BEFORE THE MAHARASHTRA REAL ESTATE APPELLATE TRIBUNAL, MUMBAI

Appeal No. AT006000000204882 of 2024
In
COMPLAINT NO.CC006000000282178 of 2019

Manojkumar Singh	]
Aged: 52 years, Occ: Service,	]
Having address at C-1203, Sonam	]
Heights, Phase XV, Bhayader (East),	]
New Golden Nest.	] .. Appellant.
Versus	
Era Realtors Pvt. Ltd.	]
Omkar House, Eastern Express Highway	]
Sion, Chunabhatti.	] .. Respondent.

Adv. Mr. Nihant B. Panicker for Appellant
Adv. Mr. Prashant Kulkarni for respondent.

CORAM : SHRI S.S. SHINDE (J), CHAIRPERSON & SHRIKANT M. DESHPANDE, MEMBER (A)

RESERVED ON : 2nd September, 2026

PRONOUNCED ON : 7th September, 2026

(THROUGH VIDEO CONFERENCING)

JUDGEMENT

[PER: SHRIKANT M. DESHPANDE, MEMBER (A)]

1. The captioned appeal arises from the order dated 24.11.2023 passed by the learned Member-I, Maharashtra Real Estate Regulatory Authority (for short "the Authority") in the complaint no.CC006000000282174 filed by the appellant herein.

2. The respondent is the promoter of the project in the name and style "Alta Monte Signet" bearing MahaRERA Project Registration No. P51700010463, located at Borivali, Mumbai Suburban District.
3. For the sake of convenience, the parties to the appeal will be hereinafter referred to as "appellant/allottee" and "promoter" respectively.
4. The brief facts culled out from the pleadings, the documents on record, and the impugned order are that the appellant booked the flat bearing no. B-2011, sometime in the year 2014, in the promoter's said project. Only after three years of the booking and having paid substantial amount towards consideration of the said flat, the promoter issued allotment letter on 03.07.2017. The appellant purchased the said flat for total consideration of Rs.2,77,62,490/-, out of which the appellant paid the amount of Rs.1,00,77,283/-, as per the details below:

Sr.No.	Date	Receipt No.	Amount (Rs.)
1	08.01.2014	REC0005/07139/13-14	6,39,624/-
2	08.01.2024	REC0005/07138/13-14	8,00,000/-
3	08.09.2014	REC0005/10615/14-15	14,68,388/-
4	27.01.2014	REC0005/07458/13-14	42,90,079/-
5	06.05.2015	REC0005/07139/15-16	14,39,596/-
6	06.05.2015	REC0005/13771/15-16	14,39,596/-
		Total	1,00,77,283/-

5. According to the appellant, there was no progress in the construction work of the project in respect of the booking which was made in the year 2014. The allotment letter came to be

issued only on 03.07.2017 i.e. after 3 years. Further, the promoter did not execute and register the agreement for sale despite substantial amount having been received from the appellant and there was no clarity on the completion of the project. Due to huge delay and non-compliance on the part of the promoter and huge amount of the appellant's money was stuck with the promoter, the appellant was unable to continue with the booking and therefore called upon the promoter for refund of the paid amounts by e-mail communication dated 16.04.2018. By the said e-mail, the appellant requested for refund of the paid amount after deduction of cancellation of charges. Thereafter, the promoter refunded the amount of Rs.20,00,000/- on 24.07.2018 and the balance amount never received from the promoter. Aggrieved by this, the appellant filed the captioned complaint before the MahaRERA seeking relief of refund of balance amount remained with the promoter.

6. The promoter appeared in the complaint and remonstrated the complaint by filing reply. The promoter contended that the complaint is not maintainable and liable to be dismissed. Further, the complainant had earlier filed a complaint bearing no.CC00600000057858 (for short "the first complaint") before the Authority seeking relief of refund of paid amount with interest. The matter was amicably settled between the parties by executing consent terms dated 12.06.2019. The promoter contended that in view of the said consent terms the complainant withdrew the said complaint in terms of the consent terms. Accordingly, the Authority passed the order dated 08.07.2019 with following directions:

"1. The complainant has withdrawn his complaint vide application dated June 12, 2019, stating that both the Parties have amicably resolved and mutually settled the issue between them.

