IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 479 OF 2021

CCI Projects Private Limited]
Office at Rivali Park, CCI Compound, Western]
Express Highway, Borivali East,]
Mumbai 400 066.] **...Petitioner**

Versus

1. **Mr. Rajesh Kumar Chaudhary**]
2. **Mrs. Sapna Chaudhary**]
   Both having address at]
   C-1001, Ekta Meadows, Off Western Express]
   Highway, Siddharth Nagar, Borivali (East),]
   Mumbai – 400066.]
3. **Mr. Abhijit Kumar Phanikumar**]
4. **Ms. Nandini Hiten Khatau**]
5. **Ms. Maithili Hiten Khatau**]
6. **Mr. Pradip Haridas Udeshi**]
7. **Ms. Nayna Bharat Pasta**]
   All having office at Rivali Park,]
   CCI Compound, Western Express Highway,]
   Borivali (East), Mumbai – 400 066.] **...Respondents**

Mr. Naushad Engineer, Senior Advocate i/b Wadia Ghandy and Co. for Appellant.
Mr. Harshad Bhadbhade for Respondents.

Coram : **Sharmila U. Deshmukh, J.**

Reserved on : **9th April, 2026.**

Pronounced on : **18th June, 2026.**

Judgment :

1. The Second Appeal is filed at the instance of the promoter, challenging the judgment dated 10th March, 2021 passed by Maharashtra Real Estate Appellate Tribunal, Mumbai [for short, ***"Appellate Tribunal"***] quashing the order dated 17th September, 2018 in Complaint No. CC006000000054636 passed by MahaRERA and directing the promoters to pay interest for delayed possession. For sake of brevity, the parties are referred to as Promoter and allottees.

2. By order dated 11th December, 2025, this Court framed the following substantial questions of law:

> "(i) Whether in view of provisions of Section 55 of the Indian Contract Act, 1872, the acceptance of delayed performance would disentitle the promisee from compensation claimed on account of non-performance of contract at the agreed time?
>
> (ii) Whether the provisions of Section 18 of the Real Estate (Regulation and Development) Act, 2016 will override the provisions of Section 55 of the Indian Contract Act, 1872?
>
> (iii) Whether in view of provisions of Section 32 of Indian Contract Act, 1872, the force majeure events listed in the contract could have been ignored?"

3. The facts of the case are that allottees filed a complaint under Section 31 of the Real Estate (Regulation and Development) Act, 2016 [for short, ***"RERA Act"***] with the Maharashtra Real Estate Regulatory Authority [for short, ***"1st Authority"***] stating that the allottees had booked an apartment in building known as Wintergreen in the project

developed by the Promoters. On 1st October, 2011, the allotment letter was issued by the Promoters which mentioned the date of possession as 30th June, 2015 with grace period of six months. The payment schedule which was mentioned in Annexure-1 of allotment letter provided for construction based payment schedule with payment of 5% which would be the balance payable on offer for possession. On 26th March, 2013, an agreement was entered into between the promoters and the allottees and as per Clause 17 thereof, the promoters agreed to give possession to the allottees on or before February, 2016.

4. The grievance was that till the filing of the complaint which was on 23rd May, 2018, the possession was not given. The total flat consideration was Rs. 1,82,18,640/- and the allottees had paid part consideration of Rs 1,73,07,708/- and apart from that had also paid the sum of Rs. 9,44,160/- towards stamp duty and registration charges on 26th March, 2013. The service tax, VAT, GST and TDS amounts were also paid and thus the allottees have paid sum of Rs. 1,91,59,215/- to the promoter.

5. As per the project registration under RERA, the proposed date of completion of project was 31st December, 2018 and revised proposed date of completion was 31st December, 2019. The allottees sought the relief of handing over possession of the apartments along with

payment of interest at the rate of 10.35% on the amount paid from the agreed date of possession i.e. from 1st March, 2016 till the date of actual possession and legal expenses of Rs. 1,00,000/-.

6. By order dated 17th September, 2018, the 1st Authority noted the submission of promoters that the construction work of project could not be completed for reasons beyond the promoter's control and that the construction would be completed before the revised completion date set out in the registration web page. It further noted that in respect of some other complaint, the promoter had already completed the project by December, 2019 and MahaRERA has passed various orders allowing the promoter to complete the project first with liberty to allottees to demand the interest at the relevant stage as per the provision of Section 18 of RERA Act. The 1st Authority directed the promoter to handover the apartments with occupancy certificate to complainants before the period of 31st December, 2019 and that the allottees shall be at liberty to demand interest at an appropriate stage under Section 18 of the RERA Act for the delay in completing the project and disposed of the complaint.

