

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**SECOND APPEAL (ST.) NO.27914 OF 2018
WITH
CIVIL APPLICATION NO.1313 OF 2018**

M/s.Samruddhi Developers	)	
a Partnership Firm registered with the	)	
Indian Partnership Act, 1932 having its	)	
office at B-5, Sai Dham, 1 st Floor,	)	
Veer Savarkar Marg, Opp. Dadar Catering	)	
College, Dadar (West),	)	
Mumbai 400 028.	)	Appellant/Applicant

Versus

Kiran Vasant Verekar	)	
Age: Adult, Occupation : Not known	)	
An Indian inhabitant presently	)	
residing at 4-D, Ganpati Wadi,	)	
Irani Building, Prabhadevi,	)	
Veer Sawarkar Marg, Mumbai – 400 025.	)	Respondents

ALONG WITH

**SECOND APPEAL (ST.) NO.27898 OF 2018
WITH
CIVIL APPLICATION NO.1325 OF 2018**

M/s.Samruddhi Developers	)	
a Partnership Firm registered with the	)	
Indian Partnership Act, 1932 having its	)	
office at B-5, Sai Dham, 1 st Floor,	)	
Veer Savarkar Marg, Opp. Dadar Catering	)	
College, Dadar (West),	)	
Mumbai 400 028.	)	Appellant/Applicant

Versus

Rajuram Mangilal Banshiwal	)	
Age : Adult, Occupation : Not Known	)	
An Indian inhabitant presently	)	
residing at 903, Building No.11,	)	

Yashomathi CHS Ltd., Sahkar Nagar)
 Shell Colony Road, Opp. Tilak Nagar)
 Railway Station, Chembur (East),)
 Mumbai - 400 071.) Respondent

ALONG WITH

**SECOND APPEAL (ST.) NO.27901 OF 2018
 WITH
 CIVIL APPLICATION NO.1314 OF 2018**

M/s.Samruddhi Developers)
 a Partnership Firm registered with the)
 Indian Partnership Act, 1932 having its)
 office at B-5, Sai Dham, 1st Floor,)
 Veer Savarkar Marg, Opp. Dadar Catering)
 College, Dadar (West),)
 Mumbai 400 028.) Appellant/Applicant

Versus

Suhas Hanumant Tawde)
 Age : Adult, Occupation : Not Known)
 An Indian inhabitant presently)
 residing at 45/5, Chawl No.1,)
 Aadarsh Nagar, Near Adarsh Vidyalaya,)
 Shell Colony Road, Chembur,)
 Mumbai - 400 071.) Respondent

ALONG WITH

**SECOND APPEAL (ST.) NO.27903 OF 2018
 WITH
 CIVIL APPLICATION NO.1319 OF 2018**

M/s.Samruddhi Developers)
 a Partnership Firm registered with the)
 Indian Partnership Act, 1932 having its)
 office at B-5, Sai Dham, 1st Floor,)
 Veer Savarkar Marg, Opp. Dadar Catering)
 College, Dadar (West),)
 Mumbai 400 028.) Appellant/Applicant

Versus

1. Mamta Suresh Sawant)
 2. Suresh V. Sawant)
 Both residing at 115/3785,)
 Om Nandeep Hsg. Soc. Ltd.)
 Kurla Nehru Nagar, Kurla (East),)
 Mumbai - 400 024) Respondents

**ALONG WITH
 SECOND APPEAL (ST.) NO.27908 OF 2018
 WITH
 CIVIL APPLICATION NO.1326 OF 2018**

M/s.Samruddhi Developers)
 a Partnership Firm registered with the)
 Indian Partnership Act, 1932 having its)
 office at B-5, Sai Dham, 1st Floor,)
 Veer Savarkar Marg, Opp. Dadar Catering)
 College, Dadar (West),)
 Mumbai 400 028.) Appellant/Applicant

Versus

Sudhakar Kasinath Salunkhe)
 residing at do. K.B. Chavan,)
 Ganesh Prasad CHS Ltd.)
 B/1546, Near Abhyudaya Bank)
 Kurla Nehru Nagar, Kurla (East),)
 Mumbai - 400 024.) Respondent

Mr.Mayur Khandeparkar a/w Ms.Apeksha Sharma, Mr.Sanjeel Kadam and Ms.Sayali Rajpurkar i/by Kadam & Co. for the appellant/applicant.

Mr.Vivek Salunke a/w Mr.Tushar Kadam, Mr.Vishal Jathar and Ms.Madhura Zende i/by M/s.MDP & Partners for the respondents in all five appeals.

**CORAM : R.D.DHANUKA, J.
 RESERVED ON : 29th August 2019
 PRONOUNCED ON : 17th September 2019**

Judgment :

. By these five appeals filed under Section 58 of the Real Estate (Regulation and Development) Act, 2016 (for short the said RERA), the appellant (original respondent) has impugned the order dated 29th August 2018 passed by the Maharashtra Real Estate Appellate Tribunal, Mumbai (hereinafter referred to as “the said Tribunal”) allowing the appeals filed by the respondents (original appellants/complainants). By consent of parties, all the appeals were heard together and are being disposed of by a common order.