2. In view of the above, the complaint is hereby disposed of, as withdrawn."

7. The promoter further contended that the complainant failed to register the agreement for sale as per the consent terms despite various reminders and failed to pay an amount of Rs.6,00,000/- per month, as agreed in the said consent terms. The promoter further contended that the complainant has suppressed these facts about his earlier complaint in the captioned complaint. The complainant has failed and neglected and violated the terms of the consent terms and therefore the promoter terminated the booking of the said flat. With these submissions, the promoter contended that the complainant is not therefore entitled to relief as prayed in the captioned complaint.
8. After hearing the parties, the Authority passed the impugned order. The Authority dismissed the complaint as non-maintainable on the following grounds.
   a) The earlier complaint was filed under the provisions of RERA Act, 2016 for refund of paid amount with interest and the same came to be disposed of finally in view of the consent terms signed by the parties. Now, again by filing the captioned complaint the complainant is seeking similar relief under the provisions of the RERA Act,2016. Further, the complainant had not sought liberty of the Authority to file the

fresh complaint seeking similar reliefs under the provisions of RERA Act, 2016.

b) The complainant by signing the consent terms has withdrawn the said earlier complaint unconditionally and thus waived of his right to seek refund of the entire amount and has opted to remain in the project. Hence, the complainant cannot file the captioned complaint seeking similar relief in view of the settled principle of res-judicata.

9. Aggrieved by the said impugned order, the appellant has filed the captioned appeal on the grounds set out in the said memorandum of appeal seeking the relief of setting aside the impugned order and allow the complaint of refund with interest under section 18 of RERA Act, 2016 in the interest of justice.

10. When the matter was heard finally, the learned Advocate for the appellant was present. None was present on behalf of the promoter. The promoter has however filed its reply to the appeal as well as written arguments. We have heard the learned Advocate for the appellant at length. We have given due consideration to the reply and written submissions of the promoter and material om record.

11. The learned Advocate for the appellant has submitted that despite receiving substantial amounts from the appellant, the promoter failed and neglected to enter into the agreement for sale with the appellant and failed to hand over possession of the flat. The promoter was under statutory obligation to enter into a registered agreement for sale under Section 4 of the Maharashtra Ownership Flats Act, (for short 'the MOFA') before accepting the substantial amounts from the appellant which

were paid in the year 2014-15. However, the promoter failed and neglected to execute and register the agreement for sale as required by section 4 of MOFA. Similarly, as per Section 13 of the RERA Act, 2016 it is obligatory on the part of promoter to execute and register the agreement for sale, having been received more than 10% of the consideration amount. Therefore, the promoter has violated both section 4 of the MOFA as well as section 13 of the RERA Act, 2016.

12. The learned Advocate submitted that the flat was booked in the year 2014 and promoter issued allotment letter on 03.07.2017 after long delay of three years since the booking. In the circumstances, when there is no allotment letter or agreement for sale entered into between by the promoter at the time of booking, it is settled law that the promoter is liable to complete the project and hand over possession within a reasonable period of three years from the date of booking of the flat.

13. The learned Advocate submitted that the appellant had filed the first complaint no.CC00600000057858 against the promoter on 31.12.2018 for seeking relief of refund with interest. The promoter appeared in the said case and informed the appellant that they would not be able to refund the amount for next 4 to 5 years. The promoter informed that it therefore will be better for him to continue with the project. The promoter promised to comply with all its legal documentation for the flat which he did not have. In these circumstances the consent terms were executed by the parties in the said complaint. Thereafter, the appellant was given a fresh allotment letter on 26.09.2019 by the promoter and the complaint was disposed of as withdrawn.

14. The learned Advocate submits that as per the said consent terms the promoter had agreed to execute and register the agreement for sale within one year from the date of consent terms. In any case, the promoter was under statutory obligation to immediately enter into an agreement for sale even in the absence of such terms in view of operation of section 13 of the RERA Act, 2016. The promoter had already taken at that point of time Rs.82,77,283/- which constitutes about 30% of the consideration amount. Despite this, the promoter still failed and neglected to enter into an agreement for sale. This is violation of Section 13 of the RERA Act, as well as consent terms filed by the parties. Further, the promoter was not entitled to demand or claim any money from the appellant until the promoter first executed the agreement for sale under section 13 of the RERA Ac, 2016. However, the promoter kept on demanding money without executing of agreement for sale, which is unlawful.
15. The learned Advocate submitted that the promoter had contended before the Authority that the appellant had defaulted in timely making payment as per the consent terms. Further, the promoter alleged that the appellant did not come forward to sign the agreement for sale after e-mail correspondence between the parties. The appellant has however refuted the said contention by filing affidavit in rejoinder before the Authority. Bare perusal of the e-mail exchanges show that the appellant was ready and willing to enter into an agreement with promoter. However, the same was not proceeded with by the promoter. However, at all the appellant had defaulted as claimed by the promoter, it was open for the promoter to follow the provisions of RERA, file

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appropriate proceedings before the Authority, and thereafter terminate the booking as per the law. However, without executing the agreement for sale, as per the consent terms, the promoter kept on demanding further money towards the consideration amount.

