017) or until the intimation of fit-out possession whichever is earlier. Thereafter, complainants themselves were required to pay pre-EMI directly.
- e.** As such, promoter cannot be held accountable for the failure on the part of the authorities for the delay in issuance of the occupancy certificate, more particularly in view of the clause 30 of the agreement for sale, which entitles promoter automatically for reasonable extension of possession delivery timeline, if the project construction is delayed on account of several factors beyond the control of the promoters *inter alia* non-availability of steel, cement, war, civil commotion, Act/s of God, force majeure events including due to stay order from courts or authorities/government etc. Accordingly, promoter is entitled for extension of delivery of possession of the subject flat.
- f.** Moreover, Complainants with malafide intentions, have filed the false and frivolous complaint before MahaRERA to avoid payment of the balance consideration and pre-EMI interest.
- g.** Learned Chairperson, MahaRERA has no jurisdiction to adjudicate the relief sought by the complainants in respect of interest for compensation for delay in delivery of the possession of the subject



flat and the same is required to be adjudicated by the Adjudicating Officer under Section 71/72 of the Act.

- h.** MahaRERA has passed the unjust, unreasonable, and unduly harsh impugned order dated 26th October 2018 without considering the aforesaid mitigating circumstances and the factors, which were beyond the control of promoter for the purported delay. Thereby, MahaRERA is not justified in fastening liability on the promoter for the alleged delay.
- i.** The promoter has not committed any breach of the impugned order. As such, based on the application filed by complainants and in pursuance to the order of this Tribunal dated 14th February 2020, promoter has already handed over the possession of the subject flat to complainants on 23rd July 2020 upon realisation of the entire amount. Before taking possession, complainants have executed an undertaking dated 23rd July 2020 whereby, they have confirmed that they have no objections or complaint of any nature whatsoever against the promoter and complainants have waived their rights to raise any objection or raise any claims of whatsoever nature. In view thereof, complainants have expressly agreed not to raise any claims against promoter in respect of and /or arising from the said agreement for sale. However, after accepting possession of the subject flat and after executing the said undertaking, complainants have filed the captioned cross appeal. Therefore, the cross appeal filed by the complainants are also not maintainable and deserve to be dismissed.
- j.** In support of the above contention, learned counsel has referred and placed reliance on the judgement of the Hon'ble Bombay High Court in the case of **Neelkamal Realtors Suburban Pvt. Ltd. & Anr. Vs. Union of India & Ors. [(2017) SCC Online Bom 9302]**,

wherein it has been held that compensation should not be awarded mechanically against the promoter on failure to complete the development work and each case has to be considered on its merits. However, the impugned order has been passed without considering all the points of the promoter and has held promoter to pay interest in mechanical manner.

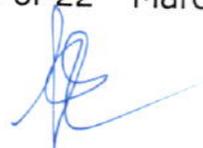
- k.** Promoter has further referred and relied on the following citations/judgments in support of the above contention (a) *Arce Polymer Pvt. Ltd. Vs. Alphine Pharmaceuticals Pvt. Ltd. (2022) 2 SCC 221* and (b) *Henriqueta Maria Julieta Vs. State of Goa 2008 (4) Mh.L.J.908*. Therefore, the impugned order is illegal, contrary to the principles of natural justice and deserves to be set aside by allowing the prayers made in the appeal and urged that the cross appeal filed by complainants be dismissed with costs.
- 7.** Per contra, complainants opposed the appeal and sought above reliefs by filing the captioned cross appeal by submitting the followings; -
- a.** The Hon'ble Supreme court in para nos. 83 to 86 of its judgment in the case of **Newtech Promoters & Developers Pvt. Ltd. Vs. State of UP & Ors.**, [2021 SCC Online SC 1044], and in terms of settled position of law, it has been held that Adjudicating Officer has jurisdiction to decide only compensation/s. Whereas Authority (MahaRERA) has jurisdiction to decide and adjudicate all other issues under the provisions of the Act other than compensation including the reliefs sought by the complainants in the instant case *inter alia* for interest for the delay in delivery of the possession under Section 18 of the Act.
- b.** The captioned complaint has been filed by allottees on account of delay in delivery of the possession within the agreed timeline of within 30 months i.e. before 22nd September 2017 as stipulated in

clause 30 of the agreement for sale, despite payments of more than 90 percent out of the total consideration of the subject flat including TDS, VAT and other charges. As such, the promoter continued to demand for payment of balance consideration of ₹ 12,87,458/- and also demanded payment of the maintenance and other dues even after the issuance of the impugned order by MahaRERA in favour of allottees. As such, promoter failed to handover possession of the subject flat despite MahaRERA order.