2. The facts in all aforesaid five appeals are identical. Learned counsel for the parties have addressed this Court in Second Appeal (St.) No.27914 of 2018. The facts in the said second appeal are thus summarised in later part of this judgment. Some of the relevant facts for the purpose of deciding these appeals are under :-

3. One Nehru Nagar Amrapali Co.op. Hsg. Soc. Ltd. (hereinafter referred to as “the said society”) is lessee of MHADA in respect of the land bearing Survey Nos.229 and 267, corresponding to City Survey No.2(Part) of Village Kurla, admeasuring 707.30 sq.mtrs. situated at Nehru Nagar, Kurla (East), Mumbai 400 024 and owner of the building bearing Building No.133 standing on the said property. The

old building No.133 has been demolished and a new building consisting of 7 floors has been constructed on the said property.

4. By and under a registered Development Agreement dated 13th December 2007 executed between the said society and one M/s.Rebuilt Developers, the said society had granted development rights in respect of the said property in favour of the said M/s.Rebuilt Developers. Under the said Development Agreement, the said society had granted right to M/s.Rebuilt to construct a new building on the said property having ground + 7 upper floors containing rehab and sale component tenaments by consuming then permitted 2.4 FSI in favour of the said Rebuilt Developers.

5. It is the case of the appellant that vide a Notification dated 6th December 2012, the Government of Maharashtra permitted utilization of 2.5 FSI for development of MHADA's housing colonies. The said society and the said M/s.Rebuilt Developers thus entered into a Supplemental Agreement dated 5th May 2012 thereby granting development rights in respect of the said additional FSI on the terms and conditions set out therein to the said M/s.Rebuilt Developers. Under the said Supplemental Agreement, the society permitted the said M/s.Rebuilt to construct one more floor i.e. 8th floor by utilizing additional FSI over and above 2.5 FSI + permissible Fungible FSI. The

said M/s.Rebuilt Developers partly completed construction of a new building on the said property consisting of ground + 7 upper floors and allegedly delivered possession of the flats therein to the Society Members and open market purchasers in or around 2013 without procuring Occupation Certificate.

6. It is the case of the appellant that the said M/s.Rebuilt Developers executed 9 separate registered agreements and agreed to sell those 9 flats out of 10 flats on the proposed 8th floor to various purchasers thereof including Manoj Sadarangani, one of the partners of the appellant who is residing in Flat Nos.A-805 and B-802. It is the case of the appellant that the appellant found it beyond its capacity to complete the remaining work, including construction of the 8th floor, and was also unable to refund the money/part consideration amount paid by those purchasers of flats on the 8th floor.

7. On 9th November 2015, the said society, the said M/s.Rebuilt Developers and the appellant entered into a Deed of Assignment assigning the development rights of the said property to the appellant on the terms and conditions recorded therein. The said society was a confirming party to the said Deed of Assignment. The said Deed of Assignment was duly registered under No.KRL-3-7594-2015. It was the case of the appellant that some of the respondents herein were

witnesses in the said Deed of Assignment. The appellant had taken over the project as per collective decision of those 9 purchasers of the flats proposed on the 8th floor including the respondents for bailing them out.

8. It is the case of the appellant that due to various reasons beyond the control of the appellant, the appellant could not carry out construction work on the 8th floor under the said Deed of Assignment. On 25th March 2016, the said RERA came into effect pursuant to which it was obligatory for all the real estate developers to register their project with the Real Estate Regulatory Authority constituted under the said RERA. The appellant also registered the said project under the said RERA under No.P51800012607.

9. Sometime in the year 2017, the respondents filed separate complaint against the appellant before the Adjudicating Authority (hereinafter referred to as “the said authority” inter alia demanding payment of interest from the appellant under Section 18 read with proviso to Section 18(1)(a) of the said RERA on the consideration amount paid to M/s.Rebuilt Developers till the date of delivery of possession of flat to them. By an order dated 15th January 2018, the Adjudicating Authority after hearing the parties rejected the prayer for payment of interest made by the respondents on delayed construction of project but directed the appellant to deliver possession of the flats to the

respondents on 31st December 2018 as mentioned in the registration details on MahaRERA's website.

10. Being aggrieved by the said order dated 15th January 2018 passed by the said Authority, the respondents herein filed separate appeals before the First Appellate Authority i.e. said Tribunal. By an oral judgment dated 29th August 2018 passed by the said Tribunal, the appeals filed by the respondents came to be partly allowed. The said Tribunal directed the appellant to release interest @10.05% p.a. in favour of each of the allottee/respondents herein for the payments made by them, effective from 1st January 2018 till handing over possession of their respective premises duly completed and getting the Completion Certificate from Competent Town Planning Authorities. The said Tribunal directed the appellant to pay interest for the period from 1st January 2018 till 31st August 2018 within a month from the date of the said order. Being aggrieved by the said oral judgment dated 29th August 2018 passed by the said Tribunal, the appellant preferred these appeals under Section 58 of the said RERA.