16. The learned Advocate submitted that without executing and registering the agreement for sale, no valid further demands can be raised by the promoter. There can be no default on the part of allottee, and the allottee cannot be said to be defaulted on the ground of non-payment of said amount despite the promoter failed to execute and register the agreement for sale. The Authority in the impugned order has failed to consider that if in the event of allottee had defaulted as claimed by the promoter, it has open for the promoter to follow the provisions of RERA Act, 2016 and file appropriate proceedings before the Authority and thereafter terminate the booing as per the law. However, this was not done by the promoter because there was no default on the part of allottee/appellant.

17. The learned Advocate submitted that the Authority erroneously held that the complaint of the appellant is not maintainable under RERA Act, as the same is hit by principle of res-judicata. However, the principle of res-judicata is not applicable to the present case. The appellant had challenged the earlier complaint no.CC006000000057858 wherein the consent terms were filed in the matter wherein the promoter had agreed to execute and register the agreement for sale within one years from the date of the consent terms. The promoter had already retained the amount of Rs.82,77,283/- which constitute about 30% of the

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consideration amount. The promoter still failed and neglected to enter into the agreement for sale in violation of the provisions of Section 13 of the RERA Act, 2016. Further, the promoter also violated the terms of the consent terms. Therefore, there was a fresh cause of action hence the appellant filed the captioned complaint. Therefore, the view of the Authority that the complaint was hit by principle of res-judicata is not legally tenable.

18. The learned Advocate submitted that the Authority placed unnecessary emphasis on the first complaint filed by the appellant. There were several breaches on the part of the promoter after the said complaint was withdrawn for which the appellant was entitled to institute a fresh complaint for refund of his money with interest. The Authority failed to consider various breaches thereof by the promoter and therefore this has led to a miscarriage of justice. The Authority failed to appreciate that second complaint i.e. captioned complaint filed by the appellant was independent and no express liberty to file the same was required when the time of first complaint was withdrawn. The learned Advocate submitted that the Authority has taken perverse and unsustainable view that the aim and object of RERA is not to help the allottees like the appellant herein. The said view is against the object of the RERA and against the public policy and therefore liable to set aside. With these submissions, the learned Advocate prayed to allow the appeal and set aside the impugned order and grant refund with interest.

19. The promoter in the written submission and reply to the appeal has submitted as follows:

    a) The appellant had previously filed complaint against the promoter for refund of the paid amount with interest.

    b) The promoter has already refunded Rs.20,00,000/- to the appellant. Net part consideration of Rs.79,86,960/- (after deducting cancellation charges) was payable. Further, the appellant agreed to retain the said booking of the flat and continued in the project that provided the promoter flexibility in payment terms. The promoter acceded to the request of the said consent terms.

    c) Based on the aforesaid understanding between the parties, the parties agreed to settle the dispute and enter into the consent terms dated 12.06.2019. The said consent terms are as follows:

       "a) It is agreed, declared and confirmed between the parties as follows:

       i). The Complainant agrees to retain the booking of the said flat and agrees not to cancel the booking of the said flat.

       ii) The part consideration amount of Rs 79,86,960/- towards the said flat is paid by the Complainant. The Respondents will not raise demand of installments in respect of the said flat to the extent of the said amount.

       iii) The Complainant and Respondents agree to execute and register Agreement for Sale in respect of the said flat within the period of 1 year (One) year from the date of *this Consent Terms. The Appellant agrees to pay stamp duty and registration charges for the same.*

iv) The Complainant agrees to pay Rs. 6,00,000/- (Rupees Six Lakhs only) per month from 1 June, 2020 towards installment in respect of the said flat, till the entire consideration value in respect of the said flat is paid by the Complainant, subject to condition provided in clause ii) hereinabove. The Complainant agrees to pay other charges and taxes as per the Agreement for Sale to be executed between the parties.

v) The Respondents agree to issue fresh Allotment Letter to the Complaint in respect of the said flat within the period of 15 days from the date of execution of the present Consent Terms.

b) In view of the aforesaid Consent Terms, the Complainant withdraws the present Complaint."