7. As against this, the allottees approached the Appellate Tribunal and by the impugned judgment dated 10th March, 2021, the Appellate Authority quashed and set aside the order of the RERA Authority allowing the complaint and directing the following :

> "**(a)** Promoter shall pay an interest @ State Bank of India's highest Marginal Cost of Lending Rate plus 2% to Allottees on the amount paid to Promoters for delayed period of possession from 1st March, 2016 till handing over possession of the flat to Allottees.
>
> **(b)** Promoter shall pay Rs. 25,000/- towards cost to the Allottees and shall bear own costs."

8. The Appellate Authority held that there is no authentic evidence to show that the allottees had accepted the revised date of possession or had acquiesced or waived their right to interest. It held that the allottees stayed with the project despite the promoters failing to give the possession as per the agreed date and gets the statutory right to claim interest for delayed possession. It held that the promoters unilaterally extended the date of possession which is not binding on the allottees. In a concurrent judgment, the non-judicial member agreed with the finding and conclusion recorded by judicial member that allottees are entitled to interest for delayed period of possession.

9. Mr. Naushad Engineer, learned Senior Advocate appearing for Appellant would submit that as per the allotment letter, the possession was to be handed over by 31st December, 2015 and subject to force majeure events by February, 2016. He points out that the schedule of payments accordingly stipulated that the full payment will be made by February, 2016. He submits that on 15th April, 2015, the Promoter addressed a communication to the allottees pointing out

that there is delay due to reasons beyond the control of the promoter and possession would be handed over by March, 2018. He submits that there was no denial or objection and in fact, the allottees accepted the delayed payment schedule as per the altered delayed timelines. He would further submit that on 14th March, 2017, the promoters addressed a letter to allottees stating that the revised date of possession is December, 2018 to which also there was no response or denial. He submits that on 9th June, 2017, the promoter communicated with the allottees revising the payment schedule for balance installments stating that original allottees were to pay 5% towards six months from completion of terrace slab which would have fallen due on 9th June, 2017, which is revised to March, 2018 and last 5% will be paid on possession. He submits that by this letter, the allottees were put to notice that by reason of altered date of possession, timelines were also being reworked. He submits that the allottees accepted the revised payment schedule and made 5% installment payment on 30th March, 2018.

10. He submits that the flat purchaser's agreement was pre-RERA and by accepting the delayed performance, there is an implied consent given to revised date of possession. He submits that by communication dated 19th August, 2017 addressed by the promoters to the allottees, it was reiterated that the final date of delivery is December, 2019 and the

allottees were called upon to give an acknowledgment to the said letter as a token of acceptance. He would further point out that in the said communication, it was clearly stated that though as per RERA, the final date of delivery is December, 2019, the building is likely to be completed in or about December, 2018 and such early completion would lead to earlier demands and as such payments would have to be made as per the milestones determined. He submits that even this letter was not responded by the allottees. He submits that despite the acceptance of delayed performance, complaint was filed by the allottees with MahaRERA. He submits that on 7th April, 2021, the occupation certificate was obtained and possession was offered on 13th April, 2021 and has been taken on 18th June, 2021.

11. He submits that as the promoter had informed the allottees about delay and the substituted performance, the allottees had the duty to speak and to either confirm or to reject the substituted performance. He submits that if the party chooses to remain silent, he forfeits his right to contend that he did not agree to the revised date. He submits that it is clear from the facts of the present case that the allottees by their conduct had accepted the substituted performance and the allottees did not choose to repudiate or terminate the contract and had made the payments as per the revised timelines. Drawing attention of this Court to Section 55 of the Indian Contract Act, 1872,

he submits that once allottees have accepted the delayed performance, no rights inures to the allottees to claim compensation or interest unless he puts the promoter to notice that he is going to claim compensation for delayed performance. He submits that when it was pointed out to the allottee that the promoter is not in position to comply with the timelines, the allottee has the option to either rescind the contract or to continue the contract and unconditionally accept the revised date or to continue with the contract and claim compensation for delayed performance. He submits that if he chooses the third option then under Section 55 of the Indian Contract Act, 1872 [for short, ***"the Contract Act"***] the allottee, at the time of acceptance of delayed performance, must give notice to the promoter of his intention to claim compensation for delay.

