

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

1. M.A. NO. 1123/26 (Withdrawal of Amt.)

IN

Appeal No. AT06/00610/2025

IN

CC006000000195389

Neelkamal Realtors Suburban Pvt. Ltd. ... Non-applicant/Appellant

V/s.
Ketan Ashokrao Nage ... Applicant/ Respondents

ALONGWITH

2. M.A. NO. 1723/26 (Withdrawal of Amt.)

ALONGWITH

Appeal No. AT06/00611/2025

IN

CC006000000193317

Neelkamal Realtors Suburban Pvt. Ltd. ... Non-applicant/Appellant

V/s.
Adv S J. Lavte ... Applicant/Respondent

ALONGWITH

3. M.A. No. 1178/26 (Withdrawal of Amt.)

IN

Appeal No. AT06/00617/2025

IN

CC006000000195012

Neelkamal Realtors Suburban Pvt. Ltd. ... Non-applicant/Appellant

V/s.
Abhishek Ashok Goyal ... Applicant/Respondent

ALONGWITH

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4. M.A. No. 1124/26 (Withdrawal of Amt.)

IN

Appeal No. AT06/00618/2025

IN

CC006000000439676

Neelkamal Realtors Suburban Pvt. Ltd. ...Non-applicant/Appellant

V/s.

Chirag Desai & Anr.

... Applicants/Respondents

ALONGWITH

5. M.A. No. 1125/26 (Withdrawal of Amt.)

IN

Appeal No. AT06/00619/2025

IN

CC006000000397748

Neelkamal Realtors Suburban Pvt. Ltd. ...Non-Applicant/Appellant

V/s.

Dhruv Kumar Agrawal

... Applicant/Respondent

ALONGWITH

6. M.A. No. 691/26 (Withdrawal of Amt.)

IN

Appeal No. AT06/00620/2025

Neelkamal Realtors Suburban Pvt. Ltd. ...Non-applicant/ Appellant

V/s.

Diwakar Devrani

... Applicant/Respondents

ALONGWITH

7. M.A. No. 712/26 (Withdrawal of Amt.)

IN

Appeal No. AT06/00622/2025

IN

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CC006000000428875

Neelkamal Realtors Suburban Pvt. Ltd. ... Non-applicant/Appellant
V/s.

Rachna Jaydeep Soni & Anr. ... Applicants/Respondents

ALONGWITH

8. M.A. No. 1126/26 (Withdrawal of Amt.)

IN

Appeal No. AT06/00623/2025

IN

CC006000000429238

Neelkamal Realtors Suburban Pvt. Ltd. ... Non-Applicant/Appellant

V/s.

Yogesh Khamitkar ... Applicant/Respondent

ALONGWITH

Appeal No. AT06/00624/2025

IN

CC006000000197648

Neelkamal Realtors Suburban Pvt. Ltd. ... Non-applicant/Appellant

V/s.

Pramila Dashrath Yadav ... Applicant/Respondent

Appearances:

Adv. Mr. Dharam Jumanji for Non-applicant/appellant-promoter.

*Adv. Ms. Ritika Iyer i/b Adv. Mr. Anil D'souza for
applicants/respondents/allottees in appeal nos. AT06/00610/2025,
AT06/00618/2025, AT06/00619/2025 & AT06/00623/2025.*

*Adv. Mr. Suryakant Lavte applicant/respondent-in-person in appeal
no. AT06/00611/2025.*

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CA Mr. Dilip Agrawal for applicant/respondent in appeal no.
AT06/00617/2025.

Adv. Mr. Makarand Raut for applicant/respondent in appeal no.
AT06/00620/2025.

Adv. Mr. Pranav Monani for applicant/respondent in appeal no.
AT06/00622/2025.