20. The promoter in the written submissions has further submitted that appellant executed the consent terms after thorough deliberation, fully understanding, and voluntarily accepting all the terms and conditions therein without any coercion, misrepresentation, or undue influence. The appellant has never challenged the consent terms or disputed the consent terms till date. The terms of the consent terms are conclusive and therefore the valid and binding between the parties.

21. The promoter in the written submissions has further submitted that appellant is estopped from reagitating the same issue upon execution of consent terms. It is settled principle of law that once parties have amicably settled their dispute and execute the

consent terms which are duly recorded by the competent authority or court the parties are therefore estopped from reagitating the same issues or initiate fresh proceedings arising from the same cause of action. The said underlined principle is also reflected in the provisions of order 23 Rule 3 of the CPC. It is therefore well established that the parties cannot be permitted to approbate and reprobate or to accept the settlement when convenient and seek to review disputes when it suits them. The filing and acceptance of consent terms operate as estoppel, both by conduct and under the principles of finality of litigation, thereby precluding the appellant from re-agitating the same issue.

22. In support of the above contention, the promoter has placed reliance on the following judgments:

    i) *Trilok Nath Singh V/s. Anirudh Singh(D) Thr. LRs & Ors. [Civil Appeal No.(S).3961 of 2020 decided by the Hon'ble Supreme Court on 06.05.2020],*

    ii) *Pushpa Devi Bhagat (Dead) Through LR Sadhna Rai (Smt.) V/s. Rajinder Singh and Others [Appeal (Civil) 2896 of 2006, decided by the Hon'ble Supreme Court on 11.07.2006*]

23. The promoter in the written submissions has submitted that appellant is in willful breach of the terms of the consent terms. The appellant has failed to pay the amount of Rs.6,00,000/- per month from 01.07.2020 towards installments in respect of the said flat till the entire consideration value in respect of the said flat is released. Despite e-mails by the promoters to make payments as per the consent terms and execute the agreement

for sale, the appellant failed to come forward and respond to the said e-mails. Further, appellant has suppressed the fact regarding execution of the consent terms in the earlier complaint filed by the appellant before the Authority. Further, from the perusal of the record before the Authority it can be seen that the appellant had willfully suppressed the fact that the parties had entered into the settlement, and the consent terms were executed by the parties. The Authority in the impugned order has also recorded the fact that the appellants suppressed filing of its earlier complaint.

24. With the above submissions, the promoter has prayed to dismiss the appeal.

25. We have heard the learned Advocate for the appellant at length. The submissions made by the learned Advocate for the appellant are nothing but re-iteration of the contents of the memorandum of appeal and written submissions. We have also carefully considered the reply and written arguments of the promoter. On examination of the pleadings of the parties, submissions advanced by the parties, the impugned order, and material placed on record, the following points arise for our consideration, and we have recorded our findings thereupon, for the reasons to follow, as under.

Sr.No.	Points	Findings
1.	Whether the appellant is entitled to relief of refund of the amount paid towards consideration to the promoter along with interest	In the Affirmative.

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	under section 18 of RERA Act, 2016?	
2.	Whether the impugned order passed by the Authority warrants interference in this appeal?	In the affirmative.
3.	What order?	As per final order.

REASONS

Point Nos.1

26. On ensemble of the facts as submitted by the parties above, it is not in dispute that the appellant has booked the subject flat in the promoter's project in the year 2014 and during the period from 2014-2015, the appellant paid the amount of Rs.1,00,77,283/- towards consideration, out of total consideration of Rs.2,77,62,490/- for the said flat. Thus, the appellant has already paid around 36% of the consideration amount to the promoter in the year 2014-2015, however the promoter failed and neglected to execute the agreement for sale and issued allotment letter on in 2018, after a period of 3 years. With great follow up from the appellant, the promoter issued the said allotment letter for the said flat on 03.07.2018. Since 2014 till date the promoter has not executed agreement for sale as mandated under Section 4 of the MOFA as well as under section 13 of the RERA Act, 2016.