12. He would submit that the interest has been awarded from 1st March, 2016 till the date of possession i.e. 18th June, 2021. He submits that as the allottees by their conduct had accepted and made the payment as per the revised timelines i.e. up to 31st December, 2019, there is no question of allottees being entitled to any interest upto 31st December, 2019.

13. He would further submit that under a circular of RERA dated 18th May, 2020, period of six months has been considered as force majeure period which is to be treated as moratorium for the purpose of

calculating the interest under Section 18 of RERA Act and therefore, the period from 1st February, 2020 till 30th June, 2020 will also have to be excluded. He submits that the promoter was therefore, liable to pay interest only from 1st July, 2020 to 13th April, 2021, being the date on which the possession was offered.

14. He would further submit that there is no inconsistency between Section 18 of RERA Act and Section 55 of the Contract Act as Section 18 of RERA Act does not contemplate a situation where the delayed or substituted performance is accepted and it is in such a situation that Section 55 of the Contract Act would apply and therefore, the allottees cannot claim compensation for period of delay which he ratifies or elects. He would further point out that under Section 88 of RERA Act, the application of other Acts is not barred and therefore, the RERA Act is in addition to and not in derogation of the Contract Act.

15. He would further submit that Section 18 of RERA Act gets triggered once the agreed date for handing over of possession has passed and has no role in determining the agreed date, which is to be seen either from the written agreement or the correspondence and conduct of the parties and in that regard, Section 55 or Section 62 of Contract Act becomes relevant in interpreting the agreement between the parties. He submits that provisions of Section 18 of RERA Act and Sections 55 and Section 62 of the Contract Act operate entirely in

different spheres and therefore, there is no question of inconsistency between RERA Act and Contract Act. In support, he relies upon the following decisions :

> ***Bombay Dyeing and Manufacturing Company Limited vs. Ashok Narang and Another***[1]
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> ***Arosan Enterprises Ltd. vs. Union of India***[2]
>
> ***State of Kerala vs. M. A. Mathai***[3]
>
> ***Hindustan Petroleum Corporation vs. Batliboi Environmental Engineers Ltd.***[4]
>
> ***Dr. Miss Kunda d/o Khemraj Choudhary vs. Mathurabai w/o Mahadu Jadhav***[5]
>
> ***Municipal Corporation of Delhi vs. Gurnam Kaur***[6]
>
> ***Director of Settlements, AP vs. Mr. Apparao***[7]
>
> ***Sarva Shramik Sanghatana vs. State of Maharashtra***[8]

16. *Per contra,* Mr. Harshad Bhadbade, learned counsel appearing for Respondents would submit that the promoter is trying to seek advantage of its own wrong of failure to give possession as per the agreed date. He would submit that unilateral extension of revised date of possession by the promoter is not binding upon the allottees. He

1 Second Appeal (St.) No. 4996 of 2020, decided on 30th August, 2021.
2 (1999) 9 SCC 449.
3 (2007) 10 SCC 195.
4 2008 2 MH LJ 542.
5 (2016) 3 MH LJ 602.
6 (1989) 1 SCC 101.
7 (2002) 4 SCC 638.
8 (2008) 1 SCC 494.

submits that the date of agreement in the context of Section 18 of RERA Act is required to be ascertained from the Agreement for sale entered into between the parties, which is February, 2016, regardless of any unforeseen events which is not attributable to the allottees. He submits that there is no question of application of Section 55 of the Contract Act in view of express provision of Section 18 of RERA Act which has been held to confer right on the allottee to seek interest on delayed possession.

17. He submits that agreements were executed in pre-RERA regime and possession could be handed over only with the occupation certificate. He submits that as RERA Act is retroactive in operation, even if the Agreements were entered pre-RERA, the provisions of Section 18 would apply. He submits that the object of RERA Act is to protect the interest of the consumers in the real estate sector and the provisions have to be interpreted to further the stated object. He would draw attention to Section 11(d) (e), Section 11(4) (b) and Section 19(2) of RERA Act, he submits that it was the duty of the promoters to update the allottees about the occupation certificate. He would further point out the provisions of Section 89 of RERA Act and would submit that the provisions of RERA Act has overriding effect notwithstanding anything inconsistent contained in any other law for the time being in force. He submits that the Contract Act is general act

whereas the RERA Act is a special Act and therefore, provisions of Section 18 of RERA Act would prevail.

