

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

**Appeal No. AT001000000052811 of 2020
In
Complaint No. CC001000000000104**

Mr. Sharadrao Pundlikrao Wagh

House no. 3, Pranjal Farm
Janori Shivani Road, Janori
Nashik, Dindori
Nashik: 422202

... Appellant

Versus

- 1] Jay Infrastructurs**
- 2] Vijay V. Lalwani (Authorized Sign)**
- 3] Karan N. Lalwani (Partner)**
- 4] Hiro R. Lalwani**

Block no. 1,2 & 3
Sacheti Height,
Opp Telephone Exchange,
Sharanpur Road,
Nashik: 422003

... Respondents

Adv. Vidyesh Nashikkar for Appellant.

Adv. Saurabh Butala for Respondents.

CORAM : SHRIRAM R. JAGTAP, MEMBER (J) &

DR. K. SHIVAJI, MEMBER (A)

DATE : 21st December 2023

(THROUGH VIDEO CONFERENCING)

JUDGMENT

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[PER : SHRIRAM R. JAGTAP (J)]

1] This appeal arises from the order dated 8th September 2020 passed by learned Member I (for short Authority) MahaRERA in complaint no. CC001000000000104 filed by Allottee to raise grievances that impugned order has not satisfactorily granted the reliefs as sought by allottee in his complaint.

2] Appellant and Respondents, will hereinafter be referred to as "Allottee" and "Developers" respectively.

3] The facts, which are necessary for disposal of the present appeal, are that the developer launched a project by name **Sai Serenity** on plot no. 14 of survey no. 50/1/1+50/1/2+50/1/3 at Anandwalli Tal. and Dist. Nashik. To attract the home buyers the developers depicted rosy picture of the project by promising a timely delivery of possession, as a result thereof, allottee booked a 2BHK flat bearing no. 9 on 5th floor having carpet area of 73.27 sq. meters in the subject project for a total consideration of Rs. 47 lakhs. Pursuant thereto, Respondents have executed a notarized agreement for sale dated 23.11.2017 in favour of allottee and committed to hand over possession of the subject flat within a period of 6 months from the date of execution of agreement for sale. Though, the allottee has paid the entire consideration amount

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to the developer from time to time till 15.03.2018, the developer has failed to execute a registered agreement for sale and thereby violated the provisions of Section 13(1) of RERA 2016.

4] The allottee has further alleged that the developer has also modified the plan without consent of the allottee, which resulted into increasing the carpet area of the subject flat from 73.27 sq. meters to 79.93 sq. meters. The developer started demanding additional consideration amount proportionate to increase area from allottee. The developer has undertaken the subject project in two different phases and the second phase is not yet registered with MahaRERA till date and thereby, the developer has violated the provisions of Section 3 of the RERA 2016. Allottee by written communications asked the developer to execute a registered deed of agreement for sale and to comply with his statutory obligation. However, the developer has failed to comply with his statutory obligation. Being aggrieved by this conduct of the developer the allottee has filed complaint.

5] In reliefs, the directions were sought to developer:

I] To pay interest on paid amount till the allottee gets actual possession of the subject flat.

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II] To refund the amount of Rs. 47 lakhs paid by allottee with interest from 23.11.2017 if developer fails to hand over the possession of the subject flat.

III] To pay Rs. 7 lakhs to allottee towards mental agony.

IV] The allottee further sought relief to impose penalty on developer for violation of Section 3, Section 13(1) and Section 14(2) (a) of RERA 2016.

6] The defence of developer which emerged from impugned order is that the allottee has filed false complaint with ulterior motive and just to harass the developer. The developer has completed the building and handed over the possession of the flats to various home buyers. In the meantime, Nashik Municipal Corporation has stopped issuing the occupation certificates for the reasons best known to it. Therefore, the developer could not apply for the occupancy certificate. The developer has further contended that vide letter dated 12.12.2018, he has informed the allottee that the flat is ready for the possession and called upon allottee to pay the stamp duty and statutory charges towards registration, GST, electricity and water meter. The developer has also called upon the allottee to execute the registered agreement for sale. However, the

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allottee did not come forward to execute agreement for sale nor paid any statutory charges as demanded by developer. On 15.11.2018 for the first time the allottee called upon developer to execute the registered agreement for sale. This signifies that the complainant is not a genuine allottee and he has booked the subject flat for investment purpose. Since the real estate market is hit by the financial crises, complainant/allottee was unable to sale the subject flat to earn more profit. Therefore, allottee did not execute the registered agreement for sale.