27. Due to huge delay even issuing the allotment letter and not executing and registering the agreement for sale in spite of having received substantial payment of the amount towards

consideration and there was no clarity of the completion of the project, the appellant requested the promoter by his e-mail dated 16.04.2018 to refund the paid amount with interest. Admittedly, the promoter on 24.07.2018 refunded the amount of Rs.20,00,000/- and the balance is yet to be received from the promoter till date.

28. Aggrieved by the above, the appellant filed the first complaint CC00600000057858 before the Authority seeking of the paid amount with interest. During the hearing the promoter appeared in the complaint before the Authority and promoter represented to the appellant that the promoter will not in a position to pay refund amount for next 4 to 5 years and therefore advised to the appellant to better to continue with the project and the promoter promised to comply with all the legal obligations and execute all the documents of the flat. With this representation, the appellant entered into the consent terms with the promoter.

29. As per the said consent terms, the part consideration of the amount of Rs.79,86,960/-, after deduction of the cancellation charges, remained with the promoter and the appellant decided to continue with the project. Therefore, the said allotment letter dated 24.07.2018 remained valid and subsisting. The promoter in spite of agreeing to execute and register the agreement for sale in the said consent terms, failed to execute and register the agreement for sale till date, in spite of retaining more than 30% of the consideration amount with him.

30. A close examination of the allotment letter reveals that it discloses all the ingredients of a valid and concluded contract

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between the parties viz: flat details, project name, consideration amount, amount paid etc. Further, the appellant has also produced on record the receipts of the amounts paid from time to time during the period from 2014-2015 towards consideration. Promoter has not disputed the factum of payments made by the appellant. Thus, all the ingredients in the allotment letter, receipts of payment etc. discloses all the elements of valid and concluded sale purchase contract between the parties which is binding on the parties. It is pertinent that the said allotment letter did not discloses any agreed date of possession.

31. Clause (a) of Section 2 of Contract Act, 1872 talks about the proposal and Clause (b) of Section 2 of the Contract Act, 1872 speaks about the promise. Clause (a) of Section 2 lays down that, when one person signified to another his willingness to do or to abstain from doing anything, with a view to obtaining the assent of that other to such act or abstinence, he is said to make a proposal. Clause (b) of Section 2 states that, when the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted. A proposal, when accepted becomes a promise. On careful examination of the receipts issued by the promoter revealing the payments made by the appellant from time to time, it reveals that those documents depict a clear picture of the fulfilment of the Clause (a) and (b) of Section 2 of the Contract Act, 1872. All receipts of the payments show that there was an offer to purchase the said flat by the allottee, the offer was accepted by the promoter and in

furtherance of the same did act of accepting the payments from the allottees towards part consideration.

32. Therefore, allotment letter and receipts of payments clearly depict the picture of fulfillment of requirement of law. In other words, both the receipts as well as allotment letter disclose that there was an offer to purchase by appellant and promoter acted in furtherance of the said offer by allotting the subject flat and by accepting part payments towards consideration as well as further sending demand notes to the appellant requesting for payments of monthly installments. Section 8 of the Contract Act, 1872 mentions about acceptance by performing conditions or receiving consideration. The said provision is reproduced below:

> "8. ***Acceptance by performing conditions, or receiving consideration-*** *Performance of the conditions of a proposal, or the acceptance of any consideration for a reciprocal promise which may be offered with a proposal, is an acceptance of the proposal.*"

33. Therefore, from the above discussion fulfilling the requirement of the Section 2(a) and Section 2(b) read with Section 8 of the Contract Act, 1872, we have no hesitation in concluding that there was valid and concluded contract between the parties fulfilling the requirement of law. Since the project is registered as an ongoing project under the provisions of RERA Act, 2016, we are of the considered view that the said sale purchase agreement is enforceable under the RERA Act, 2016.

34. Pursuant to the said consent terms, admittedly the appellant continued in the said project. Further, the promoter started

demanding appellant to pay Rs.6,00,000/- for every month from 1st June 2020 towards further installments in respect of the said flat. The said demands were raised without executing and registering agreement for sale with the appellant, which is not in accordance with Section 13 of the RERA Act, 2016, as we have already observed above. It is the contention of the promoter that since the appellant failed to pay further instalment of Rs.6,00,000/- per month as per consent terms, the promoter terminated the said allotment letter dated 24.07.2018.

