

Mar 01

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

APPEAL NO. AT006000000052555 OF 2021

WITH

MISC. APPLICATION NO. 829 OF 2021 (Stay)

Neelkamal Realtors Suburban Pvt. Ltd.]

DB Central, Maulana Azad Road,]

Rangwala Compound, Jacob Circle,]

Mumbai – 400 011.]

... *Appellant*

versus

Mrs. Regina D'Costa]

T 5-706, Emerald Isle, Saki Vihar Road,]

Powai, Mumbai – 400 072.]

... *Respondent*

ALONG WITH

APPEAL NO. AT006000000052556 OF 2021

WITH

MISC. APPLICATION NO. 833 OF 2021 (Stay)

Neelkamal Realtors Suburban Pvt. Ltd.]

DB Central, Maulana Azad Road,]

Rangwala Compound, Jacob Circle,]

Mumbai – 400 011.]

... *Appellant*

versus

Mr. Ramsay Agnelo D'Costa]

T 5-706, Emerald Isle, Saki Vihar Road,]

Powai, Mumbai – 400 072.]

... *Respondent*

***Mr. Sushant Chavan, Advocate for Appellant.
None for the Respondents - ex-parte***



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

DATE : 01st MARCH 2024

(THROUGH VIDEO CONFERENCE)

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

Present appeals have been preferred under Section 44 of Maharashtra Real Estate (Regulation and Development) Act, 2016 (in short "the Act") against the common order dated 2nd January 2020 passed by learned Member, Maharashtra Real Estate Regulatory Authority, (MahaRERA) in Complaint Nos. CC 006 000000 110765 and CC 006 000000 110766, wherein, MahaRERA directed Appellant *inter alia* to pay interest to Respondents at prescribed rate from 01st May 2017 till the actual date of handing over of the possession of the booked flats with liberty to appellant to pay the interest amount to the respondents at the time of possession with occupancy certificate by adjusting the same with the outstanding dues payable by respondents herein.

2. Captioned appeals arise out of similar facts and are raising identical questions of law. Accordingly, captioned two appeals are heard together and are being disposed of by this common order as hereunder.
3. The appellant is the developer, who is constructing a residential project known as "**DB OZONE**" located at Mira Road, Thane District (in short "the said project"). Respondents are flat purchasers and complainants before MahaRERA. For convenience, appellant and respondents will be addressed hereinafter as promoter and complainants respectively in their original status before MahaRERA.
4. Brief backgrounds giving rise to the present appeals are as under; -



- a. **Complainants case:** In 2009, complainants booked flats bearing Nos. 1606 and 1605 respectively in Building No. 11 of the promoter's said project for total consideration of Rs. 37,71,704/- for each flat and both the complainants have paid Rs. 33,85,973/- to promoter for each flat respectively. Balance amount of ₹3,85,973 for each flat is due and payable by complainants at the time of handing over the possessions of the said booked flats. Agreements for sale for both the flats were also executed among the parties on 03rd March 2011 and 09th March 2011. These agreements were registered on 01st April 2011, wherein Clause 29 of the said registered agreements for sale, stipulates that appellant promoter shall be liable to handover possession of the said flats on or before December 2014 with grace period of 12 months after 31st December 2014 and promoter shall be entitled for further reasonable extension for completion of the said project under certain conditions as elaborated in these two agreements. On account of delay in delivery of the subject flats within the timelines as agreed in the agreements, captioned Complaints came to be filed by respondents before MahaRERA, seeking various reliefs as set out in these complaints *inter alia* for directions to appellant promoter to complete and handover the possessions of the flats and to award compensation/ interest for the delay of more than 5 years as per the law.
- b. Promoter resisted complaints by filing replies before MahaRERA and raised *inter alia*, the issue of maintainability of these complaints by submitting that agreements have been registered under the provisions of the MOFA Act, which is still in force. Therefore, these complaints are governed by the provisions of the MOFA and not under the provisions of RERA Act of 2016 and further contended that under the said clause 29 of the agreement for sale, project completion date can be extended due to factors beyond the control of the promoter, more particularly due to non-



availability of steel/ construction material, war, acts of God and due to other economic factors including on account of economic downturn as well as due to delay in getting the regulatory approvals from the Competent Authorities.

