

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 389 OF 2026

Deep Homes And Construction LLP ..Appellant
Versus
Meghana Abhishek Lakhotia & Anr ...Respondents

Mr. Sanjay Chaturvedi, for the Appellant.
Mr. Keshav Borhade, for the Respondents.

CORAM : N. J. JAMADAR, J.
DATE : 19th AUGUST 2026

ORDER:

1. This Second Appeal is directed against a common judgment and order dated 2nd April 2026 in Appeal No. AT006000000103939 of 2022 and Appeal No. AT006000000134059, whereby the Appeal preferred by the Allottees against a common order dated 27th May 2022 passed by the Maharashtra Real Estate Regulatory Authority (“MahaRERA”), came to be partly allowed and the Appellant-Promoter was directed to pay the interest on the amount of Rs.1,36,50,167/- paid by the Allottees to the Appellant-Promoter towards consideration at the SBI’s highest Marginal Cost Lending Rate (MCLR) plus 2% with effect from 1st April 2019 till 14th June 2021 and the Appeal preferred by the Appellant-Promoter came to be dismissed.

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2. The Appeals arose in the backdrop of the following facts.

2.1 The Respondents-Allottees had agreed to purchase Flat No. 1601 on the 16th floor in a building named, “Auralis The Twins”, then being developed by the Appellant-Promoter, under a registered Agreement for Sale dated 31st January 2019, for a total consideration of Rs.1,36,81,500/-. Under the terms of the contract, the Promoter was to deliver the possession of the subject flat on or before 31st March 2019.

2.2 The project got delayed. The Promoter gave fit out possession of the subject flat on 25th March 2021 without obtaining occupation certificate. Eventually, the occupation certificate was obtained on 14th June 2021.

2.3 The Allottees filed a complaint before the MahaRERA alleging delay in the delivery of possession of the subject flat and sought interest on the amount of consideration parted with by the Allottees on account of delay in delivery of possession, rental income and compensation for the delay in the project.

2.4 The Authority was persuaded to partly allow the complaint and direct the Promoter to pay interest to the Allottees for the period commencing from 1st April 2019 to the delivery of fit out possession on 25th March 2021, only. The Authority was also persuaded to grant the benefit of moratorium in regard to the payment of interest during the COVID-19 pandemic period pursuant to the Notifications/Orders Nos.

13 and 14 dated 2nd April 2020 and 18th May 2020 issued by the MahaRERA.

2.5 Being aggrieved, the Allottees preferred an Appeal, being Appeal No. AT006000000134059 of 2022. The Promoter also preferred an Appeal, being Appeal No. AT006000000103939 of 2022.

2.6 By the impugned order, the Appellate Tribunal was persuaded to interfere with the order passed by the Authority, primarily on two counts. First, since the occupation certificate was obtained on 14th June 2021, the delivery of fit out possession on 25th March 2021 did not amount to delivery of possession of the subject flat. And, thus, the Allottees were entitled to payment of interest on the amount of Rs.1,30,50,167/- from 1st April 2019 till the issue of occupation certificate on 14th June 2021. Second, the MahaRERA was in error in granting the benefit of the moratorium to the Promoter as agreed date of delivery of possession, i.e. 31st March 2019 was much prior to the onset of COVID 19 pandemic. Thus the promoter was not entitled to the benefit of moratorium. Therefore, the Appellate Tribunal directed the Promoter to pay interest at the aforesaid rate with effect from 1st April 2019 till 14th June 2021..

2.7 Being aggrieved, the Promoter has preferred this Appeal.

3. Mr. Sanjay Chaturvedi, the learned Counsel for the Appellant, submitted that the Appellate Tribunal committed manifest error in law in directing the payment of interest till 14th June 2021, though admittedly the fit out possession was delivered on 25th March 2021. Secondly, the disallowance of the benefit of the moratorium was in the teeth of the express Notifications/Orders. Thirdly, the delay in the delivery of possession of the subject flat was not at all attributable to the Promoter as the delay occurred on account of the unforeseen events beyond the control of the Promoter. Inviting attention of the Court to the recitals in Clause 21 of the Agreement for Sale, Mr. Chaturvedi submitted that the parties had explicitly agreed that upon occurrence of the *force majeure* events as enumerated therein, the Promoter would be entitled to extension of time for delivery of possession of the subject flat. Lastly, Mr. Chaturvedi would submit that, the Appellate Tribunal did not advert to the corresponding obligation of the Allottees under Section 19(6) of the Real Estate (Regulation and Development) Act, 2016 (“RERA 2016”). These infirmities give rise to substantial questions of law, urged Mr. Chaturvedi.

