

**IN THE KARNATAKA REAL ESTATE APPELLATE TRIBUNAL,
BENGALURU**

DATED THIS THE 26th DAY OF MARCH, 2026

PRESENT

**HON'BLE SRI SANTHOSH KUMAR SHETTY N.
JUDICIAL MEMBER**

AND

**HON'BLE SRI MAHENDRA JAIN,
ADMINISTRATIVE MEMBER**

APPEAL No.(K-REAT)-52 of 2025

BETWEEN:

Sobha Limited,
A Company incorporated under the
Provisions of The Companies Act, 1956,
Having its Registered Office at: "Sobha"
Devarabisanahalli,
Sarjapur-Marathalli Outer Ring Road,
Bellandur Post,
Bengaluru-560 103,
Karnataka State, India.
Represented by its Authorised Signatory
Sri. Prasad M.S.

...APPELLANT

(By Sri. Vinayaka S. Pandit, Advocate)

AND:

1. The Karnataka Real Estate
Regulatory Authority,
#1/14, 2nd floor, Silver Jubilee Block,
Unity Building, CSI Compound 3rd Cross,
Mission Road, Bangalore – 560 027.
Represented by its Secretary.
2. Mr. Anil Handigol, Major,
No.32, Sirur Park,
Vidyanagar,
Hubli – 580 021.

3. Mrs. Prabhavati Anil Handigol, Major,
No.32, Sirur Park,
Vidyanagar,
Hubli – 580 021.

...RESPONDENTS

(Respondent No.1 By Sri. I.S. Devaiah, Advocate
By Sri. Ravi Kumara B.R., Advocate for 2nd & 3rd respondent)

This Appeal is filed under Section 44(1) of the Real Estate (Regulation and Development) Act, 2016, praying to set aside the impugned order dated 17.08.2023, passed by the 1st respondent-RERA in Complaint No.CMP/210623/0008029.

This appeal having been heard and reserved for Judgment, coming up for pronouncement of Judgment, this day, the **Hon'ble Administrative Member** delivered the following:

JUDGMENT

The captioned Appeal emanates from the Judgment passed by the Karnataka Real Estate Regulatory Authority (hereinafter referred to as 'the Authority' for short) on 17.08.2023, in Complaint No.CMP/210623/0008029.

2. For the sake of convenience and to avoid confusion, the Appellant will be hereinafter referred to as 'the Promoter' and the Respondents No.2 & 3 will be referred to as the 'the Allottee/Allottees'. Further, the Respondent No.1 – Karnataka Real Estate Regulatory Authority will be referred to as 'the Authority'.

3. The brief facts culled out from the Memorandum of Appeal, documents on record, and the impugned order reveal that the Allottees booked a 3 bedroom flat bearing No.3G2-3061 on the 6th

floor in Wing-3 in the project 'Sobha Valley View - Heritage' and had entered into an Agreement of Sale and Construction Agreement both dated 15.11.2014 for a total sale consideration of Rs.1,31,26,610/- and the Allottee had paid Rs.1,30,98,294/-. As per Clause 5.1 of the Construction Agreement dated 15.11.2014, the Promoter was to complete and deliver possession of the apartment by the end of 31.07.2018, with an extension period of 6 months, i.e. on 01.02.2019. As the portion of the land on which the real estate project is constructed was attached by the Income Tax Department, the registration of the property was halted by the Sub-Registrar. It has been more than 30 months from the promised date of delivery, and the Promoter has failed to transfer the unit free from all encumbrances.

4. Being aggrieved by the above acts of the Promoter, the Allottees filed the Complaint before the Authority seeking for the relief of refund of money along with interest by cancelling the Agreement.

5. After going through the record and on perusing the Statement of Objections and on hearing both the parties, the Authority passed the impugned Order dated 17.08.2023 as extracted below:

“1. The respondent (Promoter) is directed to pay the amount of Rs.2,24,81,122/- towards refund with interest to the Complainants (Allottees) within 60 days from the date of this order, calculated at 9% from 21.04.2014 to 30.04.2017 and at SBI MCLR +2% from 01.05.2017 till 21.04.2023.

2. The interest due from 22.04.2023 up to the date of final payment shall be calculated likewise and paid to the Complainant.

3. The Complainants are at liberty to enforce the said order in accordance with law, if the respondent fails to comply with the above order

No order as to costs”

6. Aggrieved by the Impugned Order supra, the Promoter has preferred the present Appeal *inter alia* on the Grounds that the Impugned Order is opposed to the provisions of the Act, the probabilities of the case and material on record. The Promoter has contended that there was no allegation in the Complaint that the Promoter has failed to give possession of the flat to the Allottees in accordance with the terms of Agreement for Sale, or failure on the part of Promoter to complete the Project. Therefore, the Authority could not have ordered as it has done and hence the impugned order is ultra vires or in excess of Section 18 of the RERA Act and is thereof, liable to be set aside. The Authority has granted relief

to the Allottees ignoring the terms of Contract and thus committed breach of jurisdiction.

6.1. Further, it is averred by the Promoter that the Authority has failed to notice the Clauses 5.1, 5.2 and 5.5 of the Construction Agreement dated 15.11.2014. As per Clause 5.1, the Promoter shall complete and deliver possession of the subject apartment to the Allottee by the end of 31.07.2018. The date of completion of Construction means the date declared by the Promoter for completion. As per Clause 5.2 of the said Agreement, in the event of there being any delay in handing over the apartment, other than the delay on account of a) Force Majeure, b) Government Orders, c) Delay in issue of NOC/permissions, Occupancy Certificate etc., the Allottee is entitled to claim Rs.4/- per square foot on SBA per month as compensation from 01.02.2019 for such delay effective from 6 months (grace period) from the date of completion as per Clause 5.1 herein above. If the Allottees are entitled for any compensation, the Promoter shall pay the compensation to the Allottees at the time of taking possession of the apartment and registering the Sale Deed, after appropriating the amount due to the Promoter towards the said apartment. Therefore, according to the Promoter, for any delay in obtaining Occupancy Certificate from the Competent Authority, the Promoter could not be held

liable, since this clause was specifically covered in the exceptions listed in Clause 5.2 of the Construction Agreement.

6.2. It is contended by the Promoter that the Authority failed to appreciate the *Force Majeure* events which hampered the project. No liability for any delay could have been fastened on the Promoter as the Promoter received the Occupancy Certificate on 03.10.2019, and the delivery of apartment was offered to the Allottees on 15.06.2019, and the Allottees themselves, by their email, agreed to take possession on 23.01.2020, and therefore, no liability for any delay can be fastened on the Promoter.

6.3. It is also contended by the Promoter that the Authority has erred in failing to consider the fact that the obligation of providing the property free from all encumbrances, litigations and disputes, was of the landowner Smt. Gowramma. The Promoter has completed his obligation of obtaining necessary plans, approvals, NOCs, permissions from the statutory authorities and also to construct the building within the time stipulated by the Authorities, and accordingly, the Promoter adhered to the above terms, constructed the building, obtained Occupancy Certificate and made necessary arrangements for its registration. However, due to untimely and unexpected events, i.e. proceedings initiated against the said landowner under the Benami Transactions Act,

injunction order passed by the Civil Court barring the registration of documents, the Promoter was forced and prevented from registering the Sale Deeds in favour of Purchasers of the apartments for the reasons which are beyond the control of the Promoter.