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

RESERVED ON : 15th September 2026

PRONOUNCED ON : 18th September 2026

(THROUGH VIDEO CONFERENCING)

ORDER

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

1. The captioned appeals arise from the order dated 08.05.2025 passed by the learned Chairperson, Maharashtra Real Estate Regulatory Authority (for short "the Authority") in the complaints filed by the respondents herein/allottees against the appellant herein/ promoter seeking possession with interest on account of delay on handing over possession and compensation under Section 18 of RERA Act, 2016. The operative part of the said impugned order is reproduced below: -

"A. The captioned complaints at 1 to 11 are allowed.

B. The complainants at Sr. Nos. 1 to 5 and 8 to 11 are entitled to claim interest for delay in handover of possession on the total amount paid to the

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respondent (excluding amounts paid towards taxes and other charges such as stamp duty, registration fees and such other amounts paid to statutory authorities) from the date as mentioned in the table at para. No. 14 above at the rate as prescribed under Rule 18 of the Maharashtra Real Estate (Regulation and Development) (Registration of Real Estate Projects, Registration of Real Estate Agents, Rate of Interest and Disclosures on Website) Rules 2017 till the date of handover of possession with occupancy certificate.

- C. The total arrears of interest accrued, shall be set off /adjusted against any outstanding dues required to be paid by the complainants towards the cost of the subject flat in terms of their respective agreement and the remaining amount shall be paid by the respondent in one instalment to the complainants at Sr. No. 1 to 5 and 8 to 11 within sixty days from the date of this order. Further any interest accruing up to date of actual handover of possession subsequent to payment of above to be paid in one instalment within thirty days of actual handover of possession with occupancy certificate.
- D. The respondent is directed to refund the amount received by them from the complainants at sr. no.

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6 and 7 towards the consideration of the subject flat (excluding amounts paid towards taxes and other charges such as stamp duty, registration fees and such other amounts paid to statutory authorities) within sixty days from the date of this order. The interest on the refunded amount shall be applicable from 01.01.2016 at the rate prescribed under Rule 18 of the Maharashtra Real Estate (Regulation and Development) (Registration of Real Estate Projects, Registration of Real Estate Agents, Rate of Interest and Disclosures on Website) Rules 2017 till the realisation of amount with accrued interest.

- E. The respondent promoter is NOT entitled to claim the benefit of "moratorium period" as mentioned in the Notifications / Orders Nos. 13, 14 and 21 MahaRERA as the aforesaid notifications are not applicable in these cases.
- F. The complainants are at liberty to approach the Adjudicating Officer vide a fresh application for the limited purpose of determination and computation of compensation.
- G. The respondent is directed to take necessary steps for seeking extension of the said project within sixty days from the date of this order failing which the respondents shall be liable to a penalty under Section 63 of the said Act.

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H. No order as to cost."

2. The captioned appeals are filed by the promoter and therefore the promoter was required to deposit the amounts as ordered by the Authority in the impugned order in order to meet the requirement of proviso to Sub-Section (5) of Section 43 of RERA Act, 2016, before the appeals are heard on merits. Accordingly, the promoter has deposited the requisite amounts towards compliance in the respective appeals.
 3. The respondents/allottees have filed the captioned miscellaneous applications 1123/26, 1723/26, 1178/26, 1124/26, 1125/26, 691/26, 712/26 and 1126/26 for withdrawal of the amounts deposited by the promoter towards compliance of proviso to Sub-Section (5) of Section 43 of RERA Act, 2016, pending the disposal of the appeals.
 4. The promoter has remonstrated the applications by filing reply/s contending therein that the applicants/allottees have not made out the case for compelling reasons to allow the applications.
 5. We have heard the learned Advocate for the applicants/allottees and promoter. Their submissions are based on the contents in the applications and the reply/s filed by the promoter.
 6. We have considered the averments made in the applications, the arguments advanced by the learned Advocate for the parties and material placed on record. We will now deal with the said applications as below.
- A. Miscellaneous Applications Nos. 1123/26, 1124/26,**

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1125/26 and 1126/26.

