Pallavi

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.330 OF 2021

Forefront Private Limited
(formerly known as Forefront Property Developers Pvt. Ltd.)
Having its registered office at 601, 6th Floor,
Hubtown Viva, Western Express Highway
Jogeshwari (East), Mumbai- 400 060. ...Appellant

Versus

1. Mrs. Rujuta Mandar Thatte
Aged : 40 years, Occ.: Service.
2. Mr. Mandar Narayan Thatte
Aged : 43 years, Occ.: Service,
Both residing at B-402,
Charmee Enclave CHSL.,
Service Road, Vile Parle (East),
Mumbai-400 057. ...Respondents

- Mr. Anoshak Daver a/w Ms. Kausar Banatwala i/b. Mr. Tushar Goradia, for the Appellant.
- Mr. Pradeep Thorat a/w Ms. Aditi Naikare and Mr. Aniesh Jadhav for the Respondents.

CORAM : MADHAV J. JAMDAR, J.
DATE : 28th FEBRUARY 2023

P.C. :

1. Heard Mr. Anoshak Daver, learned counsel appearing for the Appellant and Mr. P.J. Thorat, learned counsel appearing for the

Respondents. The arguments were concluded on 27th February 2023.

2. The Appellant who is the promoter within the meaning of Section 2(zk) of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as "RERA Act") has challenged by way of the present Second Appeal, the Judgment and Order dated 31st December 2019 passed by the learned Maharashtra Real Estate Appellate Tribunal, Mumbai (hereinafter referred to as "the Appellate Tribunal") in Appeal No.AT006000000010888.

3. The said Appeal was filed by the "allottee" as defined under section 2(d) of the RERA Act. The allottees i.e. present Respondents filed Complaint No.CC006000000023293 before the Maharashtra Real Estate Regulatory Authority, Mumbai (hereinafter referred to as "the Authority"). The complaint was filed by the allottees, *inter-alia*, seeking the following reliefs:-

> "**5. Compensation(s) sought:**
>
> In view of the **facts mentioned in paragraph 4**, above, the applicant prays for the following compensation(s):
>
> (a) **An amount of Rs.44,83,476=00 p.s. towards the interest calculated at the rate of 24% p.a. on the amount of Rs.3,65,54,860=00 p.s.** (Rupees Three Crores Sixty Five Lakhs Fifty Four Thousand Eight Hundred and Sixty Only)

which is received by the Respondent till 31st January 2018. The interest is sought for the period from 1st July 2017 till 31st January 2018.

(b) **Rs.3,00,71,878=00 ps. towards the interest calculated at the rate of 24% p.a. on the amount of money that the Respondent has already received and also on the amount of money which the Respondent would receive stage wise till 31st January, 2020 which is the date on which the Respondent intends to hand over possession of the said Flat to the Applicants as disclosed by the Respondent in the filing under RERA.**

The Applicants have annexed a chart disclosing the calculation of interest on the amount of money already received by the Respondent and also on the amount of money which the Respondent will receive in future."

(Emphasis added)

4. The learned Chairperson, MahaRERA i.e. Authority, *inter-alia,* passed the following order on 16th October 2018:-

"7. As per the provisions of the Rule 4 of the Maharashtra Real Estate (Regulation and Development) (Registration of Real Estate Projects, Registration of Real Estate Agents, Rates of Interest and Disclosures on Website) Rules, 2017 the revised date of possession for an ongoing project has to be commensurate with the extent of balance development.

On review of the Respondent's MahaRERA registration it is observed that **the respondent has put December, 2020 as the**

revised proposed date of completion which is an unreasonable time period for completion of the project.

8. In view of the above facts, **the Respondent shall, therefore, hand over the possession of the apartment, with Occupancy Certificate, to the Complainant before the period of March 31, 2019. The Complainant shall be at liberty to demand interest at an appropriate stage, as per the provisions of section 18 of the Real Estate (Regulation and Development) Act, 2016 and the rules and regulations made thereunder, from the Respondent for the delay in completing the said project.**

9. Consequently, the matter is hereby disposed of."

(Emphasis added)

5. At this stage, it is significant to note that the said order dated 16th October 2018 of the Authority is not challenged by the present Appellant and thus, the said order is accepted by the present Appellant i.e. Promoter. The present Respondents i.e. the allottees challenged the said order by filing Appeal before the Appellate Tribunal. The Appellate Tribunal passed the following order on 31st December 2019:-

"1. Appeal No.AT006000000010888 is partly allowed.

2. Impugned order dated 16.10.2018 passed in Complaint No.23293 is set aside.

3. **Respondent is directed to pay interest @ 2% above the SBI's highest Marginal Cost of Lending Rate to the Appellants on the amount paid to the Respondent w.e.f. 1-07-2018 till the Respondent hands over the possession of the flat to the Appellants.**

4. **Interest payable by Respondent for delay in delivery of possession as above shall be adjusted against the payment of balance consideration towards the flat to be paid by Appellants as per schedule of payment mentioned in clause 4 of the agreement at the time of handing over possession of the flat with occupancy certificate to the Appellants.**
5. Respondent shall pay cost of Rs.20,000/- to the Appellants and shall bear his own cost.
6. Copy of the order be sent to both the parties and the Authority as per Section 44(4) of the RERA Act."

6. The above order dated 31st December 2019 is challenged by the present Appellant i.e. Promoter by filing present Second Appeal under Section 58 of the RERA Act.

7. It is the contention of Mr. Davar, learned counsel appearing for the Appellant that the following substantial questions of law arise in the present Second Appeal:-

(i) Whether the RERA Appellate Tribunal while considering the challenge to the order of Authority had the Jurisdiction and Power to pass the Impugned Order dated 31st December, 2019 directing the Appellants to pay interest which in effect is compensation as per Section 18 of the RERA Act?

(ii) Whether RERA Appellate Tribunal erred in not remanding the matter to the Adjudicating Officer for consideration and adjudication of compensation as per the provisions of Section 18 read with Section 71(3) and Section 72 of the RERA Act?

(iii) Whether the RERA Appellate Tribunal ignored that a party which has given up it's claim before the Authority and which has been recorded by such Authority in the Order can impugn the Order of Authority?

(iv) Whether the RERA Appellate Tribunal having passed the impugned Order and having directed the Appellants to pay interest for the first time has effectively denied the statutory right of a First Appeal to the Appellant?

(v) Whether RERA Appellate Tribunal had the power to award interest for the first time, when such relief is rejected by the Authority, in the light of Section 71(3) and Section 72 of the RERA Act?

(vi) Whether the RERA Appellate Tribunal was justified in granting compensation to the Respondents in the light of the fact that under Clause 12.1 of the Agreement for Sale dated 9th September 2015 (between the Appellant and the Respondents), the Respondents have agreed that the Appellant shall be entitled to a reasonable extension of time for handing over possession of the flat to the Respondents, if possession is delayed due to (i) delay in issuance of any permission/approvals related to construction by BMC or any other concerned authorities; and (ii) reasonable cause beyond the control of the Appellant?

(vii) Whether the impugned Order is incorrect in law in as much as on one hand, Appellate Tribunal concludes that the delay in handing over possession is beyond the control of the Appellant and on the other hand, directs payment of compensation under Section 18 of the Act?

8. I have extensively heard Mr. Davar, learned counsel appearing for the Appellant and Mr. Thorat, learned counsel appearing for the Respondents. They have also relied on certain decisions of this Court and the Supreme Court to which reference will be made as and when necessary.

9. Mr. Davar, learned counsel appearing for the Appellant raised following contentions :-

(i) The Appellate Tribunal has no jurisdiction or power to pass the order directing the Appellants to pay interest which in effect amounts to compensation as per section 18 of the RERA Act.

(ii) It is his submission that for the first time, such order is passed by the Appellate Tribunal which has the effect of depriving statutory right of First Appeal of the Appellant. He submitted that the Appellate Tribunal has no power to award interest for the first time when such relief is rejected by the Authority in the light of section 71(3) and section 72 of the RERA Act.

(iii) The Appellate Tribunal completely ignored that the Respondents have given up their claim before the Authority and therefore, the impugned order of the Appellate Tribunal suffers from grave illegality and irregularity.

