

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

Appeal No. AT006000000093932 of 2022

IN

Complaint No. CC006000000192401

Kanakia Spaces Realty Pvt Ltd.)
CTS No. 101, behind Dr. L. H. Hiranandani)
Hospital, Tirandaz, Powai,)
Mumbai, Maharashtra - 400076.) ... Appellant

-Versus-

Mr. Subhash Mahadappa Panchgalle)
"Appu Villa" Shantiniketan Colony,)
Gangapur Road, Nashik - 422013) ... Respondent

Adv. Mr. Vikramjit Garewal for Appellant

Adv. Mr. Aman Shukla for Respondent

CORAM : SHRI S. S. SHINDE (J.), CHAIRPERSON, &
DR. RAJAGOPAL DEVARA, MEMBER (A)

RESERVED ON : 17th June 2026

PRONOUNCED ON : 06th August 2026

(THROUGH VIDEO CONFERENCE)

JUDGMENT

[PER : DR. RAJAGOPAL DEVARA, MEMBER (A)]

1. This captioned appeal arises from the impugned order dated 12th May 2022 passed by the Member - 1, Maharashtra Real Estate Regulatory Authority (for short 'the Authority') in Complaint No.



CC006000000192401 filed by the Allottee seeking interest for delayed possession, wherein the said complaint was partly allowed.

2. For the sake of convenience, "Appellant" will hereinafter be referred to as "Promoter" and "Respondent" will hereinafter be referred to as "Allottee".
3. The brief facts, as borne out from the pleadings, documents placed on record, and the impugned order, revealed that the Allottee purchased Flat No.3205 on the 32nd floor of 'C' Wing in the project known as "Levels", situated at Malad (East), Taluka Borivali, Mumbai. An Agreement for Sale dated 01.02.2017 was executed between the parties for a total consideration of Rs.2,01,59,220/-, wherein the date of possession was mentioned as on or before October 2018, with a grace period of six months, thereby making March 2019 as the contractual date of possession. It is an admitted position that the Allottee has paid approximately 80% of the total consideration amount, while the balance amount was payable at the time of handing over possession. It is not in dispute that the Occupancy Certificate was obtained on 10.10.2019 and possession of the flat was handed over to the Allottee on 05.11.2019.
4. Learned Advocate Mr. Vikramjit Garewal, appearing for the Appellant/Promoter, submitted that the Respondent/Allottee filed the complaint before the Maharashtra Real Estate Regulatory



Authority on 27.04.2020, nearly five months after accepting possession of the subject flat, alleging delayed possession. According to him, once the Allottee accepted possession after making full and final settlement, without any protest, no surviving cause of action remained to claim interest for delayed possession or any other relief under the RERA Act, 2016.

5. The learned Counsel for the Appellant/Promoter further submitted that the project registration under the RERA Act, 2016 was initially valid up to 31.10.2019, and was subsequently extended from time to time up to 30.04.2021. It was contended that Clause 13 of the Agreement for Sale entitled the Promoter to reasonable extension of time for handing over possession of the said flat in the event of delays caused by circumstances beyond the control of the Appellant/Promoter. It was contended that even the Respondent/Allottee had accepted the said contractual stipulation without any objection. Moreover, Section 18 of Real Estate (Regulation and Development) Act, 2016 would apply only when the project is incomplete, or the Promoter is unable to handover possession and therefore, once possession has been delivered to the Allottee, after obtaining Occupancy Certificate, the provisions of Section 18 cease to operate.



6. The learned Counsel for the Appellant/Promoter further submitted that the said flat was handed over on 05.11.2019 with full and final settlement upon receipt of Occupancy Certificate. If the Allottee/Respondent was aggrieved by alleged delay, the complaint ought to have been filed before accepting possession of the subject flat. It is evident that merely reserving the right to claim interest would not confer any enforceable cause of action after possession had been accepted. Therefore, the complaint was filed with mala fide intentions, to extract unethical money from the Appellant/Promoter. Hence, the Appellant prayed that the said impugned order should be quashed and set aside.
7. Per contra, learned Advocate Mr. Aman Shukla appearing for the Respondent/Allottee submitted that the Allottee has complied with all obligations under Agreement for Sale and had paid approximately 80% of the total consideration amount well before the completion of the project in November 2019. Upon the Promoter raising final demand of 20%, the payment was paid within five (5) days by the Allottee. Notwithstanding such prompt compliance by the Allottee, the said flat possession was not given on the agreed date i.e. October 2018 or after six months grace period i.e. March 2019. Therefore, being aggrieved by the delay, the Allottee has exercised the statutory right to get interest for delayed possession and filed



complaint before the Maharashtra Real Estate Regulatory Authority in April 2020.

