BEFORE THE MAHARASHTRA REAL ESTATE APPELLATE TRIBUNAL MUMBAI

Appeal No. AT006000000103935 of 2022
IN
(Complaint No. CC006000000161352 of 2020)

1. Mr. Amol Parshuram Sawant]
2. Mrs. Ashwini Sawant]
B-605, 6th Floor, Akruti Elegance,]
Gawanpada, 90 feet Road, Mulund]
(West), Mumbai – 400081.] ... Appellants

-Versus-

1. Nirmal Lifestyle Limited]
3rd Floor, Multiplex Building, LBS Marg,]
Mulund(w), Mumbai – 400080.]
Regd. Office: Jawahar Talkies]
Compound, N.S. Road, Mulund (West),]
Mumbai – 400080.]

2. Ricardo Constructions Private Limited]
70, S.P. Centre, Nagindas Master Road,]
Fort, Mumbai - 400023.] ... Respondents

Adv. (Dr) Sanjay Chaturvedi for the Appellants
Adv. Mr. Rubin Vakil for Respondent No.2

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

RESERVED ON : 27TH AUGUST 2026
PRONOUNCED ON : 30TH OCTOBER 2026

(THROUGH VIDEO CONFERENCE)

JUDGMENT

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

1. The captioned appeal takes exception to the common impugned order dated 15.09.2021 passed by the learned Chairperson, Maharashtra Real Estate Regulatory Authority (for short, "the Authority") in Complaint No. CC006000000161352 of 2020 filed by the Appellants/Allottees, whereby the learned Chairperson disposed of the complaint with directions to the present Promoter to comply with the interim order dated 04.09.2020.

2. For the sake of convenience, the Appellants, Mr. Amol Parshuram Sawant and Mrs. Ashwini Sawant, will hereinafter be referred to as the "Allottees", and the Respondents, Nirmal Lifestyle Limited and Ricardo Constructions Private Limited, will hereinafter be referred to as the "Promoters".

3. The factual matrix of the matter is that the Appellants/Allottees booked Flat No. 2306, admeasuring 625 sq. ft. carpet area, situated on 23rd Floor of Wing B 'Match Point' in the real estate project known as "UP Open" located in village Nahur, Mumbai Suburban District, Mumbai on 02.10.2011, for a total consideration amount of ₹1,03,14,905/- (Rupees One Crore Three Lakh Fourteen Thousand Nine Hundred Five Only). The Appellants/Allottees have made a payment of ₹1,05,80,514/- (Rupees One Crore Five Lakh Eighty

Thousand Five Hundred Fourteen Only) through various transactions in response to the demands of Respondents/Promoters. An Agreement for Sale dated 22.11.2011 was executed by the parties, stipulating the possession date as December 2015. Upon receipt of demand letter dated 04.10.2016, the Allottees allegedly realised that there had been no progress in the construction and that the completion of the project had been delayed indefinitely. The Appellants/Allottees, thereafter followed up with Respondent No.1 through oral communication and email dated 15.07.2017, raising concerns regarding the delay in completion of the project and handing over possession.

4. The Appellants/Allottees submitted that, despite having paid 100% consideration amount, the Respondent No.1, i.e. Nirmal Lifestyle Limited failed to handover possession of the subject flat within the contractual date of possession. In the meantime, through emails dated 28.06.2018 and 03.08.2018, the Appellants/Allottees were informed about an arrangement with 'Shapoorji Pallonji and Company Private Limited' for carrying out the balance construction work of 'Aces and Match Point' Building. Later on, the Respondent No. 2, i.e. Ricardo Constructions Private Limited, vide letter dated 04.07.2019 informed the Appellants/Allottees that the 'Match Point'

building, in which the said flat of the Appellants/Allottees is situated had been taken over by it.

