

Jan 30, 1100, hrs

**BEFORE MAHARASHTRA REAL ESTATE APPELLATE TRIBUNAL
MUMBAI**

APPEAL NO. AT001000000053706 OF 2022

1. Mr. Ramdas S. Gadiyar

2. Veena R. Gadiyar

202, Shree Shiv Sadan CHS Ltd.,
Sant Muktabai Road, Vile Parle (East),
Mumbai – 400057.

... *Appellants*

~ versus ~

Linker Shelter Pvt. Ltd.

C/o. Paranjape Schemes Construction Limited,
Paranjape Bungalow, 34, M. G. Road,
Vile Parle (East), Mumbai – 400057.

... *Respondent*

Along with

APPEAL NO. AT001000000053684

1. Sanny M. Pinto

2. Nina S. Pinto

B-02, Silver Cloud, Sundernagar,
Kalina, Santacruz (East),
Mumbai – 400098.

... *Appellants*

~ versus ~

Linker Shelter Pvt. Ltd.

C/o. Paranjape Schemes Construction Limited,
Paranjape Bungalow, 34, M. G. Road,
Vile Parle (East), Mumbai – 400057.

... *Respondent*

Along with

APPEAL NO. AT001000000053692

1. Annie E. Pinto

2. Edwin M. Pinto

A/401, Shringeri CHS. Ltd.,
Near Vrishi Complex, Holy Cross Road,
I. C. Colony, Borivali (West),
Mumbai – 400103.

... *Appellants*

~ versus ~

Linker Shelter Pvt. Ltd.

C/o. Paranjape Schemes Construction Limited,
Paranjape Bungalow, 34, M. G. Road,
Vile Parle (East), Mumbai – 400057.

... *Respondent*

Along with

APPEAL NO. AT001000000053686

1. Charmaine Chougule

2. Arvind D. Chougule

Flat no. 7, Aashis, Plot no. 22,
Tarun Bharat Society, Opp. Hotel Oriental Aster,
Andheri (East), Mumbai – 400099.

... *Appellants*

~ versus ~

Linker Shelter Pvt. Ltd.

C/o. Paranjape Schemes Construction Limited,
Paranjape Bungalow, 34, M. G. Road,
Vile Parle (East), Mumbai – 400057.

... *Respondent*

Mr. Yogesh S. Patki, Advocate for Appellants.

Mr. Sarthak Diwan, Advocate for Respondent.



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

DATE : 30th JANUARY 2024

(THROUGH VIDEO CONFERENCE)

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

These appeals have been preferred under The Maharashtra Real Estate (Regulation and Development) Act, 2016 (in short, the Act), for various *reliefs inter alia* to direct respondent to refund the paid amounts together with interest by challenging the common order dated 17th February 2022 passed by learned Member, Maharashtra Real Estate Regulatory Authority (in short, MahaRERA) in four separate complaints filed before MahaRERA vide Complaints nos. CC001000000010144, CC001000000010146, CC001000000010147 and CC0010000000 10148.

2. Captioned appeals arise out of similar facts and are raising identical questions of law. Accordingly, by consent, all the captioned appeals herein are heard together and are being disposed of by this common judgement as here under. By consent, background facts leading to filing of the appeal no. **AT006000000053706** have been taken as lead appeal for the purpose of disposal of these appeals.
3. Respondent is promoter, who is developing duly registered project under the Act, namely "Aaryavarta", situated at Mumbai Agra Road, New Nashik (in short, "said project"). Appellants are flat purchasers, allottees and complainants before MahaRERA. For convenience, appellants and respondent will be addressed hereinafter as 'Complainants' and 'Promoter' respectively in their original status before MahaRERA.
4. **Background facts giving rise to the present appeal.**
 - a. **Complainants case:** Complainants booked their respective flats in

promoter's said project during the years 2012 - 2013 and have executed separate registered agreements for sale in the year 2013 with the promoter. Clause 4 of the Agreements for sale stipulates that promoter will complete the project construction and will handover possession of respective flats on or before 31st December 2015 subject to reasonable extensions with maximum periods of 2 years on account of certain constraints as mentioned in clause 4.3 of the agreements.