35. As we have already observed, even after refunding Rs.20,00,000/- to the appellant, more than 30% of the consideration amount still remained paid to the promoter during 2014-15 still the promoter failed to execute and register the agreement for sale. Section 13 of the RERA Act, 2016 precludes the promoter not to demand or accept the amount towards consideration more than 10% without first executing and registering the agreement for sale. Admittedly, the promoter failed to execute agreement for sale and therefore the said demands of further payment without first executing agreement for sale are legally not permissible. It appears that the promoter terminated the allotment letter dated 24.07.2018 on the ground of non-payment of the further installments when promoter was precluded to raise further demand without first executing and registering the agreement for sale. Therefore, the said termination of allotment letter dated 24.07.2018 is illegal and therefore deserves to be set aside. Therefore, the said allotment letter is subsisting and binding on the parties. In view of this,

promoter issuing another fresh allotment letter on 26.09.2019 pursuant to executing consent terms is of no relevance.

36. Admittedly, the project is still incomplete, and possession of the flat is not handed over to the appellant. This sufficiently demonstrates that the promoter failed to complete the construction and hand over subject flat to the appellant till date. This clearly demonstrate that the promoter has failed to hand over possession of the said flat. Once there is a delay in possession, the appellant is entitled to seek relief under Section 18 of the RERA Act, 2016.

37. Considering the liability of promoter to assess the likely date of completion of the project, allottees have very limited liability of discharging of the project, allottees have very limited liability of discharging their own obligations as per the terms of the agreement *inter alia* relating of primarily to make payments from time to time so that the project is not starved of funds to cause delay in completion. It is not in dispute that the allottee has made a substantial payment out of total consideration to the Promoter and promoter failed to execute and register the agreement as well as to hand over the possession till date. If the Allottee is not responsible for the reasons for the delay, he is entitled to relief under Section 18 of RERA and cannot be saddled with consequences for delay in completing the project. The language employed in Section 18(1)(a) makes it clear that the Promoter is obligated to handover the possession of flat as per the agreement by the date specified therein. The ratio laid down by the Hon'ble

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Supreme Court in *M/s. Imperia Structures Ltd. Vs. Anil Patni & Ors.* [in Civil Appeal No.3581-3590 of 2020] is that-

> *"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)."*

38. While explaining the scope of Section 18 of RERA, the Hon'ble Supreme Court in *M/s. Newtech Promoter and Developers Pvt. Ltd. V/s. State of Uttar Pradesh* [2021 SCC Online 1044] dated 11 November, 2021 held that;

> *"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*

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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, 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."

39. It is therefore clear that there are no shackles or limitations on the exercise of the right of allottee to withdraw from the project once there is delay in possession. As we have already observed that the promoter has failed to adhere to its obligation to hand over possession of the subject flat to the appellant. Therefore, we are of the considered view that the appellant/allottee is entitled to withdraw from the project and seek refund of the paid amount with interest as per Section 18 of the RERA Act, 2016. Therefore, the appellant is entitled to refund of the entire amount of Rs.1,00,77,283/- paid by the appellant towards the consideration of the said flat along with interest from the respective dates of payment till the amount is realized to the appellant. In view of the above, we answer point no. 1 in the

affirmative. The promoter admittedly refunded the amount of 20,00,000/- to the appellant on 24.07.2018, which is to be taken in account while computing the interest amount to be paid by the promoter to appellant under section 18 of RERA Act, 2016.

Point No.2

40. When the promoter accepted more than 36% of the consideration amount in the year 2014-15, without first executing the agreement for sale, it is violation of section 4 of the MOFA. Section 4 of the MOFA makes it statutorily mandatory for the promoter not to accept amount more than 20% of the consideration amount without first executing and registering the agreement for sale. This is a clear violation of Section 4 of the MOFA. Further, the promoter also delayed issuing the allotment letter, which came to be issued only on 24.07.2018 after 3 years of the delay. Thereafter, also the promoter did not execute the agreement for sale with the appellant till date. This is a violation of Section 13 of the RERA Act, 2016. Pursuant to the consent terms executed between the parties, in the first complaint filed before the Authority, the part consideration amount of Rs.79,86960/- (excluding the so called cancellation charges) towards the said flat was retained by the promoter and it was agreed that the promoter will not raise demand of installments in respect of the said flat which was retained by the promoter. Thus, pursuant to the said consent terms, the promoter retained more than 30% of the consideration amount, still failed to execute the agreement for sale with the appellant. Section 13 of the RERA Act, 2016 makes it statutorily mandatory for the promoter not to accept more than 10% of the consideration