7] It was further contention of the developer that as per the modified plan the area of the subject flat has been increased. Initially the flat of the allottee was 2BHK which became 3BHK. The old carpet area was 73.27 sq. meters which got revised to 79.93 sq. meters. The complainant/allottee was apprised of the same to which allottee agreed for the same, subject to additional consideration amount proportionate to increased area. When complainant/allottee had objected to pay the additional amount with respect to additional area, developer offered another flat of equivalent area to allottee. However, allottee with dishonest intention to grab the flat of additional area on lower price filed the false complaint.

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8] It was further contention of the developer that the other flat purchasers have taken possession of their respective flats and started living there. The complainant sans first executing registered agreement for sale has no right to occupy the subject flat. The developer, therefore, showed his willingness to execute a registered agreement for sale.

9] After hearing the parties, the learned Authority passed order under challenge in this appeal. For the sake of convenience, the relevant part of the order is reproduced as follows.

10. With regard to the issue raised by the complainant for violation of section 14 of the RERA, the MahaRERA has observed that the complainant has failed to produce any cogent documentary proof on record of MahaRERA to show that after commencement of RERA the respondent has amended the plan without obtaining requisite 2/3rd consent of the allottee and thereby violated section 14 of the RERA. Hence for want of sufficient proof, the claim of the complainant in this regard stands rejected.

11. With regard to the payment of additional amount for increased in area of the complainant's flat, the MahaRERA feels that it is for the parties to take a decision on it, if the additional area is not acceptable to the complainant, the respondent may provide the alternative flat having similar area.

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12. During the course of hearing the respondent has shown its readiness and willingness to register the agreement for sale, since the completion certificate has already been obtained for this project on 16-07-2019. The MahaRERA therefore directs the complainant to pay necessary charges towards stamp duty and registration charges/statutory dues within a period of 15 days from the date of receipt of this order. Thereafter within next 30 days, both the parties are directed to execute the registered agreement for sale as prescribed under the provisions of section 13 of the RERA.

13. Consequently, the complaint stands disposed of.

10] We have heard learned Adv. Vidyesh Nashikkar for Appellant and learned Adv. Saurabh Butala for Respondents.

11] Epitome of argument of learned Adv. Vidyesh Nashikkar for allottee is that it is not in dispute that allottee has booked 2BHK flat in the subject project for consideration of Rs. 47 lakhs. Parties have also executed a notarized agreement for sale dated 23.11.2017. By virtue of agreement for sale the developer has committed to hand over possession of subject flat within 6 months from the date of execution of agreement for sale. It means the developer was supposed to hand over the possession of the subject flat to allottee on or before 22.05.2018. However, the developer has failed to hand over the possession of the subject flat to

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appellant/allottee with occupation certificate within stipulated period.

12] Learned Advocate has further submitted that it is not in dispute that the allottee has paid entire consideration amount of Rs. 47 lakhs to the developer from time to time till 15.03.2018. Despite having received entire consideration the developer has failed and neglected to execute registered agreement for sale and thereby, violated the provisions of Section 13 (1) of RERA 2016. Learned Adv. Vidyesh Nashikkar has sorely submitted that the developer has not disputed the fact that the developer has modified the plan without consent of the allottee. As a result thereof, the agreed area of subject flat has been increased from 73.27 sq. meters to 79.93 sq. meters. Therefore, it is crystal clear that the developer has violated the provisions of Section 14 (2) (I) of RERA 2016. Besides, the developer has undertaken the subject project in two different phases. However, the developer has not registered the second phase with MahaRERA till date and accordingly, the developer has violated the provisions of Section 3 of the RERA 2016.