- b.** On account of failure to deliver possessions of respective flats within the agreed timelines and due to certain alleged non-disclosure of ongoing title disputes/ litigations over the said project land between the promoter and some other third persons, captioned four separate complaints came to be filed before MahaRERA on 23rd March 2020 seeking *inter alia* for refund of their paid amounts together with interests as well as compensations.
- c.** Promoter appeared before MahaRERA and resisted complaints by refuting their contentions by submitting that complaints are liable to be dismissed being not maintainable, as these are not filed in prescribed formats. Promoter further contended that ongoing title suit litigations were brought to the notice of all the complainants by letters dated 22nd May 2013, 12th July 2013, 23rd December 2015 and 16th February 2016. Complainants have not taken possession of respective flats despite being offered to them after obtaining occupation certificate on 11th July 2018 by paying their respective outstanding dues. Accordingly, promoter urged to dismiss complaints filed before MahaRERA.
- d.** Upon hearing the parties, MahaRERA passed captioned common impugned order dated 17th February 2022 by concluding that Complainants have failed to prove any violation of Section 18 of the Act as on the date of filing of these complaints and Promoter has disclosed



all the pending litigations to complainants. MahaRERA does not find any merits for the claims made by complainants with regard to the title suits/ litigations of project land, but they are entitled to claim compensations due to alleged defects in the project land title and therefore, doesn't find merit in their claims for refund or interest at such belated stage, when the project has already been completed and possessions have already been offered much before they filed these complaints. Therefore, reliefs sought for refunds under Section 18 of the Act were disallowed.

- e. Aggrieved by this common order of MahaRERA, complainants have preferred the instant four individual appeals filed separately, seeking various reliefs *inter alia* for refunds of their respective paid amounts together with interest and compensations as mentioned herein above.
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 instant appeals have been set out in the chart / table as here under.

	Appeal Nos.	Flat No.	Compl aint nos.	Agree ment date	Posses sion Date	Total Considera tion in Rs.	Amount Paid in Rs.	Relie fs in Com plain t	Relief in Appeal
1.	AT-53706	4E 502	10144	31.01. 2013	31.12. 2017	37,86,608	36,09,000	Refu nd a/w. inter est and com pens ation	withdraw from the project and refund a/w. Interest and compensa tion
2.	AT-53684	4H 302	10146	07.10. 2013	31.12. 2017	34,84,000 + other charges	36,56,496		
3.	AT-53692	4C 104	10147	07.10. 2013	31.12. 2017	28,35,200	27,51,954		
4.	AT-53686	4E 504	10148	31.01. 2013	31.12. 2017	34,84,000	34,62,985		

- 6.** Heard parties in extenso.
- 7.** Learned counsel for complainants submits that; -
 - a.** In terms of the registered agreements for sale, promoter was to handover the possessions of the respective flats by 31st December 2017, and this has not been fulfilled by promoter. Beside this, the title of the project land is also disputed. Whereas promoter has clearly intimated at the time of executing the agreement for sale that the project land title is free from all the encumbrances by enclosing a title clearance certificate in the agreement for sale. Whereas Section 18 of the Act applies, when the promoter is unable to handover possession in accordance with the terms of the agreement or as the case may be, duly completed by the date specified in the agreement. Therefore, Section 18 of the Act is clearly applicable.
 - b.** Section 18 of the Act further provides that if promoter fails or is unable to give possession of an apartment in accordance with the terms of the agreement for sale or project is not duly completed by the date specified therein, the promoter shall be liable on demand to the allottee, the amount received by the promoter with interest and compensations.
 - c.** Section 18 of the Act is not rendered inapplicable if the promoter offers possession on the date of filing the complaint even though the said complaint is after the date specified in the agreement for handing over the possession of the subject flats.
 - d.** The date of filing of complaint has no relevance to the completion of the project or for handing over of possessions of these flats by promoter. However, in the present cases, possessions have been offered only after the date specified in the agreements was over.
 - e.** The only prerequisite for attracting Section 18 of the Act is in case of failure of the promoter to handover possession by date specified in the