8. The learned Counsel for the Respondent/Allottee placed reliance upon the judgment of the Hon'ble Supreme Court in the case of *M/s Newtech Promoters and Developers Pvt. Ltd. vs. State of UP & Anr.* [Civil Appeal No(s). 6745-6749 of 2021(Arising out SLP(Civil) No(s). 3711-3715 of 2021)], decided on 11th November 2021, particularly paragraphs 25 and 78, as well as the judgment of the Hon'ble Bombay High Court, in *Neelkamal Realtors Suburban Pvt. Ltd. and Anr. vs. Union of India and Ors.* [writ petition No. 2737 of 2017], decided on 6th December 2017, particularly paragraphs 258 and 261. In view of the above, the Hon'ble Supreme Court has held that the right conferred upon an Allottee, under Section 18 of the RERA Act 2016, is unqualified, unconditional, and absolute, regardless of unforeseen events, including stay orders of the Court/Tribunal, or any other reasons stated to be beyond the control of the Promoter. It was further submitted that there is no bar of limitation to seek right of an Allottee to claim interest under Section 18 of RERA Act, 2016. Therefore, the contentions of the Promoter in the present appeal are baseless and devoid of merit.
9. The learned Counsel for the Respondent/Allottee further submitted that the extension of the project completion date under RERA



registration does not rewrite or alter the contractual obligations under the Agreement for Sale. In support of this proposition, reliance was placed upon judgment of the Hon'ble Bombay High Court in *Neelkamal Realtors Suburban Pvt. Ltd. and Anr. vs. Union of India and Ors.(supra)* in para No. 256 of the judgment, *inter alia*, held as follows:

"256. Section 4(2)(1)(C) enables the promoter to revise the date of completion of project and hand over possession. The provisions of RERA, however, do not rewrite the clause of completion or handing over possession in agreement for sale. Section 4(2)(1)(C) enables the promoter to give fresh time line independent of the time period stipulated in the agreements for sale entered into between him and the allottees so that he is not visited with penal consequences laid down under RERA. In other words, by giving opportunity to the promoter to prescribe fresh time line under Section 4(2)(1)(C) he is not absolved of the liability under the agreement for sale".

The Promoter has failed to furnish any satisfactory explanation for the delay in obtaining Occupancy Certificate and in handing over possession. Obtaining all statutory approvals, including Occupancy Certificate, within the agreed timeline is the sole responsibility of the Promoter. Delay attributable to failure in securing such approvals cannot be shifted onto the Allottee. It



was therefore contended that the Promoter cannot escape its statutory and contractual obligations by relying upon the extension of project registration period under RERA Act. Therefore, the Allottee continues to be entitled to interest for the delayed period under Section 18 of the RERA Act, 2016.

10. Learned Advocate Mr. Vikramjit Garewal appearing for the Appellant/Promoter has placed reliance on the following judgment:

In the case of *Linker Shelter Pvt. Ltd. versus Charmaine Chougule, Adult & Anr.* [Second Appeal No. 391 of 2025 with Interim Application No. 10454 of 2024] decided by the Hon'ble Bombay High Court on 18th July 2025.

11. Learned Advocate Mr. Aman Shukla appearing for the Respondent/Allottee has placed reliance on the following judgments:

- i. In the case of *Park Xpress JV Through Its Partner Mr. Shravan D. Agarwal V/s. Sagar H. Saboo and Ors.* [Second Appeal no. 180 of 2024 with Interim Application No.6716 of 2024] decided by the Hon'ble Bombay High Court on 22 March 2024.
- ii. In the case of *Kalpraj Dharamshi & Anr. Versus Kotak Investment Advisors Ltd. & Anr.* [in Civil Appeal Nos. 2943-2944 of 2020] decided by the Hon'ble Supreme Court of India.



- iii. In the case of *Central Inland Water Transport Corporation Limited and Another Vs. Brojo Nath Ganguly & Another* [(1986) 3 SCC 156 in Civil Appeal No. 4412 of 1985] decided by the Hon'ble Supreme Court of India.
- iv. In the case of *Pioneer Urban Land & Infrastructure Ltd. Versus Govindan Raghavan* [in Civil Appeal No.12238 of 2018 (with Civil Appeal No. 1677 of 2019)] decided by the Hon'ble Supreme Court of India on 2 April, 2019.
- v. In the case of *Ashley Neil Serrao Vs. Propel Developers Pvt. Ltd.* (Appeal No. AT006000000052874)] passed by the Maharashtra Real Estate Appellate Tribunal, Mumbai on 31 January 2023.
12. After considering the submissions advanced by the learned Advocate Mr. Vikramjit Garewal appearing for Appellant/Promoter and learned Advocate Mr. Aman Shukla appearing for Respondent/Allottee, pleadings of the parties, impugned order and various documents placed on record, the points arise for our consideration and findings thereupon for the reasons to follow are as below:

Sr. Nos.	Points	Findings
1.	Whether the impugned order dated 12.05.2022 passed by the Member-1, MahaRERA, in the Complaint No.	In the negative

	CC006000000192401 filed by the Respondent/Allottee, warrants interference in the captioned appeal?	
2.	Whether the Appellant/Promoter is entitled to relief sought in the captioned appeal?	In the negative
3.	What Order?	As per final Order

R E A S O N S

13. On examination of pleadings of the parties, material placed on record and submissions advanced by learned Counsel appearing for the respective parties revealed that the Appellant/Promoter has developed project known as "Levels" situated at Malad (East), Mumbai. The Respondent/Allottee has booked the subject flat for a total consideration of Rs.2,01,59,220/-. As per the Agreement for Sale, possession was agreed to be handed over by October 2018, with a grace period of six months, making the agreed date of possession March 2019. It is not in dispute that the Respondent/Allottee has paid 80% of total consideration amount and possession was handed over on 05.11.2019 after obtaining Occupancy Certificate on 10.10.2019.