18. He submits that under Section 8 of MOFA, the allottee could only exit from the project whereas under Section 18 of RERA Act, option is given to either exit from the project or to continue with the project and in case of the allottee continuing with the project, he is entitled to interest for delayed possession. He submits that the payment in the present case was construction linked and delay of construction meant delayed payments. He submits that as the payment timelines were not linked to specific dates, it cannot be said that there was any acceptance of delayed performance.

19. He submits that Section 55 of the Contract Act entitles the promisee to compensation which is the scenario if the allottees exit from the project and if the allottees continue with the project, they are entitled to interest. He would submit that in the case of ***Newton Promoters and Developers Pvt. Limited vs. State of UP and Others***[9], the Hon'ble Apex Court has held that the allottee has an unqualified right to seek refund of an amount with interest under Section 18(1)(a) and Section 19(4) of the RERA Act, which is not dependent on any contingencies or stipulations thereof. He submits that the decision in the case of ***Arosan Enterprises Limited vs. Union of India*** (supra)

9 2021 SCC OnLine SC 1044.

relied upon by Mr. Engineer, it was held that where the contract itself provides for extension of time, the same cannot be termed to be essence of the contract and the default in such case, does not make the contract voidable either.

20. He has taken this Court in detail through the impugned order and would point out the findings of fact about absence of any evidence to show that the allottee has accepted revised date of possession. He submits that before the Appellate Authority, the plea raised was of waiver and acquiescence and for the first time before this Court, the plea of Section 55 of the Contract Act is raised. He submits that the Appellate Authority has held that the allottees have not relinquished their right to claim interest in the delayed possession and has specifically held that the promoters unilaterally extended date of possession which is not binding on the allottees.

21. He would submit that the circular of RERA relied upon is not applicable as the possession was to be handed over pre-covid.

22. In rejoinder, Mr. Engineer would submit that the case of the allottees is that time is of essence which gives him right to exit and treat the contract as voidable and Section 55 of the Contract Act contemplates such a case. He submits that there were reciprocal obligation to be performed by the parties and allottees cannot claim that because of change of law, the provisions of Section 55 of Contract

Act will not apply. He submit that there is no requirement to update every single buyer of the construction. He submits that the Government circular will apply in the present case as the circular specifically provides that the force majeure period will be treated as moratorium period for the purpose of calculating interest under Section 18 of RERA Act.

REASONS AND CONCLUSION :

23. The first substantial question of law framed by this Court seeks an answer as to whether there was acceptance of delayed performance and secondly, whether such acceptance of delayed performance disentitles the allottees from claiming compensation under Section 18 of RERA Act in the absence of notice by the allottees of their intention to do so as contemplated by Section 55 of Contract Act.

24. The RERA Act was enacted for regulating and promoting real estate sector and to infuse transparency in the sale of real estate projects and to protect the interest of consumer in the real estate sector providing mechanism under the Act itself for adjudicating the grievances. The scheme of RERA Act statutorily regulates the development project creating rights and obligations aimed at ensuring that the flat purchaser's interest is protected by imposing obligations on the promoters to complete the development project in a time bound schedule and conferring various rights on the allottees upon

failure of the promoter to perform its obligations.

25. Section 18 of RERA Act, reads as under :

> **"18. Return of amount and compensation.**—(1) If the promoter fails to complete or is unable to give possession of an apartment, plot or building,—
>
> (a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or
>
> (b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason, he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:
>
> Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed.
>
> (2) 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 subsection shall not be barred by limitation provided under any law for the time being in force.
>
> (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."

26. Section 18 of RERA Act codifies the summary nature of the

proceedings by discharging the onus of proof of loss upon failure by the Promoter to hand over possession as per terms of the agreement or date specified therein. It gives an option to the allottee to exit from the project with refund of the amounts paid alongwith interest including compensation or to stay in the project and get interest for every month of delay till handing over possession. Section 18 thus confers a statutory right of the allottees to interest for the delayed possession, if they choose to remain with the project.