agreement. Whereas in the present case, possessions were agreed to be offered by 31st December 2017. But Occupancy certificate itself was obtained only on 11th July 2018 and possessions were offered without clear land title only in 2019, which is much after the agreed date for handing over possessions. Therefore, Promoter has failed to give possession of the booked flats within the agreed timeline of 31st December 2017 with clear land title and therefore, there was no question of taking possessions within 2 months of the occupancy certificate.

- f.** It is undisputed that project land title continues to be defective right from the beginning and therefore promoter is not in a position to hand offer legal possession of the said flat with clear land title.
- g.** Section 19 of the Act is subject to Section 18 and once the conditions of the Section 18 of the Act are fully satisfied then only, the Section 19 of the Act will apply. Therefore, provisions of Section 19 (10) of the Act are not applicable and complainants are entitled for refund of the entire paid amounts together with interests besides compensations.
- h.** Complainants have already paid more than 95% of the consideration. Therefore, it is obvious that complainants will not dispute for taking possessions only to save balance 5% of the consideration amounts. Reason for not taking possession even after paying 95% of the consideration was that promoter was not offering possessions as per the mandated terms of the agreements with clear title.
- i.** Impugned order itself held that title of the land is defective and on that basis MahaRERA has come to the conclusion that complainants are entitled to claim only compensation is bad in law. Accordingly, urged to direct promoter to refund the paid amounts to complainants and referred and relied upon the following judgements: -
 - i. Para 255, 257, 259, 260 and 261 of Neelkamal Realtors Suburban Pvt.



Ltd. & Anr. Vs. Union of India & Ors. [(2017) SCC Online Bom 9302]

ii. Para 25 of the M/s. Newtech Promoters & Developers Ltd. Vs. State of Uttar Pradesh & Ors. [2021 SCC Online 1044]

iii. Para 19 of the Katmandu apparel Pvt. Ltd. versus Lodha Developers of this Tribunal in appeal no. 52939 of 2021.

iv. Para no. 25 and 26 of the Nipa Sheth versus Macrotech Developers Ltd. of this tribunal.

8. Per contra, promoter submits that; -

- a. Promoter has clearly demonstrated that as stated in respective agreements for sale, possessions of flats were offered, but were refused on one count or other by complainants. Thus, promoter cannot now be foisted upon to refund the paid amounts. Promoter has admittedly offered possession of said flats as per the terms and conditions of the agreements, but it is complainants, who have refused to accept possessions.
- b. There is no breach of the terms and conditions of the agreements and the provisions of Section 18 of the Act by promoter as the possession of the suit flats has been offered in terms of the agreement. Thus, Section 18 is not applicable, and complainants are not entitled for any relief.
- c. Project was complete and promoter applied for occupation certificate, which was granted on 11th July 2018 and even the possessions of respective flats were offered in terms of the agreement but was refused by complainants. Thereby, it is clear that complainants themselves have failed to comply with the the provisions of the Section 19 (10) of the Act by refusing to accept possessions despite offering the same after the receipt of the occupation certificate and therefore, promoter cannot be foisted with the provisions of section 18 of the Act.
- d. In view of above, captioned appeals are devoid of merits and deserves to be dismissed with costs.



9. From the rival pleadings, submissions and documents relied upon by parties, 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 Promoter establishes that possessions of flats were delivered by agreed timeline in terms of the agreements for sale?	In the negative.
2.	Whether Promoter has violated Section 12 of the Act?	In the affirmative.
3.	Whether complainants have failed to comply with provisions of Section 19 (10) of the Act?	In the negative.
4.	Whether allottees are entitled for refunds under Section 18 of the Act despite the refunds demanded are after receipt of occupation certificate?	In the affirmative.
5.	Whether impugned order is sustainable in law?	In the negative.
6.	Whether impugned order calls for interference in this appeal?	In the affirmative.