- c.** Eventually, promoter handed over possession of the subject flat only after the order of this Tribunal dated 14th February 2020, which was issued based on the specific application of complainants. Allottees took possession after depositing the remaining considerations under protest and also after giving an undertaking dated 23rd July 2020, wherein clause no. 5 of the undertaking clearly provides that respective parties have indemnified each other against the respective claims/rights in the captioned appeals and the impugned order passed by MahaRERA more particularly with respect to the interest payable by promoters, which have accrued in the wake of the delayed possession and interest payable by complainants on the delayed payments respectively. Therefore, possession of the subject flat has been taken over under the protest without prejudice to the accrued rights of the complainants *inter alia* under Section 18 of the Act.
- d.** The promoter itself has admitted that the construction of the said building was completed only in January 2018 and the application for occupation certificate was made only on 17th January 2018. Failure to handover possession of the subject flat due to the delay in grant of the occupancy certificate by the committed date of 21st September 2017, cannot be attributed to complainants in any case

and promoter is liable to pay interest for the delay in delivery of possession.

- e.** As such, MahaRERA while passing the impugned order has considered 31st July 2018 as date of handing over the possession, which in itself, is a reasonable extension of time and this was granted to promoter of an adjustment of certain months from the committed date in the agreement of 22nd September 2017.
- f.** MahaRERA, vide its impugned order has specifically rejected the claim/s for interest on the payment of the balance consideration by complainants and therefore, promoter is not justified in demanding interest for the payment of balance consideration.
- g.** MahaRERA has passed the order to handover possession by October 2018 based on the statement of promoter and thereby promoter was directed to pay interest for the delay in delivery of possession only for the period started from 01st August 2018 till October 2018. However, promoter has not offered possession of the said flat till 14th February 2020. Therefore, complainants are entitled for interest from 1st August 2018.
- h.** The act of promoter for not offering possession of the subject flat clearly demonstrates the malafide intentions of promoter of harassing complainants and extorting more money.
- i.** Without prejudice to their rights, learned counsel further submits that The Hon'ble Apex Court in catena of judgments, has time and again held that reasonable time for completion of the project and handing over the possession of the flat is 3 years. Even then, the reasonable time for possession delivery expires on 22nd March 2018. Therefore, promoter is otherwise liable to pay interest under Section 18 of the Act beyond the said period of 22nd March 2018.



- j.** In view thereof, it is more than clear that promoter did not adhere to the terms of the agreement for sale for timely delivery of the possession and has not delivered possession even within the reasonable time of three years as specified by the Hon'ble Apex Court and the fault for delay in grant of OC was for want of necessary compliances by promoters to obtain OC. The appeal filed by the promoter seeking payment for the balance consideration along with interest for purported delay in making payment from the date of intimation of fit-out as per the purported agreed terms is also not permissible, It is because, these reliefs have been sought for the first time in appellate stage. As such, complainants have always been making all the requisite payments in time in terms of the payment schedule in the agreement and as and when demanded by the promoter.
- k.** MahaRERA, vide its impugned order has categorically held that complainants shall make balance payment (principal amount only) after adjusting the interest to be received as stipulated in para 5 o at the time of possession.
- l.** Despite receipt of the occupation certificate, promoter never offered possession of the said flat to complainants and the possession was offered by promoter only after the order of this Tribunal 14th February 2020 based on the application filed by the complainants. Complainants have taken possession on 23rd July 2020 in pursuance to this Tribunal's order dated 14th February 2020 under protest and after making such payments.
- m.** Moreover, promoter has never filed any complaint seeking interest from complainants for the alleged delay in payment of dues/ balance consideration.



n. It is well established principle of law that maintenance charges can be demanded from allottees only after handing over the possession. Therefore, allottees are liable to pay only the principal amount of the balance payment without any interest. Accordingly, complainants have paid these balance considerations with interest, society charges, maintenance charges and GST to promoter under protest and have taken over the possession on 23rd July 2020.

o. In view of the foregoing, promoter has not made any cogent and compelling case to quash and set aside the impugned order passed by MahaRERA, which was issued after hearing all the parties and is based on cogent, well-founded reasons. Therefore, the appeal filed by promoter is liable to be dismissed and the reliefs sought by complainants in their cross appeal be allowed.