(iv) The Appellate Tribunal has completely ignored that clause 12.1 of the Agreement for Sale dated 9th September 2015 contemplates reasonable extension of time for handing over possession of the flat to the Respondents and as the delay has occurred due to the events which are beyond the control of the Appellant, the payment of compensation under section 18 of the RERA Act is not warranted. He pointed out the order dated 10th August 2018 passed by a Division Bench of this Court in Writ Petition (L) No.2695 of 2018 and particularly, direction by which both the parties to the said Writ Petition were directed to maintain status-quo. He submitted that due to said status-quo order, the construction was hampered and therefore, there is delay in handing over possession.

Mr. Davar, learned counsel appearing for the Appellant in support of above contentions, referred to the relevant material on record and also cited few decisions. The reference to the same will be made as and when necessary.

10. On the other hand, Mr. Thorat, learned counsel appearing for the Respondents raised the following contentions :-

(i) Complaint was filed seeking interest on account of delayed possession and not for compensation. Therefore, the Authority has jurisdiction to grant the interest and consequently the Appellate Tribunal while exercising the appellate power while dealing with the challenge to the order of the Authority has jurisdiction to grant the said interest.

(ii) He pointed out various dates to show that there is delay in completing the project.

(iii) He submitted that admittedly, the Appellants have received more than aggregate amount of Rs.3.83 Crores and the Appellant has committed default in handing over possession and therefore, the Appellant is liable to pay interest. He submitted that an amount of Rs.57,25,000/- is the balance amount to be paid by the Respondents, however, as on 30th January 2023, the Appellant is liable to pay an amount of Rs.1,36,63,775/- to the Respondents towards interest due to the delay in handing over possession of the said flat in terms of the order passed by the Appellate Tribunal. He submitted that, till date, possession of the flat has not been handed over.

(iv) That recently the Appellant has given possession to all the flat purchasers for fit out purposes except to the Respondents on the ground that the Respondents have filed proceedings before the Authority and the Appellate Tribunal.

(v) Mr. Thorat submitted that there are no substantial questions of law involved in the above Second Appeal and therefore, Second Appeal be dismissed with compensatory cost.

11. Before considering the rival contentions, it is necessary to set out certain aspects. The Appellate Authority has directed to adjust the balance amount of Rs.57,25,000/- payable by the Respondents/allottees in the amount of interest directed to be paid by the Appellant to the Respondents i.e. about Rs.1,36,63,775/-. Inspite of the fact that balance amount to be paid by the flat purchasers is considerably less than the due amount which Appellant – promoter is liable to pay to the Respondents/ flat purchasers towards interest, Mr. Thorat, learned counsel of the Respondents during the course of his submissions submitted that the Respondents are ready to deposit said balance amount of about Rs.57,25,000/- in this Court without prejudice to the rights and contentions of the Respondents and subject to the result of this Second Appeal. However, Mr. Davar, learned counsel appearing for the Appellant after taking instructions submitted that his client is ready to handover possession only on the condition that the Respondents pay said amount of Rs.57,25,000/- with 24% interest. In view of said submission of Mr. Davar, I suggested to Mr. Davar that as the order passed by the Appellate Tribunal is in the nature of the money decree, the Appellant should deposit the said amount of Rs.1,36,63,775/- in this Court and the Respondents will also deposit said amount of Rs.57,25,000/- with due interest and these deposits will be made without prejudice to the rights and contentions of both the parties and subject to the result of the Second Appeal. However, after taking instructions, Mr. Davar, learned counsel submitted that the Appellant is not ready to deposit the said amount as directed by the Appellate Tribunal. He further stated after taking instructions that unless the Respondents pay said amount of Rs.57,25,000/- with interest of 24% p.a., the Appellant is not ready to handover possession to the Respondents.

12. It is necessary to consider the submissions of both the learned counsel on merits in the light of following factual position:-

a) The apartment in question is Flat No.401, 4th Floor, 'A' Wing in the building known as Forefront Primeria, C.T.S. No.1570, Final Plot No.291, Vile Parle (East), Mumbai – 400 057 (hereinafter referred to as "the said Flat").

b) It is admitted position that the Appellant i.e. Promoter has executed a registered agreement for sale dated 9th September 2015 in favour of Respondent for sale of said flat for total consideration of Rs.4,40,42,000/-. The Respondents have paid an amount of Rs.1,10,10,500/- being 25% of the total purchase consideration even before execution of said agreement dated 9th September 2015. The said Flat has been purchased under the Subvention Scheme by taking loan from HDFC. Thus, HDFC has sanctioned total amount of Rs.3,30,31,500/- towards loan. The relevant clause regarding payment of consideration is clause No.4. Amount is to be paid as per the stages of the construction. The Clause No.12.1 is regarding possession. The relevant clause Nos.4.1.1 to 4.1.5 and 12.1 are reproduced herein-below for ready reference:-

"**4. PAYMENT OF CONSIDERATION:**

4.1 The purchaser/s hereby agree/s to pay to the Developers, the Purchase Consideration of Rs.4,40,42,000.00 (Rupees: Four Crore Forty Lakh Forty Two Thousand Only) in terms of the subvention scheme as follows:

4.1.1. 25% of the Purchase Consideration shall be paid by the Purchaser/s to the Developers as his own contribution, out of his own funds and HDFC shall finance the Purchasers for payment of the balance 75% payable towards Purchase Consideration and disburse such funds by way of a loan. The Borrower shall ensure to pay his/her own contribution before availing of the disbursement from HDFC;

4.1.2 After payment of the earnest money/booking amount being 25% of the Purchase Consideration, **demands for payment of further consideration shall be made by the Developers as per the disbursement pattern provided hereunder**. The Purchaser/s shall then call upon and instruct HDFC to release payments to the Developers on behalf of the Purchaser/s way of cheque/s as per the

following disbursement pattern :

Sr. No.	Amount in Rs./-	On or before the execution of these presents as earnest money (the receipt whereof the Developer/Promoter hereby admit and acknowledge)
1	1,10,10,500.00	Booking + 0 Days
2	44,04,200.00	Initiation of Plinth
3	17,61,680.00	Initiation of 1st Slab
4	17,61,680.00	Initiation of 2nd Slab
5	17,61,680.00	Initiation of 3rd Slab
6	17,61,680.00	Initiation of 4th Slab
7	17,61,680.00	Initiation of Brickwork
8	17,61,680.00	Initiation of 5th Slab
9	17,61,680.00	Initiation of 6th Slab
10	17,61,680.00	Initiation of 7th Slab
11	17,61,680.00	Initiation of 8th Slab
12	17,61,680.00	Initiation of 9th Slab
13	17,61,680.00	Initiation of 10th Slab
14	17,61,680.00	Initiation of 11th Slab
15	17,61,680.00	Initiation of 12th Slab
16	17,61,680.00	Initiation of Terrace Slab
17	17,61,680.00	Initiation of Flooring
18	13,21,260.00	Initiation of Windows & Grill
19	4,40,420.00	Initiation of Sanatation
20	4,40,420.00	Possession
Total	4,40,42,000.00	

The Purchaser/s agree and give/s full consent to release of the entire amount of loan by HDFC as may be required by the Developers;

4.1.3 The Pre-EMI to be paid by the Developers to HDFC under the subvention scheme shall be for a period of 22 months, the amount whereof shall be computed as per the method agreed between the Developers and HDFC, which has been intimated to the Purchaser/s. Although the Developers have agreed to make payment of the subvented amounts, their liability to HDFC shall be joint and several with that of the Purchaser/s shall continue to remain liable at all times to HDFC for repayment of the loan availed by them for purchase of the said Flat;

4.1.4 In this regard **under the subvention scheme, it has been explicitly agreed by the Purchaser/s that in the event that the construction of the New Building is completed prior in time and the Developers offer possession of the said Flat prior to the date on which the Developers had committed to hand over possession to the Purchaser/s in terms of this Agreement, then in such event the Purchaser/s shall refund to the Developers, the proportionate Pre-EMI amounts which may have paid by the Developers to HDFC on behalf of the Purchaser/s, for the period between the actual date of the Developers offering possession of the said Flat and the date of possession as is conveyed to the Purchaser/s on the execution of this Agreement.** The Purchaser/s agree that **in the above circumstances of completion of the building prior in time, the Purchaser/s shall not be entitled to obtain possession of the said Flat (which shall remain with the Developers) until the above proportionate Pre-EMI amounts are refunded to the Developers,**

and until such refund, the proportionate Pre-EMI amounts shall be treated as balance Purchase Consideration for the said Flat.