27. Section 55 of Contract Act deals with the consequences of failure to perform the contract at fixed time in cases where time is of essence and where time is not of essence. Section 55 reads as under:

> "**55. Effect of failure to perform at fixed time, in contract in which time is essential.—** When a party to a contract promises to do a certain thing at or before a specified time, or certain things at or before specified times, and fails to do any such thing at or before the specified time, the contract, or so much of it as has not been performed, becomes voidable at the option of the promisee, if the intention of the parties was that time should be of the essence of the contract.
>
> **Effect of such failure when time is not essential.**—If it was not the intention of the parties that time should be of the essence of the contract, the contract does not become voidable by the failure to do such thing at or before the specified time; but the promisee is entitled to compensation from the promisor for any loss occasioned to him by such failure.
>
> **Effect of acceptance of performance at time other than that agreed upon.**—If, in case of a contract voidable on account of the promisor's failure to perform his promise at the time agreed, the promisee accepts performance of such promise at any time other than that

> agreed, the promisee cannot claim compensation for any loss occasioned by the non-performance of the promise at the time agreed, unless, at the time of such acceptance, he gives notice to the promisor of his intention to do so."

28. In cases where time is of essence, Section 55 of Contract Act provides that the contract, if not performed, becomes voidable at the option of the promisee, who forgoes the right to compensation for any loss occasioned by the non-performance in absence of notice at the time of acceptance of delayed performance. Where time is not of essence, the contract is not voidable by failure to perform at specified time, however the promisee is entitled to compensation.

29. In the present case, the flat purchaser's agreement has been executed under Maharashtra Ownership of Flats Act, 1963. Section 4 of MOFA Act prescribes the particulars of flat purchaser agreement to include *inter alia* the date on which the possession shall be handed over to the flat purchaser. The statutory provisions of RERA Act providing for registration of the project requires the promoter to give the time period within which the project shall be completed and provides for consequences of failure to hand over possession as per the date duly specified. Clause 17 of the flat purchaser's agreement sets outs that the possession of the premises shall be given by February, 2016. The consequence of failure to hand over possession is provided in Clause 18 giving the purchaser the option to terminate the agreement.

Clauses in the agreement make it clear that the intention of the parties was to make time essence of contract. As the flat purchaser's contract is of the nature demanding compliance with the fixed date for performance and provides consequence for non-compliance, time is the essence of the contract.

30. The consequence of failure to hand over possession by the date specified in the agreement in respect of real estate project is provided under Section 18 of RERA Act. Plain reading of Section 18 does not indicate that the rights conferred on the allottee upon failure of the promoter to hand over possession by the date duly specified is qualified by any contingency. Neither any provision of RERA Act has been demonstrated which would have the effect of qualifying the rights under Section 18.

31. Section 18 of RERA Act gives option to the allottees upon failure of the promoter to hand over possession by the date specified in the agreement or as per the terms of the agreement either to withdraw from the project with refund of amounts paid along with interest including compensation or to stay with the project and get interest for every month of delay. In the context of real estate project, where the performance of promise of the promoter is to hand over possession by a specified date, the right given by Section 18 of RERA Act to continue with the project is nothing but permitting acceptance of delayed

performance without forgoing the allottee's right to claim interest for every month of delay.

32. Section 55 of Contract Act permits the same option to the promisee when it gives the right to the promisee to accept the performance of the promise at a date other than that agreed but qualifies the right to claim compensation only upon giving notice while accepting delayed performance.

33. If the right under Section 18 of RERA Act is an unqualified absolute right, the acceptance of revised timelines and delayed performance cannot lay fetters on the right to claim interest. The Hon'ble Apex Court in ***Imperia Structures Limited vs. Anil Patni***[10] while interpreting Section 18 of RERA Act, has held in paragraph 25 as under:

> "**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 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) …….".

10 (2020) 10 SCC 783.

34. The above interpretation placed on Section 18 of RERA Act was noted in the case of ***Newtech Promoters and Developers Private Limited vs. State of U.P.*** (supra). The Hon'ble Apex Court was considering *interalia* the issues as to the retroactive operation of RERA Act and the jurisdiction of the Regulatory Authority to direct refund under the provisions of RERA Act including Section 18 and other ancillary issues. The Hon'ble Apex Court considered the statutory scheme of RERA Act and observed in paragraph 24 as under:

> **"24.** 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/homebuyer, 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." (Emphasis supplied).