14. It is the case of the Appellant/Promoter that the Respondent/Allottee accepted possession of the subject flat on 05.11.2019 by making full and final settlement and thereafter filed



the complaint before the learned Authority on 27.04.2020, which is much after the possession was handed over to the Respondent/Allottee. According to the Appellant/Promoter, once possession was accepted, no independent cause of action survived for claiming interest under Section 18 of the RERA Act. The moot question before us is whether the Allottee, having taken possession of the flat by making full and final settlement, is precluded from claiming interest for delayed possession under Section 18 RERA Act, 2016.

15. Section 18 of the Real Estate (Regulation and Development) Act, 2016 recognises the right of Allottee to claim interest for delay in handing over possession, within the stipulated time limit for taking steps to seek relief as provided thereunder. The said provision casts an obligation upon the Promoter that in case of delay in possession, it shall be liable to pay interest on the consideration amount paid by the Allottee, if the Allottee elects not to withdraw from the project. While explaining the scope of Allottee's right under Section 18 of RERA Act, 2016, the Hon'ble Supreme Court in *M/s Newtech Promoters and Developers Pvt. Ltd. V/s. State of UP & Anr* (supra) in observed in paragraph 25 as under:

"Para 25. The unqualified right of the allottee to seek refund referred under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies



or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottee, if the promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the allottee/home buyer, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act with the proviso that if the allottee does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed."

It is clearly indicated that the statutory entitlement under Section 18 of RERA is founded on the Promoter's failure to deliver possession within the agreed timeline. The said entitlement is not extinguished because possession is subsequently offered or because the project completion date stands revised for regulatory purposes. Thus, the subsequent receipt of Occupancy Certificate or extension of the project's registration does not take away the accrued right of the Allottee to claim interest for the period of delay.

16. A perusal of Section 18 of Real Estate (Regulation and Development) Act, 2016 makes it evident that the Promoter is obligated to hand over possession on the agreed date as per the Agreement for Sale.



The date so specified in Agreement for Sale or in any other manner or form is sacrosanct and neither RERA nor Promoter can rewrite the same without the consent of the Allottees. This signifies that Section 18 of RERA would operate only when possession is handed over within the specified date however, where possession is handed over beyond the agreed and specified date, the consequences contemplated under Section 18 automatically follow. The Hon'ble Supreme Court in *M/s. Imperia Structures Ltd. Vs. Anil Patni & Anr.* [in Civil Appeal No. 3581-3590 of 2020] has held as under:

"23. In terms of Section 18 of the RERA Act, if a promoter fails to complete or is unable to give possession of an apartment duly completed..... by the date specified in the agreement, the Promoter would be liable, on demand, to return the amount received by him in respect of that apartment if the allottee wishes to withdraw from the Project. Such right of an allottee is specifically made "without prejudice to any other remedy available to him". The right so given to the allottee is unqualified and if availed, the money deposited by the allottee has to be refunded with interest at such rate as may be prescribed. The proviso to Section 18(1) contemplates a situation where the allottee does not intend to withdraw from the Project. In that case he is entitled to and must be paid interest for every month of delay till the handing over of the possession. It is upto the allottee to proceed either under Section 18(1) or under proviso to Section 18(1)."



17. Section 18 of RERA Act, 2016 gives an option to Allottee to claim interest on the amount paid on failure of Promoter to adhere to his contractual or statutory obligation. The provisions of RERA ensure that Allottee's money is not misutilised or unreasonably held by the Promoter, while assuring completion of project in a time-bound manner. We are therefore in agreement with the conclusion reached by the learned Authority that the Allottee's entitlement to interest crystallised upon the Promoter's failure to handover possession within the agreed period and it continued till actual handing over possession of the subject flat. Acceptance of possession thereafter does not amount to waiver of such accrued statutory right unless there is a conscious express relinquishment thereof, which is absent in the present case.
18. In view of the foregoing reasons and in light of the law laid down by the Hon'ble Supreme Court, we have come to the conclusion that the learned Authority is justified in granting relief of interest to the Allottee under Section 18 of the Real Estate (Regulation and Development) Act, 2016. As a result, the impugned order warrants no interference in the present appeal. Consequently, we answer point Nos. 1 to 2 in the negative and accordingly proceed to pass the following order.



ORDER

1. Appeal No. AT006000000093932 of 2022 is dismissed.
2. Parties to bear their own costs.
3. Copy of this order be communicated to the learned Authority and respective parties as per Section 44(4) of the RERA Act, 2016.


(DR. RAJAGOPAL DEVARA)

V. K. Bhople


(S. S. SHINDE, J)