4. In opposition to this, Mr. Keshav Borhade, the learned Counsel for Respondent Nos. 1 and 2-Allottees, would submit that in the backdrop of the uncontroverted facts the impugned order is wholly justifiable. The grounds now sought to be urged by the Promoter are

clearly untenable. The failure to deliver the possession of the subject flat in accordance with the terms of the Agreement between the parties, give rise to indefeasible right of the Allottees to receive interest on the amount of consideration, for the delayed period. Thus, no substantial question of law arises for consideration.

5. There is not much controversy over the foundational facts. First, the execution of the registered Agreement for Sale and the terms of the bargain incorporated therein are not put in contest. Incontrovertibly the possession of the subject flat was agreed to be delivered on or before 31st March 2019. Indisputably the project got delayed and only fit out possession and that too without occupation certificate, was delivered on 25th March 2021. Occupation Certificate was obtained on 14th June 2021.

6. In the backdrop of aforesaid uncontroverted facts, the submission on behalf of the Petitioner that the possession of the subject flat was delivered on 25th March 2021 does not advance the cause of the Promoter. The Appellate Tribunal was justified in holding that the delivery of fit out possession without occupation certificate does not amount to delivery of possession of the subject flat in accordance with the terms of the Agreement. Under Section 11(4), it is the obligation of the Promoter to obtain the occupation certificate. Conversely, under Section 19(10), the liability of the Allottee is to take possession of the

apartment within a period of two months of the grant of occupancy certificate. Thus, possession sans occupancy certificate is non est in the eye of law. The Appellate Tribunal was thus within its right in construing the delivery of date of possession as the date on which occupation certificate was obtained by the Promoter.

7. The support sought to be drawn by Mr. Chaturvedi from Clause 21 of the Agreement for Sale to the submission that on account of *force majeure* events the parties had agreed that the period of delivery of possession would stand extended, appears to be of little assistance.

8. A bare perusal of the Clause 21 of the Agreement for Sale indicates that routine and mundane events have also been incorporated therein as the situations beyond the control of the Promoter. For instance, unavailability of the building material, water or electricity supply; any directives by the Government and/or by the Local Authority, economic downturn, changes in any Rules and Regulations, Bye-laws of various Statutory Bodies and Authorities, delay in the issue of occupation certificate and/or any other sanction and/or grant of any permission, approvals etc.

9. The aforesaid events *ex-facie* do not constitute a *force majeure* event within the meaning of Section 6 of RERA 2016. The Explanation appended to Section 6 provides that for the purpose of that section, the expression “*force majeure*” shall mean a case of war, flood, drought,

fire, cyclone, earthquake or any other calamity caused by nature affecting the regular development of the real estate project.

10. By no stretch of imagination, the afore enumerated events/contingencies in Clause 21 of the Agreement for Sale can qualify as *force majeure* events. The decision of the Division Bench of this Court in the case of **Neelkamal Realtors Suburban Pvt And Anr Vs Union of India & Ors**¹ was thus rightly relied upon by the Appellate Tribunal to negate the claim premised on *force majeure* events.

11. Similarly, disallowance of the benefit of the moratorium in the matter of the application of the interest by the Appellate Tribunal appeared to be sustainable. The possession of the subject flat was agreed to be delivered on or before 31st March 2019, well a year before the COVID 19 Pandemic restrictions were imposed.

12. The right of Allottees to get interest from the Promoter on the amount of consideration paid to the Promoter in the event of delay in delivery of possession has been construed to be an indefeasible right. In the case of **M/s Newtech Promoters And Developers Pvt Ltd Vs State of U.P. & Ors**², the Supreme Court has enunciated in clear and explicit terms that Section 18(1) gives an indefeasible right to the allottee to get a return of the amount on demand if the promoter is unable to hand over possession in terms of the Agreement for Sale or has failed to

1 (2017) SCC OnLine Bom 9302.

2 2021 SCC OnLine SC 1044.

complete the project by the date specified. In the case of **Imperia Structures Ltd. Vs. Anil Patni and Another**³, the Supreme Court held that, Section 18 confers an unqualified right upon an allottee to get a refund of the amount deposited with the promoter and interest at the prescribed rate, if the promoter fails to complete or is unable to give possession of an apartment as per the date specified in the agreement. 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.

13. For the forgoing reasons, no question of law, much less a substantial question of law, arises for consideration.

14. The Second Appeal thus stands dismissed.

[N. J. JAMADAR, J.]

³ (2020) 10 SCC 783.