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13] Learned Advocate has invited our attention to the documents placed on record by allottee and poignantly submitted

that the correspondence between the parties clearly indicate that the developer has modified the plan without written consent of allottee and despite this, the developer started demanding additional consideration amount for the increased area from allottee. After 9 months of receipt of full and final payment by promoter from allottee, this fact was brought to the notice of allottee by promoter and because of this attitude of the promoter, allottee suffered mental agony. Allottee is unable to pay additional cost for increased area. It is not in dispute that flat of equivalent area is not available in the subject project. This signifies that allottee has suffered mental agony. Apart from this the developer has neither executed a registered agreement for sale nor handed over the possession of subject flat to allottee on specified date and therefore, allottee is entitled to interest on the amount paid and compensation on account of mental agony suffered by allottee for violation of Section 14 (2) (1) of RERA 2016.

14] Learned Advocate has further submitted that during the course of hearing, the respondents/developers have offered subject flat for agreed consideration of Rs. 47 lakhs without charging additional consideration for increased area subject to payment of statutory charges. The appellant is ready to accept the

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said flat without prejudice to his right to get compensation of Rs. 7 lakhs from the promoter. With these contentions learned advocate has prayed to allow the appeal with cost.

15] Succinct of argument of learned Adv. Saurabh Butala for respondents/developers are that the material produced on record by appellant clearly indicate that respondents have completed construction of the building and offered possession of the subject flat to allottee subject to payment of additional consideration for increased area. It is not in dispute that respondents have handed over possession of the flats to various home buyers. The Nashik Municipal Corporation has stopped issuing occupation certificate for the reasons best known to it. Therefore, the developer could not have applied for the occupation certificate. However, at the same time it cannot be ignored that by letter dated 12.12.2018 the developer has apprised the allottee that the construction of the building is completed and flat booked by the allottee is ready for possession. The developer has also apprised the appellant that on payment of statutory charges towards registration fees, GST, electricity meter, water meter, one time maintenance and balance amount of consideration, the developer is ready and willing to execute a registered agreement in favour of the appellant. This

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conduct of the respondents demonstrates that the respondents were/are always ready and willing to execute registered agreement for sale in favour of appellant/allottee. Despite this, the appellant did not come forward to get execution of registered agreement for sale and this conduct of the appellant shows that he is not genuine buyer, but he is an investor.

16] Learned Adv. Saurabh Butala has solely submitted that respondents have revised plan of the building and as per modified plan, area of the subject flat is increased. Initially, the subject flat was consisting of 2BHK, later it becomes 3BHK. The old area of the flat was 73.27 sq. meters and revised area is 79.93 sq. meters. Since the allottee has refused to pay additional consideration amount in respect of the increased area the respondents immediately informed to the appellant/allottee that respondents are ready and willing to allot another flat of the equivalent area in the same building to the appellant. However, the appellant with dishonest intention to grab the flat of additional area at lower price refused to either accept another 2BHK flat of the same area or to pay additional consideration in respect of increased area of 3BHK flat. This signifies that appellant has not approached this Tribunal with clean hands and it is clear intention of the appellant to harass

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the respondents. Apart from this the material on record clearly indicates that appellant was apprised by respondents to pay stamp duty and other statutory charges for execution of agreement for sale. However, the appellant did not come forward for execution of the agreement for sale. This clearly shows that appellant was never interested in executing registered agreement by paying stamp duty and other statutory charges. When appellant realized that he is unable to sale flat and earn profit from the same, he filed the complaint. Learned Advocate has further submitted that during the course of hearing of the instant appeal by letter dated 28.04.2023 the developer has shown willingness to allot subject flat for agreed consideration of Rs. 47 lakhs without charging additional consideration for increased area subject to payment of stamp duty and statutory charges towards registration, GST, MSEB and water connection. Learned Adv. Saurabh Butala has sorely submitted that still the respondents are ready to execute agreement for sale with respect to subject flat without charging additional consideration for increased area. Therefore, there is no need to interfere in the impugned order and the appeal is liable to be dismissed with exemplary costs.