- c. Upon hearing the parties, learned Member, MahaRERA passed the common impugned order dated 2nd January 2020 directing appellant promoter to pay interest at prescribed rate for the delay in delivery of possession of subject flats as elaborated above.
- d. Aggrieved by this common order of MahaRERA, promoter has preferred the present two appeals, seeking identical reliefs *inter alia* including to quash and set aside the common impugned order dated 2nd January 2020 and to declare that the delay in completion of the said project is due to factors beyond the control of appellant promoter. Therefore, the due dates for possessions as specified in clause 29 for the agreements for sale stand extended by a period of 48 months on account of such factors beyond the control of the promoter.
5. Appeal/complaint wise booking details *inter alia* flat numbers including dates of agreements for sale along with agreed possession delivery dates, reliefs sought in respective complaints and reliefs sought in these appeals are set out in the chart / table here under.

	Appeal Nos	Flat No	Complaint nos.	Agreement date	Possession Date subject to certain restrictions in the agreements	Total Consideration in Rs.	Amount Paid in Rs.	Reliefs in Complaint	Relief in Appeal
1.	AT-52555	1606	110765	09.03.2011	31.12.2015	37,71,704	33,85,973	to complete and	to quash and set aside the common impugned order dated 2 nd



2.	AT-52556	1605	110766	09.03.2011	31.12.2015	37,71,704	33,85,973	deliver possession of flats and compensation for the delay of 5 years as per the law.	January 2020 and to declare that the project completion delay is due to factors beyond the control of promoter and due dates for possessions specified in clause 29 for the agreements stand extended by a period of 48 months
----	----------	------	--------	------------	------------	-----------	-----------	---	--

6. Despite being duly served, respondents have failed to appear in the appeal proceedings. Therefore, captioned appeals have proceeded *ex parte* against the respondents.
7. Heard learned counsel for appellants in *extenso*.
8. The promoter has sought the above reliefs by citing *inter alia* following grounds.
 - a. Construction of the said project and consequent delivery of the possessions of the subject flats got delayed due to scarcity of sand, restrictions imposed on stone crushers and due to new conditions imposed for stone mining activities by the Maharashtra Pollution Control Board. The said project also suffered owing to the slowdown in the economy, more particularly in the real estate sector leading to financial difficulties to promoter and also due to interim stay by the Hon'ble State Commission in a consumer complaint etc. The said project was registered under Section 4 of the Act of 2016, after it came into force on 1st May 2017. Considering all the mitigating circumstances, the project completion date was revised to be completed by 31st December 2019. The said project consists of 25 buildings and 8 rehab buildings to be completed and to be handed over under rental housing scheme of MMRDA. Therefore, the said delay in project completion was due to COVID-19 pandemic, due to factors beyond the control and unforeseen for the promoter. As such, promoter lost 24 months for construction and further 24 months due to interim stay order. Accordingly, promoter is

entitled for reasonable extension of 48 months in accordance with the clause 29 of the agreements itself. Despite these difficulties, promoter constructed the said building and initiated handover of possessions of the flats in the said building. However, the captioned complaints came to be filed even-though, promoter had offered to refund the paid amounts together with interest @ 9 percent per annum in accordance with provisions of Section 8 of the MOFA Act and as per the provisions of the agreements.

- b. MahaRERA has further extended the project registration and project completion date to 30th December 2020, which has been further extended to 30th June 2021 on account of above factors including due to then prevailing Covid-19 pandemic and consequent difficulties faced in the nonavailability of the construction workers and this has now been further extended to 31st December 2024. However, occupation certificate of the building no. 5 has been obtained on 26th November 2019. In reference to the revised proposed completion date, MahaRERA has failed to appreciate the realistic project completion date declared by appellant promoter. The Hon'ble Bombay High Court in its judgement in W.P No. 2737 of 2017 in para 256, provides *inter alia* that Section 4(2)(1)(c) enables promoter to revise the date of completion of project and handover possession.
- c. The agreements, which are valid, binding and subsisting, were executed in 2011 during the MOFA regime and thus the provisions of the Act of 2016 are not applicable to the transactions executed between the parties.
- d. In view of the judgment of the Hon'ble High Court dated 6th December 2017 passed in Writ Petition no. 2737 of 2017, MahaRERA has neglected and ignored the findings *inter alia* that the provisions of the Act are prospective in nature. Section 8 of the MOFA also provides *inter alia* for a refund of the amount paid with interest for failure to give possession within the specified time.

