BEFORE THE MAHARASHTRA REAL ESTATE

APPELLATE TRIBUNAL, MUMBAI

Misc. Application No.973 of 2024 (Stay)

IN

Appeal No. AT12500002 of 2025
IN
Complaint No.CC006000000580864

Amit Gharkul Builders LLP]
Through its designated partner]
Shri Atul Ishwardas Chordia,]
S.No.191A/2A/1/2, CTS No.2175 Part,]
Tech Park One, Airport Road,]
Pune-411 006.] ... Appellant

Versus

Honest Shelters Pvt. Ltd.]
A Company registered under the]
Companies Act, 2013, Through its]
Directors viz:]
1) Sunil Mittal,]
2) Avi Agarwal,]
Office No. A & B, Dealing Chambers,]
2nd Floor, J.M. Road, Deccan,]
Pune.] ... Respondent

Appearance(s):
Senior Advocate Mr. Naushad Engineer a/w. Adv. Mr. Harshad Bhadbhade for Appellants.
Adv. Mr. Rubin Vakil a/w. Adv. Sarosh Bharucha, a/w Adv. Ms. Saloni Sulakhe, Adv. Mr. Declan Fernandes, Adv. i/b Dhaval Vussonji & Associates for the respondent.

CORAM : SHRI S. S. SHINDE J., CHAIRPERSON &

SHRI SHRIKANT M. DESHPANDE, MEMBER (A)

RESERVED ON : 14th October, 2026

PRONOUNCED ON : 29th October, 2026.

(THROUGH VIDEO CONFERENCING)

JUDGEMENT

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

1. The appellant has filed the captioned appeal challenging the common interim order dated 25.11.2024 passed by the learned Chairperson, Maharashtra Real Estate Regulatory Authority (for short, "the Authority") in the Complaint no. CC006000000580864 filed by the appellant/allottee, whereby the Authority did not grant interim relief as prayed for by the appellant in the interim applications No. CC0060000000580864 APPL/UH/1 and No. CC0060000000580864 APPL/IR/2.

2. The appellant is Limited Liability Partnership firm registered under the Limited Liability Partnership Act, 2008 (for short "LLP Act") which has purchased a flat in the subject project having MahaRERA project registration No. P51900006786. Respondent is promoter of the said project.

3. For the sake of convenience, the appellant herein will the referred to as the "appellant/appellant LLP/allottee" and respondent as "promoter/Honest Shelters" respectively.

Factual Matrix

4. The brief facts culled out from the pleadings, material on record and impugned order reveals that, Shree Ram Urban Infrastructure Limited (earlier known as "Shree Ram Mills Ltd., Corporate Debtor) [for short "erstwhile promoter" or "Corporate Debtor" or "SRUIL"] was the owner of a property being all the pieces and parcels of land bearing C.S. Nos. 288, 289 (part), 1/1540 (part), 2/1540 (part) and 3/1540 (part), collectively forming Plot Nos. 5B + 6 admeasuring approximately 28,409.57

sq. mtrs. Situated at Worli Estate, Lower Parel Division, Mumbai along with under construction building called "Palais Royale" and with structures thereon, and all plant and machinery attached to earth permanently fastened to anything attached to the earth, both present and future (for short "said Project") having MahaRERA project registration No. P51900006786.

5. For the purpose of carrying out the construction of the said Project, SRUIL had availed financial credit facilities from one Indiabulls Housing Finance Limited (for short "IHFL"), and for securing the aforesaid credit facilities, SRUIL had mortgaged *inter alia* the said project along with receivables in favour of IHFL vide multiple registered mortgaged deeds. Accordingly, IHFL had the first and exclusive mortgage/charge on the said project since the year 2011 along with first and exclusive charge on all the receivables/cash flow (both present and future) arising from the sales of the said project. IHFL initiated proceedings under the Securitization and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (for short "SARFAESI Act") against the Corporate Debtor/ SRUIL.

6. Thereafter, by various orders viz., order dated 05th October 2016 read with order dated 22nd March 2017 and order dated 24th August 2017, the Hon'ble Bombay High Court directed the winding up of SRUIL and appointed the official liquidator, *qua* the assets of the SRUIL. On 17th April 2018, the said official liquidator took over possession of all the assets of the SRUIL including the said project.

7. Since the SRUIL defaulted on the repayment of loan to IHFL and considering the said Project was in custody of official liquidator, IHFL, as a secured creditor, filed Company Application No. 420

of 2018 before the Hon'ble Bombay High Court seeking possession of *inter alia* the said project for the purpose of selling the same and recovering its dues. While seeking possession of *inter alia* the said project, 142 apartments out of the total 144 apartments in the said project, including the subject flat, were excluded by IHFL as SRUIL had already created third party rights in respect of the aforesaid 142 flats after obtaining a prior written NOC from IHFL in this regard; thus, possession of the aforesaid 142 apartments could not have been sought by IHFL at the time of enforcement since the same were no longer the assets of the SRUIL. The aforesaid company application was allowed on 7th February 2019 and consequently, the official liquidator handed over the possession of the following property to IHFL on 07th May 2019:

> *"All that piece and parcel of land bearing C.S. Nos. 288, 289 (part),1/1540 (part), 2/1540 (part), 2/1540 (part), and 3/1540 (part) collectively forming plot nos. 5B + 6 admeasuring approximately 28,409.57 square meters, land bounded on –*
>
> *North by: by plots reserved for MHADA (Plot No. 8) and Municipal Corporation of Greater Mumbai for R.G. (Plot No. 7) M.P. (Piot No. 3) and P.G. (Plot No. 4);*
>
> *South by: by Ganpatrao Kadam Marg;*
>
> *East by: by proposed parking building and Chitrakoot and Vrindawan building:*
>
> *and West by: by sub-plot no. 54 forming part of larger property along with under construction building "Palais Royale";*

Structures thereon;

All Plant and Machinery attached to the earth or permanently fastened to anything attached to the earth, both present and future; All the receivable/cash flows arising from the sales of the aforesaid project of the developed area as well as pre-sold;

Except –(a) 142 apartments in Palais Royal building (sold to third parties); (b) the area admeasuring approximately 4210 sq. mtrs. required for proposed car parking building (to be handed over to the MCGM; (c) area occupied by building Chitrakoot and Vrindavan (Reliance building) consuming FSI of 124103 sq. ft.; and (d) the areas required to provide common access from Ganpatrao Kadam Marg N.G. Bansode Marg to plot nos. 3, 4, 5B + 6, 7 9 and plot no 65NE admeasuring area 4845.62 sq. ft. carpet area on the 65th level, in the under-construction building called Palais Royale, and Apartment No. 21NE admeasuring area 4244 sq. ft. carpet on the 21st level in the under-construction building called Palais Royale (hereinafter collectively referred to as the "Sale Property")"

8. IHFL carried out a public auction of the Sale Property, whereby respondent Honest Shelters Pvt. Ltd. (for short "Honest Shelters") emerged as the successful bidder of the Sale Property and thereafter, the IHFL sold the Sale Property in favour of the Honest Shelters vide three separate registered Sale Certificates dated 26th June 2019 (For short "Sale Certificate"). Post the execution of the Sale Certificate, the Honest Shelters became the developer/ promoter of the said Project which in turn has

also been recognized by the Municipal Corporation of Greater Mumbai and the MahaRERA.

9. The said Sale Certificate dated 26th June 2019 has clearly mentioned description of immovable property as under: -

"All that part and parcel of the property consisting of prime real estate project titled "Palais Royale", situated at Worle Estee, Lower Parel, Mumbai consisting of all that piece and parcel of land bearing C.S. Nos. 288, 289 (Part), 1/1640 (Part), 2/1640 (part) and 3/1540 (Part), collectively forming plot Nos. 5B + 6 (admeasuring approx. 28,409,57 sq. mtr. ***Except 142 apartments*** *in Sky and Manor apartments situated at Worli Estate, Lower Parel Divisions, Mumbai save and except the area admeasuring approx. 4,210 sq. mtr. Required for proposed car parking building or plot nos. 5B + 6, area occupied by building Chitrakoot and Vrindawan (Reliance Building) consuming F.S.I. of 1,24,103 sq. ft. and the area required to provide common access from Ganpatrao Kadam Marg, M. G. Bansode Marg and g. M. Bhosale Marg to plot Nos. 3, 4, 5B + 6, 7, 9 and also plot no. 5A.*

Bounded On:

North By : By plots reserved for MHADA (Plot No.8) and Municipal Corporation of Greater Mumbai for R. G. (Plot No.7), M. P. (Plot No.3) and P.g. (Plot No.4).

South By : By Ganapatrao kadam Marg

East By : By proposed parking building and Chitrakoot and Vrindawan Building

West By : By sub-plot No.5A forming part of larger property

Together with under construction building called "Palais Royale", structures thereon and all plant and machinery attached to the earth or permanently fastened to anything attached to the Earth, both present and future along with first and exclusive charge on all receivable/ cash flows arising from sales of the aforesaid project of developed area as well as pre-sold in favour of the vendor."

10. From the said description of Sale Certificate, the immovable property excluded said 142 apartments of the project which were pre-sold from the Sale Certificate, which covers the subject flat. The Honest Shelters being promoter, recognized by the MahaRERA, was required to complete the project including the said 142 flats and hand over possession to the respective allottees. Further, it also stipulated that the Honest Shelters is entitled to receivable/ cash flows arising from sales of the project as well as pre-sold flats.

11. Thereafter, an application under the provisions of Insolvency and Bankruptcy Code, 2016 (for short "IBC") was filed against the Corporate Debtor/ SRUIL before the Hon'ble National Company Law Tribunal (for short "NCLT"), Mumbai seeking commencement of insolvency proceedings against the Corporate Debtor which in turn was subsequently allowed on 06th November 2019 by the Hon'ble NCLT and consequently, Mr. Srigopal Choudhary ("Erstwhile IRP") was appointed as the Insolvency Resolution Professional of the Corporate Debtor.

12. Subsequently, the aforesaid insolvency proceedings were challenged before appellate tribunal and consequently, vide an order dated 1st March 2021, the Hon'ble Supreme Court of India held that the Corporate Debtor would undergo CIRP under the

provisions of IBC (for short "the Hon'ble Supreme Court IBC Order").

13. On 22nd November 2022, the Honest Shelters filed an Interim Application bearing IA No. 1647 of 2023 ("said IA") before the Hon'ble Bombay High Court, Mumbai, seeking possession of 142 flats in the said Project as the promoter and Developer of the said project, from the official liquidator for completion of construction thereof and to handover possession to respective allottees. After hearing the parties at length, the Hon'ble Bombay High Court passed an order on 06th April 2023 whereby it directed the official liquidator to continue to remain in possession of the aforesaid 142 apartments and liberty was granted to all the concerned to initiate appropriate proceedings before concerned forums and the official liquidator was directed to handover possession to the concerned parties as may be directed by the concerned court.

14. By an Order dated 20th March 2023 passed in a complaint filed by one of the allottees of a flat in the said project, the MahaRERA held that it shall be the duty of Honest Shelters as a promoter/developer under RERA to handover possession to all the flat purchasers/allotees. The MahaRERA also held that Honest Shelters would not be held liable for the liabilities and obligations accrued prior to the handing over of the said project to Honest Shelters and the same shall be of the Corporate Debtor/ SRUIL only (for short "First RERA Order"). Apart from the aforesaid, the First RERA Order also held that any amounts not deposited in the designated escrow account shall not be considered as a valid discharge of the sale consideration paid by the customer in respect of his/her concerned unit.

15. Pursuant to the passing of the Hon'ble Bombay High Court Order, two applications came to be filed before MahaRERA whereby one application was filed by the Honest Shelters and another application was filed by one of the allottees of the said project for a similar direction that the possession of 54 flats be handed over to the Honest Shelters since the Honest Shelters as the promoter of the said project is liable to complete the said project under the provisions of RERA. Thereafter, by and under an order dated 19th July 2023 (for short "Second RERA Order"), the MahaRERA directed the official liquidator to hand over the possession of 54 flats to the Honest Shelters since the Honest Shelters is the promoter of the said project under RERA.