7. The promoter has deposited the amounts of Rs. 32,31,955/-, 27,88,767/-, 34,13,383/- and 33,60,461/- in the respective appeals towards compliance of proviso to Sub-Section (5) of Section 43 of RERA Act, 2016. The applicants/allottees in these miscellaneous applications have contended that this Tribunal, vide its order dated 07.04.2026, granted liberty to file the applications for withdrawal of the amounts and that the captioned appeals having been dismissed the amounts deposited by the promoter towards said compliance are liable to be released in favour of the applicants/allottees, the applicants being successful parties under the proceedings in order to give full effect to the impugned order. The learned Advocate for the applicants/allottees placed reliance on the following judgment of the Hon'ble Bombay High Court in the case of *Rare Townships Private Limited Vs. Mitul Gada* in Second Appeal No. 121 of 2026 with Interim Application No. 1837 of 2026, decided on 30.03.2026.
8. The learned Advocate for the promoter submitted that the applications are solely premised on the basis of the captioned appeals having been dismissed by this Tribunal. Pertinently, there is no other basis or reason on which the applicants have sought withdrawal of the amounts. The applications are based on completely false ground. The captioned appeals are pending adjudication and yet to be heard finally. Hence, the said applications are liable to be rejected.
9. We have appreciated the arguments of the learned Advocate



for the parties. From the averments in the said miscellaneous applications, it is evident that the applicants have taken the sole ground for withdrawal of the amounts that the captioned appeals are dismissed by this Tribunal and therefore the amounts deposited by the promoter are liable to be released to the applicants. Pertinently, the said ground is false, and the facts remain that the captioned appeals are yet to be heard finally. We are of the view that the applicants have not made out any case for allowing the applications. Hence, the said miscellaneous applications deserve to be rejected. Suffice to say that by depositing the entire amount as ordered by the Authority in the impugned order in the respective captioned appeals by the promoter, the interests of the allottees/applicants in the captioned appeals having been fully secured, and no compelling reasons for the release of the said amounts are made out by the applicants.

B. Miscellaneous Application No. 1723/26 (Withdrawal of Amt.)

10. The learned Advocate for the applicant has submitted that the promoter has deposited the amount of Rs. 12,33,145/- towards compliance of proviso to Sub-Section (5) of Section 43 of RERA Act, 2016. For the purchase of the subject flat, the applicant has availed housing loan and has been paying EMI's to the bank. Due to the delay in handing over possession of their flat, which is yet to be handed over since the project is still incomplete and there is delay of more than 4 years, the applicant is burdened by paying EMI at one hand and paying

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rent for the rental accommodation on the other hand. This is causing huge financial loss and hardship to the applicant, and in these circumstances the applicant prayed to release the amount deposited by the promoter to the applicant. Further, the applicant is ready to undertake to bring back the money to this Tribunal in the event the promoter succeeds in the appeal.

11. While opposing the application, the learned Advocate for the promoter submitted that the applicant would have to pay EMI in any case even if the possession of the flat is handed over to the applicant. We do not agree with the contention of the promoter. The applicant is required to stay in the rented accommodation since there is delay of more than 4 years in completing the said project and handing over possession of the flat. While applicant is paying EMIs the applicant is also required to pay the rental amount for rented accommodation. We are of the view that this has been causing great hardship to the applicant. Further, the applicant is ready to furnish undertaking to this Tribunal to bring back money to this Tribunal in the event promoter succeed in the appeal. In the facts and circumstances of this case, we are of the view that the application deserves to be allowed and the amount deposited by the promoter released to the applicant subject to applicant furnishing such undertaking.