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amount without first executing and registering the agreement for sale. Thus, the promoter also violated Section 13 of the RERA Act, 2016. This conduct of the promoter and blatant violation of section 13 of RERA, Act 2016 in our considered view is unfair trade practice and warrants imposing of heavy penalty under section 61 of the RERA Act, 2016

41. It is the contention of the promoter that the parties are bound by the consent terms and as per the consent terms the promoter is entitled to raise further demands of installment of Rs.6,00,000/- per month till the entire consideration amount is paid by the appellant. The said provision in the consent terms cannot override the statutory provision of Section 13 of the RERA Act, 2016. Therefore, as already observed above, the promoter is statutorily precluded from raising any further demands before first executing and registering agreement for sale. Further, the promoter himself breached the terms of the consent terms by not executing and registering the agreement for sale in respect of the said flat till date. We re-iterate that there was no default on the part of the appellant in payments. More than 30% amount was already paid and promoter failed to execute and register the agreement for sale thereby violating Section 13 of the RERA Act, 2016. Therefore, the above contention of the promoter is not legally sustainable.

42. The Authority while passing the order has held that the complaint is not maintainable in view of disposal of the earlier complaint in terms of the consent terms. The Authority has ignored that the promoter himself did not abide by the said consent terms. As per the said consent terms the promoter had

agreed to execute and register the agreement for sale, which the promoter failed. Further, the promoter is statutorily precluded from raising further any demand the amounts in violation of Section 13 of the RERA Act, 2016. Therefore, in our view, the appellant had fresh cause of action that promoter did not hand over the possession, not executing the agreement for sale in violation of section 13 of RERA and therefore the captioned complaint filed by the appellant is maintainable. The principle of res-judicata that as invoked by the Authority while holding that the captioned complaint as not maintainable is misplaced and not legally tenable. In view of the above, the impugned order is legally unsustainable and deserves interference in this appeal. Accordingly, we answer point no.2 in the affirmative.

43. In view of the above discussion, we proceed to pass the following order.

ORDER

1. The captioned appeal No.AT006000000204882 of 2024 in complaint no. CC006000000282178 of 2024 is allowed and the impugned order dated 24.11.2023 passed by the Authority is set aside.
2. The termination of allotment letter dated 24.7.2018 is set aside.
3. It is held that out of the total consideration amount paid by the appellant i.e. Rs.1,00,77,283/-, the promoter refunded an amount of Rs.20,00,000/- on 24.07.2018. Thus, the promoter has still retained the amount of Rs.80,77,283/- with it. It is clarified that the promoter

cannot deduct any amount on the so-called ground of cancellation as claimed by the promoter.

4. In view of the above, we direct the promoter to refund the said principal amount of Rs. 80,77,283/- to the appellant along with interest as per below particulars:
   a) The promoter shall pay interest on Rs.1,00,77283/- at the rate of 2% above the State Bank of India's Highest Marginal Cost Lending Rate (MCLR) from the date of respective payments till 24.07.2018.
   b) The promoter shall further pay interest on the amount of Rs. 80,77,283/- at the rate of 2% above the State Bank of India's Highest Marginal Cost Lending Rate (MCLR) from 25.07.2018 till the date of this order.
5. The promoter shall refund to appellant the principal amount of Rs. 80,77,283 along with interest amounts as mentioned above in para 3, within 30 days of this order, failing which the promoter shall pay further interest on the total amount outstanding as on 07.10.2026 with the same interest rate as prescribed above till the said amounts are realized to the appellant.
6. The promoter shall also deposit penalty amount of Rs.10,00,000/- (Rupees Ten Lakhs Only) under section 61 of the RERA Act, 2016 for the violation of the provision of Section 13 of the RERA Act, 2016 with malafide intentions in the registry of this Tribunal within the period 30 days of this order.

7. The promoter shall pay the cost of Rs.50,000/- (Rupees Fifty Thousand only) to the appellant and bear its own cost.
8. Copy of this Order be communicated to the Authority and the respective parties as per Section 44(4) of RERA Act, 2016.
9. Accordingly, the appeal stands disposed of in above terms.

(SHRIKANT M. DESHPANDE) **(S.S. SHINDE, J.)**

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