5. The Appellants/Allottees relied upon the Development Agreement dated 29.06.2019 executed between Respondent Nos. 1 and 2, contending that Respondent No.1 had undertaken responsibility for interest payable on account of delayed possession and compensation claimed by the Allottees. In this regard, Clause 5 of the said Development Agreement reads as follows:

> *"In the event, any of the Existing Purchasers do not give their consent and/or raise any objection in relation to (i) the waiver of any interest due to the delay in possession of their respective premises/units: and/or (ii) on any other communication as agreed between the Parties under clause No. 4, then in that event NLL shall deal with such Existing Purchasers and/or objections and settle the same at its own costs and expenses and keep Ricardo indemnified at all times in relation to such objections or claims of Existing Purchasers."*

6. The Appellants/Allottees, through emails dated 24.08.2019, 12.09.2019 and 10.10.2019 addressed to the Respondent No.1, demanded interest for delayed possession until actual handing over of possession and also requested that no additional amounts to be charged in view of the delay in project completion. According to the Appellants/Allottees, Respondent No.2 by its email dated 11.10.2019, informed them that Respondent No.1 was not paying any rental compensation to them. Thereafter, aggrieved by the

failure of the Respondents/Promoters to fulfil their obligations, the Appellants/Allottees approached the Authority by filing complaint seeking interest for delayed possession and rental compensation, under Section 18 of the Real Estate (Regulation and Development) Act, 2016 (for short, "RERA Act").

7. Learned Advocate (Dr) Sanjay Chaturvedi appearing for the Appellants/Allottees submitted that the common impugned order dated 15.09.2021 deserves to be set aside on the grounds urged in the appeal. He submitted that under Section 18 of the RERA Act, where a promoter fails to complete or is unable to handover possession of an apartment, plot or building, in accordance with the terms of the agreement for sale by the date specified therein, the Allottee is entitled to the remedies contemplated under the said provision.

The relevant portion of Section 18(1) of the RERA Act provides that where the allottee intends to withdraw from the project, the Promoter is liable to refund the amount received in respect of the apartment together with interest at the prescribed rate and compensation in the manner provided under the Act. The proviso further provided that, where the Allottee does not intend to withdraw from the project, the Promoter shall pay interest for every month of delay until handing over possession.

8. Learned Advocate for the Appellants/Allottees relied upon the judgment of the Hon'ble Supreme Court in *M/s. Imperia Structures Ltd Vs Anil Patni & Ors.* [in Civil Appeal No. 3581-3590 of 2020], wherein the Hon'ble Supreme Court held and explained the remedies available to the Allottee under Section 18(1) of the RERA Act. It was held that an Allottee may elect to withdraw from the project and seek refund or to continue with the project and claim interest for every month of delay until possession is handed over.

9. Learned Advocate for the Appellants/Allottees further submitted that the Appellants are entitled to interest and compensation for the period of delay, until the actual handing over of possession on the following grounds:

   a) The Appellants/Allottees had filed an individual complaint seeking relief in respect of their specific flat and had expressly declined to sign the Consent Terms and the Letter of Understanding. Accordingly, their complaint ought to have been independently adjudicated on its own merits by the Authority and decided on possession with Occupation Certificate (OC), interest for delayed possession, and rental compensation allegedly promised by the Respondents/Promoters.

b) The Respondents/Promoters had failed to hand over possession of the subject flat within the time period stipulated under the Agreement for Sale, thereby committed a breach of its contractual obligations and contravened the Section 18(1)(a) of the Real Estate (Regulation and Development) Act, 2016 ("RERA"), which mandates compensation by way of interest for delayed possession.

c) The Appellants, being "Allottees" within the meaning of RERA Act, are entitled to receive interest at prescribed rate for every month of delay, calculated from the contractual date of possession until the date of actual physical possession.

d) The prolonged delay in handing over possession has allegedly resulted in financial prejudice to the Appellants/Allottees, who have had to incur rental expenses, while being deprived of the use of the subject flat. The Appellants have also claimed loss of alternative investment opportunities and sought compensation on that account.

e) The Respondents/Promoters have continued to retain substantial amounts paid by the Appellants/Allottees

without fulfilling their obligation to handover possession. The Allottees, therefore, contend that they are entitled to appropriate relief for the period during which possession was deprived.

f) The Appellants/Allottees have further claimed that the inordinate delay, broken assurances, lack of transparency caused mental agony, anxiety, and inconvenience, thereby warranting entitlement for compensation under provisions of the RERA Act, 2016.

g) The Respondents/Promoters' failure to comply with the timelines and obligations under the project defeats the objectives of RERA, which seeks to promote transparency, accountability, and timely completion of real estate projects. The Appellants, therefore, prayed that compensation and interest ought to have been adjudicated on the merits of the individual case.