16. The Hon'ble Bombay High Court Order along with aforesaid MahaRERA Orders were challenged by the Resolution Professional of the Corporate Debtor by way of Special Leave Petition (Civil) No. 8674 of 2023 ("SLP") along with a Transfer Petition (C) No. 2050-2056 of 2023 ("Transfer Petition") before the Hon'ble Supreme Court of India. On 6th December 2023, the Hon'ble Supreme Court of India was pleased to dispose of the SLP along with the Transfer Petition. Vide the said Judgment, the Hon'ble Supreme Court of India categorically observed that the 142 apartments in the said Project as well as the said Project would not form part of the estate of the Corporate Debtor/ SRUIL pursuant to issuance of the Sale Certificate vide which 142 apartments in the said Project were excluded as the same were transacted by the Corporate Debtor prior to the commencement of CIRP of the Corporate Debtor. By way of the Judgment, the Hon'ble Supreme Court modified the Hon'ble Bombay High Court Order to that extent. Further, Honest

Shelters became responsible to complete the said project and handover possession of the same to the flat buyers, and the obligations of flat purchasers would be governed by their respective agreements for sale. The relevant paragraphs of the Judgement are reproduced hereunder for reference:

"We may note that a relevant aspect is that on 26.06.2019, a sale certificate was issued under the Securitization and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (SARFAESI Act) in terms whereof while giving the description of the immovable property as collectively forming part of plots No. 5B and 6, 142 apartments in the Sky and Manor situated in Worli Estate have been specifically excluded. Reasons for this is that qua these flats the work is assigned to respondent No. 1 and there are flat buyers who made payment in respect thereof. The orders of Real Estate Regulatory Authority (RERA) dated 20.03.2023 and 19.07.2023 required to complete the project and handover possession to the flat owners. The obligations of the flat buyers would be governed by their agreements. It is perceived that the impugned order would amount to revisiting this issue by the NCLT."

"We are of the view that since the process by the NCLT under the Insolvency and Bankruptcy Code, 2016 (the "I&B Code, 2016) commenced on 06.11.2019 and the sale certificate was issued on 26.06.2019, the rights of respondent No. 1 and the flat buyers cannot be affected by this process. Thus, the NCLT is not to examine these aspects which apparently troubles the parties"

"In view of our order aforesaid, we believe that there is clarity on this aspect, and no further directions are required in that behalf and respondent No.1 will proceed in pursuance to the RERA orders. The impugned order stands modified/clarified to that extent."

17. Pursuant to the Hon'ble Supreme Court of India order dated 06.12.2023, Hon'ble Bombay High Court by its order dated 02.01.2024 directed the Official Liquidator to hand over possession of the said 142 flats to the Honest Shelters. On 9th January 2024, possession of 142 flats was handed over to the Honest Shelters by the Official Liquidator. Thus, the possession of the said 142 flats was received by Honest Shelters from the official liquidator on 09.01.2024.

18. The promoter obtained the part occupation certificate dated 12.08.2022 covering "entrance level + 1st to 8th parking levels + 13th to 27th floor levels" of the residential building. Further, the promoter obtained the part occupation certificate for the residential building comprising of 28th floor to 53rd floor levels on 17.12.2024.

Purchase of the subject flat by the appellant:

19. In or about the year 2012 the appellant approached Shree Ram Urban Infrastructure Limited (for short SRUIL/erstwhile promoter/corporate debtor) to purchase a residential flat in the said project. Pursuant to the further discussion and negotiations, the appellant and erstwhile promoter entered into an agreement for sale dated 5th July, 2012 which was registered with the office of Sub Registrar, Assurances, Mumbai-400003 under serial no.BBE-3/6422/2012 (for short "the agreement for sale") for sale of residential flat bearing flat No.30NE on 30th floor

admeasuring 450.17 sq. mts. carpet area excluding the fire escape passage, refuge /(terrace) moat/flower bed/service areas admeasuring 318.30 sq. mts. forming part of the common areas (in addition to proportionate share in other common areas) on the 30 NE level of the said project building together with garage/s admeasuring 74.32 sq. mts. built up area in the building known as "Palais Royale" , bearing MahaRERA registration No.P51900006786 on the project land. The appellant purchased the said flat from the erstwhile promoter for total consideration of Rs.33,75,00,000/-. As per the Clause-4 of the said agreement for sale, time was essence of the contract and the payment as stated under the agreement for sale was required to be made. Clause-4, which provided the payment schedule is reproduced below:

a) *INR.9,40,00,000/- (Indian Rupees Nine Crores and Forty Lakh Only) on or before the execution of the agreement for sale;*
b) *INR.8,00,00,000/- upon casting of last roof slab of the Project building;*
c) *INR.8,60,00,000/- (Indian Rupees Eight Crores Sixty Lakhs Only) simultaneously with or before the Promoter handing over the charge/possession of the Promoter (SRUIL at that point of time) handing over the charge/possession of the Flat to the Applicant and,*
d) *INR.3,20,00,000/- (Indian Rupees Three Crores and Twenty Lakhs Only) on receipt of Occupancy Certificate.*

20. As the said flat was mortgaged to the Indiabulls Housing Finance Limited (for short 'the IHFL'), the erstwhile promoter sought no objection certificate from IHFL for sale of the flat, which was

provided by IHFL on 13th July 2012. The appellant as per the said agreement for sale, paid part consideration to the erstwhile promoter. As per Clause 15 of the said agreement for sale, the promoter was under legal obligation to hand over possession of the subject flat on or before 31st December, 2013.

Termination of agreement for sale by respondent no.2 promoter

21. As observed above, respondent Honest Shelters purchased the said project vide a public auction under the aegis of SARFAESI Act and stepped into the shoes as the promoter of the said Project on 26th June 2019. The status of the Honest Shelters as promoter of the said project has also been recognized by MahaRERA. Pursuant to being recognized as the promoter of the said project, it addressed letters to all allottees of the said project to whom apartments/flats had been allotted by the erstwhile promoter seeking details of individual agreements, payment details, etc.

22. According to Honest Shelters, it addressed a letter dated 26th May 2021 to the appellants seeking details of all the forms/applications/agreements executed with the erstwhile promoter, any no-objection certificate issued by IHFL, correspondences with erstwhile promoter, and the payment details in respect of the said flat. It further apprised the appellant that the Municipal Corporation of Greater Mumbai had already recognized the Honest Shelters as the owner of the said project and that it had undertaken necessary steps to complete the construction of the said project and handover possession.

23. Subsequent thereto, the Honest Shelters addressed another letter dated 01.12.2021 to the appellant once again seeking details of all the forms/applications/agreements executed with

the erstwhile promoter; No-objection certificate, if any, issued by IHFL; correspondences with erstwhile promoter; and the payment details in respect of the said flat. However, no response whatsoever to the same was received from the appellant.

24. Thereafter, upon receipt of part Occupation Certificate on 12th August 2022 the promoter addressed an intimation of possession letter dated 16th December 2022 to the appellant stating that the promoter is ready to hand over possession of the said flat to the appellant for fit out work, subject to payment of balance purchase consideration of Rs.11,80,00,000/-. The promoter also sought perusal of the original documents for verification and clarified that in case upon said inspection further amounts are found to be outstanding, the possession would be handed over only upon receipt of such further amounts by the promoter.

25. By letter dated 27th December 2022, the appellant responded to the promoter's intimation of possession letter dated 16th December 2022 stating that whilst the appellant was ready to make payment of the balance consideration, it would do so only upon being permitted to inspect the said flat. The appellant addressed the letters dated 19th January 2023 and 13th April 2023 to the promoter stating that via prior communications, it has already expressed its readiness and willingness to pay the balance consideration and sought inspection of the said flat prior to taking possession. The appellant further averred that it has not received any response to its past communications and once again, requested to arrange for inspection of the subject flat and documents thereof. The appellant thereafter addressed an e-

mail dated 2nd June 2023 to the promoter reiterating the contents of its past communication.

26. According to the promoter, from the perusal of the communication addressed by the appellant (Mr. Kishore Pate, its partner), it is evident that the change in management of the appellant LLP was effected from 28.11.2022 as reflected on the Ministry of Corporate Affairs and thus Mr. Kishore Pate was no longer even the partner of the appellant LLP. Despite not being a partner in the appellant LLP, the appellant with malafide intention through Mr. Kishore Pate issued various communications to the promoter pertaining to the said flat to conceal the change in management of the appellant LLP and avoid payment of transfer charges under the agreement for sale.

27. On 13th March 2024, the appellant LLP addressed a letter to the promoter, *inter-alia*, stating that it has via prior communication expressed its readiness and willingness to pay the balance consideration after inspection of the said flat. Referring to the Hon'ble Supreme Court of India's order dated 6th December 2023 in Civil Appeal No.8093 of 2023 and MahaREAT's order in M.A.No.374 of 2023 in Appeal No.154490 of 2023, the appellant LLP averred that the promoter is bound by the terms of the agreement executed between the erstwhile promoter and the appellant LLP.

28. On 20th April 2024 the promoter by a letter addressed to the appellant LLP terminated the said agreement for sale on the following grounds:

> *(a) At the time of execution of the agreement for sale, the control and management of the Appellant LLP vested with Mr. Kishore G. Pate, Mr. Sanjeev G. Pate and Mr. Rajendra*

G. Pate. However, upon perusal of the website of the Ministry of Corporate Affairs it came to the Respondent's knowledge that since 28th November 2022 the management of the Appellant LLP had been taken over by Mr. Atul Ishwardas Chordia and Mrs. Varsha Atul Chordia and the original partners being Mr. Kishore G. Pate, Mr. Sanjeev G. Pate and Mr. Rajendra G. Pate had retired from the Applicant LLP. Despite repeated requests of the promoter, the reconstituted /amended / modified LLP Agreement has not been provided by the appellant to the promoter till date.

(b) Considering the appellant has even failed to produce the amended/reconstituted LLP Agreement, without prejudice, it appears that the said document was executed by the continuing and incoming partners of the appellant LLP without payment of the requisite stamp duty under the Maharashtra Stamp Act, 1958, (and without informing the promoter and paying the Transfer Charges, thus being in contravention of the terms of the agreement for sale.

(c) It is reiterated that this change in management of the appellant LLP, was carried out in contravention of its own covenants as contained in the agreement for sale, particularly Clause 33(h) thereof.

(d) In view of the above, the appellant failed to obtain the promoter's prior written consent and pay the predetermined transfer charges of INR 3,00,00,000/- (Indian Rupees Three Crores Only) to the promoter under the terms of agreement for sale.

(e) Further, by way of the Termination Letter, the promoter informed the appellant LLP that it shall refund the sum of INR 21,95,00,000/- (Indian Rupees Twenty-One Crores and Ninety-Five Lakhs Only) already paid by the appellant LLP after deducting a sum of INR 1,00,60,274/- (Indian Rupees Onc Crore Sixty Thousand Two Hundred and Seventy-Four Only) towards interest on the Transfer Charges at the rate of 24% p.a., on account of the breach of the Appellant's covenants as provided for under the agreement for sale. The promoter clarified that the refund would be issued in terms of the agreement for sale."

29. In response to the said termination letter, the appellant LLP issued a letter dated 6th May 2024 raising various grounds challenging the termination letter which have been briefly summarized as under:

(a) Clause 33(h) of the AFS is illegal and non-est in the eyes of law.

(b) As per the array of parties to the agreement for sale, all transfers of all natures are permitted. Any change in the management of Applicant LLP does not affect its existence, rights or liabilities and, rights of individual partners were not involved.

(c) The written permission of the promoter, as contemplated in Clause 33(h) is a "mere formality", as the clause also states that such permission would not be unreasonably withheld. No discretion is available with the promoter to refuse such permission under any circumstances whatsoever.

(d) No transfer charges can be levied as per law and such transfer charges are contrary to the Competition Act, 2002.

(e) Clause 33(h) is in violation of the provisions of the Maharashtra Ownership of Flats Act, 1963.

30. According to the promoter, the appellant LLP at no point in time, denied the change in management of the appellant LLP and instead termed the relevant Clauses of the agreement for sale as illegal.

31. According to the promoter, the appellant LLP had defaulted the payment of sale consideration due as provided in the agreement for sale and has been constantly ignoring all correspondences from the promoter. Consequently, the termination of the agreement for sale by the promoter is valid and subsisting in terms thereof as it is apparent that appellant LLP has malafide intention facilitated the transfer of the flat by changing the management of the appellant LLP altogether to avoid payment of transfer charges to the promoter and the interest accrued thereupon. Furthermore, the possibility of payment not having paid requisite statutory stamp duty payable on the LLP agreement, under Maharashtra Stamp Act, 1958, can not be denied as appellant refused to produce/provide copy thereof to the promoter till date.