4.1.5 The interest for the Pre-EMI period, if extended due to *force majeure* or due to reasons beyond the control of the parties, shall be recovered from the Purchaser/s by HDFC and the Developers shall not be liable for payment of the same, in any manner whatsoever. Further, any balance payments or any payments towards escalation of the cost of the Flat shall be made by the Purchaser/s himself/herself/themselves to the Developers.

12.1 The Developers shall give possession of the said Flat to the Purchasers on or before Jun 30, 2017. The Developers shall give a written notice (hereinafter referred to as "Intimation Notice") to Purchaser/s intimating that the said Flat is ready for use and occupation. **The Developers shall be entitled to a grace period of six months for handing over possession and the same is agreed upon by the Purchaser/s**. If the Developers fail or neglect to give possession of the said Flat to the Purchaser/s on account of reasons beyond his control and or his agents as per the provisions of section 8 of the MOFA, by the aforesaid date or the dates prescribed in section 8 of the said Act, then the Developers shall be liable on demand to refund to the Purchaser/s the amount already received by him in respect of the said Flat with simple interest at 9% per annum from the date the Developers receive the sum till the date the amounts and interest thereon is repaid, provided that by mutual consent it is agreed that disputes as to whether the stipulations specified in section 8 have been satisfied or not will be referred to the Competent Authority who will act as an Arbitrator. Till the entire amount and interest thereon is refunded by the Developers to the Purchaser/s there shall, subject to prior encumbrances if any, be a charge on the said Flat. **Provided that the Developers shall be entitled to reasonable extension of time for giving possession of the said Flat on the aforesaid date, if the completion of the building in which the said Flat is to be situated is delayed on account of:**

1. Non-availability of steel, cement, other building material, water or electric supply;

2. War (national or war between other nation or group), civil commotion, strikes of any Act of God or by reason of any national or international happening or events and the resultant repercussions or it affects directly or indirectly to the date of offer of possession;

3. Any notice, order, rule, notification and/or delayed permission of the Government and/or other Public or Competent Authority or any Court of Law;

4. Delay in issuance of any permissions/approvals related to construction including but not limited to Occupation Certificate and/or Building Completion Certificate by the BMC or any other related concerned authority;

5. Changes in any law, rules, regulations, bye-laws etc. of various statutory/Govt. authorities affecting the development of the said Property and/or construction of the building thereon;

6. Any delay or default by the Purchaser/s in any payment of the amounts payable by him/them to the Developers under this Agreement;

7. Delay in any approvals; and/or

8. Other reasonable cause beyond the control of the Developers.

However, in case of occurrence of any of the above events during the period when the Developers are agreed to make payment of the sub vented Pre-EMIs, the sub vented amounts and the interest on the loan from HDFC for such period shall be borne by the Purchaser/s alone and the Developers shall not be liable for the same."

(Emphasis added)

c) As the Flat is purchased under the Subvention Scheme as per clause No.4.1.3 of the agreement, the Appellant agreed to pay pre-EMI for a period of 22 months. In this background, it is significant to note that possession of the flat is to be handed over on or before 30th June 2017. The Agreement between the parties is dated 9th September 2015 and as per clause no.12.1, the Appellant agreed to give possession of the said Flat to the purchasers on or before 30th June 2017 i.e. possession is agreed to be handed over within 21 months and 21 days. The said period agreed for handing over possession as referred in clause No.4.1.3 is about 22 months and the same is in fact less than 22 months for which period Appellant agreed to pay pre-EMIs. Thus, it is clear that a combined reading of all the above relevant clauses clearly show that the intention between the parties is that till possession of the said flat is handed over to the Respondents, the Appellant shall pay said pre-EMI and the EMI for the purchaser shall start only after receipt of possession of the said flat. Only exception to the same are the factors set out hereinabove in said clause No.12.1. The factual position in this case clearly shows that the said factors contemplated under clause No.12.1 are not available in this case. As set out herein-above, the Appellant was to handover possession of the said flat to the Respondents on or before 30th June 2017 and Appellant in compliance of clause 4.1.3 of the said Agreement for Sale has paid pre-EMI on the loan amount advanced till then by HDFC Limited only upto June 2017. Thus, it is clear that the payment of pre-EMI on loan amount by the Appellant is linked with the agreed date for handing over possession by the Appellant to the Respondents – Purchasers.

d) As the Appellants failed to handover the possession of the said flat by 30th June 2017 and also failed to pay pre-EMI to HDFC Limited from the month of July 2017, the Respondents filed complaint on 16th

February 2018 against the Appellant before the Authority under section 18 of the RERA Act seeking payment of interest due to the delay in handing over possession of the said flat. Thereafter, learned Authority disposed of the complaint by order dated 16th October 2018 *inter alia* directing that the Appellant shall handover possession of the flat with occupancy certificate to the complainant on or before 31st March 2019 and clarified that the complainant is at liberty to demand interest at appropriate stage as per section 18 of the RERA Act. As set out herein-above, the said order of Authority dated 16th October 2018 has not been challenged by the Appellant and therefore, the same is accepted by the Appellant.

e) As set out earlier, the Respondents filed Appeal before the learned Appellate Tribunal challenging said order dated 16th October 2018 and the Appellate Tribunal by order dated 31st December 2019, passed the order which has been impugned in the present Second Appeal by the Promoter.

13. As set out hereinabove, a reading of the various clauses and terms and conditions of the Agreement clearly shows that the intention of the parties is that till handing over possession of the said Flat, the Appellants are under obligation to pay the pre-EMI. It is very clear that the period of handing over possession is for about 22 months and therefore, in the agreement, it is stated that the Appellant will pay pre-EMI for said period of 22 months. The Appellant has failed to handover possession within the said period of 22 months. However, the Appellant who is the Promoter is taking unfair advantage of the clause no.4.1.3 regarding Subvention Scheme by which pre-EMI was to be paid only for a period of 22 months. However, proper reading of clause no.4.1.3 to 4.1.5 with clause no.12.1 shows that the Promoter is required to pay pre-EMI till handing over possession of the flat except in certain circumstances. However, it is important to note that this factor is set out only to show the conduct of the Promoter and the claim of interest for delayed possession raised by the Respondents is not dependent on the same.

14. It is further significant to note that on one hand, Respondents have actually paid an amount of Rs.1,10,10,500/- being 25% of the total purchase consideration at the time of booking of the flat whereas the loan of Rs.3,30,31,500/- has been sanctioned for the Respondents from HDFC Limited under the Subvention Scheme which has been floated by the Appellant in terms of the agreement with HDFC Limited and actually the same was disbursed by the HDFC Limited stage-wise. Thus, huge loan is taken by the Respondents. Admittedly, the Appellants have received the said amount of Rs.1,10,10,500/- from the Respondents even before the execution of the agreement as well as from HDFC Limited they have received aggregate amount of Rs.2,73,06,040/- stage-wise as per the progress of construction on account of Respondents. In reply dated 22nd December 2017 of the learned Solicitors of the Appellant sent to the learned Advocate appearing for the Respondents, it is clearly admitted that the Respondents have paid the said amount of Rs.1,10,10,500/-, as also in addition to that, HDFC has disbursed a sum of Rs.2,19,69,781/- on account of the Respondents. It appears that thereafter also the HDFC has disbursed the further installments of the loan as per the stages of the construction. Mr. Thorat, learned counsel appearing for the Respondents submits that total amount paid to the Appellant is Rs.3,83,00,000/- and only Rs.57,25,000/- has remained balance as per the agreed stages. He submitted that as against that total payment towards interest as per order of Appellate Tribunal to be paid by the Appellant to the Respondents is Rs.1,36,63,775/-.