10. Learned Advocate for the Appellants/Allottees further submitted that the allegation the Appellants were part of the Association of Allottees' (AOA) complaint was factual incorrect and misleading. According to learned Advocate, the Allottees were never parties to the complaint filed by the AOA and had neither authorised the Association nor consented to any arrangement and settlement on

their behalf. However, despite their independent grievance and filing of complaint, the Authority on its own tagged the Appellants/Allottees' individual complaint with other pending complaints and disposed of the matter without independently adjudicating their claim. It was submitted that each Allottee's claim under Section 18 of the RERA required to be considered with reference to individual agreements for sale, stipulated date of possession and payment timelines.

11. Learned Advocate for the Appellants/Allottees further submitted that the Appellants/Allottees had paid full consideration amount without default, whereas the Respondents/Promoters failed to complete the project and handover possession within the contractual period. It was therefore submitted that the impugned order which did not grant the relief sought by the Allottees, warrants interference by this Tribunal.

12. In support of the aforesaid submissions, learned Advocate (Dr) Sanjay Chaturvedi for the Appellants/Allottees relied upon the following judgments:

    i. *Newtech Promoters and Developers Pvt.* Ltd. *V/s State of UP and Ors.* [2021 SCC OnLine SC 1044] decided on 11.11.2021 by the Hon'ble Supreme Court of India.
    ii. *Neelkamal Realtors Suburban Pvt Ltd & Anr. V/s Union of India & Ors.* [2018 (1) ABR 558; 2017 SCC OnLine

Bom 9302] decided on 06.12.2017 by the Hon'ble Bombay High Court.

13. *Per contra*, learned Advocate Mr. Rubin Vakil, appearing for Respondent No.2/Promoter, submitted that the impugned order was passed in the context of similar complaints filed by the Allottees of 'Match Point' Buildings in the "US Open" project, seeking interest and compensation for delayed possession. It was submitted that the Authority had considered the complaint filed by Association of Allottees (AOA) raising similar issues and had issued directions in that proceeding. According to the Respondent No.2, the individual complaints were disposed of in view of the proceeding initiated by the AOA and the directions issued therein.

14. Learned Advocate for the Respondent No.2/Promoter further submitted that no relief could be granted against Respondent No.2 in the present Appeal as it was not a party to the original complaint before the Authority and impleaded for the first time in the present Appeal. It was submitted that Respondent No.2 had not been afforded opportunity to defend before the Authority against the claims now ought to be raised against it. According to Respondent No.2 the relief sought is fresh and independent cause of action and it cannot be agitated for the first time in appellate proceedings, and the present Appeal was maintainable against Respondent No.2.

15. Learned Advocate for the Respondent No.2/Promoter further submitted that the Appeal was to be confined to the issues raised before and adjudicated by the Authority. The Appellants cannot be allowed to introduce new issues, claims against the Respondent that were not raised before the Authority in the original proceedings.

16. Learned Advocate for the Respondent No.2/Promoter further submitted that soon after taking over the project, an Association of Allottees (AOA) was formed with more than 200 Allottees of the Project as members. The AOA filed Complaint No. CC006000000192465 of 2020, *inter alia*, seeking reliefs for individual Allottees including execution of Agreements for Sale, interest/compensation for delay in handover of possession of respective flats to the Allottees.

It was submitted that, while considering the said complaint, the learned Authority took note of the fact that the project had come to a standstill under the erstwhile Promoter i.e. Respondent No.1 (Nirmal Lifestyle Limited). In such circumstances, Respondent No.2 (Ricardo Constructions Private Limited) had taken over the project by infusing funds. In this context, the learned Authority observed as follows:

> *"6. It was explained to all the individual Complainants that in a project such as this, which has been transferred to the Respondent, under Section 15 of the said Act, after application of the provisions of the Securitisation and*

Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002, it would be necessary to protect the rights of the allottees and ensure that the project work gets completed, with the association of allottees, comprising more than 50% of the allottees, deciding the way forward."

Learned Advocate for Respondent No.2 submitted that in view of the above observations, the Authority directed to comply with the following "*7 point guidelines*" in the complaint filed by the Association of Allottees (AOA), while observing that the directions sought by the Association fell within the framework of Section 7(3) of the RERA Act. Therefore, in view of the provisions of the Act and the circulars passed thereunder, all pending complaints in the project were clubbed together and the following directions were issued:

"7. In view of the above, the following directions are issued:

(i) The Respondent shall handover the complete list of allottees to the US OPEN (ACES/MATCHPOINT) AOA within 15 days from the date of this order.