6.4. It is further contended by the Promoter that the Authority has lost sight of the fact that the relief granted under Sec.18 of the RERA Act was not maintainable, as the project was completed and the possession of the apartment unit was offered by the Promoter to the Allottees as well, within the time stipulated in the Agreements. It is the contention of the Promoter that the Impugned Order granting interest from 21.04.2014 is wholly misconceived, arbitrary, unjust and un-sustainable, violative of the Act and the Rules made there under, and contrary to the claim made by the Allottees. Further, when the Allottees themselves have restricted their claim for interest with effect from 01.02.2019, as per their mail dated 01.06.2021, the Allottees are stopped from claiming interest from the date of payments or any other day prior to 01.02.2019. The same was not taken into consideration by the Authority while determining the interest in the impugned order.

6.5. The Promoter further stated in his Appeal Memo that, the Authority has failed to appreciate the material fact that the

Allottees, through email dated 21.01.2020, having agreed and undertaken to take possession of the Apartment on 23.01.2020, have committed default, and after lapse of more than one year they have unilaterally cancelled the agreement and sought for refund of the amount. Hence, for the default committed by the Allottees, the Promoter cannot be fastened with the liability of paying huge and exorbitant interest.

6.6. Further, the Promoter contended that the Authority has completely erred in passing the Impugned Order referring to Sec.31 of the Real Estate (Regulation & Development) Act, 2016 as there is no violation or contravention of provisions of RERA Act, Karnataka RERA Rules 2017 and Regulations, made there under.

6.7. Further, the Promoter stated that out of the total amount paid by the Allottees, a sum of Rs.6,44,780/- is paid by the Promoter towards BESCO, BWSSB, GBWSP charges, which are mandatorily required to be paid by the Allottees to the above said authorities as well as towards maintenance, and these amounts are not retained by the Promoter and hence the Allottees cannot claim interest on such amounts and the same was not appreciated by the Authority.

6.8 Further, the Authority has failed to consider as was urged in the Statement of Objection, that there is a provision for deemed

approval of Occupancy Certificate under Sec.310(2)(b) of the Karnataka Municipal Corporations Act, 1976. The Promoter further contended that the Authority has erroneously considered and relied on the Statement of Computation filed by the Allottees as conclusive evidence/proof in awarding the compensation and completely ignored the mandatory provisions enunciated under the RERA Act and Rules.

6.9. Further, the contention of the Promoter is that the Authority also failed to consider the fact that there is no actual loss suffered by the Allottees as the records do not reveal any loss or damage suffered by them. Accordingly, the Promoter prayed to allow the Appeal and set aside the impugned Order passed by the Authority on 17.08.2023.

7. In support of his claim, the learned Advocate for Promoter has placed reliance on the following Citations as referred in the Memorandum of Appeal:

a) Navin Raheja Vs. Shilpa Jain and Others in Company Appeal (AT)(Insolvency) No.864/2019 Order dated 22.01.2020,

b) The Judgment of the Hon'ble Supreme Court in Managing Director, Haryana State Industrial Development Corporation & Others Vs. Hari Om Enterprise reported in (2009) 16 SCC 208,

- c) The Judgment of the **Hon'ble Supreme Court in Supertech Ltd. Vs. Rajni Goyal** reported in **(2019) 17 SCC 681,**
- d) The Judgment of Hon'ble Supreme Court in **Lanco Hills Technology Park (P) Ltd. Vs. Manisha Balkrishna Kulkarni** reported in **(2020) 11 Supreme Court Cases 699,**
- e) **Joint Action Committee of Air Line Pilots' Association of India Vs. DG of Civil Aviation** reported in **(2011) 5 Supreme Court Cases 435.**

8. We have heard the Arguments of Sri. M.S. Rajagopal, the learned Senior Counsel for Appellant. We have also heard the arguments of learned Counsel for Respondents No.2 and 3. Arguments on behalf of Respondent No.1 RERA is taken as heard.

: ORAL ARGUMENTS BY THE PROMOTER :

9. In the oral arguments made by the Senior Counsel for the Appellant-Promoter on 11.11.2025, he submitted that under Section 18(1) (a) & (b) of RERA Act, it is only if the Promoter fails to complete or is unable to give possession of the property in accordance with the terms of the Agreement for Sale or due to going out of his business as the Promoter, is he liable to refund or pay delay period interest. None of that is true in this case, as the Allottee himself withdrew from the project and sought for cancellation of the Allotment due to his own problems. He also drew the attention in support of his contention to the email sent by the Allottees on 03.02.2021 requesting for refund of the

amount since "he lost his job and due to present financial condition." The Promoter replied to the Allottees on 13.02.2021 informing that they will not be able to cancel the allotment or refund the amount.

10. Thereupon, the Allottees filed the Complaint with the Authority where he alleged in the detailed Complaint dated 17.06.2021 that the Promoter had not handed over possession of the Unit till date, free from all litigations and encumbrances. He also referred to the fact that dispute between landowner and the developer relating to Benami transaction, and an attachment order from Deputy Commissioner, Income Tax, and alleged that there were violations of Section 11(4)(f), Section 18(1) and 18(3) of RERA Act and sought refund of the entire amount along with interest.

11. The learned Counsel for the Promoter submitted that he is willing to execute Agreement even now and therefore it is incorrect on part of the Allottees to say that the possession was not handed over to them.

12. The learned Counsel also drew attention of this Tribunal to email by the Allottees dated 11.10.2025 saying that he is likely to take possession of the property, to which, the Promoter replied on

26.10.2025 that they are willing to handover possession. He drew attention to the letter marked as Annexure-E in the Appeal Memo sent to the Allottees informing them that they have received the Occupancy Certificate and asked the Allottees to complete remaining process, including payment etc. with forewarning that handling charges will be levied for delay from 01.01.2020 in taking over possession. The 1st Allottee's wife replied to the Promoter that she has given authorization letter along with I.D. proof to her husband, who will take over the possession. Accordingly, the handing over property was scheduled on 23.01.2020 at 10.30 a.m. and was intimated the same to the Allottee by email. But rather than taking over possession, he filed the Complaint with the Authority on 23.06.2021.

13. Even during pendency of the proceedings before the Authority and the Tribunal, the Allottee sent email on 11.10.2025 that he would likely be taking possession and seeking advise on how to proceed with the same. The Promoter replied to the Allottee on 26.10.2025 to say that they are willing to handover possession and that he may take possession after arriving at a clear picture regarding the pending proceeding in Appeal No.52/2025 arisen out of the RERA Complaint No.8029. The Promoter followed with another email dated 05.11.2025 asking

Allottee to submit certain documents and make payment of Handling and Care Taker Charges (HCTC) of Rs.7,70,000/- and Maintenance charges of Rs.3,84,323/- and also applicable BESCO charges and Property tax payment and e-Khata charges and the Stamp duty and Registration charges. He also added a note in the email saying that upon taking possession, the Authority's Order dated 17.08.2023 which is appealed against in Appeal No.52/2025 would be rendered infructuous.

: ORAL ARGUMENTS BY THE ALLOTTEES :

14. In the oral arguments made by the learned Counsel for the Allottees on 28.01.2026, he submitted that having paid entire total sale consideration amount, it is quite evident that even if he had financial difficulties due to job loss, there was no reason for him to cancel the allotment since he had paid the sale consideration amount already. The Promoter is not reflecting real reason for the Allottee having to seek cancellation, which was on account of pending litigation and properties not being free from encumbrances and also orders of the Deputy Commissioner, Income Tax regarding the Benami transaction and a specific bar on registration of the apartments to the Sub-registrar. He drew attention to the sequence of events submitted by the Promoter at Para-6.12 of the Appeal Memo where at item No.6, he said that he

applied for Occupancy Certificate on 16.01.2019, he registered the project with RERA as an 'ongoing' project on 01.02.2019, the provisional attachment order passed by the Deputy Commissioner of Income Tax at Sl.No.8 on 09.04.2019 and the demand notice issued by BBMP on 04.06.2019 at Sl.No.9 as a pre-requisite condition for issuance of Occupancy Certificate.