REASONS

Point 1: Possession delivery status.

10. It is not in dispute that Complainants have booked the said flats and Agreements for sale have also been executed. Accordingly, indisputably appellants are allottees and respondent is promoter under the provisions of the Act. Clause 4 of the agreement stipulates for promoter to deliver possessions of the booked flats within two years from 31st December 2015 subject to reasonable extension with maximum of 2 years on account of certain factors mentioned in clause 4.3 of the agreement. This implies that possessions of the said flats were agreed to be delivered latest by 31st December 2017. However, learned counsel for Promoter himself submits that Occupation Certificate of the project is dated 11th July 2018. This makes it abundantly clear that the possessions of the

booked flats were not handed over before the agreed timelines stipulated in the agreements. Moreover, it is pertinent to note that legal possessions of the booked flats cannot be handed over without the prior receipt of occupation certificate and only after the title of the project land is clear without any encumbrances. As such, learned counsel for the promoter himself submits that project land title is still not clear and various disputes over the project land title are still ongoing in different courts. However, learned counsel for the promoter submits that possessions of booked flats have been offered after the receipt of the occupation certificate. But, upon consideration that legal possessions cannot be handed over without clear title of the project land and in view of the project land still having ongoing litigations, it is crystal clear that legal possessions of the booked flats with clear land title have not been handed over till date.

- 11.** Therefore, legal possessions of the said flats have not been delivered in accordance with the agreed timeline stipulated in the Agreement for Sale i.e. even before the the 31st December 2017. Hence, point 1 is answered in the negative.

Point 2: Section 12 status.

- 12.** Learned counsel for complainants further submits that they booked respective flats based on the confirmation of the promoter at the time of booking itself about the clear, marketable title of the project land, which is free from all encumbrances and charges or claims are subject to whatever is stated in the search report by attaching the annexure D, containing the title search certificate attached to the agreements for sale executed in January 2013 between the parties. But Promoter himself subsequently communicated, vide various letters including by its letters dated 22nd May 2013, 21st December 2018 etc., that certain litigations are still ongoing in various courts including in the Hon'ble Bombay High Court



over the project land title and had called for meeting to resolve these matters. Therefore, it is clear that contents of annexure D attached to the agreements for sale, indicating clear titles of the project land was not correct at the time of booking and paid advance amount.

13. Whereas Section 12 of the Act provides for the followings; -

"12. Obligations of promoter regarding veracity of the advertisement or prospectus.—*Where any person makes an advance or a deposit on the basis of the information contained in the notice, advertisement or prospectus, or on the basis of any model apartment, plot or building, as the case may be, and sustains any loss or damage by reason of any incorrect, false statement included therein, he shall be compensated by the promoter in the manner as provided under this Act:*

Provided that if the person affected by such incorrect, false statement contained in the notice, advertisement or prospectus, or the model apartment, plot or building as the case may be, intends to withdraw from the proposed project, he shall be returned his entire investment along with interest at such rate as may be prescribed and the compensation in the manner provided under this Act."

14. In view of the provisions in Section 12 of the Act more particularly when the booking has been done on the basis of certain *incorrect, false statement contained in the notice, advertisement or prospectus etc.*, then, allottees are entitled to withdraw from the project and promoter is liable to refund with interest at prescribed rate and compensations. In the present case, bookings were done based on incorrect title clearance search report attached to the agreement. Accordingly, it is more than evident that promoter has violated the provisions of the Section 12 of the Act and therefore, is liable to refund the paid amounts together with interest there on. Accordingly, we answer point 2 in the affirmative as above.

Point 3: Status of Section 19 (10).