(ii) The US OPEN (ACES/MATCHPOINT) AOA shall share the list of its members, along with the office bearers, with the Respondent within 15 days from the date of this Order.

(iii) To ensure complete transparency, the Respondent shall have monthly meetings with the designated members of US OPEN (ACES/MATCHPOINT) AOA wherein progress of pending approvals from the complete authority, progress of work in relation to the schedule of project completion and the financial

statements, clarifying how much monies have been collected from the allottees and how much money has been spent on the project, shall be shared.

(iv) Monies paid by the Complainants to the erstwhile developer shall be honoured by the present promoter.

(v) The present and the erstwhile promoter shall, in consultation with US OPEN (ACES/MATCHPOINT) AOA formulate an exit strategy for those who intend to withdraw from the said project and inform the Complainants about the same, within 30 days from the date of this Order.

(vi) The Respondent shall, execute and register agreements for sale, under Section 13 of the said Act, with the allottees who have paid in excess of 10% of the consideration amount and intend to continue in the said project, within 60 days from the date of this Order.

(vii) The Respondent shall initiate the process of society formation within 30 days from the date of this Order."

17. Learned Advocate for the Respondent No.2/Promoter further submitted that more than 71% of the Allottees in the said project had executed Consent Letters in compliance with the order dated 08.09.2021. The Respondent No.2 had obtained an extension of the validity of the project registration for a period of 39 months. By an order dated 09.01.2023, the Authority extended the registration of

the project until 31.03.2026 in line with the consent of the majority of the Allottees in the present project.

18. In the present appeal, although the Appellants/Allottees had not executed the Consent Letter, they were nevertheless bound by the terms and conditions, as more than 2/3rd of the total Allottees had consented to the arrangement. On this basis, Respondent No.2 submitted that the date of handing over possession stands extended until 31.03.2026 and the Appellants/Allottees were entitled only to one-time compensation in accordance with the terms of the Consent Letters, which Respondent No.2 is ready and willing to pay.

19. Learned Advocate for the Respondent No.2/Promoter further submitted that, if non-consenting Allottees, who constitute 1/3rd of the total Allottees were not bound by the decisions of the majority of the Allottees, the provisions of RERA in relation to extension of validity of registration of projects and transfer/assignment of projects would be rendered otiose and unworkable. Therefore, it was submitted that the arrangement approved by the majority of members ought to be given effect in the interest of completion of the project and protect the collective interests of Allottees.

20. In support of the aforesaid submissions, learned Advocate Mr. Rubin Vakil appearing for the Respondent No.2 relied upon the following judgments:

i. *S. Kasi Vs. State Through Inspector of Police, Samaynallur Police Station, Madurai District* [(2021) SCC 12 SCC 1], decided on 19.06.2020, by the Hon'ble Supreme Court of India.

ii. *Central Board of Dawoodi Bohra Community and Another Vs. State of Maharashtra and Another* [(2005) SCC 673], decided on 17.12.2004, by the Hon'ble Supreme Court of India.

iii. *Newtech Promoters and Developers Private Limited Vs. State of Uttar Pradesh and Others* [(2021) 18 SCC 1], decided on 11.11.2021, by the Hon'ble Supreme Court of India.

iv. *Neelkamal Realtors Suburban Pvt. Ltd & Anr. Vs. Union of India & Ors.* [2017 SCC OnLine Bom 9302], decided on 06.12.2017, by the Hon'ble Bombay High Court.

v. *Esha Bhattacharjee Vs.* Managing Committee of Raghunathpur Nafar Academy and Ors. [(2013) 12 SCC 649] decided on 13.09.2013, by the Hon'ble Supreme Court of India.

vi. *Ajay Dabra Vs. Pyare Ram and Ors.* [2023 INSC 90] decided on 31.01.2023, by the Hon'ble Supreme Court of India.

vii. *Basawaraj & Another Vs. Special Land Acquisition Officer* [(2013) 14 SCC 81], decided on 22.08.2013 by the Hon'ble Supreme Court of India.

viii. *Government of Maharashtra (Water Resources Department) Represented by Executive Engineer Vs. Borse Brothers Engineers and Contractors Private Limited* [(2021) 6 SCC 460], decided on 19.03.2021 by the Hon'ble Supreme Court of India.