35. The Hon'ble Apex Court has interpreted the statutory provisions of Section 18 and Section 19(4) of RERA Act noting the legislative intent. It has held that Section 18 of RERA Act confers an unqualified, unconditional absolute right upon the allottee to claim under Section

18 of RERA. Though it is sought to be contended by Mr. Engineer, that the decision in ***Newtech Promoters and Developers Pvt. Ltd. vs. State of UP*** (supra) was not founded on considerations which arise in the present case, the Hon'ble Apex Court has interpreted the statutory scheme of the RERA Act to hold that the right of allottee under Section 18(1)(a) of the Act is unqualified right not affected by any contingencies or stipulations or an unforeseen event or even stay orders of the Court or Tribunals. On appreciation of the legislative intent, it places the right of allottee to seek refund on demand beyond the impact of any enactment by interpreting the right to be an unqualified absolute right. The interpretation of Section 18 of RERA Act by the Hon'ble Apex Court would bind this Court.

36. As the Hon'ble Apex Court has held the provisions of Section 18 of RERA Act to be beyond the pale of any qualification or condition, Section 55 of Contract Act, making the right to demand interest conditional upon giving notice to the promisor of his intention, would have the effect of qualifying the absolute right of the allottee under Section 18 of RERA Act, which runs contrary to the statutory provisions and the interpretation by the Hon'ble Apex Court.

37. Under the provisions of Section 18 of RERA Act, primacy is given to the due date specified in the agreement by linking the failure to hand over possession to the terms of agreement or as per the date

specified, whereas Section 55 of Contract Act contemplates a situation of extension of time *de-hors* the date specified in the agreement. The unqualified absolute right of the allottee stands statutorily recognised and the continuation with the project, which if expressed in the language of Section 55 of Contract Act, constitutes acceptance of delayed performance, does not impact the unfettered statutory right conferred by Section 18 of RERA Act to claim interest.

38. The Appellate Authority has come to a finding of fact that there is no authentic evidence to show that the allottees accepted revised date of possession or that the allottees have in fact acquiesced. The revised timelines were unilateral and the contention of Mr. Engineer of acceptance of delayed performance is premised on the basis that by accepting the revised dates of payment in accordance with revised schedule, the allottees have accepted the delayed performance by their conduct.The payment schedule agreed between the parties was construction linked payments and not linked to specific dates. Unless and until, the specified construction was carried out, no right accrued to the promoter to claim any money and hence, the contention that there were revised timelines is unacceptable.

39. The communication of 15th April, 2015 informs the allottees about the delay with an assurance to hand over final possession by March, 2018. The communication of 18th March, 2017 assures

possession by December, 2018. The communication of 19th August, 2017 informs allottees about RERA date of handing over possession of December, 2019 and that they would endeavor to complete the project by December, 2018 and such early completion would lead to early demand for payments. The communications, at the highest, conveys information about the delay and gives assurance to complete the project. The revised timelines are couched in a manner so as to be in nature of information requiring no further acts by allottees.

40. Even accepting that there was acceptance of revised date of possession, considering Section 18 of RERA Act, the allottees were well within their rights to accept the delayed performance without foregoing their right to interest for delayed possession. The possession was offered to the allottees on 13th April, 2021 and taken on 18th June, 2021, which was permitted under Section 18 of RERA Act.

41. As the terms of the agreement provided for the possession to be handed over by February, 2016, the Appellate Tribunal has rightly directed payment of interest from March, 2016 till handing over of possession.

42. The contention of Mr. Engineer is that Section 18 of RERA Act has no role to play in determining what is the agreed date, which has to be interpreted in terms of Section 55 of Contract Act. In view of the discussion above, the said contention is unacceptable. Going further

and dealing with the same, it needs to be noted that the claim for interest is to be filed with the Regulatory Authority as opposed to the Adjudicatory Authority, which is tasked with the function of adjudicating compensation. Section 38 of RERA Act confers the power on the Regulatory Authority to impose penalty or interest for contravention of obligations by the promoters, the allottees etc or the rules or regulations made thereunder.

43. Rule 6 of Maharashtra Real Estate (Regulation and Development) (Recovery of Interest, Penalty, Compensation, Fine payable, Forms of Complaints and Appeal, etc.) Rules, 2017 provides for manner of filing complaints with the Authority and the manner of holding of inquiry by the Authority and Rule 6(2)(c) provides that on the date so fixed, the Authority to explain the Respondent or his authorized representative about the alleged contravention and if the Respondent pleads guilty, the Authority shall record the plea and pass such orders including the imposition of penalty and if he does not plead guilty and contests then the Authority must demand explanation from him. Rule 6(2)(h) provides that where upon consideration of evidence produced before it, the Authority is satisfied that the Respondent is in contravention of provisions of Act or rules and regulations made therein, it shall pass such orders including imposition of penalty as it may think fit and if not, dismiss the complaint. The

provisions indicate the summary nature of inquiry contemplated to be conducted while deciding Section 18 complaint.