17] We have given thoughtful consideration to the submissions advanced by learned counsel appearing for respective parties. After considering the pleadings of the parties, submissions advanced by learned Advocates appearing for respective parties, impugned order and material on record following points arise for our consideration and we have recorded our findings thereupon for the reasons to follow:

Sr. No.	Points for consideration	Findings
1.	Whether appellant has established that the developer has not registered second phase of the project with MahaRERA and thereby violated the provisions of Section 3 (2) (c) of the RERA, 2016?	In the Negative
2.	Whether appellant has established that due to violation of Section 14 (2) (1) of RERA 2016 by developer, he has suffered loss?	In the Negative
3.	Whether appellant is entitled for compensation as sought?	In the Negative
4.	Whether impugned order calls for interference in the appeal?	In the Affirmative
5.	Whether appellant is entitled to interest for delay in delivering possession of subject flat?	In the Affirmative
6.	What order?	As per final order

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REASONS

18] It is in dispute that the developer has registered the project namely **Sai Serenity** with MahaRERA. It is specific contention of appellant that the developer has undertaken the subject project in two different phases and the developer has registered only one phase. The developer has not registered the second phase of the subject project till date and thereby the developer has violated the provisions of Section 3 (2) (c) of RERA. We do not find substance in the said contention of the appellant/allottee. It is significant to note that it is not in dispute that the developer has registered the project with MahaRERA by enclosing the necessity documents as contemplated under Section 4 of RERA. It means the developer has produced sanctioned plans on the website of MahaRERA. Therefore, it is expected of allottee to produce sanctioned plan to strengthen his contention that developer has undertaken the subject project in two different phases. However, the appellant has not produced cogent material on record to show that the developer has undertaken subject project in two different phases. In absence of cogent material on record, it is difficult to digest that the respondents have not

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registered the second phase of subject project with MahaRERA. Therefore, we are of the considered view that the appellant has miserably failed to establish that the developer has not registered the second phase of subject project with MahaRERA, though the developer has undertaken the project in two different phases.

19] It is not in dispute that the appellant has paid the entire consideration amount of Rs. 47 lakhs to developer from time to time till 15.03.2018. It is not in dispute that a notarized agreement for sale came to be executed by the parties on 23.11.2017. Despite having received full consideration amount of Rs. 47 lakhs the respondents have not executed a registered agreement for sale in favour of allottee. Section 13 of RERA relates to no deposit or advance to be taken by promoter without first entering into an agreement for sale. Section 13 casts an obligation on a promoter that he shall not accept a sum more than 10% of the cost of the flat as an advance payment or an application fee, from a person without first entering into a written agreement for sale with such person. It means the promoter by accepting entire consideration amount of Rs. 47 lakhs from allottee without entering into a registered agreement for sale has violated the provisions of Section 13 of RERA. Under such circumstances the allottee is entitled to



directions to developer to execute a written registered agreement for sale.

20] On careful examination of notarized agreement for sale dated 23.11.2017 reveals that clause 9 of said agreement stipulates that the developer has to hand over the possession of the subject flat to allottee within 6 months from the date of execution of agreement for sale. It means the developer ought to have handed over the possession of the subject flat to allottee on or before 22 May, 2018. According to developer, he has completed the project and by letter dated 12.12.2018 he has informed to the appellant that construction of the building is duly completed and flat booked by the appellant is ready for possession. It is specific contention of developer that mean time as the Nashik Municipal Corporation has stopped issuing occupation certificate for the reasons best known to it, the developer could not have applied for occupation certificate and could not obtain occupation certificate. It means though the flat was ready for possession, but the respondents were not in a position to hand over the possession of the subject flat to allottee because of want of occupation certificate. It has been held by the Hon'ble Bombay High Court in **Neelkamal Realtors Suburban Pvt. Ltd. & Anr. Vs. Union of**

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India & Ors. [(2017) SCC Online Bom 9302] that being expert in the open market, the promoters ought to have assessed likely timelines for completing the project and provide possession date accordingly. This being no concerned of the allottees, they cannot be held responsible or liable for any delay to suffer adverse effect in view of delay. The respondents after ascertaining all favourable and unfavourable circumstances for completing construction of the project and for post compliance i.e., for obtaining occupation certificate used to fix due date of completion of the project. Therefore, we are of the view that developer is not entitled to get benefit of alleged mitigating circumstances for the reason that the same are not attributable to allottee nor is the case of the developer that allottee in any way caused delay in possession.

