

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

**SECOND APPEAL NO.108 OF 2023
WITH
INTERIM APPLICATION (ST.) NO.4038 OF 2023
IN
SECOND APPEAL NO.108 OF 2023**

M/s Man Global Ltd. Mumbai ...Appellant/Applicant
Vs.
Mr. Jitendra Jain ...Respondent

**WITH
SECOND APPEAL NO. 155 OF 2023
WITH
INTERIM APPLICATION NO. 1728 OF 2023
IN
SECOND APPEAL NO. 155 OF 2023**

M/s. Man Global Ltd. Mumbai ...Appellant/Applicant
Vs.
Dr. Alok Chaturvedi ...Respondent

**WITH
SECOND APPEAL NO. 667 OF 2022**

M/s Man Global Ltd. Mumbai ...Appellant
Vs.
Azam Wahid Qureshi ...Respondent

**WITH
SECOND APPEAL NO. 696 OF 2022**

M/s Man Global Ltd. Mumbai ...Appellant
Vs.
Meenal Parab ...Respondent

WITH

SECOND APPEAL NO.453 OF 2022

M/s Man Global Ltd. Mumbai	...Appellant
Vs.	
Nikhil K. Kathane	...Respondent

**WITH
SECOND APPEAL NO. 660 OF 2022**

M/s Man Global Ltd. Mumbai	...Appellant
Vs.	
Jitendra Jain	...Respondent

**WITH
SECOND APPEAL NO. 685 OF 2022**

M/s Man Global Ltd. Mumbai	...Appellant
Vs.	
Tilkesh Soni	...Respondent

**WITH
SECOND APPEAL NO. 668 OF 2022**

M/s Man Global Ltd. Mumbai	...Appellant
Vs.	
Anthony D'Souza & Anr.	...Respondents

**WITH
SECOND APPEAL NO.897 OF 2022**

M/s Man Global Ltd. Mumbai	...Appellant
Vs.	
Monali C Sutrave & Anr.	...Respondents

**WITH
SECOND APPEAL NO.857 OF 2022**

M/s Man Global Ltd. Mumbai	...Appellant
Vs.	

Amreen Bhimani ...Respondent

**WITH
SECOND APPEAL NO.504 OF 2022**

M/s Man Global Ltd. Mumbai ...Appellant
Vs.
Brijesh Kumar Mathur ...Respondent

**WITH
SECOND APPEAL NO.882 OF 2022**

M/s Man Global Ltd. Mumbai ...Appellant
Vs.
Rakesh Hiralal Parmar & Anr. ...Respondents

**WITH
SECOND APPEAL NO.933 OF 2022**

M/s Man Global Ltd. Mumbai ...Appellant
Vs.
Simin Mohd. Arif ...Respondent

**WITH
SECOND APPEAL NO.675 OF 2022**

M/s Man Global Ltd. Mumbai ...Appellant
Vs.
Umesh Ved ...Respondent

**WITH
SECOND APPEAL NO.455 OF 2022**

M/s Man Global Ltd. Mumbai ...Appellant
Vs.
Vikas Khanna & Anr. ...Respondents

WITH

SECOND APPEAL NO.880 OF 2022

M/s Man Global Ltd. Mumbai	...Appellant
Vs.	
Shivnath Gunda	...Respondent

**WITH
SECOND APPEAL NO.669 OF 2022**

M/s Man Global Ltd. Mumbai	...Appellant
Vs.	
Rakesh Kumar Jha	...Respondent

**WITH
SECOND APPEAL NO.454 OF 2022**

M/s Man Global Ltd. Mumbai	...Appellant
Vs.	
Gaurav Kumar	...Respondent

**WITH
SECOND APPEAL NO.918 OF 2022**

M/s Man Global Ltd. Mumbai	...Appellant
Vs.	
Neha Chaube	...Respondent

**WITH
SECOND APPEAL NO.692 OF 2022**

M/s Man Global Ltd. Mumbai	...Appellant
Vs.	
Shyampyari Yadav	...Respondent

**WITH
SECOND APPEAL NO. 114 OF 2023
WITH
INTERIM APPLICATION (ST.) NO. 3928 OF 2023**

**IN
SECOND APPEAL NO. 114 OF 2023**

M/s Man Global Ltd. Mumbai	...Appellant/Applicant
Vs.	
Mr. Umesh R. Ved	...Respondent