15. In view of above position, it is significant to note the following aspects of the matter:-

i. As per the registered agreement dated 9th September 2015 entered into between the parties, the Appellant agreed to handover possession to the Respondents on or before 30th June 2017 and agreed to pay pre-EMI to HDFC as per the subvention scheme till the Appellant hands over possession of said flat to the Respondents.

ii. The Appellant, thereafter unilaterally, revised the proposed date of completion to December 2020.

iii. The Appellant stopped paying pre-EMI after 1st July 2017.

iv. By order dated 16th October 2018 passed by the Authority, on the complaint filed by the Respondents, a finding was recorded that the said period of December 2020, mentioned as revised proposed date of completion is an unreasonable time period for completion of the project and therefore, direction was issued to the Appellant that Appellant shall handover possession of the apartment i.e. the said flat with occupancy certificate to the Respondents on or before 31st March 2019. It is admitted position that the Appellant has not challenged the said order and in fact, said order has been challenged by the Respondents. Thus, in effect, said date for handing over flat with occupancy certificate is accepted by the Appellant.

v. It is significant to note that the Appellant has failed to obtain occupation certificate even till date i.e. till February 2023 and unilaterally the Appellant extended the date for handing over possession from June 2017 till December 2020 which period the Authority has reduced to 31st March 2019.

16. It is the contention of Mr. Davar that the Appellant could not handover possession by the said date as status-quo order was granted by the High Court in above-referred Writ Petition (L) No.2695 of 2018. Perusal of the order dated 10th August 2018 passed in Writ Petition (L) No.2695 of 2018 shows that the Petitioner and the Respondents, in that Writ Petition were directed to maintain status-quo till 20th August 2018. However, it is clear that said status-quo order is with respect to final notice under section 90 of the Maharashtra Regional and Town Planning Act, 1966 which was served on the Petitioner in said Writ Petition on 28th June 2011 which was challenged by the said Petitioner in 2018. Therefore, the said order clearly shows that the status-quo is not regarding the said project. However, assuming that said status-quo order is regarding the said project, still it is clear that said order dated 10th August 2018 specifies that the status-quo is to be maintained only till next date and the matter was directed to be placed on board on 20th August 2018. The Appellant has not produced on record order dated 20th August 2018 and have also not explained whether the said Writ Petition was on board before 20th August 2018. However, Mr. Davar has relied on order dated 21st August 2018 passed in said Writ Petition. The said order records that the subject structure has already been demolished and Corporation has sought time to file reply. Thus, it is clear that at least after 21st August 2018, there was no status-quo order. It is also very clear that status-quo order, if any, was only for the period of 10th August 2018 till 20th August 2018. It is also very clear that said status-quo order was not with respect to the entire project but with respect to the structure which was the subject matter of Writ Petition (L) No.2695 of 2018. It is the contention of Mr. Davar, learned counsel appearing for the Appellant that the debris could not be removed and therefore, construction of scheme was hampered and the same was ultimately permitted to be removed by orders dated 23rd February 2022 and 13th April 2022. It is the contention of Mr. Thorat, learned counsel appearing for the Respondents that during the said period, the construction of the scheme was progressing and the said status-quo order or the non-removal of said debris has not affected the progress of the scheme in any manner whatsoever. Mr. Davar, learned counsel of the Appellant failed to show any material to controvert the said submission. In any case, it is significant to note that the learned Authority has issued specific direction that the Appellant shall handover possession of the apartment in question to the Respondents with Occupancy Certificate on or before 31st March 2019 and admittedly, till date i.e. even after passage of 4 years thereafter also the possession of the flat has not been handed over. It is significant to note that the said order of the Authority has been accepted by the Appellant and the same has not been challenged by the Appellant. The said order dated 16th October 2018 of the Authority was challenged by filing Appeal under section 44 of the RERA Act before the Appellate Tribunal by the Respondents. The Appellate Tribunal has directed payment of interest at 2% above SBI's highest Marginal Cost of Lending Rate to the present Respondents on the amount paid to the Appellant w.e.f. 1st July 2018 till the Appellant hands over possession of the flat to the Respondents. It has been further directed by the Appellate Tribunal that the interest payable by the Appellant for delay in delivery of possession as above shall be adjusted against the payment of balance consideration towards the flat to be paid by the Respondents as per the schedule of payment mentioned in clause 4.1.2 of the agreement at the time of handing over possession of the flat with occupancy certificate to the Respondents. It is also admitted position that till 30th January 2023 the said interest amount to be paid by the Appellant is Rs.1,36,63,775/- and till date occupation certificate is not received.

17. In view of the analysis of the factual aspects, it is necessary to examine the substantial questions of law raised by Mr. Davar, learned counsel appearing for the Appellant.

18.1 The first two substantial questions of law raised by Mr. Davar are concerning the jurisdiction of the Authority. The same are as follows :-

First substantial Question of Law :

"Whether the RERA Appellate Tribunal while considering the challenge to the order of Authority had the Jurisdiction and Power to pass the Impugned Order dated 31st December, 2019 directing the Appellants to pay interest which in effect is compensation as per Section 18 of the RERA Act?"

Second substantial Question of Law :

"Whether RERA Appellate Tribunal erred in not remanding the matter to the Adjudicating Officer for consideration and adjudication of compensation as per the provisions of Section 18 read with Section 71(3) and Section 72 of the RERA Act?"

18.2 It is the contention of Mr. Davar, learned counsel appearing for the Appellant that the Appellate Tribunal had no jurisdiction and power to pass the impugned order directing the Appellant to pay interest which in effect is compensation as contemplated by section 18 of the RERA Act. It is his submission that the Respondents have only sought compensation in the complaint and therefore, the matter was required to be heard by the learned Adjudicating Officer and not RERA Authority i.e. the Chairperson.

18.3 To substantiate the contention of the Appellant, Mr. Davar has relied on the decision of Supreme Court in the case of ***Newtech Promoters and Developers Pvt. Ltd. vs. State of UP and Ors***.[1] He relied on paragraphs 81 and 82 of the said judgment. The said paragraphs read as under :-

> "81. The opening words of Section 71(1) of the Act make it clear that the **scope and functions of the adjudicating officer are only for "adjudging compensation" under Sections 12, 14, 18 and 19 of the Act**. If the legislative intent was to expand the scope of the powers of the adjudicating officer, then the wording of Section 71(1) ought to have been different. On the contrary, even the **opening words of Section 71(2) of the**

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Act make it clear that an application before the adjudicating officer is only for "Adjudging compensation". Even in Section 71(3) of the Act, it is reiterated that the adjudicating officer may direct "to pay such compensation or interest" as the case may be as he thinks fit, in accordance with provisions of Sections 12, 14, 18 and 19 of the Act. This has to be seen together with the opening words of Section 72 of the Act, which reads "while adjudging the quantum of compensation or interest, as the case may be, under Section 71, the adjudicating officer shall have due regards" to the broad parameters to be kept in mind while adjudging compensation to be determined under Section 71 of the Act.

82. The further submission made by the learned counsel for the appellants that if the authority and the adjudicating officer either come to different conclusions on the same questions or in a single complaint, the person aggrieved is seeking manifold reliefs with one of the relief of compensation and payment of interest, with the timelines being provided for the adjudicating officer to decide the complaint under Section 71 of the Act. At least, there is no provision which could be referred to expedite the matter if filed before the regulatory authority. The submission may not hold good for the reason that **there is a complete delineation of the jurisdiction vested with the regulatory authority and the adjudicating officer. If there is any breach or violation of the provisions of Sections 12, 14, 18 and 19 of the Act by the promoter, such a**

> **complaint straightaway has to be filed before the regulatory authority. What is being referable to the adjudicating officer is for adjudging compensation, as reflected under Section 71 of the Act and accordingly rules and regulations have been framed by the authority for streamlining the complaints which are made by the aggrieved person either on account of violation of the provisions of Sections 12, 14, 18 and 19 or for adjudging compensation and there appears no question of any inconsistency being made, in the given circumstances, either by the regulatory authority or the adjudicating officer**."
>
> (Emphasis added)

18.4 Mr. Thorat, learned counsel has submitted that the complaint as filed is in the format which is made available online on the website of RERA. He submitted that what is important is not the format in which complaint is filed but the substance of the complaint and ultimate relief sought in the complaint. He further submitted that in effect the various averments in the complaint clearly show that the same is not for the compensation but what is sought is the interest.