21. We have heard learned Advocates appearing for the respective parties. The submissions advanced by the learned Advocates appearing for the respective parties are nothing but reiterations of the contents of the complaint, Affidavit-in-Reply, Appeal Memo and Written Submissions/Arguments filed on behalf of the parties.

22. After considering the submissions advanced by the learned Advocates appearing for respective parties, the pleadings of the parties, material placed on record and impugned order, the following points arise for our consideration, and we have recorded our findings thereupon for the reasons as follows:

Sr. Nos.	Points	Findings
1.	Whether the impugned order dated 15.09.2021 passed by learned Chairperson, MahaRERA, in the complaint No. CC006000000161352 of 2020 filed by the Appellants/Allottees, warrants interference in the captioned appeal?	In the affirmative
2.	Whether the Appellants/Allottees are entitled to relief sought in the captioned appeal?	In the affirmative
3.	What order?	As per final order

REASONS

23. Upon careful examination of the pleadings of the parties, material on record and submissions advanced by the learned Counsel appearing for the respective parties, it is clearly revealed that the Allottees have booked Flat No. 2306 admeasuring 629 sq. ft. carpet area in Wing B, 'Match Point', in real estate project "US Open" and executed Agreement for Sale dated 22.11.2011. As per the said Agreement for Sale, Respondent No.1 had undertaken to handover possession of the subject flat by December 2015. It is not in dispute that the Appellants/Allottees have paid 100% of the consideration amount through various transactions as demanded by Respondent No.1 from time to time.

24. It is worthy to note that, Ricardo Constructions Private Limited, i.e. Respondent No.2 has taken over the said project from Respondent No.1 by virtue of Development Agreement dated 29.06.2019. Pursuant thereto, Respondent No.2 registered the project and stepped in as the Promoter of the said project, which was communicated to the Appellants/Allottees by letter dated 04.07.2019 by Respondent No.1. By the said letter, Respondent No.2 informed the Allottees that the building 'Match Point' in real estate project "US Open", in which the subject flat was situated has been taken over by it. Thus, Respondent No.2 has taken over the real

estate project in all respects and undertaken the obligation to complete the construction and handover possession to the Appellants/Allottees. In other words, Respondent No.2 has stepped into the shoes of Respondent No.1 in terms of Section 15 of the RERA Act, 2016, which governs transfer of real estate projects to new developer. Section 15 of RERA Act, 2016 reads as follows:

> *"15(1) The promoter shall not transfer or assign his majority rights and liabilities in respect of a real estate project to a third party without obtaining prior written consent from two-third allottees, except the promoter, and without the prior written approval of the Authority: Provided that such transfer or assignment shall not affect the allotment or sale of the apartments, plots or buildings as the case may be, in the real estate project made by the erstwhile promoter. Explanation.—For the purpose of this sub-section, the allottee, irrespective of the number of apartments or plots, as the case may be, booked by him or booked in the name of his family, or in the case of other persons such as companies or firms or any association of individuals, by whatever name called, booked in its name or booked in the name of its associated entities or related enterprises, shall be considered as one allottee only.*
> *(2) On the transfer or assignment being permitted by the allottees and the Authority under sub-section (1), the intending promoter shall be required to independently comply with all the pending obligations under the provisions of this Act or the rules and regulations made thereunder, and the pending obligations as per the agreement for sale entered into by the erstwhile promoter with the allottees:"*

25. In the present case, it is not in dispute that the prior consent of 2/3rd of Allottees and approval of the Authority was obtained for such

transfer. In view of Section 15(2) of the Act, the New Promoter, i.e., Respondent No. 2, was required to comply with all the pending obligations under the provisions of RERA Act, 2016, Rules and Regulations made thereunder, together with obligations arising out of the Agreement for Sale executed by and between the erstwhile Promoter and the Allottees. It is worthy to note that the rights of the Allottees under Section 18 are protected under Section 15(2) of RERA Act, in case of transfer of the project to a third party.

