

21-SA117-2026.DOC

Santosh

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**SECOND APPEAL NO. 117 OF 2026
WITH
INTERIM APPLICATION NO. 2765 OF 2026**

Kiyana Estate LLP

...Appellant

Versus

Tina Dharamshey and anr.

...Respondents

Mr. Ashish Kamat, Senior Advocate, a/w Abir P., through VC,
a/w Kartik Joshi, for the Appellant.

Mr. Manish Gala, for the Respondents.

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CORAM: N. J. JAMADAR, J.
DATED: 5th AUGUST, 2026

Order:-

1. Heard the learned Counsel for the parties.
2. This appeal is directed against a common judgment and order dated 24th June, 2025, whereby the Maharashtra Real Estate Appellate Tribunal ("Appellate Tribunal") dismissed the Appeal No. 52711/2020 preferred by the Appellant alongwith Appeal No. 52700/2020, against an order dated 28th September, 2020 passed by the learned Member, Maharashtra Real Estate Regulatory Authority ("MahaRERA") in Complaint No.CC006000000193053, and the consequent order whereby the Appellate Tribunal directed the release of the amount of

Rs.29,10,000/- deposited by the Appellant to the allottees with interest accrued thereon.

3. At the outset, it is necessary to note that, the Appellant had preferred Second Appeal No. 537 of 2025 assailing the impugned common order (Keyana Estate LLP (Earlier known as Kiyana Ventures LLP) vs. Paresh Parihar and another). By an order dated 8th October 2025, this Court dismissed the said appeal observing, *inter alia*, as under:

“15. I have perused the material on record and given anxious consideration to the submissions canvassed by the learned Counsel for the parties. The Appellate Tribunal has noted that, upon a diligent perusal of the O.C. dated 10th April 2023, it becomes evident that the said O.C. was issued subject to the condition that a Certificate under Section 270 (A) of the Mumbai Municipal Corporation Act 1888 (“the MMC Act”) shall be obtained before giving possession of the flat to the buyers for which the O.C. was thereby granted. Despite providing ample opportunities, the Promoter had failed to provide any details regarding the compliance of the said condition before handing over the possession of the subject flat to the Respondents.

16. The submission of Mr. Dave that the Appellate Tribunal could not have embarked upon an enquiry as to whether the conditions subject to which the O.C. was issued, were fulfilled or not, does not merit acceptance. A mere offer to deliver possession of the subject flat, without complying with the necessary conditions subject to which the O.C. has been issued, where those conditions bear upon the occupation of the subject flat as a habitable unit, cannot be considered as the compliance of the obligation of the promoter under the Act, 2016. Section 270A of the MMC Act, *inter alia* provides that no person shall occupy or permit to be occupied, or use or permit to be used, any premises or part thereof until he has obtained a certificate from the Commissioner to the effect that there is adequate supply of water to the persons intending to occupy or use such premises.

17. Thus, existence of adequate water supply to the project in question was a pre-condition subject to which the O.C. was granted. It is pertinent to note that, the observations of the Appellate Tribunal that the Appellant had failed to produce documents to show the compliance of the conditions could not shown to be incorrect. Only a bill for the month of April 2024, evidencing that the subject project

had water connection could be placed on record. Evidently, that was after the possession was delivered to the Respondents.

18. It is true, there was a lengthy exchange of correspondence between the Appellant and the Respondents as regards the delivery of possession of the subject flat. However, the tenor of the correspondence indicates that the Respondents had been insisting upon the delivery of possession of the subject flat in a habitable condition with the necessary facilities and amenities, as agreed.

19. The claim of the Appellant that there was delay in payment on the part of the Respondents is required to be appreciated in the light of the fact that 95% of the sale consideration was paid by the Respondents by December 2017. The Respondents had also paid the outstanding interest, despite repeated requests for inspection of the subject flat with a view to take possession thereof.