18.5 There is no dispute with respect to the proposition that as far as the relief regarding compensation is concerned, the matter has to be heard by the learned Adjudicating Officer and in that case, Authority has no jurisdiction. Therefore, it is necessary to peruse the complaint filed by the Respondents to find out whether the complaint is filed seeking compensation or interest. The paragraph (f) of the complaint reads as under :-

> "f. That **due to the failure of the Respondent to give possession of the Flat No.401 on 30th June, 2017 in accordance with the terms of Agreement for Sale dated 9th September 2015 the Respondent is liable to pay interest @ 24% per annum on the total amount of Rs.3,65,54,860=00 ps. (Rupees Three Crores Sixty Five Lakhs Fifty Four Thousand Eight Hundred and Sixty Only) which is received by the Respondent till date and is also further liable to continue to pay the interest @ 24% per annum to the Applicants till the date of handing over of possession of the said Flat No.401 to the Applicants. The Applicants do not intend to withdraw from the project and they are seeking possession of the Flat No.401 completed in all respects from the Respondent. That Clause No.10 of the said Agreement for Sale dated 9th September 2015 stipulates that in the event the Applicants make any default in payment of any instalment to the Respondent they shall be liable to pay interest @ 24% per annum to the Respondent on such amounts of instalments which are due to the Respondent. That considering the said Clause it would be just, proper and in the interest of justice to direct the Respondent to pay compensation @ 24% per annum on the total amount of Rs.3,65,54,860=00 ps.** (Rupees Three Crores Sixty Five Lakhs Fifty Four Thousand Eight Hundred and Sixty Only) received by

the Respondent from the Applicants till the date of handing the possession of Flat No.401 completed in all respects in favour of the Applicants. **The Applicants state that the Respondent will be receiving an amount of Rs.74,87,140=00 ps. (Rupees Seventy Four Lakhs Eighty Seven Thousand One Hundred and Forty Only) from HDFC as per the further stage wise development. The Respondent in the Reply dated 22nd December, 2017 issued through it's Advocate has stated that he would hand over the possession of the said Flat to the Applicants on or before December, 2020**. It would therefore, also be just and proper and in the interest of justice **to direct the Respondent to pay interest at the rate of 24% p.a. on the amount Rs.74,87,140=00 ps. (Rupees Seventy Four Lakhs Eighty Seven Thousand One Hundred and Forty Only) from the period of receipt of the said amounts till the date of handing over the possession of the said Flat to the Applicants.** The Applicants are also entitled to receive compensation at the rate of 24% on the amount of money which is already paid to the Respondent for the future period from 1st February 2018 till the date of handing over of possession of the said Flat to the Applicants."

(Emphasis added)

18.6 Above quoted paragraph (f) of the complaint as well as the reliefs sought in the complaint, which are already set out in earlier part of this order, clearly show that the relief sought is regarding the interest on the amount paid and no compensation is sought. Although paragraph No.5 mentions ‘compensation sought’, however, the same is as per the format of the RERA, and what is actually sought is interest and not the compensation. Thus, Mr. Thorat is right in contending that what is important is the substance of the complaint and not the form or format. He is right in contending that what is sought in the complaint is the interest for delayed possession and not the compensation. Therefore, there is no substance in the contention raised by Mr. Davar, learned counsel appearing for the Appellant that the complaint is filed seeking compensation and therefore, has to be adjudicated by the Adjudicating Officer. As the complaint is filed seeking interest for delay in handing over possession it is the Authority which has got the jurisdiction to deal with the same and not the Adjudicating Officer.

18.7 The Supreme Court in the decision of ***Newtech Promoters and Developers Pvt. Ltd.,*** (supra), has clearly held that the jurisdiction of the Adjudicating Officer under section 71(1) of the said Act is to adjudge compensation under sections 12, 14, 18 and 19 and application before the Adjudicating Officer is only for adjudging the compensation. It has been held by the Supreme Court that the scheme of the Act and conjoint reading of sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount and **directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory authority which has the power to examine and** determine the outcome of a complaint. The Supreme Court in said ***Newtech Promoters and Developers Pvt. Ltd.*** (supra), has framed Question No.2 as follows :-

> "**Question No.2** : Whether the authority has jurisdiction to direct return/refund of the amount to the allottee under Sections 12, 14, 18 and 19 of the Act or the jurisdiction exclusively lies with the adjudicating officer under Section 71 of the Act?"

Said Question No.2 is answered in paragraph 86 of the said Judgment. The said paragraph 86 reads as under :-

> "86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that **although the Act indicates the distinct expressions like 'refund', 'interest', 'penalty' and 'compensation', a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory authority**

> **which has the power to examine and determine the outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act. If the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and functions of the adjudicating officer under Section 71 and that would be against the mandate of the Act 2016.**
>
> (Emphasis added)

In view of the above legal position, as the complaint is filed seeking interest for delay in handing over possession, it is the Authority which has got the exclusive jurisdiction to deal with the same and not the Adjudicating Officer. As the complaint is filed by the Respondents i.e. allottees only seeking interest for the delayed possession and as the Authority *inter alia* granted liberty to demand interest in handing over possession at appropriate stage from the Appellant and as the said order is challenged before the Appellate Tribunal by the allottee, the Appellate Tribunal in exercise of the Appellate power has right to pass the order regarding interest for delayed possession. Therefore, there is no substance in the first and second substantial questions of law raised by Mr. Davar regarding jurisdiction of the Authority and the Appellate Tribunal.

19.1 Mr. Davar has raised third substantial question of law to the effect that as party has given up its claim before the Authority, such a party cannot impugn the order of Authority. The third substantial question of law raised by Mr. Davar reads as under :-

> **Third substantial Question of Law** :
>
> "Whether the RERA Appellate Tribunal ignored that a party which has given up it's claim before the Authority and which has been recorded by such Authority in the Order can impugn the Order of Authority?"

19.2 In this behalf, it is significant to note the observations of the Authority in paragraphs 4 and 8 of the order dated 16th October 2018, which read as under:-

> "4. On the last date of hearing, **the Complainant submitted that at this stage, she is interested in having the project completed and will, therefore, in the interest of the project getting completed, will not insist that the Respondent pay interest for the delayed possession as on date. Further**, she submitted that **if she does not see the efforts of the Respondent towards the completion of the project or even**

> **otherwise, she should be at liberty to demand interest as per the provisions of section 18 of the Real Estate (Regulation and Development) Act, 2016** and the rules and regulations made thereunder, from the **Respondent, at an appropriate stage**. She also submitted that **she is expecting the possession of the said apartment by March, 2019. However, the Complainant later submitted an application via email, stating that an appropriate order based on the merits of the case may be passed**.
>
> 8. In view of the above facts, **the Respondent shall, therefore, hand over the possession of the apartment, with Occupancy Certificate, to the Complainant before the period of March 31, 2019. The Complainant shall be at liberty to demand interest at an appropriate stage, as per the provisions of section 18 of the Real Estate (Regulation and Development) Act, 2016 and the rules and regulations made thereunder, from the Respondent for the delay in completing the said project."**
>
> (Emphasis added)

19.3 It is significant to note that the claim of interest for delayed payment is neither given up by the complainants i.e. Respondents and the same is also not rejected by the Chairperson, MahaRERA and it has been only clarified that the complainant is at liberty to demand interest at an appropriate stage as per the provisions of section 18 of the RERA Act.

Thus, it is clear that Authority has not denied the claim of interest. It is true that initially the statement was made by the Respondent No.1 before the Authority that she was interested in having the project completed and therefore, she would not insist, at that stage, that the Appellant shall pay interest for the delayed possession, however as recorded by the RERA Authority, thereafter, the complainant submitted an application via e-mail stating that appropriate order based on the merits of the case be passed. It is clear that although the learned Authority has not rejected the claim of the interest of the Respondents but only directed that said demand be made at a later stage. However, it is also required to be noted that the said order was passed by the Authority only on the basis of the oral statement of the complainant on the date of hearing and subsequent immediate email of the Respondents, stating that appropriate order be passed on the merits of the case, is ignored. It is significant to note that order passed by the Authority was not challenged by the present Appellant i.e. Promoter. By the said order of the Authority, the Appellant was directed to handover possession of the flat with occupancy certificate by 31st March 2019. It is significant to note that even thereafter, about 4 years have passed and the Appellant has failed to obtain occupation certificate and handover the possession of the flat. Thus, there is no substance even in the third substantial question of law raised by the Appellant.