- 15.** Learned counsel for promoter submits that complainants themselves have failed to comply with the provisions of the Section 19 (10) of the Act by refusing to accept possessions despite offering the same after the receipt of the occupation certificate and therefore, promoter cannot be foisted with the provisions of section 18 of the Act. Furthermore, MahaRERA, vide para 18 of the impugned order has concluded that complainants themselves have defaulted and violated the provisions of Section 19(10) of the Act by refusing not to accept the possessions of the flats offered by promoter after the receipt of the occupation certificate. Whereas learned counsel for complainants submits that they have refused to take possessions in the absence of the clear land title of the project.
- 16.** However, Section 19 (10) of the Act shows that “(10) *Every allottee shall take physical possession of the apartment, plot or building as the case may be, within a period of two months of the occupancy certificate issued for the said apartment, plot or building, as the case may be.*”
- 17.** It is the settled position of law that legal possessions of the booked flats can not be handed over without the prior clear land titles of the project having without any encumbrance/litigation and careful perusal of Section 19 (10) clearly stipulates that legal possession can be offered only after the receipt of the occupation certificate. Accordingly, clear project land title and prior receipt of the Occupation Certificates, both are prerequisite before offering legal possessions. As disclosed by learned counsel for promoter himself that certain litigations are still ongoing on the project land in various courts. Therefore, the offer for possessions of flats have rightly been refused by complainants in the absence with clear land title. In view of this, the possessions offered by promoter were not in accordance with the settled positions of law and thus, contention of the

promoter is legally not sustainable. Therefore, the findings of MahaRERA in para 18 of the impugned order are contrary to the settled position of laws and thus, it cannot be accepted. Accordingly, the impugned order warrants interference in these appeals to these effects, is not sustainable and we answer point 3 in the negative as above.

Point nos. 4 and 5 and 6; Section 18 and refund status.

18. These points are interconnected and interrelated. Hence, have been taken up together for determination.

19. Section 18 of the Act specifically delineates the importance of agreement for sale for the purpose of assessing delay in handing over possession, which may be due to discontinuation of business as developer or for any other reasons. 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:


(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."

- 20.** On perusal of Section 18, it can be seen that if, Promoter fails to complete the project or is unable to deliver possession of apartment, plot or building by agreed timelines and allottees intend to withdraw from the project then, Promoter shall *inter alia* refund the paid amounts together with interest to allottees at such rate as may be prescribed.
- 21.** In the instant case, as determined here in above, promoter has failed to deliver legal possessions of subject flats as per the agreed timeline in the agreements for sale with clear project land title. Therefore, Section 18 is attracted, and promoter is liable to refund the paid amounts along with interest at prescribed rate.
- 22.** 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. [2021 SCC Online 1044] dated 11th November 2021 has clarified that *if the 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.* The relevant abstract is being reproduced below for ready reference.
- "25. The unqualified right of the Allottee to seek refund referred under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the Allottee, if the Promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement **regardless of unforeseen events or stay orders of the Court/Tribunal**, which is in either way not attributable to the



Allottee/home buyer, the Promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act with the proviso that if the Allottee does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed."

And para 78 of the judgement is as under; [OBJ]

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:-

"23/25. In terms of Section 18 of the RERA Act, if a Promoter fails to complete or is unable to give possession of an apartment duly completed by the date specified in the agreement, the Promoter would be liable, on demand, to return the amount received by him in respect of that apartment if the Allottee wishes to withdraw from the Project. Such right of an Allottee is specifically made "without prejudice to any other remedy available to him". The right so given to the Allottee is unqualified and if availed, the money deposited by the Allottee has to be refunded with interest at such rate as may be prescribed.

The proviso to Section 18(1) contemplates a situation where the Allottee does not intend to withdraw from the Project. In that case, he is entitled to and must be paid interest for every month of delay till the handing over of the possession. It is 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."