11. Mr.Khandeparkar, learned counsel for the appellant invited my attention to various exhibits annexed to the second appeals including the Agreements for purchase of flats entered into between the said M/s.Rebuilt Developers and one of the partners of the appellant on the

proposed 8th floor of the said building, a copy of the complaint filed by the respondents, the order dated 15th January 2018 passed by the said Authority, various provisions of the Deed of Assignment dated 9th November 2015 and the findings rendered by the said Tribunal allowing the appeals filed by the respondents partly.

12. It is submitted by the learned counsel that each of the respondents had entered into a separate Agreement for purchase of the flats on the proposed 8th floor with M/s.Rebuilt developers. The said M/s.Rebuilt Developers, however, could not even commence construction of proposed 8th floor in the said new building. He placed reliance on some of the provisions of the Agreement dated 16th May 2013 entered into between M/s.Rebuilt Developers and one of the flat purchasers in respect of one of the flats on the proposed 8th floor and would submit that under the said Agreement, the said M/s.Rebuilt Developers had agreed to hand over possession of the flats to the flat purchasers on or before November 2013. The said agreement was entered into under the provisions of Maharashtra Ownership Flats Act. Under clause 5 of the said agreement, it was provided that the said M/s.Rebuilt Developers shall be entitled to reasonable extension to time for giving delivery of the flat on the date mentioned in the said agreement, if the completion of the building in which those flats were to be situated is delayed on account of various eventualities mentioned in clause 5 of the said agreement.

13. Learned counsel for the appellant invited my attention to some of the provisions of the said Deed of Assignment dated 9th November 2015 and would submit that none of the respondents were parties to the said Deed of Assignment. Under the said Deed of Assignment, the appellant had agreed to complete the pending construction of work of the building in all respect within a period of three months from the date of obtaining commencement certificate in respect of the pending work from Municipal Corporation of Greater Mumbai. He submits that under clause 8 of the said Deed of Assignment, it was clearly provided that the appellant would not commence construction work of the 8th floor in the said society building unless and until the appellant makes such necessary payments for procuring the commencement certificate from Municipal Corporation of Greater Mumbai or without payment of all necessary dues of concerned authorities. He submits that though the appellant had sent various reminders to the Municipal Corporation to issue commencement certificate, no such commencement certificate was issued by the Municipal Corporation and thus the appellant could not commence construction of the proposed 8th floor in the said new building.

14. It is submitted by the learned counsel that under the said Deed of Assignment entered into between the appellant, the said M/s.Rebuilt Developers and the said society, the appellant did not receive

any amount of consideration from the flat purchasers. Learned counsel invited my attention to some of the provisions of the Supplemental Development Agreement dated 5th May 2012 between the said society and the said M/s.Rebuilt Developers. He submits that under the said Supplemental Development Agreement, the said society agreed and declared that they have no objection if the appellant was not to construct a compound wall between all adjacent buildings/plots and plot/building of Nehru Nagar Amrapali Co.op. Hsg. Soc. Ltd. The said society further agreed and allowed the appellant to construct one more floor i.e. 8th floor by way of utilizing additional FSI built up area to be availed over and above 2.50 FSI on entire plot area and also by utilizing additional Fungible FSI built up area to be available as per modified Development Control Regulation published by the State Government on 6th January 2012.

15. It is submitted that demarcation of property was carried out on 21st December 2013. 40 sq.mtrs. area was enured to the benefit of the said plot. Learned counsel invited my attention to the letter dated 14th December 2015 addressed to the Resident Executive Engineer, MHAD Board requesting for issuance of an offer letter on recovery of premium payment and other necessary payments against FSI. He submits that the appellant had requested for issuance of revised NOC in view of the appellant having executed Supplemental Agreement with

M/s.Rebuilt Developers and the society. He submits that MHADA however, did not process the application for revised NOC and did not issue commencement certificate for construction work of 8th floor. No power of attorney was executed by the Society in favour of the appellant in terms of clause (g) of the said Deed of Assignment.

16. Learned counsel for the appellant invited my attention to the letter dated 1st February 2019 addressed by the appellant after filing of these appeals terminating the Deed of Assignment between the appellant, the said M/s.Rebuilt Developers and the said society. Learned counsel for the appellant submits that since the Municipal Corporation had not granted any commencement certificate to the appellant for construction of 8th floor in the said society building, under clause (k) of the said Deed of Assignment, the appellant was not required to commence construction work of 8th floor. Period of construction of three months for completion of construction of the said building could commence only upon Municipal Corporation issuing commencement certificate under clause (k). The appellant thus not having committed default in carrying out construction within the time prescribed, no compensation under proviso to Section 18(1)(a) of the said RERA could be awarded by the said Tribunal against the appellant.

17. The next submission of the learned counsel for the appellant

is that none of the allottees of flat on the proposed 8th floor were parties to the Deed of Assignment entered into between the appellant, M/s.Rebuilt Developers and the society and thus no rights had accrued in favour of the respondents/allottees under the said Deed of Assignment. The obligation of the appellant under the said Deed of Assignment was depending upon and subject to grant of commencement certificate and on completion of other eventualities prescribed under the said Deed of Assignment.