20.1 Mr. Davar, learned counsel of the Appellant also raised fourth and fifth substantial question of law which are regarding scope of powers of the learned Appellate Tribunal awarding interest/compensation at the first instance. The said substantial questions of law are as under :-

> **Fourth substantial Question of Law**:
>
> "Whether the RERA Appellate Tribunal having passed the impugned Order and having directed the Appellants to pay interest for the first time has effectively denied the statutory right of a First Appeal to the Appellant?"
>
> **Fifth substantial Question of Law**:
>
> "Whether RERA Appellate Tribunal had the power to award interest for the first time, when such relief is rejected by the Authority, in the light of Section 71(3) and Section 72 of the RERA Act?"

20.2 For appreciating the above questions of law, it is necessary to set out section 44 of the RERA Act. The same reads as under :-

> **"44: Application for settlement of disputes and appeals to Appellate Tribunal.**
>
> 44. (1) The appropriate Government or the competent authority or **any person aggrieved by any direction or order or decision of the Authority or the adjudicating officer may prefer an appeal to the Appellate Tribunal**.

(2) Every appeal made under sub-section (1) shall be preferred within a period of sixty days from the date on which a copy of the direction or order or decision made by the Authority or the adjudicating officer is received by the appropriate Government or the competent authority or the aggrieved person and it shall be in such form and accompanied by such fee, as may be prescribed:

Provided that the Appellate Tribunal may entertain any appeal after the expiry of sixty days if it is satisfied that there was sufficient cause for not filling it within that period.

(3) **On receipt of an appeal under sub-section (1), the Appellate Tribunal may after giving the parties an opportunity of being heard, pass such orders, including interim orders, as it thinks fit.**

(4) The Appellate Tribunal shall send a copy of every order made by it to the parties and to the Authority or the adjudicating officer, as the case may be.

(5) **The appeal preferred under sub-section (1), shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose of the appeal within a period of sixty days from the date of receipt of appeal**:

Provided that where any such appeal could not be disposed of within the said period of sixty days, the

Appellate Tribunal shall record its reasons in writing for not disposing of the appeal within that period.

(6) **The Appellate Tribunal may, for the purpose of examining the legality or propriety or correctness of any order or decision of the Authority or the adjudicating officer, on its own motion or otherwise, call for the records relevant to deposing of such appeal and make such orders as it thinks fit.**"

(Emphasis added)

It is very clear that right of filing Appeal under section 44 of the RERA Act is given to any person aggrieved by any direction or order or decision of the Authority. It is also important to note that the Appellate Tribunal has got power to pass such order as it thinks fit, after giving the parties an opportunity of being heard. In fact, sub-section (6) of section 44 provides power of revision to the Appellate Tribunal on its own motion or otherwise and to make such order as it thinks fit. Thus, there is no impediment in passing appropriate order by the Appellant Tribunal. It is also significant to note that it is expected that the Appellate Tribunal disposes off the Appeal expeditiously and in time bound manner.

20.3 Section 53 of the RERA Act is regarding powers of the Tribunal. The said section 53 reads as under :-

"Section 53: Powers of Tribunal.

53. (1) **The Appellate Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908 but shall be guided by the principles of natural justice.**

(2) **Subject to the provisions of this Act, the Appellate Tribunal shall have power to regulate its own procedure.**

(3) **The Appellate Tribunal shall also not be bound by the rules of evidence contained in the Indian Evidence Act, 1872.**

(4) The Appellate Tribunal shall have, for the purpose of discharging its functions under this Act, **the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 in respect of the following** matters, **namely**:—

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of documents;

(c) receiving evidence on affidavits;

(d) issuing commissions for the examinations of witnesses or documents;

(e) reviewing its decisions;

(f) dismissing an application for default or directing it ex parte; and

(g) any other matter which may be prescribed.

(5) All proceedings before the Appellate Tribunal shall be

> deemed to be judicial proceedings within the meaning of sections 193, 219 and 228 for the purposes of section 196 of the Indian Penal Code, and the Appellate Tribunal shall be deemed to be civil court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973."
>
> (Emphasis added)

Thus, it is clear that the Tribunal is not bound by the procedure laid down under the Code of Civil Procedure, 1908 nor bound by the rules of evidence as contained in the Indian Evidence Act, 1872. The Appellate Tribunal has only to follow the principles of natural justice. In this case, it is not even the case of the Appellant that the Appellate Tribunal has not followed the principles of natural justice.

20.4 It is the contention of Mr. Davar, learned counsel of the Appellant that the matter should have been remanded back to the Authority and in fact matter should have been remanded back to the Adjudicating Officer as under the pretext of the interest compensation is sought and for the first time the Appellate Tribunal could not have passed order directing interest/compensation. I have already held that the Respondents have sought relief of interest for delayed possession and not the compensation. Section 44 r/w section 53 of the RERA Act gives wide powers to the Appellate Tribunal to pass such order as it thinks fit. It is also significant to note that while adjudging the compensation the factors as enumerated in section 72 of the RERA Act are required to be taken into consideration, which reads as under :

> **"Section 72: Factors to be taken into account by the adjudicating officer.**
>
> "72. While adjudging the quantum of compensation or interest, as the case may be, under section 71, the adjudicating officer shall have due regard to the following factors, namely:—
>
> (a) **the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;**
>
> (b) **the amount of loss caused as a result of the default;**
>
> (c) **the repetitive nature of the default;**
>
> (d) **such other factors which the** adjudicating officer considers necessary to the case in furtherance of justice."

Section 71(1) of the RERA Act provides that for the purpose of adjudging compensation under sections 12, 14, 18 and section 19 of the RERA Act, the Authority shall appoint under section 2(a) in consultation with the appropriate Government, one or more judicial officer as deemed necessary, who is or has been a District Judge to be an adjudicating officer for holding an inquiry in the prescribed manner, after giving any person concerned a reasonable opportunity of being heard.

In the present case, the relief sought is regarding interest for delayed possession and not the compensation. Therefore, this is not a case where adjudication of the above factors is required. Therefore, this is not a case where remand as contended by the Appellant is required.

20.5 Although provisions of C. P. C. are strictly not applicable to the Appellate Tribunal, even if the provisions of C. P. C. regarding remand by the Appellate Court are considered then also it is clear that in the present case the remand is not required. The relevant provision is Order XLI Rule 24, which reads as under :-

> "**Order XLI Rule 24**:- Where evidence on record sufficient Appellate Court may determine case finally.—Where the evidence upon the record is sufficient to enable the Appellate Court to pronounce judgement, the Appellate Court may, after resettling the issues, if necessary, finally determine the suit, notwithstanding that the judgment of the Court from whose decree the appeal is preferred has proceeded wholly upon some ground other than that on which the Appellate Court proceeds."

The above provision also contemplates that where the evidence on the record is sufficient to enable the Appellate Court to pronounce judgment, the Appellate Court may, if necessary, finally determine the suit notwithstanding that the judgment of the Trial Court has proceeded wholly upon some ground other than that on which the Appellate Court proceeds. Thus, even the C. P. C. also contemplates that Appellate Court may determine the case finally even if Trial Court has proceeded wholly upon some ground other than that on which the Appellate Court proceeds. In the present case, the Authority has not rejected the claim of the interest but merely asked the Respondents to raise the same at a later stage. It is also significant to note that for arriving at the quantum of the interest the required factual position is available on the record. Therefore, there is no substance in the fourth and fifth substantial questions of law raised on behalf of the Appellant.

21.1 The Sixth and Seventh substantial questions of law reproduced hereinbelow raised by Mr. Davar, learned counsel appearing for the Appellant are regarding the merits of the case :-

<u>Sixth substantial question of Law:</u>

"Whether the RERA Appellate Tribunal was justified in granting compensation to the Respondents in the light of the fact that under

Clause 12.1 of the Agreement for Sale dated 9th September 2015 (between the Appellant and the Respondents), the Respondents have agreed that the Appellant shall be entitled to a reasonable extension of time for handing over possession of the flat to the Respondents, if possession is delayed due to (i) delay in issuance of any permission/approvals related to construction by BMC or any other concerned authorities; and (ii) reasonable cause beyond the control of the Appellant?"