32. Thereafter, aggrieved by the conduct of the promoter, the appellant LLP filed the captioned complaint seeking following reliefs:

> *"i) It may kindly be declared that agreement dated 5/7/2012 registered in the office of Sub Registrar of Assurances Mumbai 3 at Sr. No. 6422/2012 is legal, valid*

and subsisting and the same is binding on the Respondent.

ii) It may kindly be declared that the termination letter dated 20/4/2024 issued by the Respondent cancelling the agreement dated 5/7/2012 registered in the office of Sub Registrar of Assurances Mumbai 3 at Sr. No. 6422/2012, is null and void.

iii) The Respondent promoter may kindly be directed to give possession of Flat No. 30NE in building 'Palais Royale' at Worli Estate, Lower Parel, Mumbai-400013 as per to the Complainant as per agreement dated 5/7/2012 registered in the office of Sub Registrar of Assurances Mumbai 3 at Sr. No. 6422/2012 and also execute all necessary documents, papers, like possession receipt in favour of the Complainant.

iv) It may kindly be declared that the Respondent promoter is not entitled to charge transfer fee of Rs. 3 Crore to the Complainant as the Complainant is a Limited Liability Partnership formed and established under the provisions of Limited Liability Partnership Act, 2008."

33. Pending the hearing and final disposal of the complaint filed by the appellant LLP, it filed the interim applications for urgent relief as the promoter had issued termination letter dated 24th April 2024. After hearing the parties, the Authority passed the impugned interim order. In the impugned order the Authority observed that the captioned interim applications are for limited issue of interim reliefs as sought by the complainant. The Authority further observed that the entire case rests on the Clause 33(h) of the agreement for sale which bars the purchaser

from parting with any flat purchaser's interest till the full payment of the consideration amount is paid to the promoter. The promoter argues that the composition of the LLP changed and hence they are justified in cancelling the agreement for sale. The Authority further observed that the entire matter hinges on the adjudication of issues under the Limited Liability Partnership Act, 2008 which this Authority is not legally competent. Further, the promoter's impugned action of issuance of the termination notice emanates from the interpretation of the clauses of the LLP Act. Further, the complainant's entire case is based on the definition and composition of LLPs as per the LLP Act. In view of this, the Authority observed that it is unable to grant any interim relief as prayed for by the complainant. Parties may seek adjudication of the issues emanating from the LLP Act, 2008 at the proper forum. With these observations the Authority disposed of the said interim applications and did not grant reliefs as prayed by the appellant in the said interim applications.

34. Aggrieved by the said interim impugned order of the Authority, the appellant LLP has filed the captioned appeal on the grounds as set out in the memorandum of appeal seeking following reliefs:

> *"a) That the Impugned Interim Order dated 25/11/2024 passed in complaint no CC006000000580864 by the Authority be quashed and set aside and this Tribunal be further pleased to grant injunction thereby restraining the respondent promoter from creating third party rights in respect of Flat No. 30NE on 30th floor of building PALAIS ROYALE';*

b) That pending the hearing and final disposal of the captioned appeal, this Hon'ble Tribunal may be pleased to direct the Respondent and/or its servants, agents, assignee or any person claiming through and/or under the Respondent from acting upon the termination notice 20.04.2024;

c) That pending the hearing and final disposal of the captioned appeal, this Hon'ble Tribunal may be pleased to direct the Respondent and/or its servants, agents, assignee or any person claiming through and/or under the Respondent from creating any third-party rights, or encumbrances in respect of the flat bearing no 30 NE in the said project namely "PALAIS ROYALE";

d) Pending the hearing and final disposal of the above said matter, the Respondent may kindly be restrained by an order of injunction;

e) That the Respondent be ordered to hand over the possession of their respective flat.

35. The learned Advocates for the parties were called upon to advance their arguments on the application.

36. The learned Senior Advocate for the appellant has submitted that the Authority declined to grant interim protection as erroneously held that the issue emanating from the LLP Act, 2008 and it lie outside its jurisdiction. The learned Senior Advocate further submitted that the said finding is *ex-facie* contrary to the provisions and intent of RERA Act, 2016 which is a complete code providing for adjudication of disputes arising between promoters and allottees under registered agreements for sale. Further, the Authority erred in law and in fact in failing

to protect the appellant's vested contractual rights, despite clear proof of readiness and willingness, substantial compliance with contractual obligations, and overwhelming equity in its favour.

37. The learned Senior Advocate submitted that the appellant LLP has purchased the subject flat by an agreement for sale dated 5th July 2012 executed with the erstwhile promoter for total consideration of Rs.33,75,00,000/-, out of which the appellant LLP has paid more than 60% as per the demands raised by the erstwhile promoter from time to time. The due possession date of possession as per the agreement for sale was 31st December 2013.

38. The learned Senior Advocate submitted that owing to the financial insolvency of erstwhile promoter, the project came under the purview of the SARFAESI Act, and the respondent/promoter acquired rights in the project as an assignee/promoter. Upon taking charge of the project, the promoter acknowledged the appellant's allotment and issued a possession letter dated 16th December 2022, confirming readiness to hand over the subject flat to the appellant. However, when the appellant sought inspection of the flat and relevant documentation vide its letter dated 27th December, 2022, the promoter abruptly issued a termination notice dated 20th April, 2024 alleging non-payment of the balance consideration, without any prior notice of default or opportunity to cure in violation of Section 13(2) of the RERA Act. The learned Senior Advocate submitted that appellant immediately replied to the said termination letter demonstrating its consistent readiness and willingness to pay the balance consideration and take possession. The promoter's unilateral and malafide

termination is contrary to the principles of contractual fairness and statutory obligations under the RERA framework.

39. The learned Senior Advocate submitted that the Authority erred in holding that the subject matter of the complaint falls under the LLP Act, 2008. The complaint pertains purely to non-delivery of possession, illegal termination, and enforcement of rights under the registered agreement for sale, which are squarely governed by Sections 14, 18, and 19 of the RERA Act. The learned Senior Advocate submitted that the jurisdiction under RERA extends to all acts and omissions of promoter affecting the rights of allottees, irrespective of the promoter's internal corporate structure, as held in *M/s. Neelkamal Realtors & Developers Pvt. Ltd. v. Union of India* [2018 SCC OnLine Bom 120 (Bom HC)]. The Authority's refusal to exercise jurisdiction defeats the legislative intent of the RERA Act and effectively denies the appellant to its statutory remedy.

40. The learned Senior Advocate submitted that the promoter having acquired the project through the SARFAESI mechanism, stepped into the shoes of the erstwhile promoter and is statutorily bound by the obligations contained in the registered agreement for sale. Section 15(2) of the RERA Act explicitly provides that in case of transfer of a project to a new promoter; the transferee is liable to all obligations and liabilities of the original promoter. The learned Senior Advocate submitted that the promoter cannot claim immunity or escape its obligations under the pre-existing agreements merely because of its status as an acquirer of the project under SARFAESI. Therefore, the appellant's rights under the 2012 agreement for sale continue to subsist against the promoter.

41. The learned Senior Advocate submitted that the promoter's unilateral termination without lawful notice and without offering a reasonable opportunity to cure alleged defaults violates Section 13(2) of the RERA Act and is null and void. The promoter's act of demanding an additional Rs.3.00 crore on the pretext that there was a change in the appellant's partners is untenable in law. A change in partnership composition does not amount to transfer of property; the LLP continues as a distinct legal entity. Such a conduct of the promoter is arbitrary, amounts to coercion, and reflects a mala fide intent to resell the flat at escalated market value in contravention of the RERA Act's consumer-protection objectives.

42. The learned Senior Advocate submitted that the appellant has a strong *prima facie* case by way of producing the registered agreement for sale, proof of substantial payment, and consistent willingness to perform the remaining obligations. Further, the balance of convenience lies overwhelmingly in favour of the appellant, as creation of third-party rights would render the complaint infructuous and result in irreparable injury. The respondent being a promoter under RERA, cannot be allowed to profit from its own breach. The learned Senior Advocate submitted that Authority's refusal to grant interim protection is thus arbitrary, contrary to the settled principles laid down in "*Newtech Promoters and Developers Pvt. Ltd. v. State of U.P.*, [(2021) 10 SCC 366]", wherein the Hon'ble Supreme Court held that RERA Authorities have wide powers to issue interim orders to protect allottee's rights and interest.

43. The learned Senior Advocate submitted that the promoter having inherited obligations, is bound to complete the project

and deliver possession to the allottees in accordance with the original agreement for sale executed with the erstwhile promoter. The act of issuing a termination notice without lawful authority constitutes breach of statutory duty and is hit by Section 18(1)(a) of the RERA Act. It is settled that the RERA is a welfare legislation intended to protect allottees from arbitrary conduct of promoters. The appellant's investment, exceeding Rs.22 crore, is locked for over a decade, and denial of relief would result in manifest injustice.

44. The learned Senior Advocate submitted that this Tribunal in *"L&T Realty Ltd. v. RERA Maharashtra* (Appeal No. AT006000000015223)" and *"Kukreja Builders v. Deshmukh* (2022)" has consistently held that once a project is registered under RERA, the promoter cannot alter or rescind allottee's contracts unilaterally. The appellant's conduct reflects bona fide intent by demonstrating that the payments have been made diligently, correspondence maintained transparently, and readiness to pay the balance consideration is recorded in writing. Therefore, the appellant's equitable rights must be protected.

45. With these submissions the learned Advocate for the appellant prayed to allow the application and the appeal.

46. The learned Senior Advocate for the appellant has placed reliance on the following judgements:

i) Pioneer Urban Land and Infrastructure Ltd V/s. Govindan Raghavan [2019) 5 SCC 725],

ii) NBCC (India) Ltd. V/s. Shri Ram Trivedi [(2021) 5 SCC 273],

iii) Experion Developers Private Limited V/s. Sushma Ashok Shiroor [(2022) 15 SCC 286].

47. Per contra, the learned Advocate for the promoter has submitted that the transfer charges of Rs.3.00 crore is triggered in cases where the allottee transfers, even though share transfer or change of management, the flat prior to payment of the entire sale consideration as per Clause 33(h) of the agreement for sale. In the instance case the said flat has been transferred through reconstitution/change of partners prior to the payment of the entire sale consideration, the transfer charges are payable in addition to the sale consideration to be recovered from the allottee in terms of the agreement for sale. The learned Advocate submitted that upon purchasing the said project from IHFL, the promoter addressed various letters to the appellant more particularly dated 26th May, 2021, 6th August, 2021 and 1st December, 2021 as the promoter of the said project seeking various documents pertaining to the said flat. However, no response was received by the promoter from the appellant to the aforesaid letters. Upon receipt of the part Occupation Certificate of the project on 12th August, 2022 the promoter issued a letter dated 16th December, 2022 to the appellant whereby the promoter informed the appellant that the possession of the subject flat was ready to be handed over by the promoter to the appellant for fit out purpose, subject to the making payment of Rs.11,80,00,000/- being balance as per the amount due under the agreement for sale, within 15 days from the receipt of the said letter and subject to verification of the documents, bank statements to be provided by the appellant to the promoter. The appellant in response to the said letter informed the promoter that by its letter dated 27th December 2022 that the appellant was ready and willing to make payment

of the balance consideration subject to inspection of the said flat and also enclosed a copy of the demand draft towards payment of the balance consideration. However, the said letter was signed and issued by Mr. Kishore Pate, purported partner of the appellant given the fact that Mr. Kishore Pate was no longer a partner of the appellant at the time of issuance of the aforesaid letter dated 27th December 2022.

48. The learned Advocate submitted that sometime in 2024, the promoter while perusing the portal of Ministry of Corporate Affairs came across the fact that the appellant LLP had been reconstituted on 28th November, 2022 and all the erstwhile partners of the appellant viz., Mr. Kishore Pate, Mr. Sanjeev Pate and Mr. Rajendra Pate, who had originally purchased the said flat through the appellant LLP, were replaced by an entirely new partners consisting of Mr. Atul Chordia and Mrs. Varsha Chordia. In view of the LLP reconstitution, the said flat stood indirectly transferred from the erstwhile partners of the appellant LLP to the new partners in contravention of the covenants of the agreement for sale, more particularly Clause 33(h).

49. The learned Advocate submitted that in accordance with Clause 33(h) of the agreement for sale, the appellant was obligated not to transfer/assign or part with their interests or benefits under the agreement for sale, until payment of all the dues payable under the agreement for sale to the promoter and without obtaining prior written permission of the respondent/promoter. Further, in the event, the appellant desired to assign its rights and interests under the agreement for sale prior to making payment of the entire sale consideration under the agreement for sale, then the respondent/promoter in its absolute discretion

could permit the same only upon the appellant making payment of Rs.3.00 crore towards predetermined transfer charges payable before the transfer/assignment/alienation of the said flat by the appellant. In the present case, the appellant has altered/replaced the management and control of the appellant LLP without the prior consent of the promoter and without making payment of transfer charges.

