BEFORE THE MAHARASHTRA REAL ESTATE APPELLATE TRIBUNAL MUMBAI

MISC. APPLICATION NO. 879/26 (Possession)
In
APPEAL NO. AT12500070/2025

Sharan Pal Singh & Ors. ... Applicants/Allottees
V/S
Transcon Sheth Creators Pvt. Ltd. ...Non-Applicant/Promoter

Adv. Ms. Gauri Gabure, i/b Adv. Mr. Anil D'souza for Applicants/Allottees
Adv. Ms. Sakshi Jain for Non-Applicant/Promoter

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

RESERVED ON : 29th SEPTEMBER 2026

PRONOUNCED ON : 05th NOVEMBER 2026

(THROUGH VIDEO CONFERENCING)

ORDER

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

1. The Applicants/Allottees have preferred the present Miscellaneous Application No.879/2026 (for possession), seeking direction for handing over possession of subject flat, in the captioned appeal filed by the Applicants/Allottees challenging the impugned order dated 29th November 2024. By the said impugned order, the Non-Applicant/Promoter was directed to pay interest to the Applicants/Allottees for delayed on the actual amount paid

towards consideration of the subject flat from 1st July 2023 until the actual date of possession along with Occupancy Certificate (OC).

2. Learned Adv. Ms. Gauri Gabure i/b Adv. Mr. Anil D'souza, appearing for the Applicants/Allottees, submitted that the Agreement for Sale was executed by the parties in respect of the subject flat for a total consideration of Rs.1,29,90,000/-. It is submitted that the Applicants/Allottees have paid approximately 91% of the total consideration, besides an amount of Rs.6,49,600/- towards Stamp Duty and Rs. 30,000/- towards registration charges.

3. Learned advocate for the Applicants/Allottees further submitted that the Non-Applicant/Promoter vide e-mail dated 1st July 2023, has acknowledged receipt of 91% of the total consideration amount and subsequently, raised the final demand letter on 11th July 2025.

4. It is pertinent to note that the said project received the Occupancy Certificate on 3rd February 2026. However, despite obtaining the Occupancy Certificate, the Non-Applicant/Promoter has not, till date, offered possession of the subject flat to the

Applicants/Allottees. It is submitted that the Applicants/Allottees have repeatedly requested the Non-Applicant/Promoter to handover possession and also expressed their willingness to pay the balance consideration amount. In this regard, the Applicants/Allottees have conveyed their willingness to the Non-Applicant/Promoter vide email dated 4th April 2026, in addition to the communications through WhatsApp.

5. The Learned Advocate further submitted that the Applicant/Appellants have been making payments diligently as and when demanded by the Non-Applicant/Promoter, with expectation of getting possession of the subject flat. Despite having received the Occupation Certificate in February 2026, the Non-Applicant/Promoter has failed to offer possession to the Applicants/Allottees.

6. In support of the aforesaid submissions, the learned Advocate appearing for the Applicants/Allottes placed reliance upon Section 19(10) of the RERA Act, which reads as follows: *"Every allottee shall take physical possession of the apartment, plot or building, as the case may be, within a period of two months of the occupancy certificate issued for the said apartment, plot or building, as the case may be."*

7. It is further submitted that, the Applicant/Appellants are presently residing in rented accommodation along with their family and are, therefore, constrained to bear substantial financial burden of rent and other outgoings along with EMIs towards the home loan availed for purchasing the subject flat. In view of the above circumstances, learned advocate prayed that the Non-Applicant/Promoter be directed to hand over actual possession of the subject flat to the Applicants/Allottees, thereby relieving them of their financial hardship.

8. *Per contra*, Learned Advocate Ms. Sakshi Jain, appearing for the Non-Applicant/Promoter, opposed and contended that, by way of the present application, the Applicants/Allottees are seeking a substantive direction for handing over possession of the subject flat, along with interest for delayed possession, during the pendency of the captioned appeal.

9. It is submitted that the relief sought by the Applicants/Allottees constitutes an independent and substantive relief, which they seek to obtain by invoking the interim jurisdiction of this Tribunal. According to the learned advocate, the Applicants/Allottees, by way of the interlocutory application, are attempting to enlarge the scope of the pending appeal by seeking substantive relieves

founded upon subsequent events.