44. The Hon'ble Apex Court in ***Newtech Promoters and Developers (P) Ltd.*** (supra), considered whether the jurisdiction to direct return/refund of amount to the allottee under Sections 12, 14, 18 and 19 of RERA Act vests with the Regulatory Authority or Adjudicating Authority. It noted the delineation of jurisdiction conferred upon the Adjudicating Authority and Regulatory Authority under RERA Act. It held in paragraph 76 as under:

> "**76.** The further submission made by the learned counsel for the appellants is that the return of the amount adversely impacts the promoter and such a question can be looked into by the adjudicating officer in the better prospective. The submission has no foundation for the reason that the legislative intention and mandate is clear that Section 18(1) is an indefeasible right of the allottee to get a return of the amount on demand if he promoter is unable to hand over possession in terms of the agreement for sale or failed to complete the project by the date specified and the justification which the promoter wants to tender as his defence as to why the withdrawal of the amount under the scheme of the Act may not be justified appears to be insignificant and the Regulatory Authority with summary nature of scrutiny of undisputed facts may determine the refund of the amount which the allottee has deposited, while seeking withdrawal from the project, with interest, that too has been prescribed under the Act, as in the instant case, the State of Uttar Pradesh has prescribed MCLR +1% leaving no discretion to the Authority and can also claim compensation as per the procedure prescribed under Section 71(3) read with Section 72 of the Act."

45. The decision makes it clear that the legislative intent was to

invest the Regulatory Authority with the jurisdiction to decide the complaints under Section 18 of RERA Act by conducting summary nature of scrutiny of undisputed facts, which may not fit in the scheme of determination of agreed date of possession in context of Section 55 of Contract Act, which would require an adjudicating process.

46. Perusal of the statutory provisions of RERA Act would indicate that the date referable to Section 18(1) of the Act as the date specified in the agreement is sacrosanct and where the project is ongoing and covered by the RERA Act, the only manner in which the extension can be sought is under Section 6 of RERA Act by extension of registration. Section 18 of RERA Act confers an unqualified absolute right upon the allottee to accept delayed performance without foregoing their right to claim compensation for every month of delay, which right is not affected by non issuance of notice of intention to claim compensation. The first substantial question of law is answered accordingly. In light of the discussion above, the Appellate Authority has rightly granted interest for every month of delayed performance.

47. In so far as the second question of law as to the overriding effect of Section 18 of RERA Act *qua* Section 55 of Contract Act, the contention of Mr. Engineer is that there is no conflict between the two provisions as the question is what is the agreed date for handing over possession as the revision of timelines was pre-RERA. In ***Newtech***

Promoters and Developers Pvt Ltd (supra), the Hon'ble Apex Court considered whether RERA Act is retrospective or retroactive in its operation and legal consequences and held in paragraph 40 as under:

> **"40.** The clear and unambiguous language of the statute is retroactive in operation and by applying purposive interpretation rule of statutory construction, only one result is possible i.e. the legislature consciously enacted a retroactive statute to ensure sale of plot, apartment or building, real estate project is one in an efficient and transparent manner so that the interest of consumers in the real estate sector is protected by all means and Sections 13, 18(1) and 19(4) are all beneficial provisions for safeguarding the pecuniary interest of the consumers/allottees. In the given circumstances, if the Act is held prospective then the adjudicatory mechanism under Section 31 would not be available to any of the allottees for an ongoing project. Thus it negates the contention of the promoters regarding the contractual terms having an overriding effect over the retrospective applicability of the Act, even on facts of this case."

48. The Hon'ble Apex Court has held that RERA Act being retroactive will apply after getting the ongoing projects and future projects registered under Section 3 to prospectively follow the mandate of RERA Act and specifically negated the contention of the contractual terms having an overriding effect over the retrospective applicability of the Act.

49. The retroactive nature of RERA Act would result in creating new obligations under Section 18 applicable to the flat purchaser's agreement. Section 18 confers a right on the allottees to claim interest for every month of delay, where the possession is not handed over by

the due date, by continuing with the project. To express Section 18 of RERA Act in the language of Section 55 of Contract Act, is that even though the flat purchaser's agreement is voidable at the option of the allottee as the possession was not handed over by due date, by continuing with the project, the allottee accepts the performance at a time other than that agreed. The distinction between Section 18 of RERA Act and Section 55 of Contract Act comes upon such acceptance and where Section 18 confers right upon the allottee to continue with the project and be entitled to claim interest for every month of delayed possession, Section 55 permits compensation to be claimed only when he gives notice to the promoter of his intention to do so. Whereas Section 18 of RERA Act gives an unqualified absolute statutory right to claim interest unimpeded by any condition, Section 55 of Contract Act lays fetters on that right making it subject to giving notice of intention to claim compensation. The inconsistency between the two provisions appears on the aspect of right to claim compensation.