50. The learned Advocate submitted that the agreement for sale executed by the appellant with the erstwhile promoter explicitly categorizes the transfer of shares or any transaction by virtue of which the management and control of the appellant LLP to any third party as an assignment of the said flat wherein the prior consent of the promoter and payment of the transfer charges, is a pre-requisite and a material term of the agreement for sale. Consequently, it is submitted that the change in the management of the appellant LLP automatically triggered the payment of the transfer charges in terms of the agreement for sale which the appellant connivingly avoided paying to the promoter prior to the LLP reconstitution, culminating in breach of the terms of agreement for sale and resulting in its consequent termination.

51. The learned Advocate submitted that upon knowledge of the LLP reconstitution, the promoter immediately addressed a letter dated 20th April 2024 to the appellant terminating the agreement for sale due to the appellant's failure to comply with the terms of the agreement for sale more particularly Clause 33(h). In response to the termination letter, the appellant issued a letter dated 6th May 2024 raising various frivolous grounds challenging the termination letter *inter alia* stating that Clause 33(h) is *non-*

est in the eyes of law and in violation of the provisions of the Maharashtra Ownerships of Flats Act, 1963, transfer charges are contrary to the provisions of the Competition Act, 2002 and written permissions under Clause 33(h) is a "mere formality"

52. The learned Advocate submitted that in the above circumstances, the appellant has miserably failed and neglected to comply and abide by its obligations arising out of the agreement for sale. Therefore, the promoter has within its rights to duly terminate the agreement for sale by its termination letter dated 20th April, 2024 considering Clause 17.2 of the agreement for sale which permitted the promoter to terminate the agreement for sale by giving a 15 days' notice to the appellant read with Clause 33(h) and Section 11(5) of Real Estate (Regulation & Development) Act, 2016 and also offered to refund the amount of Rs.21,95,00,000/- after deducting Rs. 1,00,60,274/- to the appellant in terms of the agreement for sale.

53. The learned Advocate submitted that the Hon'ble Supreme Court of India in the case of *Maharashtra State Electricity Distribution Company Ltd. vs Datar Switchgear Limited & Ors. [AIR 2018 Supreme Court 529]* has categorically held that upon commission of a fundamental/material breach of the contract, the innocent party therein is entitled to repudiate the contract and sue for damages from such party in breach. Further, the fundamental breach, by its very nature, pervades the entire contract and once committed, the contract as a whole stands abrogated. The learned Advocate submitted that the appellant is a serious defaulter having defaulted upon fulfilling the terms of the agreement for sale as well as Section 19(6) of the RERA

Act, 2016. In view of the above, the promoter has validly terminated the agreement for sale in accordance with the terms thereof and under Section 11(5) of RERA Act, 2016. The learned Advocate submitted that the captioned appeal and stay application are preferred by the appellant under Section 11(5) of the RERA Act, 2016. A bare perusal of Section 11 (5) of RERA Act, 2016 reveals that an allottee has been provided with the liberty to approach this Tribunal in case its allotment *qua* a flat has been terminated by the promoter. Importantly, in such circumstances the allottee has to satisfy twin requirements laid down by Section 11(5) of RERA viz., (i) the termination is not in accordance with the terms of the agreement for sale, (ii) the termination is unilateral/without sufficient cause.

54. The learned Advocate submitted that the original complaint was filed on the premise that Clause 33(h) of the agreement for sale is illegal, void & non-est, therefore the termination letter terminating the said agreement for sale ought to be set aside. Apart from this bald submission, the appellant has miserably failed to back its case with any cogent evidence. There is no material evidence or submission on record to prove that the termination of the said agreement for sale has been carried out by the promoter contrary to the provisions of the agreement for sale or the provisions of RERA Act, 2016. Therefore, the preliminary requirement laid down under Section 11(5) of the RERA Act, 2016 has not been satisfied by the appellant. On this ground alone, the stay application deserves to be dismissed.

55. The learned Advocate submitted that the appellant can under no circumstances be permitted to argue that a clause under the agreement for sale is void or illegal before this Tribunal as under

Section 11(5) of RERA this Tribunal has limited jurisdiction to decide upon the legality of termination of an allottee. The appellant's contentions and submissions are akin to re-writing of a contract which is not within the jurisdiction of this Tribunal. In case the appellant believes there are genuine infirmities in the agreement for sale, it is bound to approach the civil courts who possess the relevant jurisdiction to decide upon the legality and validity of the terms of the agreement for sale. Therefore, the stay application ought to be dismissed due to the appellant's default in making out a case under Section 11(5) of RERA Act, 2016.

56. The learned Advocate submitted that the Clause 33(h) of the agreement for sale had been negotiated and added by the consent of parties to the agreement for sale so that the said flat would not be traded/transferred/assigned to any third party without consent of the promoter. Further, Clause 33(h) of the agreement for sale was included in the agreement for sale so that the promoter of the said Project would be aware of the people purchasing/allotted flats in the said project, affording the promoter to sell flats in the said project as per its discretion. The scope of Clause 33(h) of the agreement for sale is extremely limited in nature; it is operational only until the payment of the entire sale consideration under the agreement for sale is made by the appellant. The promoter's prior consent and payment of transfer charges are required only until the entire sale consideration was paid by the appellant to the promoter as per Clause-4 of the agreement for sale. Further, the milestones for payment of the sale consideration are construction based all the way until the promoter receives full Occupation Certificate

pertaining to the said project. The requirements laid down under Clause 33(h) of the agreement for sale become non-operational upon payment of the entire sale consideration under the agreement for sale under Clause 4 thereof. Therefore, the said clause cannot be termed as a condition/limitation absolutely restraining the appellant from parting with or disposing of its interest in the said flat.

57. The learned Advocate submitted that at the time when the agreement for sale was executed, it was very common for parties to assign immovable properties owned by juristic entities by changing its management and ownership structure for evading the payment of stamp duty and other charges. Thus, Clause 33(h) of the agreement for sale was included in the agreement for sale as an additional security so as to ensure that a juristic entity could not cheat the government treasury or the promoter out of the stamp duty dues and other charges by fraudulent transfers/assignments like the one in the present case.

58. The learned Advocate submitted that the inclusion of Clause 33(h) of the agreement for sale was explicitly agreed to by and between the erstwhile partners of the appellant LLP and erstwhile promoter. There was no demur or protest about the inclusion of Clause 33(h) at the time of execution of the agreement for sale or anytime thereafter until the promoter issued the termination letter. The aforesaid conduct of the appellant itself shows that the appellant chose to impugn Clause 33(h) of the agreement for sale as an afterthought in an attempt to guise its breaches under the agreement for sale more

particularly overtly avoiding to pay the transfer charges to the promoter as per the terms of the agreement for sale.

59. The learned Advocate submitted that since the agreement for sale was executed in the year 2012 and the appellant LLP reconstitution occurred on 28th November 2022, the incoming/new partners of the appellant LLP ought to have deemed knowledge of the provisions of the agreement for sale. The new partners of the appellant LLP were thereby obligated to seek prior consent of the promoter and pay the transfer charges before conniving assignment of the said flat by the erstwhile partners to the new partners guised under the false garb of a mere reconstitution of the LLP. The new partners of the appellant LLP cannot thus feign ignorance of the obligations imposed under the agreement for sale and material breaches of the terms of the agreement for sale on their part. In any event, the onus of proving that Clause 33(h) of the agreement for sale is illegal or contrary to provisions of law rests squarely with the appellant who has miserably failed to demonstrate which provision of law, Clause 33(h) of the agreement for sale exactly contravenes. The said clause does not contravene the model agreement published by MahaRERA, Transfer of Property Act, 1882 or any other law in force. Furthermore, as demonstrated hereinabove, Clause 33(h) of the agreement for sale is reasonable and included in the agreement for sale for cogent reasons by consent of the parties thereto.

60. The learned Advocate submitted that the appellant LLP reconstitution occurred on 28th November 2022, a bare perusal of the portal of Ministry of Corporate Affairs reveals that as on 28th November 2022, the erstwhile partners of the appellant LLP

had retired from the appellant LLP, and the new partners were the only partners of the appellant LLP. The appellant has conveniently not placed on record its Reconstitution Deed or provided the same to the promoter for its verification. Despite retiring from the appellant LLP, Mr. Kishore Pate i.e. one of the erstwhile partners illegally and without any authority issued letters dated 27th December 2022, 19th January 2022 and 13th March 2024 and e-mail dated 02nd June 2023 to promoter intimating the appellant's readiness and willingness to pay the balance consideration upon inspection of the said flat. It is clear that Mr. Kishore Pate continued to address communication on behalf of the appellant LLP to the promoter with malafide intentions so as to hide the illegal assignment of the said flat to the new partners contrary to the covenants of the agreement for sale and to more particularly avoid making payment of the transfer charges.

61. The learned Advocate submitted that bare perusal of the stay application and the captioned appeal reveals that the appellant has miserably failed to chalk out any *prima-facie* case whatsoever for grant of any reliefs as sought vide the stay application, the facts in the present dispute reveal that the appellant's allotment over the said flat has been validly terminated by the promoter due to the default of the appellant itself. Furthermore, the question of irreparable loss and harm to the appellant does not and cannot arise as vide its termination letter dated 20th April 2024 the promoter has agreed to refund the amount of Rs.21,95,00,000/- after deducting Rs.1,00,60,274/- to the appellant in terms of the agreement for sale. Thus, the balance of convenience lies squarely in favour

of the promoter who has invested countless resources for completion and construction of the said project.

62. The learned Advocate submitted that in view of the aforesaid submissions, it is clear that the appellant is a serious defaulter under the agreement for sale as well as the provisions of RERA Act, 2016 and it thus not entitled to any relief under the stay application. With these submissions, the learned Advocate for the promoter prayed to reject the application.

63. We have heard the learned Advocates for the parties. We have also given careful consideration to the averments made in the application, contents of the memorandum of appeal, reply filed by the promoter and material placed before us. On examination of the pleadings, submissions of the parties and the material placed before us, 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 appellant allottee is liable to pay the transfer charges of Rs.3,00,00,000/- as per the clause 33(h) of the agreement for sale?	In the negative.
2.	Whether the termination of the agreement for sale by the promoter is valid and legally sustainable?	In the Negative.
3.	Whether the promoter can be directed to hand over possession of the flat to the appellants?	In the affirmative

4.	Whether the impugned order is sustainable in the eyes of law?	In the negative
5.	Whether impugned order warrants interference in this appeal?	In the affirmative
6.	What order?	As per order.

REASONS

Point no.1

64. On ensemble of the facts submitted above by the parties, it is not in dispute that Shree Ram Urban Infrastructure Limited (SRUIL) erstwhile promoter was owner and promoter of the subject project. For the purpose of carrying out the construction of the said project, SRUIL had availed financial credit facilities from IHFL and for securing the aforesaid credit facilities, SRUIL had mortgaged *inter alia* the said project along with receivables in favour of IHFL vide multiple registered mortgaged deeds. On failure to repay the loan amounts, IHFL initiated proceedings under the Securitization and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (SARFAESI Act) against the erstwhile promoter/ SRUIL. Thereafter, by various orders viz., Order dated 05th October 2016 read with Order dated 22nd March 2017 and order dated 24th August 2017, the Hon'ble Bombay High Court directed the winding up of SRUIL and appointed the official liquidator, *qua* the assets of the SRUIL. On 17th April 2018, the said official liquidator took over possession of all the assets of the SRUIL including the said project. IHFL as a secured creditor filed Company Application No. 420 of 2018 before the Hon'ble Bombay High Court seeking possession of

inter alia the said project for the purpose of selling the same and recovering its dues. While seeking possession of the said Project *inter alia*, 142 apartments out of the total 144 apartments in the said project, including the subject flat, were excluded. Official liquidator handed over the possession of the project property to IHFL excluding the 142 flats on 07th May 2019.

65. IHFL carried out a public auction of the Sale Property whereby the Honest Shelters emerged as the successful bidder of the Sale Property and thereafter, the IHFL sold the Sale Property in favour of the Honest Shelters vide three separate registered Sale Certificates dated 26th June 2019. Post execution of the Sale Certificate, the Honest Shelters became the developer/ promoter of the said Project.