Seventh Substantial Question of Law:

"Whether the impugned Order is incorrect in law in as much as on one hand, Appellate Tribunal concludes that the delay in handing over possession is beyond the control of the Appellant and on the other hand, directs payment of compensation under Section 18 of the Act?"

21.2 I have already discussed the merits of the case in earlier part of this judgment. The Appellate Tribunal, *inter-alia*, took into consideration the following factors:-

i. There is an apparent delay of around 30 months from the committed date of possession and still the flat is not ready for delivery of possession with occupation certificate. It has been observed that even if extension as contemplated in clause 12.1 are taken into consideration, then also there is delay in handing over possession;

ii. Although as per the agreement possession was to be handed over on or before 30th June 2017, the Appellate Tribunal has directed payment of interest w.e.f. 1st July 2018 i.e. 1 year after the agreed date of possession;

iii. It has been observed by the Appellate Tribunal that the reasons given in support of overall delay in delivering the possession appear to some extent beyond the control of the Appellant, however, that cannot be unforeseeable or unpredictable as claimed by the Appellant. It has been observed that there is no *force majeure* responsible for the delay caused in handing over possession;

iv. The only contention of the Appellant for delay is regarding the status-quo order granted by High Court. However, as extensively discussed in earlier part of this judgment, the said status-quo was at the most for 10 days and in any case, the same was not regarding the entire project and only with respect to one particular structure. Therefore, in fact, the Appellate Tribunal is not right in observing that there is some explanation for said delay. In any case, the Appellate Tribunal is right in observing that there is no *force majeure* responsible for the delay caused in handing over possession;

v. The Appellate Tribunal has extensively dealt with the said order of status-quo in paragraph 18 and observed that the said status-quo order at the most can be said to have been granted on 10th August 2018 and ceased to exist after 21st August 2018. It has also come on record that the said structure was in the meanwhile demolished and the same is recorded in order dated 21st August 2018. It has also been observed that there was no stoppage of work due to said litigation.

vi. Although, the Respondents in their complaint have sought interest @ 24% p.a., however, the Appellate Tribunal has confined the interest as prescribed under the RERA Act and the Rules framed thereunder.

21.3 The above aspects as well as the various factors discussed hereinabove clearly show that the Appellate Tribunal has not committed any error in passing the impugned order. Therefore, there is no substance in the sixth and seventh substantial question of law raised on behalf of the Appellant.

<u>Reliefs required to be granted in the facts and circumstances of this case:</u>

22.1 After consideration of all the substantial questions of law raised by the Appellant, it is necessary to consider very important and significant aspect of the matter. The same is whether vigilant citizen who approaches the Court can be punished by the Promoter by violating the mandate of the RERA Act only for the reason that the citizen has availed the legal remedy and whether in such a situation Court exercising power under the RERA Act can be the mute spectator. Before considering the above important issue, it is necessary to note the following aspects:-

(a) In this case, as per the Subvention Scheme and as per the agreement, in fact, what is agreed is that the developer will pay pre-EMI till handing over possession. The date of handing over possession clearly matches with the period of payment of pre-EMI. The developer has not been able to comply with the date of handing over possession but stopped the payment of pre-EMI.

(b) In this case, the Respondents have made down-payment of huge consideration of Rs.1,10,10,500/- from their own funds as well as HDFC has paid on behalf of the Respondents an amount of Rs.2,73,06,040/-. Therefore, the aggregate payment made by the Respondents is Rs.3,83,16,540/-.

(c) The possession date as per the agreement was 30th June 2017. The Authority by order dated 18th October 2018 directed that possession of said flat with occupancy certificate shall be handed over to the Respondents on or before 31st March 2019, which order the Appellant has not challenged and therefore, deemed to have been accepted by the Appellant. Till date i.e. till 28th February 2023, possession has not been handed over to the Appellant. It is also admitted position that till date occupation certificate is not received. Thus, the Appellant failed to hand over possession even after delay of about 6 years.

(d) It is admitted position that to the other flat purchasers' possession has been handed over for fit-out purposes and only the Respondents are deprived from taking possession on the pretext that present Respondents have approached RERA Authorities and Appellate Tribunal and therefore, there is animosity between the Appellant and the Respondents. The ostensible reason given by Mr. Davar for not handing over possession even for fit-out purposes is that the Respondents are not ready and willing to pay the said balance amount of Rs.57,25,000/-. It is significant to note that the amount of interest as directed by the Appellate Tribunal to be paid by the Appellant comes to 1,36,63,775/- which Appellate Tribunal has directed to be adjusted in the amount to be paid by the Respondents.

(e) Mr. Davar after taking instructions, has informed on earlier occasion that his client is not ready and willing to deposit the said amount in this Court. In fact, Mr. Thorat, after taking instructions from the Respondents has submitted that without prejudice to their rights and contentions, the Respondents are ready and willing to deposit the said amount of Rs.57,25,000/- in this Court.

22.2 The Supreme Court in said ***Promoters and Developers Pvt. Ltd.*** *(supra),* has discussed in detail, the object and reasons for enacting RERA. It has been observed that RERA Act has been enacted with an object to ensure greater accountability towards consumers, to significantly reduce frauds and delays and also the current high transaction costs, and to balance the interests of consumers and promoters by imposing certain responsibilities on both, and to bring transparency on the contractual conditions, set minimum standards of accountability and a fast-track dispute resolution mechanism. The object and reasons for enactment of the RERA Act are discussed in detail in said decision. The relevant portion of said decision are set out herein-below:-

> "6. Over the past two decades, with the growth of population and the attraction of the people to shift towards urbanization, the demand for housing increased manifold. Government also introduced various housing schemes to cope with the increasing demand but the experience shows that demands of the housing sector could not be meted out by the Government at its own level for various reasons to meet the requirement, the private players entered into the real estate sector in meeting out the rising demand of housing. **Though availability of loans, both from public and private banks, become easier, still the high rate of interest and the EMI has posed additional financial burden on the people.**
>
> 7. At the given time, **the real estate and housing sector was largely unregulated and the consequence was that consumers were unable to procure complete information for enforced accountability towards builders and developers in the absence of an effective mechanism in place**. Though, The Consumer Protection Act, 1986 was available to cater the demand of home buyers in the real estate sector but the

experience shows that this mechanism was inadequate to address the needs of the home buyers and promoters in the real estate sector.

8. At this juncture, the **need for Real Estate (Regulation) Bill was badly felt for establishing an oversight mechanism to enforce accountability to the real estate sector and providing an adjudicating machinery for speedy dispute redressal mechanism and safeguarding the investments made by the home buyers through legislation to the extent permissible under the law.**

9. The statement of object and reasons of the Act indicates that the **primal position of the regulatory authority is to regulate the real estate sector having jurisdiction to ensure compliance with the obligation cast upon the promoters**. The opening statement of objects and reasons which has a material bearing on the subject reads as follows:-

"1. The **real estate sector plays a catalytic role in fulfilling the need and demand for housing and infrastructure** in the country. While this sector has grown significantly in recent years, it **has been largely unregulated, with absence of professionalism and standardisation and lack of adequate consumer protection**. Though the **Consumer Protection Act, 1986** is available as a forum to the buyers in the real estate market, the recourse is only curative and **is not adequate to address all the concerns of buyers and promoters in that**

sector. The lack of standardisation, has been a constraint to the healthy and orderly growth of industry. Therefore, the **need to regulating the sector has been emphasised in** various forums.

2. In view of the above, it **becomes necessary to have a Central legislation, namely, the Real Estate (Regulation and Development) Bill, 2013, in the interest of the effective consumer protection, uniformity** and **standardisation of business practices and transactions in the real estate sector.** The proposed Bill provides for the establishment of the Real Estate Regulatory Authority (the Authority) for regulation and promotion of real estate sector and to ensure sale of plot, apartment or building, as the case may be, in an efficient and transparent manner and to protect the interest of consumers in real estate sector and establish the Real Estate Appellate Tribunal to hear appeals from the decisions, directions or orders of the Authority.