18. Learned counsel for the appellant placed reliance on Section 15 of the said RERA and would submit that since prior written consent from 2/3rd allottees except promoter and prior written approval of the authority under the said provisions of RERA was not obtained by M/s.Rebuilt Developers for transfer or assignment of their majority rights and liabilities in respect of real estate project to the appellant, the said Deed of Assignment was not enforceable and thus the appellant could not be liable to pay any interest to any of the allottees under the said Deed of Assignment.

19. Learned counsel for the appellant invited my attention to some of the averments made in the additional affidavit filed by his client on 27th August 2019 and also to the declaration filed by his client. He would submit that the said declaration was uploaded on the website of

MahaRERA in or around July 2017 clearly stating that the appellant was not liable for registration of the project under the provisions of RERA but acting bonafide the appellant was registering under the provisions of the said RERA. He submits that in the said declaration, it was clearly stated that the appellant was unable to comply with the terms of the said agreement and though the project is classified as “Ongoing Project” under the provisions of RERA, role of the appellant in the entire project is limited to carrying out pending construction work mentioned in the said agreement.

20. It is submitted by the learned counsel that in any event, since the appellant has already terminated the said Deed of Assignment on 1st February 2019, the appellant has ceased to be liable to comply with any of the obligations under the said Deed of Assignment or to pay any liability to any of the allottees.

21. Learned counsel for the appellant placed reliance on paragraphs 128, 129 and 132 to 134 of the judgment delivered by the Division bench of this Court in the case of ***Neelkamal Realtors Suburban Pvt. Ltd. & Anr. Vs. Union of India & Ors. reported in 2017 SCC OnLine Bom 9302*** and would submit that under the provision of Section 18, the delay in handing over the possession would be counted from the date mentioned in the agreement for sale entered into by the

promoter and the allottee prior to its registration under RERA and not on the basis of the date of handing over possession mentioned in the application for registration of project under RERA. The RERA does not contemplate rewriting of contract between the flat purchaser and the promoter. He submits that under the provisions of RERA, the promoter is given a facility to revise the date of completion of project and declare the same under Section 4.

22. It is submitted by the learned counsel for the appellant that though various legal issues were raised by the appellant before the said Tribunal, the said Tribunal did not consider any of those submissions made by the appellant in the written submissions and thus the impugned order passed by the said Tribunal deserves to be set aside on this ground also.

23. Mr.Salunke, learned counsel for the respondents in all these appeals, on the other hand, invited my attention to various provisions of the Deed of Assignment dated 9th November 2015 entered into between the appellant, M/s.Rebuilt Developers and the said society and would submit that in the said Deed of Assignment, list of all members is annexed including the respondents to these five appeals in Annexure-II. He submits that out of 10 flats proposed to be constructed on the 8th floor, 2 flats were allegedly purchased by the partners of the appellant

whereas 5 flats were purchased by the respondents to these five appeals. The appellant thus cannot be allowed to urge that the respondents are not concerned with the Deed of Assignment dated 9th November 2015 at all.

24. Learned counsel for the respondents placed reliance on the recital (d) of the Deed of Assignment at page 351 of the second appeal and would submit that it is clearly stated in the said recital that the said M/s.Rebuilt Developers had disclosed all the encumbrances created by the said Developers arising out of the said Development Agreement and Supplemental Agreement including interest, right, title created in favour of new flat purchasers as per list annexed thereto besides the existing members of the society. The appellant herein had agreed to accept and clear the same without there being any kind of encumbrance, lien over the society property or any of its existing members. He submits that the appellant had stepped into the shoes of the said M/s.Rebuilt Developers.

25. Learned counsel also strongly placed reliance on clause (r) of the said Deed of Assignment and would submit that it is clearly provided that the payment received by the said M/s.Rebuilt Developers from the flat purchasers till the date of the said Deed of Assignment is deemed to have been received by the appellant and the appellant herein would be entitled to receive balance consideration from the new purchasers for which they have irrevocable right to do so independently

without any kind of monetary claim over/from the society or its member. The said clause also refers to the Memorandum of Understanding executed between the said M/s.Rebuilt Developer and the appellant herein in that regard.

26. Learned counsel for the respondents placed reliance on the definition of “promoter” under Section 2(zk) of the said RERA and would submit that the promoter includes his assignee, a person who constructs or causes to be constructed an independent building or a building consisting of apartments. He submits that the appellant thus is promoter within the meaning of Section 2(zk) of the said RERA and is bound by the obligations of a promoter under the said provisions of the said RERA. He also placed reliance on Section 3 of the said RERA and would submit that prior registration of real estate project with Real Estate Regulatory Authority by the promoter in respect of the project that are on going on the date of commencement and for which completion certificate is not being issued is mandatory. It is submitted that on 6th September 2017, the appellant had got its on going project which was inclusive of construction of 8th floor in the building registered with Real Estate Regulatory Authority.

