

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 320 OF 2026**

M/s Seema Promoters And Builders Pvt Ltd ..Appellant
Versus
Col Asoke Kumar & Anr ...Respondents

**WITH
INTERIM APPLICATION NO. 5196 OF 2026
IN
SECOND APPEAL NO. 320 OF 2026**

Mr. Rajesh A Tekale, for the Appellant/Applicant.

**CORAM: N. J. JAMADAR, J.
DATE : 22nd JULY 2026**

ORAL ORDER:

1. Heard Mr. Rajesh A Tekale, the learned Counsel for the Appellant.
2. This Second Appeal is directed against a judgment and order dated 23rd April 2026 passed by the Maharashtra Real Estate Appellate Tribunal, Mumbai, in Appeal No. AT006000000144418, whereby the Appellate Tribunal has allowed the Appeal preferred by the Appellants-Allottees and directed the Appellant-Promoter to refund the entire consideration amount paid by the Appellants-Allottees with interest as per the State Bank of India's highest Marginal Cost of Lending Rate

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(MCLR) + 2% calculated from the respective dates of payment till realization of the entire amount to the Appellants-Allottees.

3. The Allottees have booked the shops bearing Nos. 5 and 6 and an Agreement for Sale was executed on 27th June 2017. Out of the agreed consideration of Rs.10,42,600/- for Shop No.5 and Rs.12,50,500/- for Shop No. 6, the Allottees have paid the amount of Rs.9,46,520/- and Rs.11,37,500/- respectively.

4. Under the terms of the Agreement, the possession of the subject shops was to be delivered on or before 31st March 2019. Evidently, the Appellant-Promoter did not complete the project before the scheduled agreed date of delivery of possession. The occupancy certificate was obtained in the month of February 2020.

5. Before the occupancy certificate could be obtained and possession offered, the Allottees have addressed a letter to the promoter on 17th October 2019 and sought refund of the consideration parted with by the Allottees along with interest thereon, invoking the provisions contained in Section 18(1) of the Real Estate (Regulation and Development) Act, 2016 (“the RERA 2016”).

6. Eventually, the Allottees lodged complaint before the Maharashtra Real Estate Regulatory Authority, Mumbai (“the Regulatory Authority”). By an order dated 23rd January 2023, the Regulatory Authority was persuaded to dismiss the complaint as the occupancy

certificate in respect of the subject shops was obtained on 5th February 2020 and the withdrawal notice seeking refund of the consideration was addressed by the Allottee on 12th February 2021.

7. Being aggrieved, the Allottee preferred an Appeal before the Appellate Tribunal. By the impugned order, the Appellate Tribunal was persuaded to allow the Appeal and direct the refund of the amount of consideration paid by the Allottee along with interest.

8. Mr. Rajesh Tekale, the learned Counsel for the Appellant, submitted that since the occupation certificate was obtained in the month of February 2020, the Allottee could not have declined to take possession of the subject shops. It was obligatory on the Allottee to take the possession of the subject shops within a period of two months of the grant of the occupation certificate under Section 19(10) of RERA 2016. The Appellate Tribunal has committed a gross error in not considering the import of the provisions contained in Sections 18 and 19(10) of the RERA 2016. Thus, according to the learned Counsel for the Appellant, a substantial question of law arises for consideration.

9. I find it difficult to accede to the submissions on behalf of the Appellant. The fact remains that the possession of the subject shops was to be delivered by 31st March 2019. Indisputably, the shops were not ready for delivery of possession by the expiry of the agreed date for the delivery of possession. The occupancy certificate was obtained on 5th

February 2020. Prior to the obtaining of the occupancy certificate, the Allottee had addressed the communication and sought the refund of the consideration.

10. In paragraphs 17 and 18 of the impugned judgment, the Appellate Tribunal has extracted the purport of the communication addressed by the Allottee seeking the refund of the amount. It is specifically recorded that in the email of 17th October 2019, the attention of the Appellant-Promoter was drawn to the provisions contained in Section 18 of RERA 2016. The Appellate Tribunal has referred to the series of correspondence, addressed by the Allottee, before the grant of the occupancy certificate.

11. In this view of the matter and having regard to the ultimate order passed by the Appellate Tribunal thereby directing the refund of the entire amount of consideration along with interest thereon in the face of the indisputable fact that the possession of the subject shops could not be delivered by 31st March 2019, and the occupation certificate was obtained after the Allottee sought the refund of the amount, no question of law, much less a substantial question of law, arises for consideration.

12. The Appeal stands dismissed.

13. In view of the dismissal of the Appeal, the Interim Application stands disposed.

[N. J. JAMADAR, J.]