- 23.** In view of above, it has been held that the rights of Allottees under Section 18 of the Act are unconditional and absolute, regardless of unforeseen events including any other reason/s even factors beyond the



control of the Promoter and it is allottees, who have sole discretions to proceed either under Section 18 (1) or under the proviso to the Section 18 (1).

- 24.** However, MahaRERA vide its para 21 of the impugned order, concluded that complaints have failed to prove any violation of Section 18 of the Act on the date of filing of these complaints. But promoter has not offered legal possession till date with clear title, which are contrary to the settled position of law and therefore, contention of the promoter cannot be accepted.
- 25.** However, MahaRERA has declined the prayers of Complainants for their demands for refund, primarily on the ground that the possessions have been offered after the receipt of the occupation certificate and the project is complete. Thus, the moot point before us for determination/adjudication, is whether, Section 18 of the Act will cease to operate merely upon receipt of occupation certificate of the project and whether the rights so accrued to allottees under 18 of Act will be affected in such circumstances?
- 26.** Close perusal of the provisions of Section 18 shows that allottees hold unqualified and absolute rights to seek refund from Promoter, if the Promoter is unable to hand over the possessions of flats or complete the project on account of suspension or revocation of registration or for any other reasons, which may be due to several other reasons including may be even on account of expiry of registration or allottees have made demand for refunds of the paid amount even after the receipt of the occupation certificate but in the absence of the clear project land title. Therefore, rights under Section 18 once accrued to allottees, being absolute, cannot be taken away merely because the complaints have been filed for such demands for refund by allottees after the project has

received occupation certificate. It is because, it is allottees, who have the full discretions/liberties to choose various options from out of several available reliefs conferred upon him under the provisions of the Act and have absolute rights to demand for refund or otherwise in terms of the Section 18 of the Act. Accordingly, the Promoter is under binding obligations *inter alia* to refund with interest, if refund is demanded by allottees even after the receipt of occupation.

27. Accordingly, Section 18 will continue to be applicable as well as it will not cease to operate, and rights so accrued to Complainants due to delay in delivery of possessions/ project completion. Hence, refunds so demanded by allottees will remain unaffected even if demanded after the receipt of the occupation certificate on account of the followings: -

- a. Rights so accrued to Allottee under Section 18, cannot be taken away without following the due process of law. Dispute in the instant case is because, MahaRERA has declined prayers for refunds made by Complainants under the Section 18 of the Act by holding that it is not applicable owing to the receipt of occupation certificate. However as determined here in above that legal possessions of the booked flats can be offered only with prior clear project land title, which are yet to be obtained in the captioned cases.
- b. In the instant case, agreements for sale continues to remain valid, subsisting and binding to parties without any change even in event of the refunds are demanded after the receipt of the occupation certificate. Hence, provisions of the agreements including the rights of allottees accrued under Section 18 of the Act therein, will continue to be enforceable, binding and Promoter is obligated to refund the paid amounts if, Allottees wish to withdraw and seek refund under Section 18 of the Act even after the receipt of the occupation certificate.

- c. Delay in handing over legal possessions of the booked flats is on account of delay in getting the clear land title and these are on account of promoter. This delay is not attributable to complainants Allottees. Therefore, Promoter cannot deny the accrued rights to seek refunds to Allottees under Section 18 of the Act on account of the very same reason of not offering clear title of project land for which, promoter itself is responsible for. It is more particularly 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."*
- d. The Act of 2016 is Social Legislation with primary purpose and objective with legislative intent to safeguard the interest of the allottees. Therefore, right of Allottees cannot be taken away for no faults on the part of the Allottees and particularly in view of delay in getting clear project land title, which is attributable to Promoter owing to its own lapses and not due to fault of Complainants.

28. In view of the foregoing discussions, it is more than evident that rights once accrued under Section 18, will not cease to operate merely on account of the delay in demand for refund by allottees even after the receipt of the occupation certificate.

29. Therefore, Complainants are entitled *inter alia* for the refund of the paid amounts and Promoter has bounden duty *inter alia* to refund the entire

paid amounts together with interest at prescribed rate including statutory payments for taxes, fees etc.