27. Learned counsel for the respondent placed reliance on Section 6 of the said RERA and would submit that if according to the

appellant, the appellant could not commence or complete the project due to any force majeure, the appellant could have applied for extension of registration under the said provision after showing the reasonable circumstances. The appellant, however, did not apply for any such extension of registration under the said provision. Learned counsel for the respondents placed reliance on Section 18 of the said RERA and would submit that the respondents had two options available under the said provision i.e. either to withdraw from the project without prejudice to any other remedy available, to return the amount received by the promoter in respect of the flat allotted on the proposed 8th floor with interest at such rate, as may be prescribed in this behalf including compensation or could seek interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed. He submits that the said authority erroneously rejected the complaint filed by the respondents. The said authority held that since in the Deed of Assignment, the names of all the complainants were mentioned, they were entitled to possession of their apartments before 31st December 2018 as per the date mentioned in the project registration.

28. It is submitted by the learned counsel that even before the said authority, the appellant had made a statement that the appellant was committed to complete the project in accordance with the Deed of Assignment on 31st December 2018 as mentioned in the Registration

details on MahaRERA's website. He submits that considering this statement made by the appellant before the said authority, the said authority did not grant prayer for interest and rejected the said complaint.

29. Learned counsel for the respondents placed reliance on Section 15 of the said RERA and would submit that the said RERA came into force from on 1st May 2016. The Deed of Assignment was already executed between the appellant and the said Rebuilt Developers and the said Society on 9th November 2015. It was for the erstwhile Developers i.e. M/s.Rebuilt Developers to comply with its obligation under the agreement entered into with the flat purchasers. The appellant had taken over the project from M/s.Rebuilt Developers. Under Section 15(2) of the said RERA, the said project having been assigned in favour of the appellant, the appellant became liable to independently comply with all pending obligations under the provisions of the said RERA and Rules and Regulations therein and pending agreements entered into between the erstwhile promoter and the allottees. He submits that having taken over the project from M/s.Rebuilt Developers, the appellant was bound to comply with the obligations of the erstwhile Developers under the agreement for sale entered into between the erstwhile Developers and the respondents.

30. In so far as the submission of the learned counsel for the appellant that the said Tribunal had not considered various submissions though forming part of the written submission filed before the said Tribunal is concerned, learned counsel for the respondents invited my attention to the order passed by the said Tribunal and would submit that the said Tribunal had summarised all the submissions which were made across the bar before the Tribunal in the detailed impugned order passed by the said Tribunal. He submits that if it was the case of the appellant that any of the submissions made across the bar were not considered by the said Tribunal, the appellant ought to have made application before the said Tribunal for clarification or modification at the appropriate time.

31. In so far as the submission of the learned counsel for the appellant that the appellant having already terminated the Deed of Assignment and thus cannot be saddled with the payment of interest till the date of handing over possession of the flats to the respondents is concerned, it is submitted by the learned counsel that the so called letter of termination thereby purporting to terminate the Deed of Assignment is issued by the appellant only after the order of the said Tribunal. The so called termination of Deed of Assignment would not wipe off the statutory obligations of the appellant under the Deed of Assignment under the provisions of the said RERA towards the allottees of the flat. He submits that the said so called letter of termination is thus

not binding upon the respondents.

32. It is submitted that the liability of the appellant to hand over possession of the respective flats to the respondents had already accrued in the agreement entered into between the respondents and the said M/s.Rebuilt Developers which liability and encumbrances had been assigned to the appellant. In view of the delay on the part of the appellant in handing over possession of the respective flats to the respondents within the time prescribed, the appellant become liable to pay interest for the delayed period under Section 18 of the said RERA. The liability towards interest had already accrued against the appellant. The appellant cannot be allowed to overreach the statutory obligations and the order passed by the said Tribunal by issuing a purported letter of termination thereby terminating the Deed of Assignment.

33. It is submitted by the learned counsel that two of the respondents have already paid the entire consideration whereas three of the respondents have paid around 80% consideration payable under those agreements entered into with M/s.Rebuilt Developers which payments are deemed to have been made to the appellant. It is submitted by the learned counsel that the said RERA is a Social Welfare Legislation and has been enacted for protection of flat purchasers. The appellant cannot be allowed to wriggle out of their obligations under the said Social

Welfare Legislation to provide the flats to the respondents in an efficient and transparent manner.

34. It is lastly submitted by the learned counsel that no substantial question of law arises in these appeals filed by the appellant and thus no interference with the order passed by the said Tribunal is warranted.

35. Mr.Khandeparkar, learned counsel for the appellant in rejoinder would submit that the complaints filed by the respondents with the said authority were on account of the alleged failure on the part of the appellant on the date specified in MOFA agreements entered into between the said M/s.Rebuilt Developers and the respondents and not on the date of registration of stipulation date of completion mentioned in the application for registration of project by the appellant with the Real Estate Regulatory Authority.

36. Mr.Khandeparkar, learned counsel for the appellant placed reliance on paragraph 132 of the judgment delivered by the Division Bench of this Court in the case of ***Neelkamal Realtors Suburban Pvt. Ltd. & Anr. (supra)*** and would submit that the provisions of the RERA are not retrospective in nature but may be to some extent be having a retroactive or quasi retroactive effect.