14.1. The Promoter filed a Writ petition No.25459-25461/2019 on the notice issued by BBMP on 15.06.2019 which was stayed by the Hon'ble High Court of Karnataka on 24.06.2019 and the BBMP issued the Occupancy Certificate as per High Court direction on 03.10.2019. He also drew attention to Sl.No.16 where, on 30.01.2020, the Allottees inspected the flat on 23.01.2020 pointing out some snags. He also drew attention to the Sl.No.19 where Allottee sought refund on 03.02.2021 and 02.03.2021 for the reason that he lost his job. He said that on the day they were asked to register the project but Occupancy Certificate was not secured by the Promoter.

15. He further argued that issuance of proceedings before Enforcement Directorate were not revealed to the Allottees. He also drew attention to the Allottees' email to the Promoter dated 16.05.2021 where he gave detailed reasons for cancelling the project and seeking refund of the amount with interest for

reasons such as attachment by Income Tax department on account of Benami property issue and the failure on part of the Promoter to deliver the unit with valid title, free from all encumbrances. He submitted that '*force majeure*' clause will not apply for these reasons which is the primary responsibility of the Promoter to address, and that '*force majeure*' applies only to conditions such as Covid Pandemic etc. He drew attention to his Complaint to the Authority under Section 31 r/w.71 of the Act where he had sought relief of refund and he was given liberty to seek compensation for other prayers before the Adjudicating Officer.

16. Continuing his arguments on 19.02.2026, he submitted that land related issue between landowner and the Promoter did not constitute cause for invoking '*force majeure*' Clause and the matter pertaining to the Benami transaction was finally resolved by Hon'ble High Court in Writ Petition No.27322/2019 dated 05.09.2022, which was well after he had filed his Complaint before RERA. It is evident, therefore, that Promoter could not have executed the Sale Deed in his favour as claimed by them on account of legal complication pertaining to the land title. He is therefore, fully entitled under Section 18(1) and 18(3) to seek refund since the Promoter failed to deliver possession as per the

Sale Agreement and Construction Agreement. He, therefore, concluded that Order of the Authority is fair, just and does not deserve to be interfered with.

: REPLY ARGUMENTS BY PROMOTER :

17. In the reply arguments made by the learned Counsel for the Promoter, he submitted that the delay in handing over possession was due to delay in issue of Occupancy Certificate by the Government which is covered under Clause 5.1 of the Agreement of Sale and Clause 5.5 (c) of the Construction Agreement. He again re-iterated that in the e-mails of 06.12.2019 onwards till 21.01.2020 which are produced at Annexure-E of the Appeal Memo, the Promoter requested the Allottees to take possession, to which they expressed their willingness also on 21.01.2020, but they sought cancellation of the allotment on 03.02.2021 for personal reason. Even as recently as on 11.10.2025, the Allottees sent an email that they will likely take possession to which the Promoter replied on 05.11.2025 asking them to submit certain documents and to pay balance amount towards certain other charges. It shows that the Allottees are dithering for the possession and they cannot approbate and reprobate at their whims & fancies.

: REPLY ARGUMENTS BY ALLOTTEES :

18. In reply arguments by the Allottees, the learned Counsel for the Allottees submitted that they started making payment towards total sale consideration on 21.04.2014 and had paid the entire amount of approximately Rs.1.30 Crores by the year 2020. He stated that the Allottees sought cancellation of the project on account of pending litigation as a result of which Sale Deed could not have been executed which is confirmed by the email of the Promoter dated 24.06.2023 where they informed that "*the issue blocking the sale deed from being executed have been resolved, and we will soon begin the registration for the units.*" He further argued that litigation was between landowner and the Promoter and although Promoter was fully aware of this litigation when they signed the JDA with the landowner, but they went ahead with taking up the project out of confidence of handling the litigation, and therefore now they cannot take shelter under 'force majeure' on this account.

: WRITTEN ARGUMENTS BY PROMOTER :

19. In addition to the above arguments by the parties, learned Counsel for the Appellant-Promoter filed Written Synopsis on 27.02.2026 by re-iterating the contentions made in the Appeal Memo. Added to that, he has stated that the Allottee has not come forward to take possession and has not shown his readiness

or willingness to get the Sale Deed executed despite efforts made by the Promoter, and hence the Allottee is estopped from raising a contention that the Promoter herein has failed to register the apartment without any encumbrances.

19.1 Further, the delay period interest, if at all, has to be calculated only after agreed date of handing over the possession as per Agreement i.e. 31.01.2019, and until the date of issuance of Occupancy Certificate, since the Allottees could not have further grievance regarding delay in handing over possession beyond that date. The Allottees cannot be allowed to reap benefits of their own delays in taking possession. For establishing that the interest calculated is erroneous and the same is to be calculated only from the date when refund becomes due and not from the date of the payment done by the Allottee, he relied on the citation of **Hon'ble Apex Court** in the case of **Godrej Projects Development Ltd. Vs. Anil Karlekar and Ors.** reported in **2025 INSC 243 [Civil Appeal 3334/2023]** mainly on Para-41 to 43 of the said Judgment.

: WRITTEN ARGUMENTS BY RERA :

20. The Respondent No.1-RERA also has filed Written Synopsis on 27.02.2026 and contended that the impugned order dated 17.08.2023 was passed strictly within the jurisdiction conferred

upon the Authority under Section 18 of the Act, 2016. The relief claimed by the Allottees seeking refund of the entire consideration paid, together with interest, on the grounds that the Promoter has failed to register the property and pass on the title free from all encumbrances within the due dates mentioned in the Agreement falls squarely within Section 18(1)(a) of the Act and accordingly the RERA has passed the impugned judgment. The Authority has further stated that complaint filed by the Allottee ought to have been decided by the Adjudicating Officer under Sections 31 and 71 of the Act is wholly untenable. In the above background, Respondent No.1-RERA has placed reliance on the Judgment of **M/s.Newtech Promoters and Developers Pvt.Ltd. Vs. State of U.P. & Ors.** reported in **(2021) 18 SCC 1** and **Imperia Structures Ltd. Vs. Anil Patni** reported in **2020 10 SCC 783**. The learned Counsel for the RERA contended that after affording full opportunity to both parties, and considering the documentary evidence, has rightly directed refund of Rs.2,24,81,122/- with interest, calculated in accordance with statutory provisions. Accordingly, he stated that the impugned order is legal, valid and within the jurisdiction, and as such, prayed to dismiss the Appeal in limine with costs.