20. In these circumstances, the Appellate Tribunal was justified in holding that the Appellant committed default in the delivery of the possession of the subject flat, even after the grant of O.C. At any rate, the grant of O.C. was also much beyond the agreed date of delivery of possession of the subject flat. A clear case of violation of the provisions of Section 18 of the Act, 2016 was made out.

21. The submission of Mr. Dave premised on the *force majeure* is required to be noted to be repelled as in view of the decision of the Supreme Court in the case of ***M/s Newtech Promoters and Developers Pvt Ltd Vs State of U.P. & Ors.*¹** such submission cannot be readily acceded to. Even otherwise, no case of unforeseen event resulting in delay has been made out.

22. In the aforesaid view of the matter, this Court does not find any question of law, much less a substantial question of law, arises for consideration.”

4. The Appellant preferred Special Leave to Appeal (C) No. 4213/2026 before the Supreme Court. However, on 11th February, 2026, the said appeal came to be dismissed as withdrawn, as the Appellant sought leave to withdraw the appeal.

5. Mr. Ashish Kamat, the learned Senior Advocate for the Appellant, submitted that, though the two grounds which were urged before this Court in the said appeal cannot be urged in

1 2021 SCC OnLine SC 1044.

this appeal in view of the dismissal of the said appeal by recording the aforesaid reasons, yet, there is another ground which gives rise to a substantial question of law. Thus, despite the dismissal of the appeal against the very same impugned common judgment and order passed by the Appellate Tribunal, this Court may entertain the instant Second Appeal.

6. Articulating the substantial question of law, Mr. Kamat would urge that, since under the terms of the contract between the parties, the Appellant was to deliver possession of the subject flat on 30th June, 2018, and despite the delay on the part of the Appellant to deliver the possession of the subject flat on 30th June, 2018, the Respondents – allottees accepted the performance of the promise subsequently, without giving notice to the promiser-promoter of their intention to claim compensation for the loss occasioned by the non-performance of the promise at the agreed date, in view of the provisions contained in Section 55 of the Indian Contract Act, 1872, the allottees were not entitled to claim the compensation for the said period, notwithstanding the provisions contained in Section 18 of the Real Estate (Regulation and Development) Act, 2016 (“the RERA 2016”).

7. The aforesaid submission is required to be noted to be repelled for reasons more than one. First, in view of the provisions contained in Section 89 of the RERA 2016, which incorporates a non-obstante clause, the provisions of RERA 2016 shall have an overriding effect over any other law for the time being in force. Second, the right of the allottee to get interest for every month of delay till the handing over of possession in accordance with the agreement between the parties, is an independent and indefeasible right of the allottee.

8. In the case of *M/s Newtech Promoters* (supra), the Supreme Court has enunciated in clear and explicit terms that Section 18(1) gives an indefeasible right to the allottee to get a return of the amount on demand if the promoter is unable to hand over possession in terms of the Agreement for Sale or has failed to complete the project by the date specified. In the case of *Imperia Structures Ltd. Vs. Anil Patni and Another*², the Supreme Court held that, Section 18 confers an unqualified right upon an allottee to get a refund of the amount deposited with the promoter and interest at the prescribed rate, if the promoter fails to complete or is unable to give possession of an apartment as per the date specified in the agreement. The proviso to Section 18(1) contemplates a situation where the allottee does

² (2020) 10 SCC 783,

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.

9. Third, the provisions contained in the RERA 2016, especially Section 18(1), are in the nature of beneficial provisions for safeguarding the interest of the allottees, and if the submission sought to be canvassed by Mr. Kamat is accepted, the very object of the enactment of RERA 2016 would be defeated.

10. Resultantly, no question of law, much less a substantial question of law, arises for consideration. Thus, the instant appeal must meet the same fate as that of Second Appeal No. 537/2025, which assailed the very common judgment and order passed by the Appellate Tribunal.

11. The appeal stands dismissed.

12. In view of the dismissal of the appeal, Interim Application No. 2765 of 2026 also stands dismissed.

[N. J. JAMADAR, J.]