REASON AND CONCLUSION :-

37. There is no dispute that Nehru Nagar Amrapali Co.op. Hsg. Soc. Ltd. was the owner of the building bearing Survey Nos.229 and 267. There was development agreement dated 13th December 2007 executed between the said society and the said M/s.Rebuilt Developers. There is no dispute that separate agreements were entered into between the said M/s.Rebuilt Developers and the respondents herein who are the purchasers of various flats on the 8th floor proposed to be constructed on the new building constructed by the said M/s.Rebuilt Developers. The said M/s.Rebuilt Developers had partly constructed a new building on the said property having ground + 7 upper floors and without obtaining occupation certificate, delivered possession of those flats to the members of the said society on ground + 7 upper floors.

38. There is no dispute that the said M/s.Rebuilt Developers could not commence construction of flats proposed to be constructed on the 8th floor on the said building. The appellant, the said M/s.Rebuilt Developers and the said society thus entered into a Deed of Assignment on 9th November 2015.

39. A perusal of the said Deed of Assignment clearly indicates that prior to the date of execution of the said Deed of Assignment, the

said M/s.Rebuilt Developers had already sold various flats on the ground + 7 upper floors and 9 flats out of 10 flats proposed to be constructed on the 8th floor. The said Deed of Assignment clearly provided that the said M/s.Rebuilt Developers had authorised the appellant to receive balance consideration from the new flat purchasers and to issue NOC in favour of those new flat purchasers as per list annexed to the Deed of Assignment.

40. The names of flat purchasers including the respondents herein were mentioned in the list annexed at Annexure-II to the Deed of Assignment. A perusal of the said list indicates that out of 10 flats proposed to be constructed on 8th floor, two flats were purchased by the partners of the appellant and five flats were purchased by the respondents herein. The said Deed of Assignment further records that the payment already received by the said M/s.Rebuilt Developers from the flat purchasers till date were deemed to have been received by the appellant and that appellant was entitled to receive balance consideration from the new purchasers for which they have irrevocable right to do so independently without any kind of monetary claim over/from the society or its member. The appellant had agreed to indemnify the society the cost of the litigation in respect of the claim raised by the new flat purchasers against the society or any individual member including the cost incurred for litigation in Court, Arbitration, advocate fees etc.

41. I am thus not inclined to accept the submission of Mr.Khandeparkar, learned counsel for the appellant that the appellant had not received any consideration from the respondents and thus was not liable to pay any interest on the delayed period under Section 18 of the said RERA.

42. Recital (d) of the said Deed of Assignment clearly provides that the appellant had agreed to accept all encumbrances created by M/s.Rebuilt Developers arising out of the said Development Agreement and Supplemental Agreement including the interest, right, title created in favour of new flat purchasers as per list annexed at Annexure-II to the the Deed of Assignment. I am thus not inclined to accept the submission of the learned counsel for the appellant that there was no agreement between the appellant and the flat purchasers or that the respondents had no locus to demand any amount of interest from the appellant under the said Deed of Assignment. A perusal of Section 15(2) read with definition of “promoter” under Section 2(zk) of the said RERA clearly indicates that the promoter includes his assignees and is required to independently comply with all the pending obligations of the original promoter under the provisions of the said RERA or Rules and Regulations made thereunder and the pending obligations as per the Agreement for Sale entered into by the erstwhile promoter with the allottees on transfer or assignment of a real estate project.

43. The appellant who had stepped into the shoes of the erstwhile promoter and had applied for registration of real estate project with Real Estate Regulatory Authority established under the said RERA is liable to comply with all pending obligations under the provisions of the said RERA which were to be complied with by the erstwhile promoter with the allottees.

44. Under Section 3 of the said RERA, the projects which are ongoing on the date of commencement of the said RERA and for which the completion certificate has not been issued, the promoter is bound to make an application before the authority for registration of the said project within a period of three months from the date of commencement of the said RERA. It is not in dispute that the appellant had applied for registration of the said ongoing project after the provisions of the said RERA came into effect with the authority. In my view, the appellant thus is under a statutory obligation to comply with all pending obligations of the erstwhile promoter i.e. M/s.Rebuilt Developers with the respondents herein as per the agreement for sale entered into under the provisions of MOFA in view of the assignment of the said project in favour of the appellant. There is no merit in the submission of Mr.Khandeparkar, learned counsel for the appellant that the respondents did not have any locus to claim any interest from the appellant on the ground of delay in handing over possession of the flat allotted to them.