26. It is pertinent to note that the transfer or assignment under the provisions of Section 15 does not result in, *ipso facto,* extending the time for completion of the real estate project. Incumbent Promoter of erstwhile promoter, in case of default or delay, it shall be liable to the consequences thereof. In the present case, Respondent No.1 had promised to complete the project and deliver possession of the said flat by December 2015. Therefore, it is not in dispute that the Respondent Nos. 1 and 2 failed to handover possession of the subject flat to the Appellants/Allottees on the agreed date. Upon execution of the Development Agreement dated 29.06.2019 and the Authority order dated 13.08.2019 in respect of Respondent No. 2 (Ricardo Constructions Private Limited) became liable to fulfil all pending obligations of Respondent No.1, including the liabilities arising out of delay in handing over possession of the said flat.

27. Learned Adv. Mr. Rubin Vakil, appearing for the Respondent No.2/Promoter further contended that in similar complaints filed by the Appellants/Allottees of the 'Match Point' buildings in the "US Open" project seeking interest and compensation were disposed of in the proceedings initiated by the Association of Allottees (ASO). It is worthy to note that the majority of the Allottees, while giving Consent Letters, have agreed for one time compensation so the Allottees are bound by the terms of such Consent Letters wherein one time compensation was accepted. We do not find merit in the contentions of Respondent No.2. The statutory rights of Allottees cannot be curtailed by such arrangement made through Letter of Understanding. Section 8 of MOFA Act speaks about the refund of the amount paid with interest for failure to give possession within specified time or further time allowed. Section 8 of MOFA lays down that:

> "if *(a) the promoter fails to give possession in accordance with the terms of his agreement of a flat duly completed by the date specified, or any further date or dates agreed to by the parties, or (b) the promoter for reasons beyond his control and of his agents, is unable to give possession of the flat by the date specified, or the further agreed date and a period of three months thereafter, or a further period of three months if those reasons still exist, then, in any such case, the promoter shall be liable on demand (but without prejudice to any other remedies to which he may be liable) to refund the amounts already received by him in respect of the flat*

(with simple interest at nine per cent. per annum from the date he received the sums till the date the amounts and interest thereon is refunded), and the amounts and the interest shall be a charge on the land and the construction if any thereon in which the flat is or was to be constructed, to the extent of the amount due, but subject to any prior encumbrances."

28. Section 18 of the RERA Act spells out consequences if the promoter fails to complete or is unable to give possession of flat or apartment either in terms of Agreement for Sale or to complete the project by the date specified therein on account of discontinuance of his business as a developer on account of suspension or revocation of registration or for any other reason, the allottee/ home buyer holds an unqualified right to seek interest on the paid amount by him at such rate as may be prescribed in this behalf or to seek refund of amount with interest if he wishes to withdraw from the project. It is now settled law that if delay is not attributable to the allottees/ home buyers, they are entitled to claim relief provided under Section 18 of RERA Act. It has been observed by the Hon'ble Supreme Court in a case of *M/s. Imperia Structures Ltd. Vs. Anil Patni & Ors.* (supra) decided on that-

"In terms of Section 18 of the RERA Act, if a promoter fails to complete or is unable to give possession of an apartment duly completed by the date specified in the agreement, the Promoter would be liable, on demand, to return the amount received by him in respect of that apartment if the allottee wishes to withdraw from the

Project. Such right of an allottee is specifically made "without prejudice to any other remedy available to him". The right so given to the allottee is unqualified and if availed, the money deposited by the allottee has to be refunded with interest at such rate as may be prescribed. The proviso to Section 18(1) contemplates a situation where the allottee does not intend to withdraw from the Project. In that case he is entitled to and must be paid interest for every month of delay till the handing over of the possession. It is upto the allottee to proceed either under Section 18(1) or under proviso to Section 18(1)."

29. Even if force majeure factors as demonstrated by the promoter are given some consideration, we are of the view that promoter is not entitled to get benefit of the same for the reasons that the same are not attributable to the allottees nor is the case of promoter that allottees in any way caused delay in handing over the possession. While explaining the scope of Section 18 of the RERA Act 2016 the Hon'ble Supreme Court in the case of *M/s Newtech Promoter and Developers Pvt. Ltd. V/s. State of Uttar Pradesh* (supra) has held in para 25 as under:

> *"Para 25. The unqualified right of the allottee to seek refund referred under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottee, if the promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal,*

which is in either way not attributable to the allottee/home buyer, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act with the proviso that if the allottee does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed."