: WRITTEN ARGUMENTS BY THE ALLOTTEES :

21. The Respondents No.2 and 3-Allottees also have filed Written Arguments on 27.02.2026 reiterating the averments made in the Statement of Objections. Further, they have added that the doctrine of “approbate and reprobate” does not apply to a consumer exercising a statutory right triggered by a developer’s pre-existing and ongoing default regarding the Occupancy Certificate and Benami attachment. Further, the Allottees citing amongst other grounds as narrated in Statement of Objection, stated that despite accepting a substantial consideration of over Rs.1.30 crores, the Promoter failed to deliver legal possession of the unit by the contractually mandated deadline of February 1, 2019. The Promoter’s defense of physical completion is legally irrelevant, as it is a matter of record that the Occupancy Certificate was obtained eight months late, and the project land was encumbered by a Benami attachment and an undisclosed 2004 civil court injunction at the time of delivery deadline. The Authority correctly applied the law as settled by the Hon’ble Supreme Court in **M/s.Newtech Promoters** (supra), which affirms the unqualified right of the Allottees to a full refund with interest, when a Promoter is unable to provide a clear, registrable title by the agreed date and the Authority’s exercise of jurisdiction

was entirely proper. Accordingly, they prayed to dismiss the Appeal with costs.

22. In view of the submissions made by the respective parties, the points that would arise for our consideration are:

- i) Whether, the impugned Order dated 17.08.2023 passed by Karnataka Real Estate Regulatory Authority in Complaint No.CMP/210623/0008029 warrants interference in this Appeal?
- ii) What Order?

23. We answer the point No (i) in the **Negative** for the following:

REASONS

24. Point No.(i): We have examined the Memorandum of Appeal, written and oral submissions made by both the Appellant and Respondents, the impugned order & trial court record, the written argument furnished by the Authority and the Citations submitted by the Appellant at length.

25. The undisputed facts in this matter are that the Allottees booked a 3 bedroom apartment bearing No.3G2-3061 in the project 'Sobha Valley View – Heritage' and an Agreement of Sale and Construction Agreement were signed on 15.11.2014 for a total sale consideration of Rs.1,31,26,610/- and the Allottees have paid

almost entire amount totaling to Rs.1,30,98,294/-. As per Clause 5.1 of the Construction Agreement, the due date of completion and handing over possession of the apartment was on 01.02.2019 which includes grace period of 6 months. The Promoter made an application for issuance of Occupancy Certificate on 16.01.2019 and upon receiving 'on demand notice' by the BBMP on the property to pay applicable charges, the Promoter filed Writ Petition and eventually BBMP issued Occupancy Certificate as per the direction of Hon'ble High Court of Karnataka on 03.10.2019. However, the Sale Deed has not been registered till date.

26. It is evident therefore, that there is a clear delay in handing over possession of the property by the Promoter to the Allottees, since the due date for completion was on 01.02.2019 and the Sale Deed has not been registered till date for various reasons. The Promoter has blamed the Allottees for delay in taking over possession and he has claimed that he offered to handover possession of the apartment to the Allottees on several occasions, but the Allottees did not come forward to get the Sale Deed executed. He has also taken plea that since there was litigation pertaining to title of the land with the landowner, and therefore the liability to pay interest to the Allottees, if any, should be that of landowner and not the Promoter. The Promoter has also quoted

force majeure on account of delay in issuing Occupancy Certificate by the competent authority and therefore, claimed the benefit of deemed Occupancy Certificate under Section 310 of Karnataka Municipal Corporations Act, 1976. He has also submitted that the Allottee himself has restricted his claim for the interest from 01.02.2019 onwards as per the Allottee's email to the Promoter dated 01.06.2021. We shall be discussing these grounds taken by the Promoter at length in the coming sections of this Order.

27. Insofar as the Promoter's plea that the Allottee himself has restricted his claim as per email dated 01.06.2021 is concerned, we have perused the email sent by the Allottee to the Promoter, where he has stated that "since property is attached, the Promoter cannot give the possession to the Allottee as it is illegal to do so" and he has nowhere agreed or restricted his claim, in this email, for interest for any day prior to 01.02.2019. The Allottee also has written in his email that "had he taken the possession of the property then the matter would have been different but that is not fact in this case since the Promoter legally could not have handed over possession."

28. The question, therefore, that arises is, whether the interest is to be calculated from due date of handing over possession or from the day he made payments to the Promoter towards sale

consideration? At this juncture, it could be appropriate to carefully peruse Section 18(1) of RERA Act regarding consequential benefit if the Promoter fails to handover possession as per the terms of Agreement both, in case the Allottee wishes to exit from the project, or whether the Allottee does not intend to exit from the project. Section 18(1) is reproduced below for easy reference:

"18.(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."

29. It is clear from the wordings of Section that if the Promoter has failed to give possession of the apartment as per the terms of the Agreement for Sale, as is the fact in this case, on account of title of the land not being free from litigation, and if the Allottee wishes to exit from the project as is the case here, the Promoter is liable to return the amount received by him from the Allottee with interest and therefore, the Authority is perfectly justified in

directing the Promoter to refund the amount with interest from the date when the Allottee has made various payments to the Promoter. It is only when the Allottee wishes to continue in the project, is the Promoter liable to pay interest for every month of delay from due date of completion till handing over of the possession. It is also an undisputed fact that the amounts paid by the Allottee have been available with the Promoter and the Promoter has failed to handover possession of the property which is free from any defect in the title, and therefore, the Allottee is entitled to claim interest, not subsequent to the due date of handing over possession, as claimed by the Promoter, but from the date on which he has made various payments to the Promoter towards the sale consideration.

30. The Allottee has sought refund of entire amount of consideration from the date of respective payment of installment till date along with interest. It is clear from the record that Allottees have made payments to the Promoter totaling to Rs.1,30,98,294/- on the following dates:

Sl.No.	Amt. paid Date	Amt. Paid (Rs.)
1	21.04.2014	5,00,000.00
2	12.07.2014	7,50,652.00
3	15.12.2014	27,08,277.00

4	24.09.2015	12,88,790.00
5	25.01.2016	15,04,616.00
6	02.05.2016	15,04,617.00
7	03.08.2016	15,06,492.00
8	28.01.2017	15,06,491.00
9	13.04.2017	6,27,705.00
10	01.05.2017	1,18,97,640.00
11	27.05.2017	6,27,705.00
12	08.02.2019	5,65,851.00
13	21.01.2020	7,098.00
	Total Amount paid	1,30,98,294.00

31. The Authority has calculated the interest on these payments in the impugned order, which is as per the correct interpretation of the statute, and therefore we find no reason to make any modification in the order of the Authority.

32. The reason assigned by the Allottees for not taking over possession is that there was litigation regarding clear title land and there was proceeding pending before the Enforcement Directorate and attachment by Income Tax Department on account of Benami transaction and since the Promoter was not in a position to deliver the unit with valid title, free from all encumbrances, he did not apt for executing Sale Deed till the pending litigation was concluded in favor of the Promoter. He has further argued that when the Allottees were asked to register the apartment, Occupancy

Certificate had not been secured by the Promoter. He also argued that the pendency proceedings before Enforcement Directorate pertaining to title of the land and Benami transaction was not revealed to the Allottees although Promoter was fully aware of the same when the Agreement of Sale and Construction Agreement were entered into. He added that, '*force majeure*' clause will not apply on account of delay in obtaining the Occupancy Certificate or on account of land dispute with the landowners since it is primary responsibility of the Promoter to obtain the necessary approvals in time and to make sure that land is free from all encumbrances, and that '*force majeure*' applies to conditions such as in case of war, natural calamity, pandemic etc.