10. **It was introduced with an object to ensure greater accountability towards consumers, to significantly reduce frauds & delays and also the current high transaction costs, and to balance the interests of consumers and promoters by imposing certain responsibilities on both, and to bring transparency of the contractual conditions, set minimum standards of accountability and a fast-track dispute resolution mechanism. It also proposes to induct professionalism and**

standardization in the sector, thus paving the way for accelerated growth and investments in the long run.

11. Some of the relevant Statement of Objects and Reasons are extracted as under:-

"4 …

(d) to impose liability upon the promoter to pay such compensation to the allottees, in the manner as provided under the proposed legislation, in case if he fails to discharge any obligations imposed on him under the proposed legislation;

(e) …..

(f) the functions of the Authority shall, inter alia, include – (i) to render advice to the appropriate Government in matters relating to the development of real estate sector; (ii) to publish and maintain a website of records of all real estate projects for which registration has been given, with such details as may be prescribed; (iii) to ensure compliance of the obligations cast upon the promoters, the allotees and the real estate agents under the proposed legislation. .….

(i) to appoint an adjudicating officer by the Authority for adjudging compensation under sections 12, 14 and 16 of the proposed legislation…."

12. The Bill provides **for establishment of the authority for regulation and promotion of real estate sector, to ensure sale**

of plot, apartment or building 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 provide the adjudicating mechanism for speedy dispute redressal mechanism by establishing the regulatory authority and the adjudicating officer and in hierarchy, the Appellate Tribunal for early and prompt disposal of the complaint being instituted primarily by the home buyers for whom this Act has been enacted by the Parliament in 2016.

13. To examine the matter in this perspective, consider what a house means in India. The data shows that **about more than 77% of total assets of an average Indian household are held in real estate and it's the single largest investment of an individual in his lifetime. The real estate in India has a peculiar feature. The buyer borrows money to pay for a house and simultaneously plays the role of a financer as building projects collect money upfront and this puts the buyer in a very vulnerable position-the weakest stakeholder with a high financial exposure**. The amendment to the Insolvency and Bankruptcy Code, 2018 recognised the home buyers as financial creditors and the present enactment is the most important regulatory intervention in favour of the home buyers and it's had an impact and with passage of time, has become a yardstick of laying down minimum standards in the market. Earlier, the real estate sector was completely unregulated and there was no transparency in their business

profile and after the present enactment, it is open for the potential home buyers to check if a project is approved under the Act, 2016 that at least gives a satisfaction to a person who is coming forward in making a lifetime investment.

14. That apart **from the project being statutorily regulated, it attaches certain authenticity with regard to completion of the project and a statutory obligation upon the developer and home buyer to abide by the terms and conditions of the home buyers agreement and statutory compliance to the mandate of law.** In addition, any project which is approved under the Act, 2016 helps the promoter in raising funds from banks and statistics shows that buyers express their satisfaction in approved projects which is beneficial not only to the home buyers but to the promoters and real estate agents as well."

(Emphasis added)

In paragraph 13, the Supreme Court has discussed the important role played by flat purchasers. It has been observed that the Real Estate in India has a peculiar feature. The buyer borrows money to pay for a house and simultaneously plays the role of a financer as building projects collect money upfront and this puts the buyer in a very vulnerable position-the weakest stakeholder with a high financial exposure.

22.3 In the present case, the Respondents - flat purchasers who are vigilant are being punished for approaching RERA Authority and thereafter

Appellate Authority for exercising their contractual and statutory rights. It is admitted position that inspite of paying huge consideration, the Appellant has delayed in handing over possession of the said flat for more than 6 years. In fact, the Appellant has failed to get occupation certificate till date.

22.4 As already noted hereinabove, Mr. Thorat, after taking instructions from the Respondents states that they are ready and willing to deposit in this Court the balance payment without prejudice to their rights and contentions. Mr. Davar, learned counsel appearing for the Appellant, after taking instructions, states that the Appellant is not ready and willing to deposit the money which has been directed to be paid by the learned Appellate Tribunal and he further submitted that unless balance payment with interest is made by the Respondents, his instructions are that the Appellant is not ready to hand over possession of the flat to the Appellant. This is a case where the balance payment is of about Rs.57,25,000/- whereas, the interest as directed to be paid by the Appellate Court is to the tune of Rs.1,36,63,675/- till 30th January 2023 and the same will increase as till date the Appellant is not in a position to handover possession with occupation certificate. It is the contention of Mr. Davar that the said Rs.57,25,000/- are to be paid along with interest. It is significant to note that the Appellant i.e. promoter who has defaulted in handing over possession within time as per the agreement, failed to pay pre-EMI till handing over possession and has stopped payment of pre-EMI, has been directed by the RERA Authority to handover possession on or before 31st March 2019 which order the Promoter has not challenged and still failed to comply with the same and till date the promotor has failed to obtain occupation certificate. Thus, it is clear that the promotor has failed in complying with various important contractual and statutory obligations.

22.5 The object of enacting the RERA Act is the effective consumer protection, uniformity and standardisation of business practices and transactions in the real estate sector. Also the same has been enacted to ensure greater accountability towards consumers, to significantly reduce frauds and delays and also the current high transaction costs, and to balance the interests of consumers and promoters by imposing certain responsibilities on both, and to bring transparency of the contractual conditions, set minimum standards of accountability and a fast-track dispute resolution mechanism. It also proposes to induct professionalism and standardization in the sector, thus paving the way for accelerated growth and investments in the long run. The conduct of the Appellant – Promoter in the present case is contrary to the objectives of RERA Act. The said conduct shows that it is the desire of the Appellant that the Respondents be placed in such a vulnerable position that the possession of the flat should not be received by them even after making huge payment of Rs.3,83,16,540/- and when the Appellant is liable to pay at least Rs.79,38,775/- [Rs.1,36,63,675/- — Rs.57,25,000/- = Rs.79,38,775/-] to the Respondents in terms of the order passed by the Appellate Tribunal. It is very clear that the conduct of the Appellant is malafide and to teach lesson to the Respondents – flat purchasers so that no other flat purchaser in Appellant's any scheme in future should approach RERA Authority for protection of rights as guaranteed by the RERA Act. It is significant to note that huge consideration has been paid by the Respondents. The Promoter has handed over possession for fit-out purposes to all other flat purchasers except the present Respondents, as the present Respondents have approached RERA Authority and thereafter to the Appellate Tribunal, which in fact, is their statutory right.

23. Therefore, this is a fit case where Second Appeal is required to be dismissed with compensatory cost due to the malafide conduct of the Appellant as discussed hereinabove which is in violation of the rights guaranteed to the flat purchasers under RERA Act and certain other directions are also necessary.

24. For the above reasons, as there is no substance in any of the substantial questions of law raised by the Appellant, the Second Appeal deserves to be dismissed. Hence, I pass the following order:-

ORDER

(i) Second Appeal No.330 of 2021 is dismissed with compensatory cost of Rs.10,00,000/- (Rupees Ten Lakhs Only). The amount of cost is to be paid to the Tata Cancer Society, Mumbai within a period of two weeks;

(ii) The Court Receiver, High Court, Bombay is appointed as Receiver under Order XL Rule 1 of Civil Procedure Code, 1908 to take immediate physical possession of the said flat bearing Flat No.401, 4^{th} Floor, 'A' Wing in 'Forefront Primeria' building situated at Vile Parle (E), Mumbai – 400057;

(iii) The Court Receiver, Bombay is immediately directed to take possession of the said Flat No.401, 4^{th} Floor, 'A' Wing in 'Forefront Primeria' building situated at Vile Parle (E), Mumbai – 400057 today and handover the same to the Respondents for the fit-out purposes only;

(iv) The cost and charges of the Court Receiver shall be borne by the Respondents;

(v) The Respondents to file an undertaking in this Court on or before 3rd March 2023 stating that unless occupation certificate of the said building is received they will not actually start using the said flat for residential purpose and till that time, the said flat will be used only for the fit-out purposes;

(vi) The Appellant to comply with Clause Nos.3 and 4 regarding payment of interest and Clause No.5 of the impugned order dated 31st December 2019 within a period of two weeks from today;

(vii) Second Appeal is disposed of accordingly;

(viii) The Second Appeal will be listed on **3rd March 2023** for reporting compliance of this order by Court Receiver;

(ix) All the parties to act upon an authenticated copy of this order.

[MADHAV J. JAMDAR, J.]