30. Learned Advocate appearing for the Respondent No.2/Promoter further contended that the Respondent No.2 was not a party to the original complaint before the Authority and the relief sought by the Allottees is fresh and independent. Therefore, it cannot be agitated for the first time in appellate proceedings. We do not find merit in the contentions of the Respondent No.2. A scrutiny of the common impugned order dated 15.09.2021 reveals that, although Respondent No.2 was not impleaded in the individual complaint filed by the Appellants/Allottees, it was impleaded in other complaints dealt by the Authority in the common impugned order. Perusal of the common impugned order demonstrates that Respondent No.2 had participated in the proceedings before the Authority and his reply pleaded that by virtue of the interim order dated 04.09.2020, the rights and liabilities of the parties, including the present Appellants/Allottees have been conclusively determined and thereby require no further adjudication. The liability sought to be enforced against the Respondent No.2/Promoter arises from the subsequent

transfer of the project and the obligations cast upon Respondent No.2 under Section 15 of RERA Act, 2016.

31. Learned Advocate for the Respondent No.2/Promoter further contended that approximately 78% of the Allottees in the project had executed Consent Letters and that although the Appellants/Allottees had not executed such Consent Letter, they were bound by the arrangement accepted by the majority. It was further contended that, based on consent accorded by the majority of the Allottees, the project period and possession date had been extended until 31.03.2026.

32. We are unable to accept the contention of Respondent No.2/Promoter, that the Appellants/Allottees are automatically bound by the compensation arrangement merely because a majority of the Allottees have accepted it. In the present appeal, the material placed on record reveals that, the Allottees have consciously elected not to sign the Consent Letter and opted to seek interest for delayed period of possession by invoking their right under Section 18 of RERA Act. Further, consent for the transfer of a project under Section 18 of the RERA Act cannot be treated as consent to waive accrued rights arising from delayed possession. Similarly, Consent Letters executed by other Allottees does not establish that the contractual date of possession under the Appellants/Allottees'

Agreement for Sale stands extended. In the present case, the agreed date of possession was December 2015. The alleged extension accepted by other Allottees until 31.03.2026 cannot be applied to the Appellants/Allottees, as the Consent Letters are not binding them to the arrangement. Therefore, the Appellants/Allottees' entitlement to interest must be determined with reference to the applicable contractual date and the statutory provisions.

33. For the foregoing reasons, we are of the considered opinion that the subsequent transfer of the said real estate project to Respondent No.2, i.e. Ricardo Constructions Private Limited, does not take away the rights of Appellants/Allottees, arising from the failure to handover possession within the agreed period. Having accepted the pending obligations of the erstwhile Promoter under Section 15(2) of the RERA Act 2016, Respondent No.2 is liable to discharge the statutory obligation to pay interest for delayed possession. In the present appeal, the Consent Letters executed by other Allottees in the said project cannot be made binding upon the Appellants/Allottees and deprive them of their individual statutory rights. The common impugned order dated 15.09.2021 passed by learned Chairperson, MahaRERA, therefore, warrants interference in

the captioned appeal. Accordingly, we answer point Nos. 1 and 2 in the affirmative and proceed to pass the following order: -

O R D E R

1. Appeal No. AT006000000103935 of 2022 is partly allowed.
2. The Respondent No.2/Promoter is directed to pay interest on consideration amount of ₹1,05,80,514/- for delayed possession, from 01.01.2016 until actual date of possession, at the highest Marginal Cost of Lending Rate (MCLR) of SBI plus 2% per annum, as prescribed under the provisions of Section 18 of RERA Act, 2016 and Rules made thereunder, within four weeks from the date of this order.
3. The interest payable thereof shall be calculated on the consideration amount excluding stamp duty, registration charges and other applicable taxes paid to government authorities.
4. The Respondent No.2/Promoter is directed to pay costs of ₹25,000/- to the Appellants/Allottees.
5. Copy of this order be communicated to the learned Authority and respective parties as per Section 44(4) of the RERA Act, 2016.

(DR. RAJAGOPAL DEVARA)

(S. S. SHINDE, J)

V. K. Bhople_