66. On 22nd November 2022, the Honest Shelters filed an Interim Application bearing IA No. 1647 of 2023 before the Hon'ble Bombay High Court, Mumbai, seeking possession of 142 flats in the said project as the promoter and developer of the said project, from the official liquidator for completion of construction thereof and to handover the possession to respective allottees. After hearing the parties at length, the Hon'ble Bombay High Court passed an order on 06th April 2023 whereby it directed the official liquidator to continue to remain in possession of the aforesaid 142 apartments. By and under an order dated 19th July 2023 (for short "Second RERA Order"), the Hon'ble MahaRERA directed the official liquidator to hand over the possession of 54 flats to the Honest Shelters since the it is the promoter of the said project under RERA.

67. The Hon'ble Bombay High Court Order along with RERA Orders were challenged by the Resolution Professional of the Corporate

Debtor by way of Special Leave Petition (Civil) No. 8674 of 2023 ("SLP") along with a Transfer Petition (C) No. 2050-2056 of 2023 ("Transfer Petition") before the Hon'ble Supreme Court of India. On 6th December 2023, the Hon'ble Supreme Court of India was pleased to dispose of the SLP along with the Transfer Petition ("Judgment"). Vide the said Judgment, the Hon'ble Supreme Court of India categorically observed that the 142 apartments/flats in the said Project as well as the said Project would not form part of the estate of the Corporate Debtor/ SRUIL pursuant to issuance of the Sale Certificate vide which 142 apartments in the said Project were excluded as the same were transacted by the Corporate Debtor prior to the commencement of CIRP of the Corporate Debtor. By way of the Judgment, the Hon'ble Supreme Court modified the Hon'ble Bombay High Court Order to that extent. Further, Honest Shelters was responsible to complete the said project and handover possession of the same to the flat buyers, and the obligations of flat purchasers would be governed by their respective agreements for sale.

68. Pursuant to the Hon'ble Supreme Court of India order dated 06.12.2023, Hon'ble Bombay High Court by its order dated 02.01.2024 directed the Official Liquidator to hand over possession of the said 142 flats to the Honest Shelters. On 9th January 2024, possession of 142 flats was handed over to the Honest Shelters by the Official Liquidator. Thus, the possession of the said 142 flats was received by Honest Shelters from the official liquidator only on 09.01.2024. The promoter Honest Shelters was never in possession of these 142 flats any point in time prior to 09.01.2024.

69. It is also not in dispute that the promoter obtained the part occupation certificate dated 12.08.2022 covering "entrance level + 1st to 8th parking levels + 13th to 27th floor levels" of the residential building. Further, the promoter obtained the part occupation certificate for the residential building comprising of 28th floor to 53rd floor levels on 17.12.2024. It is also not in dispute that the subject flat is on 30th floor of the building, which is covered by the part occupation certificate dated 17.12.2024 and not by the occupation certificate dated 12.08.2022.

70. It is not in dispute that in or about the year 2012 the appellant approached erstwhile promoter to purchase a residential flat in the said project. The appellant and erstwhile promoter entered into and registered the agreement for sale dated 5th July 2012 for the subject flat for total consideration of Rs.33,75,00,000/-. The erstwhile promoter also obtained the NOC dated 13.07.2012 from the IHFL for sale of the said flat. The due date of possession as per the said agreement for sale is 31.12.2013. Pertinently, the erstwhile failed to hand over possession of the flat to the appellant by the due date. Further, the promoter Honest Shelters also failed to hand over possession of the flat since 26.06.2019 when it took over the said project under the SARFAESI proceedings till date.

71. As per the Clause-4 of the said agreement for sale, time was essence of the contract and the payment as stated under the agreement for sale was required to be made. Clause-4, which provided the payment schedule is reproduced below:

e) INR.9,40,00,000/- (Indian Rupees Nine Crores and Forty Lakh Only) on or before the execution of the agreement for sale;

f) *INR.8,00,00,000/- upon casting of last roof slab of the Project building;*

g) *INR.8,60,00,000/- (Indian Rupees Eight Crores Sixty Lakhs Only) simultaneously with or before the Promoter handing over the charge/possession of the Promoter (SRUIL at that point of time) handing over the charge/possession of the Flat to the Applicant and,*

h) *INR.3,20,00,000/- (Indian Rupees Three Crores and Twenty Lakhs Only) on receipt of Occupancy Certificate.*

72. It is not in dispute that the appellant has paid the total amount of Rs.21,95,00,000/- towards the consideration of the flat and Rs.11,80,00,000/- remains outstanding, which is payable simultaneously on lawful possession of the flat. It is undisputed that the amounts so far paid by the appellant are strictly in accordance with the terms of the said agreement and there are no breaches on the part of appellant with regard to payments as per clause 4 of the agreement for sale.

73. As observed above, respondent Honest Shelters purchased the said project vide a public auction under the aegis of SARFAESI Act and stepped into the shoes as the promoter of the said Project on 26th June 2019. The status of the Honest Shelters as promoter of the said project has also been recognized by MahaRERA. Pursuant to being recognized as the promoter of the said project, it addressed letters to all allottees of the said project to whom apartments/flats had been allotted by the erstwhile promoter seeking details of individual agreements, payment details, etc.

74. Honest Shelters addressed letters dated 26.05.2021, 06.08.2021, and 01.12.2021 to the appellant seeking details of

all the forms/applications/agreements executed with the erstwhile promoter, any no-objection certificate issued by IHFL, correspondences with erstwhile promoter, and the payment details in respect of the said flat. It further apprised the appellant that the Municipal Corporation of Greater Mumbai had already recognized the Honest Shelters as the owner of the said project and that it had undertaken necessary steps to complete the construction of the said project and handover possession. However, no response whatsoever to the same was received from the appellant.

75. Thereafter, upon receipt of part Occupation Certificate on 12th August 2022, the promoter addressed an intimation of possession letter dated 16th December 2022 to the appellant stating that the promoter is ready to hand over possession of the said flat to the appellant for "*fit out*" work, subject to payment of balance purchase consideration of Rs.11,80,00,000/-. The promoter also sought perusal of the original documents for verification and clarified that in case upon said inspection further amounts are found to be outstanding, the possession would be handed over only upon receipt of such further amounts by the promoter.

76. By letter dated 27th December 2022, the appellant responded to the promoter's intimation of possession letter dated 16th December 2022 stating that whilst the appellant was ready to make payment of the balance consideration, it would do so only upon being permitted to inspect the said flat. The appellant addressed the letters dated 19th January 2023 and 13th April 2023 to the promoter stating that via prior communications, it has already expressed its readiness and willingness to pay the

balance consideration and sought inspection of the said flat prior to taking possession. The appellant further averred that, it has not received any response to its past communications and once again, requested to arrange for inspection of the subject flat and documents thereof. The appellant thereafter addressed an e-mail dated 2nd June 2023 to the promoter reiterating the contents of its past communication.

77. It is the case of promoter that from the perusal of the communication addressed by the appellant (Mr. Kishore Pate, its partner), it is evident that the change in management of the appellant LLP was effected from 28.11.2022 as reflected on the Ministry of Corporate Affairs and thus Mr. Kishore Pate was no longer even the partner of the appellant LLP. Despite not being a partner in the appellant LLP, the appellant with malafide intention through Mr. Kishore Pate issued various communications to the promoter pertaining to the said flat to conceal the change in management of the appellant LLP and avoid payment of transfer charges under the agreement for sale.

78. On 13th March 2024, the appellant addressed a letter to the promoter, *inter-alia*, stating that it has via prior communication expressed its readiness and willingness to pay the balance consideration after inspection of the said flat. Referring to the Hon'ble Supreme Court of India's order dated 6th December 2023 in Civil Appeal No.8093 of 2023 and MahaREAT's order in M.A.No.374 of 2023 in Appeal No.154490 of 2023, the appellant LLP averred that the promoter is bound by the terms of the agreement executed between the erstwhile promoter and the appellant LLP.

79. On 20th April 2024 the promoter by a letter addressed to the appellant LLP terminated the said agreement for sale on the grounds which, *inter alia,* included that at the time of execution of the agreement for sale, the control and management of the Appellant LLP vested with Mr. Kishore G. Pate, Mr. Sanjeev G. Pate and Mr. Rajendra G. Pate. However, upon perusal of the website of the Ministry of Corporate Affairs it came to the promoter's knowledge that since 28th November 2022 the management of the appellant LLP had been taken over by Mr. Atul Ishwardas Chordia and Mrs. Varsha Atul Chordia and the original partners being Mr. Kishore G. Pate, Mr. Sanjeev G. Pate and Mr. Rajendra G. Pate had retired from the Applicant LLP. Further, it is the contention of the promoter that considering the appellant has even failed to produce the amended/reconstituted LLP Agreement, it appears that the said document was executed by the continuing and incoming partners of the appellant LLP without payment of the requisite stamp duty under the Maharashtra Stamp Act, 1958, (and without informing the promoter and paying the Transfer Charges, thus being in contravention of the terms of the agreement for sale. Thus, this change in management of the appellant LLP, was carried out in contravention of its own covenants as contained in the agreement for sale, particularly Clause 33(h) thereof. Therefore, in view of the above, the appellant failed to obtain the promoter's prior written consent and pay the predetermined transfer charges of Rs.3,00,00,000/- to the erstwhile promoter/present promoter under the terms of agreement for sale.

80. The promoter by way of the said termination letter dated 20.04.2024, informed the appellant LLP that it shall refund the sum of Rs.21,95,00,000/- already paid by the appellant LLP after deducting a sum of Rs.1,00,60,274/- towards interest on the transfer charges at the rate of 24% p.a., on account of the breach of the appellant's covenants as provided for under the agreement for sale. The promoter clarified that the refund would be issued in terms of the agreement for sale.

81. It is thus the case of the promoter that change in partners of the appellant LLP amounts to transfer/assignment of rights and interests in the subject flat in favour of new partners prior to completion of all payments due under the said agreement for sale and therefore it would attract clause 33(h) of the agreement for sale. Further, the appellant failed to seek permission for such assignment of rights and interests in the subject flat in favour of the new partners and not paid the amount of transfer charges of Rs.3,00,00,000/- to the erstwhile promoter/new promoter thereby violated the clause 33(h) of the agreement for sale, hence the promoter is entitled to terminate the agreement for sale in accordance with the agreement for sale r/w section 11(5) of RERA Act, 2016. Therefore, the said termination by letter dated 20.04.2024 is valid and lawful.

82. The seminal issue for our consideration is whether the change in the partners of a Limited Liability Partnership firm, like the appellant in this case, amounts to transfer of rights and interest in the flat to the new partners. Under the Limited Liability Partnership Act, 2008 (for short 'the LLP Act') and Limited Liability Partnership (for short 'the LLP') is distinct body

corporate and separate legal entity from its partners. It has its own legal entity, meaning it can acquire, own, hold and dispose of immovable property like a flat in its own name.

83. The perusal of the agreement for sale executed by the erstwhile promoter with the appellant LLP reveals that the purchaser of the said flat is M/s. Amit Gharkul Builders LLP and the seller of the flat is Shri Ram Urban Infrastructure Limited i.e. erstwhile promoter. The signature page of the said agreement for sale reveals that the director of the erstwhile promoter has signed on behalf of the erstwhile promoter and partners of the appellant LLP has signed for "Amit Gharkul Builders, LLP". The said page further records as under:

"SIGNED SEALED AND DELIVERED] SHRI RAM URBAN
The withinnamed Promoter] INFRASTRUCTURE LTD
Shree Ram Urban Infrastructure Limited] xxxxsd/-

In the presence of .....] Director.....

SIGNED SEALED AND DELIVERED BY] For AMIT GHARKUL
The withinnamed flat purchaser] BUILDERS LLP
M/s. Amit Gharkul Builders LLP] xxxsd/-
in the presence of .....] ..... Partner"

84. The record also reveals that all the correspondences by the erstwhile promoter and the new promoter Honest Shelters with regard to the subject flat and the agreement for sale is addressed to "M/s. Amit Gharkul Builders LLP". Further, all the payments have been made by "M/s. Amit Gharkul Builders LLP" to the erstwhile promoter and receipts of the said amounts are also in the name of "M/s. Amit Gharkul Builders LLP" i.e. the appellant LLP. The possession letter dated 16.12.2022 issued by the promoter Honest Shelters is also addressed to the "M/s.