8. From the rival pleadings, submissions and documents relied upon by the parties, following points arise for our determination in this appeal and we have recorded our findings against each of them for the reasons to follow: -

	POINTS	FINDINGS
1.	Whether complainants are entitled for the reliefs as prayed for in the cross-appeal?	As per the order.
2.	Whether impugned order passed by MahaRERA calls for interference in these appeals?	In the affirmative.

REASONS

Points 1 and 2:

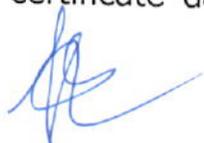
- 9.** These points are interrelated so have been considered together.
- 10.** Learned counsel for the complainants while arguing the matter submits that complainants are seeking only the reliefs relating to the direction to

promoter for payment of interest for the delay in delivery of possession of the subject flat from 1st August 2018 till the actual date of delivery of possession and not pressed for the remaining reliefs sought in the appeal and vehemently opposed the claims made by the promoter.

11. Whether the Possession of the flat was delivered as per agreed

timelines: It is not in dispute that complainants have booked the subject flat in the said duly registered project of promoter by executing agreement for sale dated 22nd March, 2015 for total consideration of ₹ 1,31,93,985/-, wherein Clause No. 30 of the said agreement stipulates that the possession of the subject flat will be handed over by the Promoter on or before 30 months from the date of the agreement (i.e. by 21st September 2017) subject to reasonable extension based on certain factors beyond the control of promoter as enumerated in the agreement. Therefore, complainants are allottees and developer is promoter under the provisions of the Act. Moreover, the project under reference is duly registered under the Act of 2016. Therefore, provisions of the Act are squarely applicable to the aforesaid transaction in the instant appeals.

12. Learned counsel for the promoter claims that project work was completed within the stipulated time and the promoter's architect has also given a certificate to this extent vide architect certificate dated 01st September 2017. Whereas application for occupation certificate was made on 17th January 2018 and fit out possession was also offered to complainant-on 26th March 2018. However, the occupation certificate was received only on 12th October 2018. However, offer of fit out possession is not a legal possession, and it is a settled position of law that legal possession of the flat cannot be offered without the receipt of valid occupation certificate, which was received only on 12th October 2018. Moreover, perusal of occupation certificate dated 12th October



2018 issued by MAHADA, further reveals that this is a conditional occupation certificate, which contains several conditions. But promoter has not produced any documentary evidence to show that these conditions mentioned in the Occupation Certificate have been complied with and fulfilled.

- 13.** In view thereof it is more than clear that the legal possession of the subject flat with occupation certificate was possible to be offered only after 12th October 2018 and therefore, it is more than evident that legal possession was not offered on or before agreed timeline of 21st September 2017 as a stipulated in clause 30 of the agreement for sale.
- 14.** In view of the foregoing, it is more than clear that delivery of legal possession of the said flat with required occupancy certificate have not been handed over before the agreed timelines therefore Section 18 of the Act will be attracted.
- 15.** It is apposite to reproduce Section 18 of the Act as under: -

"18. Return of amount and compensation. — (1) If the Promoter fails to complete or is unable to give possession of an apartment, plot or building, —
(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or
(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,
he shall be liable on demand to the allottees, in case the Allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:

Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed.

(2) ..

(3) If the Promoter fails to discharge any other obligations imposed on him under this Act or the rules or regulations made thereunder or in accordance with the terms and conditions of the agreement for sale, he shall be liable to pay such compensation to the allottees, in the manner as provided under this Act."

16. In view of the provisions of Section 18 of the Act, complainants are entitled for interest for the delay in delivery of the possession of the subject flat.
17. However, learned counsel for the promoter submits that the delay in receipt of the occupation certificate was despite completion of the building construction and delay has happened apparently due to internal disputes between the MAHADA and MCGM, for which promoter cannot be faulted. Moreover, the agreement for sale specifically provides for a reasonable extension of possession delivery date on account of such factors, which are beyond the control of the promoter.
18. Whereas The Hon'ble Supreme Court in para nos. 25 and 78 of its judgment dated November 11, 2021, in the case of **M/s Newtech Promoters and Developers Pvt. Ltd vs. State of Uttar Pradesh & Ors. (supra) dated 11th November 2021** has clarified that *if Promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement, then, Allottee's right under the Act to seek refund/ claim interest for delay is unconditional & absolute, regardless of unforeseen events or stay orders of the Court/Tribunal.*

And para 78 of the judgement further states that; -

78. This Court while interpreting Section 18 of the Act, in *Imperia Structures Ltd. Vs. Anil Patni and Anr.* [5 2020(10) SCC 783], has held that Section 18 confers an unqualified right upon an Allottee to get refund of the amount deposited with the Promoter and interest at the prescribed rate, if the Promoter fails to complete or is unable to give possession of an apartment as per the date specified in the home buyer's agreement.