50. RERA Act being a special enactment will prevail over Contract Act, a general law. Section 89 of RERA Act gives it an overriding effect over anything inconsistent with the other laws and the retroactive application of RERA Act would impose an obligation on the promoter to pay interest for the delayed possession computed from the date of

handing over possession as specified in the agreement even in the absence of any notice to the promoter by the allottee of its intention to do so. The decisions cited by Mr. Engineer analysing the provisions of Section 55 of Contract Act did not arise from consideration of Section 18 of RERA Act making the decisions distinguishable on facts.

51. Coming to the third question of law as to whether the force majeure events listed in the contract could be ignored, Covid 19 pandemic falls within the ambit of force majeure clause. The date of handing over possession under the agreement for sale was February, 2016. Subsequently by communications, the Promoter revised the timelines and as per RERA registration, the date of handing over possession was December, 2019. Section 32 of Contract Act governs the position when the performance is impacted by force majeure event. The force majeure event of Covid-19 was subsequent to the due date of performance by the Appellant and did not impact the performance of the contract by the Promoter.

52. Mr. Engineer has emphasised on the RERA Order dated 18th May, 2020 seeking exclusion of period of six months which was clarified to be treated as moratorium period for purpose of calculating interest under Section 18 of RERA. In ***M/s. Pragatej Builders and Developers Pvt Ltd vs Abhishek Anju Sukhadia***[11]**,** the Co-ordinate Bench of this

11 Second Appeal No. 688 of 2023 and Second Appeal No. 689 of 2023, decided on 23rd January, 2024.

Court has considered the circulars issued by MahaRERA for moratorium during Covid-19 pandemic. It held that where the possession was to be handed over before the Covid-19 pandemic has held that the subsequent Covid-19 pandemic, lockdown cannot come to the aid of the promoter for claiming any relief for payment of interest and it cannot seek to take advantage of Covid 19 pandemic to escape the liability to pay interest. As the issue is settled by the decision of the Co-ordinate Bench, the same does not constitute substantial question of law.

53. In light of the above discussion, the substantial questions of law are answered as under:

> **(a)** Under the provisions of Section 18 of RERA Act, the handing over possession as per terms of agreement or as per the date specified is sacrosanct remaining unqualified by any contingencies outside the terms of the agreement and is not affected by the acceptance of delayed performance. The allottee would be well within their statutory right to claim interest for every month of delayed possession for the period specified in the flat purchaser's agreement till the date of handing over possession.

(b) Whereas Section 18 of RERA Act gives an unqualified absolute statutory right to claim interest unimpeded by any condition, Section 55 of Contract Act lays fetters on that right making it subject to giving notice of intention to claim compensation. The inconsistency between the two provisions is on the aspect of claim of compensation. RERA Act being a special enactment will prevail over Contract Act, a general law. Section 89 of RERA Act gives it an overriding effect over anything inconsistent with the other laws and the retroactive application of RERA Act would impose an obligation on the promoter to pay interest for the delayed possession computed from the date of handing over possession as specified in the agreement even in the absence of any notice to the promoter by the allottee of its intention to do so.

(c) The aspect of seeking benefit of moratorium is covered by decision of this Court in ***M/s. Pragatej Builders and Developers Pvt. Ltd. vs. Abhishek Anju Sukhadia*** (supra) and being settled does not give rise to substantial question of law.

54. In light of the substantial questions of law answered as above, the Second Appeal stands dismissed.

55. In view of above, nothing survives for consideration in pending Applications, if any, and the same stand disposed of.

[Sharmila U. Deshmukh, J.]

56. At this stage, learned counsel appearing for Appellant seeks relief of stay of execution proceedings for period of four weeks from today. Though said request is opposed by learned counsel appearing for Respondent considering that the statement was operating during the pendency of Second Appeal, the execution proceedings to be deferred by period of four weeks from 24th June, 2026.

[Sharmila U. Deshmukh, J.]