- e. MahaRERA has misread the clause 29 of the agreements, which is in accordance with the Section 8 of the Maharashtra Ownership Flats Act 1963 (in short, "MOFA"), has misinterpreted in the impugned order, which reads as "*.....promoter is liable to pay interest for the period of delay in accordance with the terms and conditions of the agreement and has failed to take note of the provisions mentioned in clause 29 of the agreement, which provides for the promoter to refund the paid amount to complaint with simple interest @ 9 percent per annum from the date of receipt.*"
- f. MahaRERA ought to have taken into consideration of these facts that the project has suffered financial constraints due to economic slowdown between 2012 and 2017 as well as again in 2020 and 2021. Therefore, possessions date as mentioned in the agreements stood extended by 48 months and promoter is entitled for reasonable extension under Clause 29 of the agreements.
- g. MahaRERA has failed to take note that factors elaborated in Section 71 and 72 of the Act are required to be taken into account and the power to adjudicate compensations or interest as the case may be, lie with the Adjudicating Officer and not with the Member or the Chairperson of MahaRERA. However, common impugned order has not been passed by the Adjudicating Officer and is without considering the factors enumerated under section 72 of the Act. Therefore, the common impugned order dated 2nd January 2020 passed by the Member is *non-est* and the entire proceedings are void *ab-initio* and liable to be set aside.
- h. MahaRERA has failed to appreciate that out of 3200 flats, 896 flat purchasers have already taken fit out possessions. MahaRERA has failed to appreciate that imposition of penalties and compensations in individual cases would drain the funds of the promoter and funds are more critically required for the completion of project than individual benefits.



- i. Considering *inter alia* above, appellant promoter referred to and placed reliance on the judgment of the judgment in the case of V. Sanjeevamma vs. Yerram Purnamma and Ors. in [AIR 1984 AP 28] and the sought *inter alia* to quash and to set aside the impugned order by granting reliefs sought therein after allowing these appeals.
9. From the pleadings, submissions and documents placed on record, following points arise for our determination and we have recorded our findings against each of them for the reasons to follow: -

	POINT(S)	FINDING(S)
1.	Whether the provisions of the Act of 2016 will be applicable in the instant case?	In the affirmative
2.	Whether Promoter establishes that possessions of flats were delivered as per the agreed timelines in terms of the agreements for sale?	In the negative.
3.	Whether rights of allottees under Section 18 of the Act is unconditional & absolute, regardless of unforeseen events and factors beyond control of Promoter?	In the affirmative.
4.	Whether project completion date mentioned while registering the project be taken as the agreed date for delivery of possessions?	In the negative.
5.	Whether Promoter is entitled for extension of 48 months of possessions date due to factors beyond control, whereby possessions date be revised to 31 st December 2019 as prayed for by promoter in the appeal?	In the negative.
6.	Whether impugned order is sustainable in law?	As per order.
7.	Whether impugned order calls for interference in this appeal?	As per order.

REASONS

Point 1: Applicability of The Act.

10. It is not in dispute that complainants have booked the subject flats in the promoter's said project and promoter has accepted payments of more than 88 percent of total considerations. Parties have also executed registered agreements for sale, wherein, clause 29 stipulates for delivery of

possession of the subject flat before 31st December 2014 with grace period of 12 months and further reasonable extension under certain conditions as set out in the agreements. In view of the above, it is not in dispute that respondents complainants are allottees and appellant is promoter within the meaning of the provisions of the Act of 2016. The promoter itself has further submits that the said project has been duly registered as an ongoing project after the said Act came into force as on 01st May 2017. Whereas The Hon'ble Bombay High Court in para 86 of its judgement in the case of Neelkamal Realtors Suburban Pvt. Ltd. & Anr. Vs. Union of India & Ors. [(2017) SCC Online Bom 9302] *has held inter alia that ".....The RERA (the Act of 2016) will apply after getting the project registered. In that sense, the application of RERA is prospective in nature....."*