33. The case of the Promoter is that he had applied for Occupancy Certificate well in time but there was delay on part of BBMP to issue the Occupancy Certificate, for which, the Promoter is not responsible. He also contended that it is the landowner who did not give the land to the Promoter free from all encumbrances and therefore the Allottees should seek relief from landowner and not the Promoter. He further added that since Allottees themselves have restricted their claim for interest from 01.02.2019, hence, they cannot claim interest from the date of payment made by them or any day prior to 01.02.2019. It is also

their case that the Allottees unilaterally cancelled the Agreement and sought for refund although the Promoter were willing to execute Sale Deed in their favour and therefore, the Allottees cannot seek refund for cancelling the allotment for their own reason and in case of any default on part of the Promoter. He also argued that the amount of Rs.6,44,780/- paid by the Allottees was towards BESCO, BWSSB charges and therefore they cannot claim interest on these amounts.

34. It is the contention of the Promoter that he had completed the project well within the time and the apartment was ready to handover on time as agreed in the Agreement of Sale. But due to proceedings initiated in Writ Petitions before the Hon'ble High Court of Karnataka by the third parties against the Landowners and Promoter, on account of provisional attachment order passed by the Deputy Commissioner of Income Tax and proceedings before the Income Tax Authorities, the Promoter could not execute and register the Sale Deed and handover possession as agreed.

35. The main grounds taken by the Promoter for filing this Appeal are summarized as under:

- i) Jurisdiction to award compensation in case of delay in completion of the project is vested with the Adjudicating

Officer and not of the RERA Authority, and therefore the order passed by the Authority is ab initio, void and illegal;

- ii) The delay in issue of Occupancy Certificate was on the part of the competent authority who has to issue Occupancy Certificate. The Promoter had applied for the Occupancy Certificate in time but the competent authority delayed issuance of Occupancy Certificate and therefore Promoter is not liable to pay interest on delay period. The Promoter is also entitled to invoke the provision for deemed Occupancy Certificate under Section 310(2)(b) of KMC Act which has not been considered by the Authority.
- iii) Since the Promoter had applied for the Occupancy Certificate in time, he is entitled to the benefit of Section 310 of Karnataka Municipal Corporation Act, as per which, if the competent authority does not issue the Occupancy Certificate within one month of the application, it may be considered as 'Deemed Occupancy Certificate'.
- iv) The attachment order under Benami Transaction Act by the Income Tax Authority is against the Landowner and not the Promoter and therefore it should be Landowners who should be held responsible for delay and not the Promoter;
- v) The delay was on account of *Force Majeure* circumstances as listed in Clause 5.5 of the Construction Agreement and

therefore the Promoter is not liable to pay interest compensation on this account.

36. The Promoter has questioned the '**Jurisdiction**' of the RERA Authority to award compensation in case of delay in completion of the project by claiming that such compensation in cases of delay, the power to award compensation is vested with the Adjudicating Officer and not with the RERA Authority, and therefore has claimed that the order passed by the Authority is void and illegal.

37. This matter of delineation of jurisdiction has been deliberated at length in the **Newtech** (supra) judgment, under which, the relevant paragraph-86 read as under:

"86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like 'refund', 'interest', 'penalty' and 'compensation', a conjoint reading of [Sections 18](#) and [19](#) clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory authority which has the power to examine and determine the outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon under [Sections 12, 14, 18](#) and [19](#), the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with [Section 72](#) of the Act. If the adjudication under [Sections 12, 14, 18](#) and [19](#) other than compensation as envisaged, if extended to the adjudicating officer as prayed that, in

our view, may intend to expand the ambit and scope of the powers and functions of the adjudicating officer under Section 71 and that would be against the mandate of the Act 2016.”

38. It is clear therefore that the relief of refund, interest on delay period is vested with the Authority and the relief of compensation for factors such as shortcoming in the amenities, mental agony etc. will come under the jurisdiction of the Adjudicating Officer. Para-86 of the above cited Judgment clearly mentions that a conjoint reading of *Section 18 and 19* makes clear that when it comes to (a) refund of the amount (b) interest on the refund amount (c) payment of interest for delayed period of possession (d) penalty and interest thereon, it is the Regulatory Authority which has the power to examine and determine the outcome of the Complaint. If the loss or injury is suffered by the Allottee due to false or incorrect statement in the advertisement or prospectus under *Section 12*, structural defects or provision of defective services/goods under *Section 14* of RERA Act, claim for additional compensation due to losses sustained by the Allottee on account of violation of *Sections 12 and 14* have to be decided by the Adjudicating Officer by conducting a detailed enquiry considering factors such as the amount of loss on account of factors mentioned in *Section 72* of RERA Act.

39. It is a matter of fact that RERA Act is a Special Enactment and in view of non-abstante clause in the Act, Promoter is bound to pay interest as per contractual rate at SBI MCLR + 2% per annum.

40. With regard to ground taken by the Promoter that he had applied for the Occupancy Certificate on 16.01.2019 which is well within the due date for handing over possession and therefore he is entitled for benefit of *Section 310 of the KMC Act*, according to which, if the competent authority does not issue the Occupancy Certificate within one month of the application, it may be considered as '**Deemed Occupancy Certificate**'. In support of said contention, the learned Counsel for Promoter has relied on the decision of **Hon'ble High Court of Karnataka** in the case of **P. Shyamaraju Vs. Karnataka Electricity Board, Bangalore and Others** (cited supra). In the said decision, it was held that

"the application in the prescribed form for grant of the said certificate had been filed with the Corporation on 11.11.1995 (Annexure-F) with the Completion Certificate. But till date, to his knowledge, no order thereon has been passed. In the said view of the matter as provided under clause (b) of sub-section (2) of Section 310 there will be a deemed grant of Completion Certificate."

41. While it is true that the Promoter can claim the provision of 'Deemed Occupancy Certificate' under *Section 310 of KMC Act*, we are of the considered view that it is incumbent on the part of the Promoter to disclose this material and relevant fact to the Allottees and then proceed to take further steps of executing the Sale Deed for handing over possession on the strength of the 'Deemed Occupancy Certificate', rather than waiting for a proper Occupancy Certificate which is to be issued by the competent authority, meaning the local authority in force which has the powers to give permission for development and completion of such property.

42. It would be relevant at this juncture to examine to refer to the provisions of Section 19(1) & (2) of RERA Act which reads as under:

"(1) The allottee shall be entitled to obtain the information relating to sanctioned plans, layout plans along with the specifications, approved by the competent authority and such other information as provided in this Act or the rules and regulations made thereunder or the agreement for sale signed with the promoter.

(2) The allottee shall be entitled to know stage-wise time schedule of completion of the project, including the provisions for water, sanitation, electricity and other amenities and services as agreed to between the promoter and the allottee in accordance with the terms and conditions of the agreement for sale."

43. It is evident from the above provision that it is the right of the Allottee to obtain all information relating to the plans, as also

time schedule of the completion of the project as and when there are any updates on these material developments. *Section 11 (d)* of RERA Act also enjoins the Promoter to update all details of the proposed project including the approval taken and the approvals which are pending subsequent to Commencement Certificate. Further, *Section 11(4)(b)* of RERA Act makes the Promoter responsible not only to obtain the Occupancy Certificate, but also to make available to the Allottees individually or to the Association of the Allottees as the case may be.

44. There is nothing on record to show that the Promoter made this information available to the Allottees about not getting the Occupancy Certificate within 30 days from the date of his application from the competent authority. Ideally, the Promoter could also have written to the competent authority stating that since they had filed an application for issuance of Occupancy Certificate on 16.01.2019, and the competent authority failed either to refuse or issue Occupancy Certificate, and therefore they are proceeding with the execution of Sale Deeds on the basis of 'Deemed Occupancy Certificate' as per provision under *Section 310* of the Karnataka Municipal Corporations Act, 1976. This clearly amounts to suppression of material facts and information to the Allottee and therefore the Promoter has violated these provisions

of RERA Act. Hence, viewed from any angle, there is no force in the submission made by the learned Counsel for the Promoter that he is not liable to pay interest on delay period because the delay was on part of the competent authority to issue Occupancy Certificate.