19. In para 23/25, it was further held as under:



".....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 up to the Allottee to proceed either under Section 18(1) or under proviso to Section 18(1).** The case of Himanshu Giri came under the latter category. The RERA Act thus definitely provides a remedy to an Allottee who wishes to withdraw from the Project or claim return on his investment."

20. In view of above, it is crystal clear that the rights of Allottees under Section 18 of the Act are unconditional and absolute, regardless of unforeseen events including due to any other reasons, even due to **factors beyond control of the Promoter and it is the allottees, who have sole discretions to proceed either under Section 18 (1) or under the proviso to the Section 18 (1).** Accordingly, respondents allottees have unconditional and absolute right to claim interest at prescribed rate under Section 18 of the Act for delay in delivery of possession of the subject flat from the agreed date.

21. Extension in possession date as per the agreement: Learned counsel for the promoter further submits that clause 30 of the agreement for sale provides for reasonable extension/s of the delivery date of possession on account of such factors as have been encountered in the instant project, namely the delay in issuance of the approvals and occupation certificate on the part of the authorities etc,. However, careful perusal of these factors, it reveals that these factors do not qualifies as force majeure events as defined under section 6 of the Act and therefore, the contentions of the promoter are contrary to the provisions of the Section 6 of the Act and cannot be accepted. Moreover, promoter has not invoked these clauses by sending intimation to complainants by intimating the same in writing well in time.



- 22. Effect of an executing undertaking by complainants before taking possession:** Learned counsel for the promoter further contended that before taking possession, complainants have executed an undertaking dated 23rd July 2020, whereby, they have confirmed that they have no objections nor any complaint of any nature whatsoever against the promoter and complainants have waived their rights to raise any objection or raise any claims of whatsoever nature. In view thereof, complainants have expressly agreed not to raise any claims against the promoter in respect of and /or arising from the said agreement for sale. However, after accepting possession of the subject flat and after executing the said undertaking, complainants have filed the captioned cross appeal. Therefore, according to the promoter, the cross appeal filed by the complainants is not maintainable and deserves to be dismissed.
- 23.** However, upon meticulous perusal of the undertaking given by the complainants more particularly its clause 5 clearly reveals as follows; -
"I/we hereby indemnify and keep indemnified the promoter against the appeal no. AT10940 of 2019 pending before this Tribunal with regard to the interest payable by me/us, accrued on the delayed payments. Further, the promoters here by indemnify and keep indemnifying me/ us against the order dated 26th October 2018 by MahaRERA against the complaint no. CC 54617 with regard to the interest payable by the promoter, accrued on the delayed possession."
- 24.** Learned counsel for the complainants vehemently contended these claims of the allottees by submitting that the possession has been taken under without prejudice to their rights based on the order of this Tribunal dated 14th February 2020 and therefore, these contentions of the promoter are legally not tenable. Meticulous perusal of clause 5 of the undertaking, it is crystal clear that the possession of the flat has been

taken by complainants under protest by clearly indemnifying each other in respect of their irrespective claims and accrued rights under the provisions of the Act.

25. Moreover, learned counsel for the promoter himself confirmed at the time of hearing, that the draft of this undertaking was prepared by promoter itself and was handed over to complainants for giving their undertaking and accordingly, this undertaking has been executed and been given by complainants to promoter. Therefore, the contentions of the promoter cannot be accepted.

26. In view of the foregoing, claims of the promoter are legally not tenable on account of the followings; -

- a. As determined here in above, the rights of Allottees under Section 18 of the Act are unconditional and absolute, regardless of unforeseen events including any other reasons even factors beyond control of the Promoter.
- b. The delay in project completion and consequent delay in delivery of possession of the subject flat is not attributable to allottees. Delivery of timely possession is the contractual commitments given by promoter under the agreement for sale. Therefore, promoter continues to be legally liable to pay interest at prescribed rate for the period of delay in delivery of the possession under the Act.
- c. The Hon'ble Bombay High Court, in the case of **Neelkamal Realtors Suburban Pvt. Ltd. & Anr. Vs. Union of India & Ors. (Supra)** in para 119, further 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...***".