30. However, MahaRERA has observed/ concluded in para 17 of the impugned order that agreements for sale provides delivery of possession as on 31st December 2017 including the grace period of two years but the Respondent has obtained the occupancy certificate on 11th July 2018. It is also the admitted position of the parties that the legal possessions have not been offered with clear project land title to allottees till date due to various ongoing litigations over the project land title. Even then, MahaRERA vide its findings in para 21 of its impugned order has concluded that complainants have failed to prove any violations of Section 18 of the Act as on the date of filing of the captioned complaints. This is contrary to the findings as determined herein above and therefore, the impugned order warrants interference in these appeals.

31. MahaRERA vide para 23 of the impugned order has further observed that promoter itself has submitted various letters on the record issued by promoters themselves after the execution of the agreements for sale, such as letter dated 22nd May 2013, 12th July 2013, 23rd December 2015 and 16th February 2016, whereby promoter has informed complainants about the pending ongoing litigations in various courts. Even then, it is observed by MahaRERA that complainants have not taken any action to these disclosure letters, if they were aggrieved regarding the clear title of the project land. However, Section 4 (I) (a) of the Act stipulates that while filling the application for registration of the real estate project then, Promoter shall enclose *inter alia* a declaration supported by an affidavit duly signed by by the promoter or any person authorised by the promoter stating that the land is free from all encumbrances , or as the case may be the details of the encumbrances on such land including any rights,

title, interest or name of any party in or over such land along with the details. However, as determined herein above, the agreements for sale contain annexure D containing title certificate reflecting that the title of the owner is clear and marketable and free from all encumbrances, charges or claims subject to whatever stated in the search report. Promoter himself has disclosed afterwards about the ongoing litigations on the project land after the project has been registered and after the execution of agreements for sale. Therefore, Promoter has not complied with the provisions of Section 4, while filling the application for project registration and the observations made in the impugned order are not legally sustainable. Hence, the impugned order warrants interference in these appeals.

- 32.** In view thereof, MahaRERA is not justified in denying or restricting the scope of the valuable rights accrued to Complainant as conferred to allottees under Section 18 of the Act and it is incorrect to decline the prayers of Complainants *inter alia* for refunds with interest.
- 33.** In view of the foregoing and considering our findings herein above, it is more than evident that Section 18 of the Act provides unconditional and unqualified right to Complainants for refund irrespective of the demands for the refunds made by allottees even after the receipt of the occupation certificate. Accordingly, we are of the considered view that Complainants are entitled for refunds of paid amounts including the amounts paid for taxes, registration fees and other statutory payments together with interest at prescribed rate under the Act/Rules made thereunder. In the light of above, impugned order suffers from infirmities, is not maintainable and is liable to be set aside. Thus, we answer the points 4, 5 along with 6 as above and proceed to pass order as follows:



ORDER

- a) Captioned Appeals are partly allowed.
- b) Common impugned order dated 17th February 2022 passed in Complaint Nos. CC001000000010144, CC001000000010146, CC001000000010147 and CC0010000000 10148 is set aside.
- c) Respondent Promoter is directed to refund to appellants allottees all the paid amounts including the amounts paid for taxes, registration fees and other statutory payments within 30 days to Complainants together with interest at the rate of highest marginal cost of lending rate of State Bank of India plus 2% from the date of receipt of payments, failing which, Promoter will pay interest at this prescribed rate on the total amounts due and outstanding as on 29th February 2024 till their complete realizations by Allottees.
- d) Charge of these claims of the allottees over the respective booked flats will continue till the above amounts are refunded completely.
- e) Promoter will bear all the costs of the deed of cancellations of agreements on behalf of complainants in addition to its own costs.
- f) In view of the provisions of Section 44(4) of the Act of 2016, a copy of this order shall be sent to the parties and to MahaRERA.


(Dr. K. SHIVAJI)


(S.R. JAGTAP, J.)