45. A perusal of the order passed by the competent authority on 15th January 2018 clearly indicates that it was the case of the appellant before the competent authority that Deed of Assignment was executed as a Special Purpose Vehicle only to bail out the erstwhile Developer from its financial crisis and to complete the pending construction work. It was the case of the appellant that the appellant was committed to complete the project in accordance with the Deed of Assignment on 31st December 2018 as mentioned in the registration details on MahaRERA's website. The competent authority while disposing of the complaint made by the respondents clearly observed that since in the Deed of Assignment, the names of all the complainants (respondents herein) were mentioned, they were entitled to possession of their apartments before 31st December 2018 as per the date mentioned in the project registration made by the appellant. This finding of the competent authority has admittedly not been impugned by the appellant by filing any appeal. The appellant cannot thus dispute the locus of the respondents to seek enforcement of their any rights under the MOFA agreements between the said M/s.Rebuilt Developers and the respondents which obligations are assigned in favour of the appellant under the said Deed of Assignment.

46. The rights of the respondents are confirmed by the appellant even before the competent authority and thus cannot be allowed to now challenge their locus in these second appeals. In view of the definition

of “promoter” under Section 2(zk), the said M/s.Rebuilt Developers having assigned the Real Estate Project in favour of the appellant herein, the appellant is the promoter within the meaning of Section 2(zk) of the said RERA and thus is bound to comply with all the obligations under the said RERA.

47. In so far as the submission of Mr.Khandeparkar, learned counsel for the appellant that since the Municipal Corporation of Greater Mumbai did not grant any commencement certificate to construct the work upto 8th floor in the said society building, the appellant was not bound to commence construction work and consequently the question of completion of pending construction work within three months from the date of obtaining commencement certificate did not arise is concerned, it is not in dispute that the appellant did not apply for extension of registration by invoking Section 6 of the said RERA by satisfying the conditions set out therein.

48. In so far as the submission of Mr.Khandeparkar, learned counsel for the appellant that since the appellant had already terminated the said Deed of Assignment by notice dated 1st February 2019 and since the appellant would not be able to carry out any construction on the 8th floor in the said new building, the appellant cannot be saddled with the liability of payment of interest till the date of handing over possession of

the flats to the respondents is concerned, it is not in dispute that the so called letter of termination dated 1st February 2019 is issued much after the date of order passed by the said Tribunal. Be that as it may, in view of Section 15(2) of the said RERA, the appellant became liable to independently comply with all pending obligations under the provisions of the said RERA and Rules and Regulations therein and under pending agreements entered into between the erstwhile promoter and the allottees. The appellant cannot be allowed to riggle out of such pending obligations under the guise of termination of agreements entered into with the erstwhile promoter which are assigned in favour of the appellant herein. Various rights are already accrued and crystalised in favour of the allottees under the Deed of Assignment read with Agreement for Sale which would not come to an end even on the basis of such purported letter of termination.

49. In so far as the submission of Mr.Khandeparkar, learned counsel for the appellant that though various legal submissions were made before the said Tribunal by the appellant, the said Tribunal did not consider those submissions in the impugned order is concerned, a perusal of the impugned order of the said Tribunal clearly indicates that the Tribunal has summarised all the submissions made across the bar by the appellant and has dealt with each of those submissions in detail and after recording various reasons has rejected those submissions. If

according to the appellant, any of the submissions made by the appellant during the course of the arguments were not dealt with or recorded, it was for the appellant to make appropriate application immediately upon receipt of the impugned order. The appellant however, has not made any such application raising these issues before the said Tribunal and thus cannot be allowed to urge such submission before this Court now. The impugned order passed by the said Tribunal thus cannot be set aside on this ground.

50. In so far as the submission of Mr.Khandeparkar, learned counsel for the appellant that since the assignment of Real Estate Project in favour of the appellant was without obtaining prior written consent from 2/3rd allottees and without prior written approval of the said Authority and thus the said Deed of Assignment was not binding on the appellant is concerned, in my view, this submission made by the appellant is made out of frustration and lacks honesty. The appellant itself made a statement before the said Authority that the appellant was committed to complete the project in accordance with the Assignment Deed, on 31st December 2018 as mentioned in the registration details on MahaRERA website. The said Authority also held that since in the Deed of Assignment, the names of all the complainants were mentioned, they were entitled to possession of their apartments before 31st December 2018 as per the date mentioned in the project registration. Submission of

the learned counsel is ex facie contrary to the submission made before the said Authority.

51. A perusal of ground (c) of the Appeal Memo clearly indicates that it is the case of the appellant that the appellant was formed as a result of unanimous decision of all purchasers of 9 flats on the 8th floor, M/s.Rebuilt and the said society however, with the limited object of completing the project. The said Real Estate Project assigned in favour of the appellant has been already registered with Real Estate Regulatory Authority under the provisions of the said RERA. This submission of the learned counsel for the appellant is thus totally baseless and deserves to be rejected.

52. The said RERA is enacted for the purpose of ensuring sale of plot, apartment of building, as the case may be, or sale of real estate project, in an efficient and transparent manner and to protect the interest of consumers in the real estate sector and to establish an adjudicating mechanism for speedy dispute redressal. The said Act is a Social Welfare Legislation and is enacted for protection of interest of consumers in the real estate sector. It is the case of the respondents that three of the flat purchasers have already paid 100% consideration to the erstwhile promoter and remaining two have already paid around 80% consideration.