**WITH
SECOND APPEAL NO. 109 OF 2023
WITH
INTERIM APPLICATION (ST.) NO.4043 OF 2023
IN
SECOND APPEAL NO. 109 OF 2023**

M/s. Man Global Ltd. Mumbai	...Appellant/Applicant
Vs.	
Mr. Amreen Bhimani	...Respondent

**WITH
SECOND APPEAL NO.138 OF 2023
WITH
INTERIM APPLICATION (ST.) NO.4012 OF 2023
IN
SECOND APPEAL NO.138 OF 2023**

M/s. Man Global Ltd. Mumbai	...Appellant/Applicant
Vs.	
Mr. Nikhil Kumar Kathane	...Respondent

**WITH
SECOND APPEAL NO. 113 OF 2023
WITH
INTERIM APPLICATION (ST.) NO.3926 OF 2023
IN
SECOND APPEAL NO. 113 OF 2023**

M/s. Man Global Ltd. Mumbai	...Appellant/Applicant
Vs.	
Mr. Brijesh K. Mathur	...Respondent

WITH
INTERIM APPLICATION (ST.) NO.4009 OF 2023
IN
SECOND APPEAL NO. 113 OF 2023

M/s. Man Global Ltd. Mumbai	...Applicant
Vs.	
Tilkesh Rameshchandra Soni	...Respondent

WITH
SECOND APPEAL NO. 123 OF 2023
WITH
INTERIM APPLICATION (ST.) NO.4216 OF 2023
IN
SECOND APPEAL NO. 123 OF 2023

M/s Man Global Ltd. Mumbai	...Appellant/Applicant
Vs.	
Mrs. Monali C. Sutrave And Anr.	...Respondents

WITH
SECOND APPEAL NO. 119 OF 2023
WITH
INTERIM APPLICATION (ST.) NO.4015 OF 2023
IN
SECOND APPEAL NO. 119 OF 2023

M/s. Man Global Ltd. Mumbai	...Appellant/Applicant
Vs.	
Mrs. Simin Asif And Anr.	...Respondents

WITH
SECOND APPEAL NO. 110 OF 2023
WITH
INTERIM APPLICATION (ST.) NO.4010 OF 2023
IN
SECOND APPEAL NO. 110 OF 2023

M/s. Man Global Ltd. Mumbai	...Appellant/Applicant
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Vs.
Mrs. Meenal Parab And Anr ...Respondents

WITH
SECOND APPEAL NO.121 OF 2023
WITH
INTERIM APPLICATION (ST.) NO.4017 OF 2023
IN
SECOND APPEAL NO.121 OF 2023

M/s. Man Global Ltd. Mumbai ...Appellant/Applicant
Vs.
Mr. Vikas Khanna And Anr. ...Respondents

WITH
SECOND APPEAL NO. 117 OF 2023

M/s Man Global Ltd. Mumbai ...Appellant
Vs.
Mr. Rakesh Hiralal Parmar And Anr. ...Respondents

WITH
SECOND APPEAL NO. 112 OF 2023
WITH
INTERIM APPLICATION (ST.) NO.4020 OF 2023
IN
SECOND APPEAL NO. 112 OF 2023

M/s Man Global Ltd. Mumbai ...Appellant/Applicant
Vs.
Ms. Neha Chaube ...Respondent

WITH
SECOND APPEAL NO. 118 OF 2023
WITH
INTERIM APPLICATION (ST.) NO.4021 OF 2023
IN
SECOND APPEAL NO. 118 OF 2023

M/s. Man Global Ltd. Mumbai ...Appellant/Applicant
Vs.
Mr. Rakesh Kumar Jha And Anr. ...Respondents

WITH
INTERIM APPLICATION (ST.) NO.4219 OF 2023
IN
SECOND APPEAL NO. 118 OF 2023

M/s. Man Global Ltd. Mumbai ...Applicant
Vs.
Mr. Rakesh Hiralal Parmar and Anr. ...Respondents

WITH
SECOND APPEAL NO. 120 OF 2023
WITH
INTERIM APPLICATION (ST.) NO.4037 OF 2023
IN
SECOND APPEAL NO. 120 OF 2023

M/s. Man Global Ltd. Mumbai ...Appellant/Applicant
Vs.
Mr. Jitendra Jain ...Respondent