Accordingly, it is evident that Promoter is inherently better equipped about market related information and is structurally at advantageous position in as much as the information about the said project updates are concerned. Therefore, in consonance with the provisions under Sections 11 (3) and 19(2) of the Act, Promoter is liable to provide unambiguous and expressed/ definite information about project completion date / possession delivery date at the time of booking and the change in the possession date can be possible only with the mutual consents/agreements of the parties.

- d. However, it is pertinent to note that it is the promoter, who is responsible for timely delivery of possession of the booked flat but has failed by not delivering possession of the subject flat within the agreed timelines as per the agreement. Therefore, promoter has violated the statutory provisions under Sections 18 of the Act on this count.
- e. **Party in breach, cannot take advantage of its own wrong:**
 The said delay, being attributable to Promoter itself, cannot deny the accrued rights under Section 18 of the Act to Allottees on the very same ground for which, Promoter himself is responsible for delay, especially because the rights so accrued to allottees under Section 18 are unconditional, unqualified, and absolute. Promoter is seeking extension of this very delay on account of its own deficiencies/ non-performance and despite being party in breach, this is legally not permissible. It is because, he himself cannot take advantage of its own wrong in view of the judgement of The Hon'ble Supreme Court in the case of ***Kusheshwar Prasad Singh Vs. State of Bihar and Ors. [Supreme Court] Civil Appeal No. 7351 of 2000***. Where in, it has been held that - "It is settled principle of law that a man cannot be permitted to take undue and unfair



advantage of his own wrong to gain favourable interpretation of law. It is sound principle that he, who prevents a thing from being done shall not avail himself of the non-performance he has occasioned. To put it differently, "a wrongdoer ought not to be permitted to make a profit out of his own wrong.

- f. It is also important to note that the project has been registered under the Real Estate (Regulation & Development) Act, 2016 ("the Act"), which provides several welfare provisions including for greater accountability towards consumers to protect consumers as contemplated in the statement of Objects and Reasons of the Act. Whereas it is distressing to note that, there is undue and inordinate delay in delivery of the possessions of the subject flat despite payment of substantial amounts by complainants. As a result of this, complainants continue to be deprived of their legitimate entitlements of getting possession of flat in time.
- g. In the Judgment of the Hon'ble Supreme Court of India in the case of *M/s. Newtech Promoters and Developers Pvt. Ltd. versus State of U.P & Ors (supra)*., it has been observed with regard to some of the relevant statement of objects/reasons as mentioned in para 11 as that "11. *Some of the relevant Statement of Objects and Reasons are extracted as under: "*
- 4...(f) the functions of the Authority shall, inter alia, include –*
- (iii) to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under the proposed legislation.*
- h. It is also important to note that the project has been registered under the Real Estate (Regulation & Development) Act, 2016, which provides several welfare provisions to protect interests of consumers including for greater accountability towards consumers to inject greater efficiency, transparency and accountability as contemplated in the statement of Objects and Reasons of the Act. Regulation 39 of Maharashtra Real Estate Regulatory Authority (General)



Regulation, 2017 further stipulates inherent powers of the Authority. It lays down that

"Nothing in the Regulations shall be deemed to limit or otherwise affect the inherent power of the Authority to make such orders as may be necessary for meeting the ends of justice or to prevent the abuse of the process of the Authority."

Similarly, Regulation 25 of Maharashtra Real Estate Appellate Tribunal, 2019 speaks about similar inherent powers of the Tribunal as *"25(1) Nothing in these Regulations shall be deemed to limit or otherwise affect the inherent power of the Tribunal to make such orders as may be necessary for meeting the ends of justice or to prevent the abuse of the process of the Tribunal."*

It means the Regulatory Authority and the Appellate Tribunal have inherent powers under the Regulations framed under RERA Act, 2016 to pass appropriate Orders, which are necessary to meet the ends of justice.

27. Effect of execution proceeding of the impugned order: Learned counsel for promoter further contended that Complainants have filed application for execution of the impugned order before MahaRERA and the current appeal is challenging the very same order. Therefore, according to him, appeal has become infructuous and will affect the reliefs sought in this appeal.

28. However, The Hon'ble Supreme Court has clarified in paras 7.3- 7.7 of its judgement in the case of **Karnataka Housing Board vs. K. A. Nagamani [(2019) 6 SCC 424]** as follows.

"7.3 the nature of execution proceedings is materially different from the nature of proceedings for adjudication of a consumer complaint. Execution proceedings are independent proceedings. Order passed for enforcement of the final order in



consumer dispute, cannot be construed to be orders passed in the "consumer dispute."