10. Learned Advocate for the Non-Applicant/Promoter further submitted that the Applicants/Allottees have challenged the impugned order by preferring the present appeal on the ground that the reliefs granted by the learned Authority are inadequate. However, during the pendency of the appeal, the Applicants/Allottees are now seeking a fresh and substantive mandatory direction for handing over possession, relying upon subsequent events of the issuance of the Occupancy Certificate on 3rd February 2026.

11. It was further submitted that the present Miscellaneous Application proceeds on the erroneous premise that the mere issuance of the Occupation Certificate warrants a direction from this Tribunal to direct delivery of possession during the pendency of the appeal. The impugned order does not contemplate any such interim direction, and the Applicants/Allottees cannot seek, through the present application, substantive relief which falls outside the scope of the issues arising in the present appeal. on these grounds, learned advocate prayed for dismissal of the Application for Possession.

12. We have given full consideration to the submissions advanced by the learned Counsel appearing for the respective parties and have carefully perused the material placed on record.

13. It is not in dispute that, by the impugned order dated 29th November 2024, the Non-Applicant/Promoter has been held liable to pay interest to the Applicants/Allottees on account of delay in handing over possession of the subject flat. Admittedly, the Applicants/Allottees have paid approximately 91% of the total consideration amount and the said payment has not been disputed by the Non-Applicant/Promoter. Further, the Applicant/Appellants have expressed their willingness to pay the balance consideration amount and take physical possession of the subject flat.

14. In this context, Section 19(10) of the RERA Act obligates the Allottee to take possession of the flat within two months from the date of issuance of the Occupation Certificate. Correspondingly, upon obtaining the Occupation Certificate, the Promoter is expected to take necessary steps to offer and hand over possession of the flat to the Allottee in accordance with provisions of the Act. Thus, in the present case, duty is cast upon the Applicants/Allottees to immediately take possession of the flat,

and the Non-Applicant/Promoter is obligated to hand over actual possession of the subject flat. Therefore, given the Allottees willingness to fulfill their obligation to pay the balance consideration amount, the Non-Applicant/Promoter is duty bound to hand over possession.

15. A perusal of the impugned order and the material placed on record reveals that the Applicants/Allottees have paid Rs.1,17,03,345/- as consideration amount, excluding service tax Rs.3,39,039/-, VAT Rs.1,29,901/-, GST Rs.3,91,648/-, TDS Rs.1,19,203/-, stamp duty Rs.6,49,600/- and registration charges of Rs.30,000/-. Further, in their affidavit of calculations filed on 10th September 2026, the Applicants/Allottees have themselves disclosed that the balance amount payable by them towards the consideration of the subject flat and other charges is Rs.19,67,905/-.

16. Admittedly, the Applicants/Allottees are ready and willing to pay the outstanding amount and take physical possession of the subject flat. The Occupancy Certificate has already been issued on 3rd February 2026. Despite the issuance of the Occupation Certificate, the Applicants/Allottees have not been offered possession by the Non-Applicant/Promoter. Having regard to the

substantial consideration amount already paid by the Applicants/Allottees, their willingness to pay outstanding consideration amount and the fact that they have been deprived of possession for so long, we find merit in the grievance raised by them.

17. In view of the aforesaid discussion, we pass the following order:-

ORDER

a. The Miscellaneous Application No. 879/2026 (for possession) is allowed.

b. The Applicants/Allottees are directed to deposit an amount of Rs.19,67,905/- towards the balance consideration and other charges, within four (4) weeks, with the Registry of this Tribunal and communicate such deposit to the Non-Applicant/Promoter in writing.

c. Upon receipt of such written intimation, the Non-Applicant/Promoter shall hand over actual possession of the subject flat to the Applicants/Allottees within a period of one week from the date of such intimation.

d. The aforesaid directions shall be without prejudice to the rights and contentions of the parties in the Appeal.

e. Accordingly, Miscellaneous Application No. 879/2026 (for possession) stands disposed of.

(DR. RAJAGOPAL DEVARA)

(S. S. SHINDE, J.)

Z. Q. Pathan