45. Insofar as the plea of the Promoter that delay in conclusion of the project was on account of '**Force Majeure**' circumstances as listed in Clause 5.5 of the Construction Agreement is concerned, we find that several of the grounds mentioned as reasons for delay in completion of the project for which the Promoter is disowning the liability to pay further delay period interest are not really the *Force Majeure* circumstances as elaborated under Explanation of Section 6 of the RERA Act. Clause 5.5 of the Construction Agreement is as given below:

- a) Force Majeure/Act of God
- b) Government Orders/restriction/control
- c) Delay in issue of NOC/ permissions, Occupancy certificate sanction by Government and Statutory Authorities /Local Bodies.
- d) Delay in providing electrical, water and sewerage connections by various authorities.
- e) Non-availability, non-supply of construction materials/labour etc,

- f) Short supply of materials (viz, sand, aggregates etc.)
- g) Delay/default in payments but the Second Party.
- h) Any other reason beyond the control of the First Party.
- i) Rainfall of 25mm or above
- j) Riots, Transportation strikes, Labour strike etc.,

On happening of any of the above events, the date of delivery of the apartment by the First party to the Second Party shall be varied to future date in view of the delay in completion of the project on the date mentioned in clause 5.1 of this agreement for the above reasons and the Second Party is not entitled for any compensation for delay in completion/delivery of the Apartment. The First party shall endeavor and make every effort to apply for and obtain the Occupancy Certificate on completion of the project from the authority and if there is any delay from the authority side to issue Occupancy Certificate, the First Party shall not be responsible for such delays.

46. Inclusion of factors such as short-supply of materials, non-availability of materials and labour, delay in providing electrical, water and sewerage connections by various authorities or any other reason beyond the control of the Promoter etc., as some of the events for which the Promoter can vary the due date of delivery to any future date, and that the Allottee will not be entitled for any compensation for delay due to such reasons, is against the spirit of RERA Act which is legislated to protect the

interest of homebuyers. As elaborated in Explanation under *Section 6* of the Act, **Force Majeure** means *a case of war, flood, drought, fire, cyclone, earthquake or any other calamity caused by nature affecting the regular development of the real estate project.* Only the delay on account of these factors can be taken as valid grounds for limiting the liability of Promoter.

47. In view of the above, we are of the considered view that the delay in completion of the project, on account of so-called *force majeure* circumstances as listed in Clause 5.5 of the Construction Agreement cannot be taken as a sufficient reason to absolve the Promoter from the liability to pay interest compensation on this account.

48. The Promoter has also taken the plea that the attachment order under **Benami Transaction Act** by the Income Tax Authorities is against the landowners and not the Promoter and therefore, it should be the landowners who are to be held responsible for delay and not the Promoter. *Section 19(3) r/w. Section 4(2)(1)(A)* of the RERA Act clearly confirms the statutory right to receive possession of unit free from encumbrances. The Promoter is required to give an unequivocal declaration submitted by Affidavit under *Section 4(2)(1)* of the Act, which reads as under:

- (A) *that he has a legal title to the land on which the development is proposed along with legally valid documents with authentication of such title, if such land is owned by another person;*
- (B) *that the land is free from all encumbrances, or as the case may be details of the encumbrances on such land including any rights, title, interest or name of any party in or over such land along with details.*

49. This makes it very clear that it is the responsibility of the Promoter to ensure that he has legal title to the land along with legally valid documents with authentication of such title, if such land is owned by another person, namely the landlord who may be different from the Promoter. It is also his responsibility to ensure that land is free from all encumbrances including any rights, title, interest or name of any party in or over such land along with details. The Promoter cannot absolve himself from the responsibility of paying delay compensation to the Allottee solely on the ground that the landowner is liable to pay the compensation arising due to title issues under the framework of RERA Act. It could not have been the intention of the legislature to bind or affect the rights of the homebuyer for any internal arrangement between the Promoter and the landowner such as JDA etc. The homebuyer is protected regardless of which party, between the

Promoter or the landowner, is internally responsible for the title issue. Further, under *Section 18(2)* of the RERA Act, the Promoter is specifically liable to compensate, which reads as under:

"18(2) *The Promoter shall compensate the allottees in case of any loss caused to him due to defective title of the land, on which the project is being developed or has been developed, in the manner as provided under this Act, and the claim for compensation under this sub-section shall not be barred by limitation provided under any law for the time being in force."*

50. It is clear therefore, that it is the Promoter who is specifically liable to compensate the Allottee for any loss caused due to defective title of the land on which the project is being developed. Further, there is nothing on record to show that the Promoter disclosed this important piece of information either in Sale Agreement, or in Construction Agreement or in any other form of communication, regarding pending litigation pertaining to the title of the land to the Allottees though the Promoter was in full knowledge of it as evidenced in the Joint Development Agreement. As far as the homebuyer is concerned, the cause of the delay, unless it is on account of *force majeure*, is less important than the fact of delay and therefore, if the title issue stalls the project leading to any delay, we are of the considered view that the Promoter is liable for delay compensation to the homebuyer.

51. If at all, Promoter has any reasons to show that the title defects are responsibility of the landowner in the Joint Development Agreement, the Promoter may sue the landowner to recover that amount from the landowner based on the terms of the internal JDA and he cannot simply transfer the liability for compensation on the landowner as far as the Allottee is concerned. Such recovery would be a matter between landowner and the Promoter, and not the homebuyer. Promoter cannot take shelter under the alleged fault on part of the landowner as a valid reason to avoid paying compensation to the Allottees.

52. Coming to another ground taken by the Promoter, he has agreed that the due date for handing over possession was on 01.02.2019 and that he had applied for Occupancy Certificate on 16.01.2019 which was before the due date of completion before the BBMP which delayed the issuance of Occupancy Certificate and therefore the Promoter cannot be held liable for paying interest on account of such delay. From the record, it is evident that although Promoter had applied for Occupancy Certificate on 16.01.2019, the BBMP issued demand notice to the Promoter on 04.06.2019 as prerequisite condition for issuance of Occupancy Certificate. The Promoter filed Writ Petition to the Hon'ble High

Court of Karnataka on the notice issued by BBMP which was stayed by the Hon'ble High Court and in pursuance of the directions from Hon'ble High Court, the BBMP issued Occupancy Certificate on 03.10.2019. The responsibility for obtaining Occupancy Certificate under RERA Act is on the Promoter as per Section 11(4)(b) of the Act, which reads as under:

“11(4) (b) The Promoter shall be responsible to obtain the completion certificate or the occupancy certificate, or both, as applicable, from the relevant competent authority as per local laws or other laws for the time being in force and to make it available to the allottees individually or to the association of allottees, as the case may be; (c) be responsible to obtain the lease certificate.”

and if the BBMP raised any queries or demand notice on the application of the Promoter for issuance of Occupancy Certificate, and as a consequence of which, if the Occupancy Certificate gets delayed, the Promoter cannot, in our considered view, plead that the delay was caused by the Competent Authority in issuance of Occupancy Certificate for which he is not responsible and therefore not liable to pay interest.