21] As per Section 18 of RERA 2016, if the promoter fails to hand over possession or complete construction on or before due date or as per terms of the agreement for sale, the promoter is liable to pay interest on the total amount received from the allottee from agreed date of possession till the date of giving actual possession to allottee. It has been held by the Hon'ble Apex Court in **M/s. Newtech Promoters and Developers Pvt. Ltd. Vs.**

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State of U.P. & Others [Civil Appeal Nos.5745, 6749 and 6750 to 6757 of 2021] in paragraph 25 as under-

"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."

22] Section 18 of RERA confers unqualified rights upon the allottee to get refund of amount deposited with developer and interest at the prescribed rate if developer fails to complete project or is unable to give possession of the subject flat as per agreed date. The allottee is also entitled for interest for the period of delay

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till handing over possession of the flat at the rate prescribed. Therefore, for the foregoing reasons we are of the view that the allottee is entitled to interest on the amount paid by him to the developer from the agreed date of possession till the date of occupation certificate or till the date of actual possession.

23] It is specific contention of appellant that the respondents have modified the plan without his consent and thereby the respondents have violated the provisions of Section 14 (2) (1) of RERA. Whereas, according to respondents they had apprised the allottee about the modification of the plan and at the relevant time the allottee did not take objection and therefore, now he is estopped from denying the fact that plan has been modified without his consent. We do not find substance in the said contention of respondents. It is not in dispute that the respondents have revised the plan of the building and as per modified plan area of the subject flat is increased. Initially the subject flat was consisting of 2BHK, which later becomes 3BHK. The old area of the subject flat was 73.27 sq. meters, which got revised to 79.93 sq. meters. Section 14 of RERA relates to the adherence to sanction plans and project specifications by the promoter. Section 14 (2) (I) lays down that the promoter shall not make any additions and

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alterations in the sanctioned plans, layout plans and specifications and the nature of fixtures, fittings and amenities described therein in respect of the apartment, plot or building, as the case may be, which are agreed to be taken, without previous consent of that person. In the instant case, the respondents have failed to produce cogent material on record to show that he had obtained written consent of appellant/allottee before modification of sanctioned plan.

24] It is worthy to note the material produced on record clearly indicate that the respondents have informed to allottee/appellant that the carpet area of the subject flat has been increased and asked the appellant to pay additional consideration amount for additional area. However, the appellant has refused to pay additional consideration amount for increased area. The material on record clearly indicates that the respondents have offered another flat of equivalent area in the same building to the allottee but the allottee has refused to accept the said offer.

25] It is worthy to note that the appellant has produced on record letter of developer dated 28.04.2023, a perusal of said letter would show that the respondents have agreed to allot the subject flat to allottee for agreed consideration of Rs. 47 lakhs without

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charging additional consideration for increased area subject to payment of requisite charges towards stamp duty, registration, GST, MSEB, water connection and building maintenance deposit. It is significant to note that the respondents have filed Purshis (Page 120), which is nothing but replica of letter dated 28.04.2023 written by respondents to appellant. The Purshis further discloses that the building maintenance charges will be calculated from the date of handing over of possession only if the appellant agrees to accept the possession on or before 15.01.2024 and will be adjusted from the building maintenance deposit. The appellant by purshis, has shown his willingness to accept the subject flat but without prejudice to his right to get compensation from the respondents for mental agony. It means the appellant is not ready to accept the flat without compensation of Rs. 7 lakhs. This conduct of allottee shows that allottee somehow seems to be uppity. After considering the offer of respondents, we are of the view that this offer is nothing but bonanza to allottee, because respondents have agreed to allot the subject flat for agreed consideration of Rs. 47 lakhs without charging additional consideration for increased area.