53. Division Bench of this Court in the case of ***Neelkamal Realtors Suburban Pvt. Ltd. & Anr. (supra)*** has dealt with the statement of objects and reasons of RERA in great detail. Division bench of this Court has rejected the challenge to the constitutional validity of the said Act except the provisions relating to one of qualifications for appointment of Judicial Member prescribed in Section 46(1)(b) of the said RERA.

54. In so far as the submission of Mr.Khandeparkar, learned counsel for the appellant that the RERA does not contemplate rewriting of contract between the flat purchaser and the promoter is concerned, there is no dispute about this proposition of law. However, in the facts of this case, learned counsel for the appellant could not point out as to how it could be said that the said Tribunal has rewritten the contract between the parties. The appellant had taken over all the obligations of erstwhile promoter under the said Deed of Assignment and thus is unable to demonstrate that the said Tribunal or the said Authority had rewritten any part of the agreement entered into between the parties.

55. In so far as the submission of the learned Counsel for the appellant that since the Municipal Corporation of Greater Mumbai did not issue commencement certificate in respect of pending work, the period of three months for completing the pending construction of the work of the building in all respect had not commenced is concerned, appellant has not

produced any material on record to show whether any steps were taken by the appellant against the Municipal Corporation for not granting commencement certificate for no alleged fault on the part of the appellant. Similarly, the appellant also did not produce any material on record to show that the MHADA did not process the application for revised NOC and did not issue commencement certificate for construction of work on 8th floor either before the authorities below or before this Court.

56. In so far as the submission of the learned Counsel for the appellant that since none of the respondents were parties to the Deed of Assignment entered into between the appellant, M/s. Rebuilt Developers and the society and thus no relief could be claimed by the respondents against the appellant is concerned, a perusal of the averments made in paragraphs 1.7 and 1.10 in the appeal memo clearly indicates that the appellant itself has given the names of all the respondents as the purchasers of various flats on the proposed 8th floor. It is specifically averred by the appellant that the respondents herein had landed up in a difficult situation in as much as that on the one hand their hard earned money got blocked and on the other hand there was not much hope of getting possession of their flats. To deal with the peculiar situation, all the flat purchasers including all the respondents herein decided to under take construction of flats on the 8th floor.

57. It is further alleged that in furtherance of such understanding, the said M/s. Rebuilt Developers, the appellant and the said society executed a Deed of Assignment dated 9th November, 2015. The names of all the respondents were mentioned in Annexure II annexed to the Deed of Assignment. In the recital, Annexure II of the Deed of Assignment is referred as the list of new flat purchasers. There is thus no merits in this submission of the learned Counsel for the appellant.

58. In so far as submission of the learned Counsel for the appellant that under the provisions of Section 18 of the said RERA, the delay in handing over the possession has to be counted from the date mentioned in the agreement entered into between the said M/s. Rebuilt Developers and the respondents is concerned, the said submission on the part of the learned Counsel for the appellant would be beneficial to the respondents and not to the appellant.

59. In so far as the submission of the learned Counsel for the appellant that the provisions of the said RERA are not retrospective in nature but may be to some extent having a retroactive or quasi retroactive effect is concerned, there is no dispute about this proposition of law canvassed by the learned Counsel for the appellant. None of the reliefs granted by the said Tribunal in favour of the respondents are with retrospective effect in this case.

60. In so far as the submission of the learned Counsel for the appellant that the appellant did not get any benefit of any nature whatsoever under the Deed of Assignment since 9 out of 10 flats on the 8th floor proposed to constructed by the appellant were already sold by the erstwhile promoter is concerned, the appellant cannot be permitted to wriggle out of its statutory obligation under the provisions of the said RERA having accepted assignment of the said real estate project from the erstwhile promoter. It was a commercial bargain between the appellant and the erstwhile promoter and thus even if there was no expected profit earned by the appellant under the said Deed of Assignment, the appellant cannot refuse to perform its part of statutory obligation under the provisions of the said RERA read with the Deed of Assignment.

61. During the course of the arguments, this Court enquired from the learned Counsel for the appellant whether the appellant is ready and willing to return the amount spent by the respondents to the erstwhile promoter with interest as provided under Section 18 of the said RERA without prejudice to any other remedy available to the respondents against the petitioner, the learned Counsel for the appellant on instruction states that his client is not agreeable to return the amount paid by the respondents with interest as contemplated under first part of Section 18 of the said RERA.

62. The said Tribunal had recorded various findings of facts after considering the submissions made by the parties and the documents on record. The said Tribunal has interpreted various provisions of the said RERA. I do not find any perversity in the findings rendered by the said Tribunal. No substantial question of law arises in these appeals. These appeals are totally devoid of merit.

63. I therefore pass the following order :-

- (i) The Second Appeal (St.) Nos.27914 of 2018, 27898 of 2018, 27901 of 2018, 27903 of 2018 and 27908 of 2018 are dismissed with costs quantified at Rs.30,000/- which shall be paid by the appellant to each of the respondents separately within one week from the date of this order.
- (ii) In view of dismissal of the aforesaid second appeals, civil applications do not survive and are accordingly disposed of.

R.D.DHANUKA, J.