11. Hon'ble Supreme Court in para 54 of its judgment dated November 11, 2021, in the case of **M/s Newtech Promoters and Developers Pvt. Ltd Vs, State of UP & Ors. [Civil Appeal Nos.6745-6749 of 2021]** *has also held that " 54. From the scheme of the Act 2016, its application is retroactive in character, and it can safely be observed that the projects already completed or to which the completion certificate has been granted are not under its fold and therefore, vested or accrued rights, if any, in no manner are affected. At the same time, it will apply after getting the ongoing projects and future projects registered under Section 3 to prospectively follow the mandate of the Act 2016."*
12. Therefore, as per the settled position of law including as per the landmark judgement of the Hon'ble Supreme Court and The Hon'ble Bombay High Court (supra), various provisions of the Act are squarely applicable in the instant case. Consequently, the said sale transactions including the agreements for sale executed on 03rd March 2011 and 09th March 2011 respectively as well as have been registered on 01st April 2011 in the instant cases are also entirely covered within the purview of the Act of 2016. Moreover, in case of conflict/s, provisions of the Act of 2016 will



prevail over MOFA. Thus, it is hard to agree with the contentions of Promoter stating that provisions of the said Act of 2016 will not be applicable merely because the agreements have been executed during the MOFA regime. Accordingly, we answer point no.1 in the affirmative.

Point 2: Whether Possessions were delivered as per agreed timelines:

- 13.** It is not in dispute that Complainants have booked the said flats and agreements for sale have also been executed on 03rd March 2011 and 09th March 2011 respectively and have been registered on 01st April 2011. Clause 29 of the agreements stipulates that possessions of the flats will be handed over before 31st December 2014 with a grace period of 12 months and further reasonable extension is subject to certain restrictions regarding events set out in the agreements. This implies that even after adding the extended period of one year, possessions of the said flats were agreed to be delivered by 31st December 2015. Admittedly this has not happened.
- 14.** However, learned counsel for the Promoter himself submits that project was not completed due to financial constraints and on account of several factors beyond the control of the promoter including due to certain economic factors including owing to slow down in the economy, shortage of sands, stones, labours, and workforce as well as due to difficulties faced by promoter due to then prevailing Covid-19 pandemic. But these factors causing delay, are not attributable to complainants at all and appellant promoter is a squarely responsible for these as per the contractual commitments given by Promoter which has been provided under the agreements. Moreover, the COVID-19 pandemic was much after the agreed timelines for delivery of possessions.
- 15.** It is also not in dispute that the bookings of flats were done during 2009 itself. Accordingly, delivery of legal possessions of flats are not seen delivered by promoter even after adding 3 years of reasonable time as laid



down by The Hon'ble Supreme Court in para 15 of its judgment in the case of **FORTUNE INFRASTRUCTURE & ANR VERSUS TREVOR D'LIMA & ORS [(2018) 5 SCC 442]**.

- 16.** Learned counsel for appellant promoter himself submits that the subject flats are located in building no. 11 and promoter has not received the occupancy certificate of this building to date. As such, MahaRERA has further extended the project registration and project completion date to 30th December 2020, which has been further extended to 30th June 2021 on account of above factors including due to then prevailing Covid-19 pandemic and this has now been further extended to 31st December 2024. Therefore, it is more than clear that building no. 11, wherein the subject flats are located, has not received the occupancy certificate yet. Thus, the building is still not complete.
- 17.** In view of above, it is more than clear that delivery of legal possessions of the said flats with required occupancy certificate have not been handed over before the agreed timelines, despite having specific stipulations for this in the agreements. Therefore, the promoter has failed to deliver possessions of the flats neither within the agreed timelines nor within a reasonable permissible period, which constrained us to answer **point 2** in the negative.

Point No.3: Whether rights accrued under Section 18 is absolute.

- 18.** 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."

- 19.** 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 Another [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.

then in para 23/25, it was 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 has been held by the Hon'ble Apex Court 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 rights 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 and we answer the point 3 in the affirmative.