7.4 During the course of the hearing, the learned counsel for the appellant raised contention that execution proceedings are a continuation of "appeal" and must therefore be considered to be a continuation of the "consumer dispute". Reliance in this regard was placed on the decision of the Bombay High Court in Satguru Construction Co. (P) Ltd. Vs. Greater Bombay Cooperative Bank Ltd. and Raghunath R. Shingate Vs. Jayant Gajanan Pathak, village Patna High Court in Parshava Properties Ltd. Vs. A. K. Bose, where it was held that execution proceedings are a continuation of the suit.

7.5. On the other hand, correspondent complaint has placed reliance on a full bench of the Andhra Pradesh High Court in Guntupalli Rama Subbayya Vs. Guntupalli Rajamma, where it was held that [SCC online AP para 11]

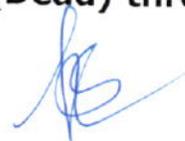
"11. Execution proceedings, in our view, cannot be regarded as continuation of the suit in the sense in which the proceedings in the appeal are treated."

7.6. A full bench of Patna High Court in Narmada Devi Vs. Ram Nandan Singh, similarly, held that execution proceedings cannot be regarded as a continuation of the suit.

7.7. We affirm the view taken by the full bench of Andhra Pradesh High Court and the Patna High Court. Execution proceedings even though they are proceedings in a suit, cannot be considered to be a continuation of original suit. Execution proceedings are separate and independent proceedings for execution of decree.

The merits of the claim or dispute cannot be considered during the execution proceedings. They are independent proceedings initiated by the decree holder to enforce the decree asked in the substantive dispute."

29. Additionally, The Hon'ble Supreme Court has laid down in paras 13 of its judgement in the case of **Malluru Mallappa (Dead) through Legal**



Representatives Vs. Kuruvathappa and Others [(2020) 4 SCC 313] as follows;

"13. It is a settled position of law that an appeal is a continuation of the proceedings of the original court. Ordinarily, the appellate jurisdiction involves a re-hearing on law as well as on fact and is invoked by an aggrieved person. The first appeal is a valuable right of the appellant and therein all questions of fact and law decided by the trial court are open for re-consideration. Therefore, the first appellate court is required to address itself to all the issues and decide the case by giving reasons. The court of first appeal must record its findings only after dealing with all issues of law as well as fact and with the evidence, oral as well as documentary, led by the parties. The judgment of the first appellate court must display conscious application of mind and record findings supported by reasons on all issues and contentions.

- 30.** In view of above, it is evident that despite the execution proceeding, captioned appeals will not become infructuous, and reliefs sought in the cross appeal will remain unaffected.
- 31.** In view of the foregoing reasons/discussions, it is crystal clear that promoter has failed to deliver the possession of the subject flat within the agreed timeline in terms of the agreements for sale and the rights so accrued to complainants under Section 18 of the said Act are unconditional and absolute regardless of unforeseen events including due to factors beyond the control of the promoter and claims of the promoter for the extension of possession delivery date under the agreement for sale is legally not sustainable.
- 32.** Accordingly, we are of the considered view that captioned appeal filed by promoter is devoid of merits, lacks substance and promoter is not entitled for the reliefs sought in its appeal. Consequently, the captioned appeal deserves to be dismissed.



33. Complainants are entitled for the interest at prescribed rate for the delay in delivery of possession from 1st August 2018 till the date of taking possession of the subject flat i.e. on 23rd July 2020. Accordingly, we answer point nos. 1 and 2 as above and proceed to pass the order as follows; -

ORDER

- (i) Captioned Appeal No. AT0060000000 10940 filed by promoter stands dismissed with costs.
- (ii) Captioned cross Appeal No. AT0060000000 53448 filed by complainants is partly allowed.
- (iii) Promoter is directed to pay interest at the rate of highest MCLR (Marginal Cost of Lending Rate) of SBI plus 2% from 1st August 2018 till 23rd July 2020 to complainants on the amounts paid by allottees within 30 days from the date of uploading of this order failing which, promoter will pay interest at this rate on the total amount due and outstanding as on 30th April 2024 till its actual realisation.
- (iv) Promoter is further directed to pay the costs of ₹10,000 directly to the account of complainants and will bear its own costs.
- (v) In view of the provisions of Section 44(4) of the Act of 2016, a copy of the Judgment be sent to the parties and MahaRERA.


(Dr. K. SHIVAJI)


(S. R. JAGTAP J.)