26] It is not in dispute that the allottee has booked 2BHK flat in the subject project. However, because of modification of plan the subject flat becomes 3BHK flat. Considering the offer of the respondents, we are of the view that this is a good offer. The appellant is not going to suffer any loss or harm. Under the circumstances, we are of the view that though the respondents have modified the plan and violated the provisions of Section 14(2) (I) of RERA but the appellant has not suffered any loss or injury because of such modification, on the contrary he is getting 3BHK flat instead of 2BHK flat. Therefore, we are of the view that appellant has miserably failed to establish that he has suffered loss or injury because of modification of plan by respondents without his consent.

27] On scanning the impugned order would show that the learned Authority misconstrued the provisions of Section 13 of RERA and held that allottee is equally at fault by signing a notarized agreement for sale and also violated the provisions of Section 13 of RERA. The learned Authority declined to grant relief of interest on account of delayed possession to allottee only on the ground that claim of the interest for the delayed possession under Section 18 of the RERA is based on the said agreement for sale. The

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observations of learned Authority are not only erroneous but also against the objective and purpose of RERA Act, 2016, which is enacted as a beneficial legislation to abet hardships of gullible flat purchasers. Learned Authority misinterpreted the provisions of Section 13 and Section 18 of RERA and thereby declined to grant relief of interest to allottee. Thus, we are of the considered view that the impugned order to that extent is not sustainable in law and calls for interference in this appeal.

28] The allottee has claimed twofold reliefs in the complaint. The allottee has claimed interest on paid amount till he gets actual possession of the subject flat on account of delayed possession. The second relief claimed by allottee is in case developer fails to hand over possession of the subject flat the amount of Rs. 47 lakhs paid by him be refunded to him with interest from 13.11.2017 and also direct the developer to pay compensation of Rs. 7 lakhs to allottee towards mental agony. Therefore, considering the reliefs sought by allottee in the complaint as well as in appeal and the offer of respondents that they are ready and willing to allot subject flat to allottee for agreed consideration of Rs. 47 lakhs without charging additional consideration for increased area subject to payment of requisite charges towards stamp duty, registration,

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GST, MSEB, water connection and building maintenance deposit, we are of the view that if respondents are directed to pay interest on the amount paid by allottee from 23.05.2018 till the date of occupation certificate or till the date of handing over possession of the subject flat to allottee and to execute a registered deed of agreement for sale the very purpose will suffice. In the interest of justice, it is desirable to direct the respondents to refund the entire amount with interest at prescribed rate from 23.05.2018 till the realisation of the entire amount to allottee, in case the allottee wishes to withdraw from project and the allottee shall exercise such right expressly within fortnight from the date of order in writing and shall indicate the same to developer.

29] For the foregoing reasons, we have come to the conclusion that the impugned order warrants interference in this appeal. Consequently, we proceed to pass the following order.

ORDER

1] Appeal no. AT001000000052811 of 2020 is partly allowed.

2] The respondents shall execute a registered agreement for sale with respect to subject flat without accepting additional consideration amount for increased area

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from allottee within 15 days from the date of payment of requisite charges towards stamp duty, registration, GST, MSEB and water connection to respondents/promoters/developers by allottee/appellant within 30 days from the date of order.

3] The respondents shall pay interest on the amount paid by allottee from 23.05.2018 at the rate of 2% above the SBI highest MCLR till allottee gets the possession of the subject flat.

4] The respondents are directed to hand over the actual physical possession of the subject flat along with occupation certificate as early as possible.

5] In case the allottee wishes to withdraw from the project, he shall exercise his right in writing within 15 days from the date of this order and shall communicate the same to respondents within 8 days and thereafter within 30 days, the respondents shall refund the entire amount of Rs. 47 lakhs to appellant/allottee with interest at the rate of 2% above the SBI highest MCLR from 23.05.2018 till the realisation of the entire amount as above.

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- 6] Parties to bear their own costs.
- 7] Copy of this order be communicated to the Authority and the respective parties as per Section 44(4) of RERA, 2016.


(DR. K SHIVAJI)


(SHRIRAM R. JAGTAP)

Ajit