Amit Gharkul Builders LLP" i.e. appellant LLP. The letter dated 19.07.2012 issued by the erstwhile promoter is also addressed to "M/s. Amit Gharkul Builders LLP", i.e. appellant LLP, whereby the erstwhile promoter issued NOC dated 13.07.2012 regarding sale of the subject flat. The said letter specifically mentions "*NOC for sale between Shri Ram Urban Infrastructure Limited and M/s. Amit Gharkul Builders LLP*". All the cheques sent by the appellant LLP by its letter dated 06.05.2024 in response to the letter dated 20.04.2024 by the promoter are of "M/s. Amit Gharkul Builders LLP", appellant LLP and signed by the authorized signatory of the "M/s. Amit Gharkul Builders LLP", appellant LLP.

85. The above position clearly demonstrates that the said flat is purchased by the appellant LLP and not by any individual partners in their personal capacity. It is the contention of the promoter that by change in partners, the rights and interest in the said flat get transferred in favour of the new partners. In this regard it would apposite to visit the relevant provision of the LLP Act, 2008, more particularly Section 3, which reproduced below for ready reference:

> "3. ***Limited liability partnership to be body corporate***.-*(1) A limited liability partnership is a body corporate formed and incorporated under this Act and is a legal entity separate from that of its partners.*
>
> *(2) A limited liability partnership shall have perpetual succession.*
>
> *(3) Any change in the partners of a limited liability partnership shall not affect the existence, rights or liabilities of the limited liability partnership.*"

The said provision of Section 3 is clear that the LLP is legal entity separate from its partners. Further, the LLP shall have perpetual succession irrespective of change in the partners. It clearly stipulates that the any changes in partners of LLP shall not affect, the existence, rights and liabilities of the LLP.

86. In view of the above, it is clear that the said flat is owned by the "M/s. Amit Gharkul Builders LLP", appellant LLP and not by its partners in their individual capacities. The said flat is purchased by the appellant LLP which is distinct legal entity and separate from its partners. As per Section 3 of the LLP Act, the change of partners would not affect the rights and liabilities of the LLP. The legislature in its wisdom has given perpetual succession and separate legal entity status to the LLP which is distinct and separate from its partners. The individual partners are not involved in the said purchase transaction in their personal capacities, but the rights of the appellant LLP i.e. "M/s. Amit Gharkul Builders LLP" only are involved. Therefore, the contention of the promoter that change in partners would result in transfer of rights and interests in the said flat in favour of the new partners is not legally sustainable. Appellant LLP continues to own the said flat irrespective of the changes in partners and shall continue to reflect in the balance sheet of the appellant LLP.

87. We reiterate that as per the provisions in the LLP Act, 2008, LLP is a distinct body corporate and separate legal entity from its partners. The partners have signed the agreement for sale in the capacity of authorized signatory of the appellant LLP and not in their personal capacities. Therefore, the true legal owner of the said flat i.e. rights and interest is appellant LLP itself and not

individual partners in their personal capacities. The LLP enjoys perpetual succession. It means its existence, rights and assets are entirely unaffected by internal structural change, such as admission, resignation, retirement or death of its partners. The LLP entity remains exactly the same before and after the partner transition.

88. The partners' rights are in the nature of economic interests. The partners hold in the LLP such rights like share in profit and loss and capital contribution, and management rights. The partners do not possess propriety or ownership rights over assets owned by the LLP. When old partners retire and new partners are inducted, what changed was internal profit sharing and management structure of the LLP because the individual partners never owned fractional shares of the actual flat to be taken in real estate transfer occurred when partnership structure changed. In view of this, we come to the conclusion that there is no transfer of rights and interests in the said flats due to retirement of old partners and induction of new partners.

89. The next issue that is seminal to the controversy is whether Clause-33(h) of the agreement for sale is applicable in the facts of this case. It would be apposite to examine the said Clause in the agreement for sale. Clause-33(h) is reproduced below:

> *"33h. The Flat Purchaser shall not let, sub-let, transfer assign or part with Flat Purchaser's interest or benefit of this Agreement or part with the possession of the said Premises until all the dues payable by the Flat Purchaser to the Promoter under this Agreement are fully paid up and only if the Flat Purchaser had not been guilty of breach of or non-observance of any of the terms and*

conditions of this Agreement and without obtaining price written permission of the Promoter (which permission shall not be unreasonably withheld) Provided however that if the Flat Purchaser desires to assign his interest in the said premises and the benefit of this Agreement even prior to the completion of all payments due under this Agreement (but in any event only if the Flat Purchaser has not been guilty of breach or non-observance of any of the terms and conditions of this Agreement), the Promoter may in its absolute discretion permit the same, but upon the payment of Rs. 3,00,00,000/- (Rupees There Crore Only) as and by way of pre-determined transfer charges, the reasonableness of which under no circumstances shall be challenged by the Flat Purchaser. The Flat Purchaser hereby unconditionally and irrevocably confirms and declares that as a responsible person/Corporate Body, he/it has carefully considered on merits the quantum of the said Transfer Fees payable under this Clause to the Promoter and the Flat Purchaser considers the same to be reasonable and proper and therefore, the question of Flat Purchaser making any application of whatsoever nature and to whomsoever for reduction of the said Transfer Fee just does not and cannot arise Therefore the Flat Purchaser hereby irrevocably and unconditionally agrees, undertakes and covenants that it shall not make any such application at any time whatsoever. This Agreement, undertaking and covenant of the Flat Purchaser constitutes the fundamental essence of this liberty of the Flat Purchaser to assign the benefits of this Agreement

even prior to the completion of all payments to the Promoter, as provided in this Clause. ***For the purpose of this Clause, assignment of the Flat Purchaser's interest in the said Premises and the benefit of this Agreement shall*** *mean any transaction or dealing including sale, gift, lease leave and license for a period exceeding 9 years, tenancy, etc. by virtue of which the possession of the said premises is parted with or agreed to be parted with in favor of any Third Party and in the case of the Flat Purchaser being a Company (not listed on any Stock Exchange)* ***includes transfer of shares of that Company or any transaction by virtue of which the management and control of that Company gets transferred (immediately or over a period of time) in favor of any Third Party..."***

(Emphasis Supplied)

90. The said Clause would be attracted in the following cases:

a) If there is transfer of rights and interests in the subject flat by the purchaser in favour of the third parties before all outstanding payments are made by the flat purchaser.

b) Any assignment of flat purchaser's rights and interest, which according to the said Clause would mean action by virtue of which the possession of the said flat is parted with or agreed to be parted with in favour of third party and in case flat purchaser is a company (not listed on any stock exchange) includes transfer of shares of that company or any transaction by virtue of which the management and control of that company gets transferred in favour of any third party.

91. We would now examine the facts of this case in the light of the said Clause 33(h) of the agreement for sale. As we have already observed with elaborate reasons that the change in partners in the LLP in no manner transfers the rights and interests in the subject flat in favour of the new partners. Further, the flat is owned and is an asset of the appellant LLP even after change in the partners. Therefore, the said Clause 33(h) will not apply in this case with reference to retirement of the old partners and induction of the new partners. Changes in partners in no manner will transfer and interest of the appellant LLP in favour of the new parters.

92. It is also pertinent that the said Clause nowhere refers legal status or character as an LLP formed and established under the LLP Act, 2008. The facts of this case also demonstrate that the said flat is owned by the appellant LLP and in no manner possession of the said flat is parted with or agreed to be parted with in favour of any third party including new partners. The said provision of Clause 33(h) also stipulates that in case flat purchaser being company, not listed on in any stock exchange, includes transfer of shares if that company or any transaction by virtue of which the management and control of that company gets transferred in favour of third party. In the present facts of the matter, the appellant LLP is not Company wherein the shares are issued. In LLP no shares are issued, hence the above provision also is not applicable in the present case.

93. In view of the above discussion, we come to the conclusion that the said Clause 33(h) in the agreement for sale is not applicable in the facts of the present case. There is no transfer or assignment of the rights and interest in the subject flat in favour

of third party including new partners. Therefore, the contention of the promoter that there is violation of Clause 33(h) of the agreement for sale is not legally sustainable. Therefore, we are of the considered view that the appellant LLP is not liable to pay the transfer charges of Rs.3.00 crores as per the said Clause 33(h) of the agreement for sale. Accordingly, we answer point no.1 in the negative.

Point No.2

94. The next pivotal point that arises for our consideration is whether the termination of the agreement for sale by the promoter is legally sustainable in law. The promoter terminated the said agreement for sale vide notice dated 20.04.2024. the relevant part of the said letter is reproduced below for ready reference:

> *"1. This is with reference to Flat No.30NE on the 30th floor of the building known as "Palais Royale" situated at Worli Estate, Lower Parel, Mumbai-400 013 ("said Flat) and the Agreement for Sale executed between Shree Ram Urban Infrastructure Limited ("SRUIL") and yourself in respect of the said Flat.*
>
> *2. By the Letter of Intimation of Possession, we had informed you about the receipt of the Part Occupation Certificate of the said Flat and had called upon you to make payment of the balance consideration of Rs. 11,80,00,000/- (Rupees Eleven Crore Eighty Lakh Only) payable by you to us under the Agreement for Sale ("Balance Consideration").*
>
> *3. At the time of execution and registration of the Agreement for Sale, the control and management of AGB*

LLP vested with Kishore G. Pate, Sanjeev G. Pate and Rajendra G. Pate. However, it has now come to our notice that the control and management of AGB LLP has been transferred to one Atul Ishwardas Chordia and one Varsha Atul Chordia ("said Transfer") on 28th November 2022.

4. This is to record that the said Transfer has been made in contravention of Clause 33(h) of the Agreement for Sale as you have failed to (1) obtain our prior written consent, and (ii) make payment of the transfer charges of Rs.3,00,00,000/- (Rupees Three Crores Only) to us ("Transfer Charges").

5. In light of the aforesaid, we are writing this letter to inform you that the said Transfer is null and void ab initio and since you are in breach of Clause 33 of the Agreement for Sale, we are hereby terminating the Agreement for Sale effective immediately, without any further act, deed, matter or thing to be done/executed.

6. In view of the termination as aforesaid, your rights in the said Flat are deemed to have been forfeited from the date of this letter. Accordingly, on and from the date of this letter we will be entitled to deal with the said Flat at our sole discretion and in the manner, we deem fit and proper.

7. In light of the aforesaid termination and as stipulated in the Agreement for Sale, we shall refund the sum of Rs.21,95,00,000/- (Rupees Twenty One Crore Ninety Five Lakh Only) that has already been paid by you in respect of the said Flat after deducting therefrom a sum of INR. 1,00,60,274/- being the interest calculated at the rate of

24% (Twenty-Four Percent) per annum on the Transfer Charges payable by you on account of the aforesaid breach and therefore, the net amount to be refunded by us shall be INR. 20,94,39,726/-("said Refund Amount"). Also, as stated in the Agreement for Sale, the said Refund Amount shall be refunded by us only upon receipt of the entire consideration from the new purchaser of said Flat. It is hereby clarified that we shall not be liable to pay to you any interest or any other amount over and above the Refund Amount on any ground whatsoever."

95. It thus appears that the sole ground for termination of the agreement for sale is alleged violation of Clause 33(h) of the agreement for sale by the appellant LLP. This issue has been elaborately dealt with by us in the paras hereinabove, wherein we have held that the appellant LLP has not violated Clause 33 (h) of the agreement for sale. In fact, the said Clause 33 (h) does not apply in the facts of the matter. Therefore, the said termination is not legally tenable on the said ground of violation of Clause 33 (h) of the agreement for sale.

96. It is also contended by the promoter that the promoter by letter dated 16.12.2022 offered possession of the subject flat by communicating that the promoter obtained occupation certificate and flat is ready for possession. The relevant portion in the said letter are reproduced below:

*"1. With reference to the above referred subject matter, we on behalf of the entire team of Honest Shelters Private Limited ("**HSPL**"), are happy to inform you that we have obtained/procured Part **Occupation Certificated dated 12th August, 2022** bearing*

reference no. EB/987/GS/OCC/1 issued by the Municipal Corporation of Greater Mumbai in respect of the said Flat.