53. The next important ground taken by the Promoter is that he offered delivery of apartment to the Allottee on 15.06.2019 and the Allottee even agreed to take possession on 23.01.2020 and yet

he did not take over the possession and instead sought unilateral cancellation of the Agreement and sought for refund. According to Promoter, the Allottees gave reason for cancellation as 'his personal reasons due to financial difficulties arising out of loss of job.' While it is true that the Allottee had indeed written to the Promoter on 03.02.2021 seeking cancellation of the allotment and refund of his amount, but it is also a fact that he had paid almost entire sale consideration amount of Rs.1,30,98,294/- and therefore he could not have cited financial reasons for cancellation of the allotment. In their arguments, the Allottees submitted that the actual reason for seeking cancellation was on account of pending litigation regarding title of the land between the Promoter and amongst the landowners, and the Allottee did not want to get caught up with a property without clear title. Even in his emails dated 16.05.2021 and 24.07.2023, the Allottee has clearly mentioned that he is not willing to register the property because of land title dispute.

54. We have examined the Complaint filed by the Allottee before the Authority where, in the reliefs sought, he has prayed the Authority to direct Promoter to refund the entire amount of consideration from the date of respective payment of installments along with interest, since the Promoter has not registered the

property, and is not in a position to pass on the title free from all the encumbrances within the due dates mentioned in the Agreement. We have examined the Complaint of the Allottee before the Authority from the Trial Court Record and we find this averment of the Allottee to be true in Part-3 of the Complaint at Clause 3.1 which reads as under:

"3.1 For the reasons stated above the Complainants seeks refund of the compensation along with interest from the date of payment of respective installment till the repayment date. Total consideration along with the interest till April 19, 2023 works out to Rs.2,24,81,122/-"

55. There was litigation pertaining to the project land with regard to Benami transaction. The Promoter is required to make sure that he has legal title of the land and that land is free from all encumbrances and he cannot absolve himself and claim that it is landowner who is liable to pay compensation to the Allottees and not the Promoter. Section 18(2) of the RERA Act requires the Promoter to pay compensation to the Allottees due to defective title of the land he cannot fasten his responsibility on the land owner insofar as the Allottee is concerned. We have also seen the email from the Promoter dated 24.06.2023 where they have informed the Allottees that "*the issue blocking the sale deed for*

the units in the project from being executed has been resolved, and we will soon begin the registration to the units." This makes it amply clear that the Promoter was not in a position to execute the Sale Deed till the land dispute amongst the landowners & between the landowner and the Promoter resolved, and we also found nothing to show that the Promoter was fully aware of this litigation amongst the claiming landowners when they signed 'Joint Development Agreement' with the landowner, not only did they proceed with taking up the project, presumably in full knowledge and confidence that they will be able to handle this issue, and did not even share this vital piece of information with the Allottees & so that he could take an informed decision whether to opt for such property or not, and therefore they cannot take shelter for denying compensation to the Allottees on this ground.

56. The Allottee has argued that the Sale Agreement between him and the Promoter was executed on 15.11.2014. However, the suit was filed by some plaintiffs in O.S.No.4654/2004 in the City Civil Court Bengaluru in the year 2004 wherein, in the schedule of the Complaint at Para-8, 9, 10 and 11, the details of survey numbers and lands which were attached are mentioned and these survey numbers are the lands on which the project was to be taken up. Further, temporary injunction was granted by City Civil

Court on 26.07.2006 as prayed for to restrain the defendants (who, are landowners in this matter) from alienating plaintiffs' share in the property was granted, and this injunction was vacated by the City Civil Court against the Landowner in this suit in the year 2023. Hence, it is clear that the land dispute between landowner and certain other parties was very much pending until 2023 and it was incumbent upon the Promoter and the Landowner to have brought this to the notice of the Allottees at the time of entering into Agreement with the Allottee.

57. We find no reason, therefore, as to why the Allottees would agree to restrict not claiming interest only subsequent to 01.02.2019 and not prior to. If the Sale Deed for the apartment was executed then probably the claim for interest by the Allottees could have been restricted till the date when the Promoter obtain Occupancy Certificate and offered to execute Sale Deed. However, since the Allottees sought cancellation of the apartment due to delay in completion of the project on the part of the Promoter and on upon the Allottee knowing of the litigation regarding title dispute over the land between Promoter and amongst the landowners, he decided to withdraw from the project after due date of completion for the above reason and therefore, he would be entitled to interest on the amount paid by him on various dates

till the actual disbursement of the refund amount to the Allottees. We have perused email written by the Allottees to the Promoter on 24.07.2023, where he has clearly written that

"the entire family has undergone mental agony since the day we came to know about the property being BENAMI and attached to ED it is our hard earned money and booking was with full trust and faith in SOBHA.

While the aforesaid complaint is still pending and since I do not intend to either withdraw the complaint or come forward to take possession of the apartment, pending adjudication of the complaint, the email sent to me directing me to take possession of the apartment by citing provisions of RERA, which require an allottee to take possession is not only improper, but also speaks of how Sobha Limited wants to force me to take possession of the apartment while it has itself violated the provisions of RERA.

Furthermore, there is a threat of imposition of handling and care taking charges of Rs.10,000/- per month, if I do not come forward to take possession of the apartment, which if levied, will be illegal in view of the pendency of the complaint. I call upon you to withdraw the said email as well as the threat to impose the monthly handling and care taking charges."

It is clear from the above correspondence that actual reason for cancellation of the apartment on part of the Allottee and seeking refund was on account of litigation regarding the land and not because of any other personal reason of the Allottee.

58. In the next ground, the Promoter stated that out of the total amount paid by the Allottees, a sum of Rs.6,44,780/- is paid by the Promoter towards BESCO, BWSSB, GBWSP charges, which are mandatorily required to be paid to the competent authorities, and these amounts are not retained by the Promoter and hence the Allottees cannot claim interest on such amounts. Prima facie, it appears that these charges were part of the total sale consideration in the Construction Agreement and therefore the Allottees would have paid these charges to the Promoter.

59. It is not forthcoming, however, if the Promoter has passed on these amounts to the concerned authorities. The Allottees seem to have paid the amount towards BESCO, BWSSB, GBWSP charges to the Promoter, but the Sale Deed was not executed on account of reasons discussed above. Whether that amount or interest thereon has to be refunded to the Allottees or not is the issue at hand. It is upto the Promoter to establish whether the said charges have not been received by them from the Allottee or not. If the Allottees have paid the charges and not got the possession of the property, then the Promoter is liable to refund that amount also to the Allottees. If the Promoter has paid these charges to BESCO, BWSSB, the Promoter can either claim that amount from the subsequent buyer of the apartment or adjust in the total

consideration payable by the subsequent buyer of this apartment, or claim refund of the amount from the relevant authorities.

60. However, the present Respondent-Allottee, is entitled to obtain refund towards these charges also from the Promoter since he has paid the amount and the property has not been registered in his name. The interest on these charges may be refunded only from the dates when these charges were paid by the Allottees to the Promoter till the date these amounts were deposited by the Promoter to the concerned authorities. If the Promoter has still not deposited these amounts to the authorities, he is liable to pay interest on these amounts also to the Allottees.