C. Miscellaneous application no. 1178/26 (Withdrawal of Amt.)

12. The learned Advocate for the applicant has submitted that the

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promoter has deposited the amount of Rs. 22,78,082/- towards compliance of proviso to Sub-Section (5) of Section 43 of RERA Act, 2016. The project is still incomplete, and the promoter has not obtained the occupation certificate. The applicant has therefore suffered continued loss and deprivation of the beneficial use of the flat. The object of provision of 43(5) is to protect the rights of the allottees during the pendency of the appeal and not to indefinitely deprive the successful allottee of the benefit of the valid adjudicated order. The applicant is ready to furnish undertaking that applicant will bring back money to this Tribunal in the event the promoter succeeds in the appeal.

13. Per contra, the learned Advocate for the promoter has submitted that no compelling reasons or exceptional case is made out in the application for release of pre-deposit amount. The interest of applicant is fully protected, and the said pre-deposit amount is and remains *custodia legis* and cannot and ought not to be released to applicant during the pendency of this Appeal. We are of the view that the interests of the applicant/allottee are fully protected by depositing the entire amount as ordered by the Authority in the impugned order in this Tribunal. The applicant has not demonstrated exceptional grounds or reasons in order to consider the release of the pre-deposit amount during the pendency of the appeal. We are therefore not inclined to allow the said application.

D. Miscellaneous Application No. 691/26 (Withdrawal of Amt.)

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14. The learned Advocate for the applicant has submitted that the promoter has deposited the amount of Rs. 53,99,195/- towards compliance of proviso to Sub-Section (5) of Section 43 of RERA Act, 2016. The applicant has purchased the subject flat vide agreement for sale dated 18.07.2012. The due date of possession is 31.12.2014. In spite of 12 years of delay, the promoter has failed to complete the construction of the project and hand over the possession of the flat to the applicant. The applicant has paid 92.8% of consideration amount by availing loan from HDFC Bank. At one hand, the applicant has been paying EMIs and on the other hand also paying the rent for the past 10 years. This is causing severe hardship to the applicant. Further, the applicant is ready to give undertaking that applicant will bring back money to this Tribunal in the event the promoter succeeds in the appeal. The learned Advocate for the applicant has placed reliance on the judgments of Hon'ble Supreme Court in the case of *Raj Duggal Vs. Ramesh Kumar Bansal* (1991) Supp (1) SCC 191 in Civil Appeal No. 4358 of 1990 decided on 06.08.1990. Wherein in para '5' of the said judgment the Hon'ble Supreme Court has held as under:

"5. The appeal is, accordingly, allowed and the appellant granted leave to defend the suit on condition that the amount of Rs. 20,000 deposited in this case pursuant to the earlier orders made in this proceeding shall, during the pendency of the suit, be paid to and retained by the respondent-

plaintiff subject to the condition that if ultimately respondent-plaintiff fails in his suit he shall be liable to restitute the said sum of Rs. 20,000 to the appellant defendant with interest thereon at 9 per cent per annum."

15. Further, the learned Advocate placed reliance on the judgment of Hon'ble Bombay High Court in the case of *Leela Capital and Finance Ltd. Vs. Modiluft Limited* reported in MANU/MH/0680/2002, in Appeal Nos. 219 and 220 of 2002 decided on 01.11.2002. Wherein the Hon'ble Bombay High Court in para nos. 16 and 17 has held as under:

"15. *The plea taken on behalf of the respondent that they have claimed a set off because the plaintiff did not sell the shares given by way of security, does not impress us. It is well settled that a creditors remedy of proceeding to dispose of securities is separate and distinct from his right to peruse legal remedies to recover the money through the process of law. (See State Bank of India v. Smit. Neela Ashok Naik MANU/MH/0236/2000 : 2000 (1) Mh.LJ. 801 = : AIR 2000 Bom 151 Division Bench) we cannot also lose sight of the fact that the defendant company created hurdles in giving fresh transfer forms in respect of the shares when called upon to do so. In any case, in our opinion, the plaintiff company was within its rights to seek the recovery of the*

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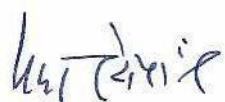
money due to it by the filing of the present summary suit.