Point 4: possession date on MahaRERA website:

21. Clause 29 of the agreements for sale stipulates for delivery of possessions of respective flats by December 2014 subject to grace period of 12 months and is eligible for further reasonable extension. It was alleged by complainants that promoter has unilaterally extended the date of possession without any consultations nor consents of complainants to December 2020, while registering the project with MahaRERA and it has been further extended 2021 and now 2024. But these extensions are not binding to allottees in the light of the paras 119 and 256 of **the Judgment of The Hon'ble Bombay High Court** in the case of ***Neelkamal Realtors Suburban Pvt. Ltd vs. UOI & Ors dated December 06, 2017, in writ petition number 2737 of 2017***, which clarifies that “*The RERA does not contemplate rewriting of contract between the flat purchaser and the promoter.*” Para 256 of this Judgment further clarifies that “*by giving opportunity to the promoter to prescribe fresh timeline under Section 4(2)(1)(C), he is not absolved of the liability under the agreement for sale*”.

- 22.** Moreover, delivery date mentioned on MahaRERA's website is revised unilaterally without consent of complainants. Therefore, it is not binding on complainants. Accordingly, revised possession dates mentioned on the website, while registering the project on the website of MahaRERA cannot be accepted as agreed possessions delivery date for Section 18 of the Act and we answer the point 4 in the negative accordingly.

Point 5, 6 and 7:

- 23.** These points are inter-related, accordingly have been taken together for consideration.
- 24.** Learned counsel for promoter further contended that delay of 48 months in project completion was due to factors which are beyond the control of the promoter, not attributable to promoter. Therefore, promoter cannot be held liable for this delay of 48 months. Thus, promoter is seeking various reliefs *inter alia* for extension of 48 months of possession dates due to factors beyond control, whereby possession date be revised to 31st December 2019.
- 25.** However, these contentions 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 possessions of the subject flats are not attributable to allottees. Delivery of timely possession is the contractual commitments given by promoter under the agreements for sale. Therefore, promoter continues to be legally liable to pay interest at prescribed rate for the period of delay in delivery of the possessions 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. [(2017) SCC Online Bom 9302]** 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 / possessions delivery date at the time of booking and the change in the possessions date can be possible only with the mutual consents/agreements. Whereas complainants in the instant cases have not agreed for any extension of the possessions date.
- 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 possessions of the subject flats within the agreed timelines as per the agreements. 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



adjustment/ extension/ compensation of this very 48 months of delay on account of its own deficiencies/ non-performance and despite being party in breach. This is legally not permissible 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 flats despite payment of substantial amounts by complainants. As a result of this, complainants continue to be deprived of their legitimate entitlements of getting possessions of flats 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 shows 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 shows 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.

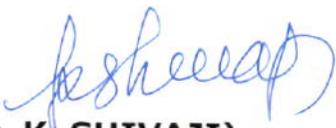
26. In view of the foregoing reasons/discussions, it is crystal clear that the provisions of the Act of 2016 are squarely applicable in the instant case, promoter has failed to deliver the possessions of the subject flats within the agreed timeline in terms of the agreements for sale and the rights so accrued to complainants respondents 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. Moreover, project completion date extended, while registering the project with MahaRERA and cannot be taken as an agreed date in terms of the agreements for sale for the purpose of the rights accrued under Section 18 of the Act of 2016 to allottees for claiming interest for delay in delivery of the possessions of respective flats.

- 27.** Perusal of the common impugned order dated 2nd January 2020, reveals that MahaRERA has rejected the claims of the promoter on the grounds for delay in delivery of possessions and has awarded interests to respondents for delay. In view of the above, we are of the considered view that no interference is called for as prayed for by the promoter in the present appeals, captioned appeals filed by promoter are devoid of merits, lacks substance and promoter appellant is not entitled for the reliefs sought in these appeals. Consequently, the captioned appeals deserve to be dismissed. Accordingly, we answer point 5, 6 and 7 as above and proceed to pass the order as follows; -

ORDER

- (i) Captioned Appeal Nos. AT00600000052555 and AT 00600000052556 stand dismissed.
- (ii) In view of the dismissal of appeals, pending miscellaneous applications will not survive, hence stand disposed of.
- (iii) No order as to costs.
- (iv) 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.)