: Discussion on Citations relied upon by Promoter :

61. With regards to the Citations relied upon by various parties, we shall first examine the Citations submitted by the Promoter and findings therein. In the first Citation produced in the matter of **Navin Raheja Vs. Shilpa Jain and Others in Company Appeal (AT)(Insolvency) No.864/2019 Order dated 22.01.2020**, the **Hon'ble National Company Law Appellate Tribunal** has observed that '*delay in granting approval by the Competent Authority cannot be taken into consideration to hold that the Corporate Debtor' defaulted in delivering the possession.*' The cited

matter refers to case pertaining to Company law, whereas the case before us pertains to RERA which is a 'welfare oriented legislation, essentially to protect, the interest of consumers in the Real Estate Sector.' Further, when the Promoter submitted application for Occupancy Certificate to the BBMP, the Competent Authority, the BBMP sent a demand notice to the Promoter to pay certain amounts towards ground rent charges etc., against which, the Promoter went to the Hon'ble High Court of Karnataka and the delay had occurred on that account and not because of delay due to negligence on the part of the Competent Authority. Merely inserting such delay as one of the conditions for invoking '*force majeure*' by the Promoter does not mean that it can be taken as ground for '*force majeure*'. As elaborated in Explanation under *Section 6* of the Act, **Force Majeure** in the context of RERA Act refers to *a case of war, flood, drought, fire, cyclone, earthquake or any other calamity caused by nature affecting the regular development of the real estate project.* Only the delay on account of these factors can be taken as valid grounds for limiting the liability of the Promoter. This being the factual situation, the law laid down in the case of **Navin Raheja Vs. Shilpa Jain and Others** (supra) will not come to the aid of the Promoter.

62. Next Citation relied upon by the Promoter is in the case of **Managing Director, Haryana State Industrial Development Corporation & Others Vs. Hari Om Enterprise** of **Hon'ble Apex Court** reported in **(2009) 16 SCC 208**. This Citation is also similar to previous Citation where the Promoter is trying to pass on the responsibility of handing over possession in time, upon state action/inaction. As reasoned in the above Citation, there was no undue delay on the part of the Competent Authority and therefore the Promoter cannot, in our considered view, take shelter from paying interest to the Allottee for the amount deposited by the Allottee to the Promoter, and the Allottee seeking cancellation of the allotment due to the delay and seeking refund of the amount paid by him along with interest.

62.1. Further, the cited matter pertains to a case where the entrepreneur did not take up construction of the industrial unit since physical possession was not handed over to the entrepreneur by the Haryana State Industrial Corporation. This case, clearly, will not apply to the matter at hand, since the land, in the matter at hand was obtained by the real estate Promoter towards Joint Development Agreement with some land owners, and there was no question about delay by any government authority in handing over land which delayed the completion of the project.

63. The next judgment cited by the Promoter in the case of **Supertech Ltd. Vs. Rajni Goyal** reported in **(2019) 17 SCC 681** of **Hon'ble Supreme Court** pertains to the case where the purchaser delayed in taking over possession of the apartment. In the present case, however, there was clear delay in handing over possession of the apartment by the Promoter to the Allottee on account of reasons such as litigation regarding land, case under Benami transaction and direction from the Dy.Commissioner of Income Tax to the Sub-Registrar not to alienate any property on account of the suspected Benami transaction. The Allottees had valid reasons for withdrawing from the project and seeking refund of the amount with interest. Therefore, this Citation also will not, in our view, come to the aid of the Promoter.

64. The next Citation of **Lanco Hills Technology Park (P) Ltd. Vs. Manisha Balkrishna Kulkarni** reported in **(2020) 11 Supreme Court Cases 699**, again refers to a situation where the delay was attributed to '*force majeure*' event. We have dealt with applicability of '*force majeure*' clause in the Citation pertaining to the case of *Navin Raheja Vs. Shilpa Jain and another* and established that '*force majeure*' clause has been detailed in Explanation to Section-6 of RERA Act and therefore responsibility of obtaining necessary Occupancy Certificate and approval from

the Competent Authority is that of the Promoter under Section 11(4) of the RERA Act and therefore this Citation also will not come to the rescue of the Promoter.

65. In the next Citation relied upon by the Promoter in the matter of **Joint Action Committee of Air Line Pilots' Association of India Vs. DG of Civil Aviation** reported in **(2011) 5 Supreme Court Cases 435**, finding of the Hon'ble Supreme Court is that '*the doctrine of election is based on the rule of estoppels – the principle that one cannot approbate and reprobate inheres in it.*' The finding given is, that the party cannot blow hot and cold by taking inconsistent stands and prolong proceedings unnecessarily. In the present case at hand, there is no such conduct on the part of the Allottees as they have paid amount to execute Sale Deed by the Promoter in their name and had to resort to seeking cancellation on account of the fact that there was delay in completion of the project as per the terms of the Agreement for Sale, and the Allottee is clearly at liberty to withdraw from the Project under Section 18 of RERA Act in such a situation. Therefore, this Citation also does not have much relevance in the present case at hand.

66. In the Written Arguments submitted by the learned Counsel for the Promoter, he has also relied on judgment of **Hon'ble Apex Court** in the case of **Godrej Projects Development Ltd. Vs. Anil Karlekar and Ors.** reported in **2025 INSC 243 [Civil Appeal 3334/2023]** referring to Para-41 to 43 of the said Judgment by stating that the interest has to be calculated only after admitted date to handover of the possession as per the Sale Agreement and until the date of issuance of Occupancy Certificate. We have already explained in reasoning in the foregoing sections of this order that if the Allottee does not intend to withdraw from the project, the interest will be payable after the due date of completion and until offer for handing over the possession is made by the Promoter, after obtaining Occupancy Certificate, to execute the Sale Deed in favour of the Allottees. However, in this case, the Allottees sought cancellation of the apartment and wanted to withdraw from the project entirely due to the delay in completion of the project on the part of the Promoter and on account of Allottee learning about the litigation regarding dispute over the land of the title. The Allottee is, therefore, entitled to the interest on the amount paid by him on various dates till actual disbursement of the refund amount and not after the due date of completion.

: Discussion on Citation relied upon by RERA :

67. The Respondent No.1- RERA in their Written Argument have relied on Citation in **M/s.Newtech Promoters and Developers Pvt.Ltd. Vs. State of U.P. and Ors. (supra)** wherein the **Hon'ble Supreme Court** has clearly delineated the power of Adjudication between the Authority and the Adjudicating Officer, according to which, it is the Authority which has the powers to give a ruling when it comes to refund of the amount and interest on the refund amount. In view of this, the Authority is well within its right to pass the Order pertaining to refund, upon cancellation of the allotment sought by the Allottee, and therefore the impugned order does not become illegal or invalid on account of 'jurisdiction' in view of the said judgment.

68. With these observations, Point No.(i) is answered in the negative and we proceed to pass the following:

ORDER

- (i) Appeal filed by the Promoter is hereby dismissed;
- (ii) The impugned order dated 14.09.2023 in CMP/210623/0008029 passed by the 1st Respondent-Authority is hereby confirmed;
- (iii) The Registry is directed to release the amount in deposit before this Tribunal, including the interest

accrued thereon by issuing Bankers Cheque/DD, in favour of the Allottees, after the expiry of the appeal period, by following the due procedure and it is open to the Allottees to comply with the provisions of the Income Tax Act, if applicable.

- (iv) In view of disposal of the Appeal, all pending I.As. if any, stand rejected, as they do not survive for consideration;
- (v) The Registry shall comply with the provisions of Section 44 (4) of the RERA Act.

There is no order as to costs.

Sd/-
HON'BLE JUDICIAL MEMBER

Sd/-
HON'BLE ADMINISTRATIVE MEMBER