- 16.** *The last question that remains is as to what order would be just and proper. In this connection reliance has been placed on the order passed by the Apex Court in the case of Raj Duggal Vs. Ramesh Kumar Bansal reported in MANU/SC/0393/1990: AIR1990SC2218. In the case, the Apex Court while granting leave directed the amount deposited to be paid and to be retained by the respondent-plaintiff subject to the condition that if ultimately the plaintiff failed in his suit, he would be liable to restitute the said deposited amount to the defendant with interest thereon at 9% per annum. In the present case, we intend to impose a similar condition to be incorporated in a undertaking."*
16. In view of the above judgments and facts and circumstances of the present case that the applicant is at one hand paying EMIs and on the other hand paying rent for rented accommodation for past 10 years due to delay in completion of project and handing over possession, the applicant is undergoing financial hardship. Therefore, the application deserves to be allowed subject to applicant furnishing undertaking that the applicant will bring back money to this Tribunal in the event that the promoter succeeds in appeal.
- E. Miscellaneous Application no. 712/26 (Withdrawal of**

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17. The learned Advocate for the applicants has submitted that the promoter has deposited the amount of Rs. 33,32,416/- towards compliance of proviso to Sub-Section (5) of Section 43 of RERA Act, 2016. The applicant has filed the miscellaneous application after the Tribunal granted liberty to file the said application for withdrawal of the amount. The applicants have invested substantial portion of their life savings with legitimate expectation of timely possession. The Applicants have neither been able to enjoy occupancy of the flat nor derive any income through lease rentals. Further, the applicants have suffered financial loss and hardship. The applicants are ready to furnish undertaking that they will bring back money to this Tribunal in the event the promoter succeeds in this appeal.
18. We are of the view that reasons given by the applicants are generic. They suffered financial loss as they could not get rental income out of the flat. We are of the view that no exceptional or compelling reasons are made by the applicants to allow the application. Suffice to say that the interests of the applicant are fully secured by the promoter depositing the entire amount as determined by the Authority in the impugned order. The said deposited amount in this Tribunal will continue to fetch interest till the appeal is finally decided, therefore, no prejudice is caused to applications. Therefore, we are not inclined to allow the said application.
19. In view of the above discussions, we pass the following order:

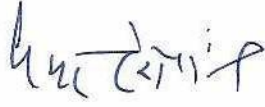


ORDER

- i. The miscellaneous application no. 1723/26 (withdrawal of amount) is allowed, and the applicant is permitted to withdraw the amount of Rs. 12,33,145/- deposited by the promoter towards compliance of proviso to Sub-Section (5) of Section 43 of RERA Act, 2016, along with accrued interest, if any, subject to the applicant furnishing the undertaking that the applicant shall bring back the money to this Tribunal along with interest in the event that the promoter succeeds in the appeal. The Registry is therefore directed to release the said amount along with accrued interest thereupon, if any, to the applicant by following usual office procedure.
- ii. The miscellaneous application no. 691/26 (withdrawal of amount) is allowed, and the applicant is permitted to withdraw the amount of Rs. 53,99,195/- deposited by the promoter towards compliance of proviso to Sub-Section (5) of Section 43 of RERA Act, 2016, along with accrued interest, if any, subject to the applicant furnishing the undertaking that the applicant shall bring back the money along with interest to this Tribunal in the event the promoter succeeds in the appeal. The Registry is therefore directed to release the said amount along with accrued interest thereupon, if any, to the applicant by following usual office procedure.
- iii. The miscellaneous application nos. 1123/26, 1124/26,

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- 1125/26, 1126/26, 1178/26 and 712/26 are rejected.
- iv. Accordingly, the above-mentioned miscellaneous applications stand disposed of.



(SHRIKANT M. DESHPANDE)



(S.S. SHINDE, J.)

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