*2. In light of the aforesaid, we are pleased to inform you that we are ready to handover the possession of the Said Flat to you for carrying out **fit-work outs**. However, before we handover the possession of the Said Flat to carrying out fit-out works, we request you to make balance payment of Rs. 19,06,00,000/- which is outstanding as per the Deed of Transfer ("**Balance Amounts**").*

*3. Please note that the **Balance** amounts payable by you is subject to our verification of the documents and bank statements to be provided by you in respect of the Said Flat, as requested on multiple occasions in our prior emails and correspondences. We request you to come forward with the original documents for verification at the earliest. If after perusing the requisite documents. We observe that there are further amounts liable to be paid by you which are in addition to the Balance Amounts then we request you to pay the same to us before we handover the possession of the Said Flat to you."*

97. From the above letter it is clear that the promoter represented to the appellant that part occupation certificate dated 12.08.2022 was obtained by the promoter and therefore the flat is ready for handover, subject to payment of balance amount of Rs.11,80,00,000/-, which is outstanding as per agreement for sale. Perusal of the part occupation certificate dated 12.08.2022 reveals as under:

"*The **Part 1** development work of **Residential** building comprising of **Entrance level + 1st to 8th parking level + 13th to 27th floor levels** on plot bearing C.S. No./CTS No. **288, 289, 309, 310, 1/1540, 2/1540, 3/1540, 1547, 1548, 1549, 1/1539 & 1550** of Division **2044** at **Ganpatrao Kadam Marg** is completed under the supervision of Shri. **SAURABH SATISH JADHAV**, **Licensed Surveyor**, Lic. No. **J/188/LS**, Shri. **Girish Purushottam Dravid,** RCC Consultant, Lic. No. **STR/D/59** and Shri. **BIPIN DINESH GAIKAR**, Site Supervisor, Lic. No. **G/199/SS-I** and as per development completion certificate submitted by architect and as per completion certificate issued by Chief Fire Officer u/no. **EB/987/GS/A/CFO/1/New-0** dated **12 August 2022**."*

98. The relevant part of the part occupation certificate dated 17.12.2024 is also reproduced below:

"*The **Part 2** development work of **Residential** building comprising of **28th to 53rd floor levels** on plot bearing CS. No. **288, 289, 309, 310, 1/1540, 2/1540, 3/1540, 1547, 1548, 1549, 1/1539 & 1550** of Division **LOWER PAREL** at **Ganpatrao Kadam Marg** is completed under the supervision of Shri. **SAURABH SATISH JADHAV**, **Licensed Surveyor**, Lic. No. **J/188/LS**, Shri. **Dineshchandra P. Bhaud,** Structural Engineer, Lic. No. **STR/B/99** and Shri. **BIPIN DINESH GAIKAR,** Site Supervisor, Lic. No. **G/199/SS-I** and as per development completion certificate submitted by Licensed Surveyor and as per completion certificate issued*

by Chief Fire Officer u/no. ***EB/987/GS/A/CFO/1/New-0*** *dated* ***30 October 2024****. The same may be occupied and completion certificates submitted as sighted above are hereby accepted."*

99. From the above, part occupation certificate dated 12.08.2022, clearly reveals that the said occupation certificate is obtained for flats **13th to 27th floor levels**. However, the subject flat in this appeal is on 30th floor. Therefore, it is clear that the said occupation certificate dated 12.08.2022 does not cover the subject flat. The occupation certificate dated 17.12.2024 is for the **28th to 53rd floor levels**, which covers the subject flat. It is also pertinent to note that offer of possession dated 20.12.2022 from the promoter specifically mentions the "***possession for carrying out fits-works outs***". On this account also we do not consider the said offer of possession of valid offer of possession.

100. We reiterate that the offer of possession by the promoter by its letter dated 20.12.2022 is not valid of offer of possession since occupation certificate dated 12.08.2022 does not cover the subject flat and so called "*possession for carrying out fits-works outs*" is not lawful possession. The said flat is covered by the occupation certificate dated 17.12.2024. The promoter has not placed on record any communication post 17.12.2024 demonstrating any offer of possession with valid occupation certificate, which would amount to lawful offer of possession.

101. On the contrary, the promoter terminated agreement for sale by its letter dated 20.04.2024. Thus, the promoter terminated the agreement for sale even prior to obtaining the occupation

certificate covering the subject flat. It is pertinent that the promoter acquired the project on 26.06.2019 in SARFAESI auction. However, the promoter was never in the possession of 142 flats, covering this subject flat, which were actually in possession of the official liquidator appointed by the Hon'ble Bombay High Court. The promoter received possession of the 142 flats from the official liquidator appointed by the Hon'ble Bombay High Court only on 09.01.2024. Hence, the purported offer of possession dated 20.12.2022 is not meaningful offer of possession, where promoter itself not in possession of 142 flats including subject flat.

102. Admittedly appellants have paid amount of Rs.21,95,00,000/- to the erstwhile promoter in accordance with the terms of the agreement for sale and the same is a valid discharge of the said payments. Further, there is an outstanding balance consideration of Rs.11,80,00,000/-, which is due and payable simultaneously on the possession of the flat. As we already observed that the promoter failed to give valid and lawful offer of possession of the subject flat to the appellants. The offer of possession dated 16.12.2022 is not lawful offer of possession since the occupation certificate covering the subject flat was not obtained by the promoter. The promoter obtained the occupation certificate only on 17.12.2024 covering the subject flat. Further, the promoter itself was not in possession of the subject flat, which was handed over to the promoter by the official liquidator appointed by the Hon'ble Bombay High Court on 09.01.2024. Therefore, the promoter has failed to offer lawful possession of the subject flat till date.

103. We are of the view that the non-payment of Rs.11,80,00,000/- of the outstanding balance consideration also cannot be a ground for termination of the agreement for sale since there is no violation of Clause 4 of the agreement for sale. Therefore, we come to the conclusion that the appellant LLP has not violated any provision of the agreement for sale, more particularly Clause 33(h) of the agreement for sale as alleged by the promoter as well as Clause 4 of the agreement for sale, which cast obligation on the part of the appellant LLP to make payment of instalment in accordance with the said Clause. In view of this, we of the view that the promoter is not entitled to terminate the said agreement for sale under Section 11(5) of the RERA Act, 2016. Thus, the said termination notice dated 20.04.2024 is also legally not sustainable on this ground, as well.

104. We have also other reasons to hold that the promoter is not entitled to terminate the of the agreement for sale. It is pertinent that since the erstwhile promoter defaulted on the repayment of loan to IHFL and considering that the said project was in custody of the Official Liquidator, IHFL as the secured creditor filed Company Application No.420 of the 2018 before the Hon'ble Bombay High Court seeking possession, inter-alia, of the said project for the purpose of selling the same and recover its dues. By seeking possession, inter-alia, of the said project 142 apartments out of total 144 in the said project which included the subject flat were excluded by IHFL as the erstwhile promoter had already created third party rights in respect of the 142 flats after obtaining prior written NOC from IHFL. Thus, the possession of the 142 apartments could not have been sought by the IHFL at the time of enforcement, since the same were no

longer assets of the erstwhile promoter. The aforesaid Company Application was allowed on 07.02.2019 and consequently the Official Liquidator handed over the possession of the subject property to the IHFL on 07.05.2019. The Description of the said property explicitly mentions the said project property except 142 apartments sold to third parties by the erstwhile promoter. The said possession to IHFL also clearly mentions handing over possession except 142 apartments. However, IHFL entitled to all the receivables, cash flow arising out of the pre-sold apartments including 142 apartments. Further, the new promoter Honest Shelters was successful bidder in the public auction carried out by IHFL and Honest Shelter became the new promoter of the said project since the IHFL sold the said property in favour of the Honest Shelters vide three registered sale certificates dated 26.06.2019. The said sale certificate also clearly mentions the property except 142 apartments along with exclusive charge of all receivables arising out of sale of pre-sold flats by the erstwhile promoter in favour of the lender. Thus, from the description of the sale certificates, the immovable property excluded the said 142 apartments of the project which were pre-sold from the sale certificate, which covers the subject flat. The Honest Shelters being the promoter recognized by the MahaRERA was thus required to complete the project including 142 flats and hand over possession of the respective flats to the allottees. Further, the Honest Shelters was entitled to receive cash flows arising from the sale of the project as well as the pre-sold flats.

105. From the above, it is thus clear that no title on the said flats has been passed on to the promoter. By executing agreement for

sale by the erstwhile promoter, the title of the said flat was already passed on to the appellants/allottees.

106. The Section 54 of the Transfer of Property Act, 1882 ("TP Act") defines sale to be "*a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised.*" This indicates that in order to constitute a sale, there must be a transfer of ownership from one person to another, i.e., transfer of all rights and interests in property which are possessed by that person are transferred by him to another person. The transferor cannot retain any part of his interest or right in that property or else it would not be a sale. The definition further says that the transfer of ownership has to be for a "*price paid or promised or part-paid and part-promised*". It is pertinent as we have observed above that the appellants have paid Rs.21,95,00,000/- towards consideration and balance consideration of Rs.11,80,00,000/- is due and payable only on possession. These words "*price paid or promised or part-paid and part-promised*" indicate that actual payment of the whole of the price at the time of the execution of the sale deed is not a *sine qua non* to the completion of the sale. Even if the whole of the price is not paid, the document is executed and thereafter registered, if the property is of value of more than ₹ 100, the sale would be complete.

107. The above position is clarified by the Hon'ble Supreme Court in the case of *Vidhyadhar v. Manikrao, [(1999) 3 SCC 573] wherein the Hon'ble Supreme Court in at para 36* of the said judgement has held as under:

> *"36. The definition indicates that in order to constitute a sale, there must be a transfer of ownership from one*

person to another, i.e., transfer of all rights and interests in the properties which are possessed by that person are transferred by him to another person. The transferor cannot retain any part of his interest or right in that property or else it would not be a sale. The definition further says that the transfer of ownership has to be for a "price paid or promised or part-paid and part-promised". Price thus constitutes an essential ingredient of the transaction of sale. The words "price paid or promised or part-paid and part-promised" indicate that actual payment of whole of the price at the time of the execution of sale deed is not sine qua non to the completion of the sale. Even if the whole of the price is not paid but the document is executed and thereafter registered, if the property is of the value of more than Rs. 100/-, the sale would be complete."

108. In the context of the present dispute, upon execution of the agreement for sale, erstwhile promoter divested all its rights in the said flat in favour the appellant for monetary consideration, since in the state of Maharashtra, if there is an agreement to sell immoveable property which stipulates that the possession of such property is transferred by a specific time, then the same is deemed to be a conveyance.

109. The Hon'ble Supreme Court in the case of *Veena Hasmukh Jain v. State of Maharashtra, [(1999) 5 SCC 725] in para 9 and 10* has held as under.

"9. The learned counsel for the appellants urged that the character of an instrument cannot be determined by reason of a subsequent event to take place such as

handing over of possession. But a close examination of the provisions of the Explanation will make it clear that in the case of an agreement to sell immoveable property possession is transferred at any time without executing the conveyance in respect thereof, such an instrument is deemed to be a "conveyance". The object of the Explanation is clear that if an agreement is entered into and that agreement itself contemplates the delivery of possession of the property within the stipulated time, then such an agreement should be deemed to be a conveyance for the purpose of duty leviable under the Bombay Stamp Act.

10. It is clear that the object of the Stamp Act is to levy stamp duty on different kinds of instruments. The Legislature, in the present case, has chosen to levy a rate of duty equivalent to conveyance in respect of an agreement though the transaction may not have been completed because of certain instruments arising out of such agreement being executed and possession thereof being taken prior to or simultaneous with the document or subsequently. But in the Explanation it is not clear that if the document provides that possession has to be taken without execution of the conveyance certainly it would attract the appropriate duty. If the agreement provides that possession will be handed over on the execution of a conveyance as contemplated under Section 11 of the MOF Act, then the Explanation shall not be attracted at all. In the present case, it is clear that in the terms of the agreement there is no provision made at all for execution

of the conveyance. On the other hand, what is submitted is that the provisions of the MOF Act could be applied to the agreement and, therefore, a conveyance could be executed subsequently when it is not clear as to when the conveyance is to be executed and the stipulated time within which the possession has to be handed over. If that is so, it is clear that the document would attract duty as if it is a conveyance as provided in the Explanation. Thus, we find no error in the view taken by the High Court. It is not necessary to examine in these appeals as to whether the instrument in question itself conveys a title or not. Therefore, we uphold the decision of the High Court made in this regard. The appeals are dismissed."

110. The fact that these rights were transferred in the present case is also evident from the specific exclusion of the 142 pre-sold flats from the 2019 Auction. The agreement for sale was executed and thereafter registered, evidencing that the sale *and* conveyance of the said flat to the appellant was confirmed. Therefore, in light of Section 54 of the Transfer of Properties Act, the sale from erstwhile promoter to the appellant has been concluded.

111. We are of the considered view that a relief of cancellation of an agreement for sale/transfer of assignment or sale deed cannot be granted on account of only non-payment or default in payment of amounts under the agreement for sale/sale deed. In such cases, the only relief available in law to the seller is to recover the alleged unpaid amount of the sale consideration in its capacity as an unpaid seller. Any amount if either due or payable towards the consideration of the flat or under any other

clauses of the agreement for sale, if any, including clause 33(h), the remedy for a promoter is to file appropriate proceedings for recovery of the said consideration or the amounts and not cancellation of the agreement for sale. This aforesaid position has been held by the Hon'ble Supreme Court of India in the case of *Dahiben v. Arvindbhai Kalyanji Bhanusali (Gajra) dead through Legal Representatives &Ors. 2020 [(7) SCC 366].*

112. The Hon'ble Supreme Court in the case of *Dahiben V/s. Arvindbhai Kalyanji Bhanusali (supra)* in para 15.3 of the said judgement has observed as under:

> *"15.3 The Plaintiffs have made out a case of alleged non-payment of a part of the sale consideration in the Plaint, and prayed for the relief of cancellation of the Sale Deed on this ground.*
>
> *Section 54 of the Transfer of Property Act, 1882 provided as under:*
>
> *"54. 'Sale' defined. - Sale is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised."*
>
> *The definition of "sale" indicates that there must be a transfer of ownership from one person to another i.e. transfer of all rights and interest in the property, which was possessed by the transferor to the transferee. The transferor cannot retain any part of the interest or right in the property, or else it would not be a sale. The definition further indicates that the transfer of ownership has to be made for a "price paid or promised or part paid and part promised". Price thus constitutes an essential ingredient of the transaction of sale.*

In Vidyadhar V. Manikrao & Anr. [(1999) 3 SCC 573] this Court held that the words "price paid or promised or part paid and part promised" indicates that actual payment of the whole of the price at the time of the execution of the Sale Deed is not a sine qua non for completion of the sale. Even if the whole of the price is not paid, but the document is executed, and thereafter registered, the sale would be complete, and the title would pass on to the transferee under the transaction. The non-payment of a part of the sale price would not affect the validity of the sale. Once the title in the property has already passed, even if the balance sale consideration is not paid, the sale could not be invalidated on this ground. In order to constitute a "sale", the parties must intend to transfer the ownership of the property, on the agreement to pay the price either in praesenti, or in future. The intention is to be gathered from the recitals of the sale deed, the conduct of the parties, and the evidence on record.

In view of the law laid down by this Court, even if the averments of the Plaintiffs are taken to be true, that the entire sale consideration had not in fact been paid, it could not be a ground for cancellation of the Sale Deed. The Plaintiffs may have other remedies in law for recovery of the balance consideration but could not be granted the relief of cancellation of the registered Sale Deed."

113. In the aforesaid judgment, the Hon'ble Supreme Court has held that the sale indicates the "transfer of ownership" from one person to another i.e. transfer of all rights, title, and interest in the property which was possessed by the transferor to

transferee. In such an event transferor cannot retain any part of interest, title or rights in the property and therefore it is not open for the promoter to cancel the agreement for sale. It is thus clear that the cancellation of the agreement for sale or sale deed cannot be done on account of only non-payment or default in payment of amounts under the agreement for sale or sale deed. In such cases the only relief available in law to the promoter is to recover the alleged unpaid amounts of the sale consideration or under the clauses of the agreement in its capacity as an unpaid seller. The remedy for the promoter is to file appropriate proceedings for recovery of the said amounts and not the cancellation of the agreement for sale. In view of the above settled law, the promoter is not entitled to terminate/cancel the agreement for sale on account of default in making payment of the agreement consideration or the amounts under the clauses of the agreement. Thus, the alleged termination of the agreement for sale is not accordance with the law.

114. The Hon'ble Supreme Court in the case of *Dr. Amit Arya v/s Kamleh Kumari* [Civil Appeal arising out of SLP (C) No.20091 of 2022 decided on 19.12.2025] in para 7 of the said judgement has held as under.

> *"7. Unquestionably, the power to extend the time granted within the decree for performance of its conditions can be extended on such terms as the Court may deem fit. However, it is matter of record that in this case no such extension was granted. However, such non-grant of extension of time cannot, in our view, be the end of the transaction. Taking such a view would be classic example*

of a hyper-technical approach which, this Court has observed, ought to be eschewed [see Ramankutty Gupta v/s Avara 1994 2 SCC 642]. We are supported in such a view by a recent order of this Court in Ram Lal v.s Jairnal Singh 2025 SCC OnLine SC 584, whereby it has been observed that, "the non-payment of balance sale consideration within the time period fixed by the trial Court does not amount to abandonment of the contract and consequent rescinding the same. The real test must be to see of the conduct of the plaintiff will amount to a positive refusal to complete his part of the contract."

115. In the above judgment the Hon'ble Supreme Court has held that the termination of the agreement for sale can only be justified if the conduct of the allottee amounts to positive refusal to pay balance amount of consideration, which is not the case in the present matter. On the contrary, in response to the possession letter dated 16.12.2022, the appellant by its letter dated 27.12.2022 has clearly stated that the appellant is ready and willing to make balance consideration amount and would like to take inspection of the said flat to ascertain his readiness to hand over. The appellant in the said letter also attached a copy of the demand draft dated 27.12.2022 for sum of Rs.11,80,00,000/- issued by RBL Bank Limited in favour of the promoter. However, there was no response from the promoter. The appellant again by its letter dated 19.01.2023 addressed to the promoter reiterated its willingness to pay balance consideration as communicated by letter dated 27.12.2022 and again requested for inspection of the flat. There was no response from the promoter to the said letter. The appellant again addressed

another letter dated 13.04.2023 to the promoter, again reiterating its willingness to pay balance consideration and requested for inspection of the flat before taking possession. The appellant by its letter dated 13.12.2024 again reiterated its willingness to pay balance consideration and requested for inspection of the flat. This clearly demonstrates that the appellant time and again reiterated its willingness to pay outstanding amount as per the possession letter of the promoter dated 16.12.2022. Therefore, in these facts and circumstances also the termination of the agreement for sale is not legally sustainable.

116. In view of the above discussion, we are of the considered view that the termination of the agreement for sale by the promoter by its notice dated 20.04.2024 is not sustainable in the eyes of law and therefore liable to be set aside. We reiterate that the promoter is entitled to only the balance consideration amount of Rs.11,80,00,000/- which is due and payable only on possession of the flat. It is not in dispute that the occupation certificate dated 12.08.2022 did not cover the subject flat since the subject flat is situated on the 30th floor, whereas the said occupation certificate is for 13th to 27th floor. Further, after obtaining occupation certificate dated 17.12.2024 which covered the subject flat, the promoter failed to offer possession of the said flat along with occupation certificate. On the contrary, the promoter terminated the agreement for sale on 20.04.2024 even prior to obtaining the occupation certificate dated 17.12.2024 covering the said flat. In view of the discussion above, we are of the considered view that the termination of the agreement for

sale by the promoter is invalid and legally not sustainable. Accordingly, we answer point no.2 in the affirmative.

Point No.3

117. It is pertinent that the promoter has obtained occupation certificate on 17.12.2024, which covers the subject flat. The appellants have paid Rs.21,95,00,000/- towards consideration of the flat to the erstwhile promoter and the promoter is entitled to receive the balance consideration amount of Rs.11,80,00,000/-, which is due and payable at the time of possession.

118. Section 19 of the RERA Act speaks about rights and duties of the allottees. Sub-section (3) of Section 19 of the RERA Act gives absolute right to the allottees to claim possession of the apartment. It is statutory right of allottees to claim possession of the flats from the promoter. It is made clear that the possession is natural, ultimate, and unavoidable consequences of any transaction related to real estate and promoter is duty bound to hand over possession to the purchasers in case the purchasers do not suffer from any disqualification. The allottees have statutory right to claim possession and thus not obliged to demand the same. On the contrary, the RERA Act casts an obligation on the promoter to hand over possession of the flat and the allottees have to accept the same within the period of two months of obtaining occupation certificate as provided in Section 19(10) of the RERA Act, 2016, failing which to face consequences. In the instant case, the appellant has paid Rs.21,95,00,000/- out of the total consideration of flat of Rs.33,75,00,000/- and the balance amount of Rs.11,80,00,000/- to be paid at the time of possession. The promoter has obtained

occupation certificate on 17.12.2024 and therefore the promoter is obliged to hand over possession of the flat to the appellant under Section 19(10) of the RERA Act, 2016, subject to payment of the outstanding balance amount i.e. Rs.11,80,00,000/- of consideration amount and any other possession charges strictly as per the terms of the agreement for sale. Therefore, we are of the considered view that the appellant is entitled to receive possession on payment of the balance consideration amount and any other possession charges strictly in accordance with the agreement for sale. Accordingly, we answer the Point No.3 in affirmative.

Point Nos. 4 and 5

119. The Authority in the impugned order has observed that the entire case rests on the Clause 33(h) of the agreement for sale, which bars the purchaser from parting with any flat purchasers' interest till full payment of the consideration amount is paid to the promoter. The Authority further observed that the entire matter hinges on the adjudication of the issues under the limited liability partnership Act, 2008 which the Authority is not legally competent. Further, the promoter impugned action of issuance of termination notice emanates from the interpretation of the Clauses of the LLP Act. Further, the entire case is based on the definition and composition of the LLP and as per the LLP Act. Therefore, the Authority observed that it is unable to grant any interim reliefs as prayed for by the complainant and advised that parties may seek adjudication of the issues emanating from the LLP Act, 2008 at the proper forum.

120. It is the contention of the appellant that the said observation of the Authority is *ex-facie* contrary to the provisions of intent of

RERA Act, 2016, which is complete code providing for adjudication of dispute arising between the promoter and allottee under registered agreement for sale. Further, the Authority erred in law and in fact in failure to protect the appellant's vested contractual rights despite clear proof of readiness and willingness to the substantial compliance with contractual obligations and overwhelming equity in its favour.

121. We are of the view that the complaint pertains purely to non-delivery of possession, illegal termination, and enforcement of rights of the appellant under the registered agreement for sale. Therefore, the said issues are squarely covered under the provisions of RERA Act, 2016. The Authority's adjudication under RERA Act, 2016 extends to all acts and omissions of the promoter affecting the rights of the allottees irrespective of the promoter's internal corporate structure. Therefore, Authority's refusal to exercise jurisdiction defeats the legislature intent of the RERA Act, 2016 and factually denies the appellant to its statutory remedy. The dispute does not emanate between the appellant LLP or its partners under the LLP Act, 2008. The dispute is clearly between the promoter and the appellant/allottee. Therefore, the view of the Authority that the dispute arises out of LLP Act. 2008 is erroneous. The Authority was obligated after hearing both the sides to interpret clauses of the agreement for sale in the facts and circumstances of the case and come to the conclusion on the issues raised in the complaint or interim applications.

122. In view of the above and the elaborate discussion hereinabove, while dealing with those issued, the impugned order, in our view is not legally sustainable and is liable to be set aside.

Accordingly, we answer point no.4 in the negative and point no.5 accordingly.

123. In view of the discussion hereinabove, we proceed to pass the following order.

ORDER

1. The impugned interim order dated 25.11.2024 passed by the Authority in the captioned complaint no.CC006000000580864 more particularly in the interim application no. CC006000000580864/APPL/UH-1 and CC006000000580864/APPL/IR-2 is quashed and set aside.
2. The termination of the agreement for sale dated 05.07.2012 executed between the erstwhile promoter and the appellant/allottee by the promoter vide its termination notice dated 20.04.2024 is held unlawful and therefore set aside.
3. The respondent/promoter is directed to hand over possession of the subject flat to the appellant LLP after accepting the balance outstanding amount of Rs.11,80,00,000/- and any other possession charges or taxes, strictly in accordance with the agreement for sale within the period of 30 days of the order.
4. The appellant as well as the respondent/promoter are directed not to create any third-party rights or interests in the subject flat, pending the hearing and final disposal of the captioned complaint by the Authority.
5. Since the impugned order is set aside by this order, nothing survives for consideration in the appeal and accordingly the said appeal no.AT12500002 of 2025 is also disposed of.

6. With the disposal of the captioned appeal, nothing survives in the Misc. Application No. 973 of 2026 (Stay) and same is disposed of.

7. No order as to costs.

8. Copy of the order be communicated to the Authority and the respective parties as per section 44(4) of RERA Act, 2016.

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

D. B. Mulla