WITH
SECOND APPEAL NO. 115 OF 2023
WITH
INTERIM APPLICATION (ST.) NO.4041 OF 2023
IN
SECOND APPEAL NO. 115 OF 2023

M/s. Man Global Ltd. Mumbai ...Appellant/Applicant
Vs.
Mr. Azam Wahid Qureshi ...Respondent

WITH
SECOND APPEAL NO.122 OF 2023
WITH
INTERIM APPLICATION (ST.) NO.4026 OF 2023

**IN
SECOND APPEAL NO.122 OF 2023**

M/s Man Global Ltd. Mumbai	...Appellant/Applicant
Vs.	
Mr. Anthony Dsouza And Anr.	...Respondents

**WITH
SECOND APPEAL NO. 116 OF 2023
WITH
INTERIM APPLICATION (ST.) NO.4222 OF 2023
IN
SECOND APPEAL NO. 116 OF 2023**

M/s Man Global Ltd. Mumbai	...Appellant/Applicant
Vs.	
Mr. Sadiqali Mankar	...Respondent

**WITH
SECOND APPEAL NO. 111 OF 2023
WITH
INTERIM APPLICATION (ST.) NO.4049 OF 2023
IN
SECOND APPEAL NO. 111 OF 2023**

M/s Man Global Ltd. Mumbai	...Appellant/Applicant
Vs.	
Mr. Deepak Agarwal And Anr.	...Respondents

**WITH
SECOND APPEAL NO.307 OF 2023**

M/s Man Global Ltd. Mumbai	...Appellant
Vs.	
Alok R. Chaturvedi	...Respondent

**WITH
SECOND APPEAL NO.313 OF 2023**

M/s Man Global Ltd. Mumbai ...Appellant
Vs.
Mr. Niraj Singh & Anr. ...Respondents

**WITH
SECOND APPEAL (ST) NO.29289 OF 2022**

M/s Man Global Ltd. Mumbai ...Appellant
Vs.
Mr. Bhavesh Mewada ...Respondent

**WITH
SECOND APPEAL (ST) NO.29309 OF 2022**

M/s Man Global Ltd. Mumbai ...Appellant
Vs.
Mr. Ashish Mewada ...Respondent

Mr. Vineet Naik, Senior Advocate a/w Mr. Vinod G. Talreja, Avinash Undhare i/b. Gobindram D. Talreja for the Appellants in SA/110/2023, SA/108/2023, SA/114/2023, SA/109/2023, SA/113/2023, SA/123/2023, SA/119/2023, SA/121/2023, SA/117/2023, SA/112/2023, SA/118/2023, SA/120/2023, SA/115/2023, SA/122/2023, SA/116/2023, SA/111/2023, SA/155/2023, SA/138/2023 and IAs.

Mr. Vinod G. Talreja, Avinash Undhare i/b. Gobindram D. Talreja for the Appellants in SA/667/2022, SA/857/2022, SA/692/2022, SA/504/2022, SA/454/2022, SA/675/2022, SA/685/2022, SA/918/2022, SA/455/2022, SA/882/2022, SA/660/2022,

SA/453/2022, SA/897/2022, SA/668/2022, 696/2022, SA/880/2022, SA/669/2022, SA/933/2022, SA/313/2023, SA(ST)/29309/2022, SA(ST)/29289/2022 and SA/307/2023.

Mr. Naresh Pai i/b. Ms. Rupali Padgulekar for Respondent in SA/109/2023 with IA(ST)4043/2023 in SA/109/2023 with SA/138/2023 with IA(ST)4012/2023 in SA/138/2023 with SA/113/2023 with IA(ST)3926/2023 in SA/113/2023 with SA/119/2023 with IA(ST)4015/2023 in SA/119/2023 with SA/110/2023 with IA(ST)4010/2023 in SA/110/2023 with SA/121/2023 with IA(ST)4017/2023 in SA/121/2023 with SA/117/2023 with SA/112/2023 with IA(ST)4020/2023 in SA/112/2023 with SA/118/2023 with IA(ST)4021/2023 in SA/118/2023 with SA/115/2023 with IA(ST)4041/2023 in SA/115/2023 with SA/122/2023 with IA(ST)4026/2023 in SA/122/2023 with SA/116/2023 with IA(ST)4222/2023 in SA/116/2023 with SA/111/2023 with IA(ST)4049/2023 in SA/111/2023.

Mr. Arun Panickar a/w Mr. Vinay Nair for Respondent in SA/114/2023 with IA(ST)3928/2023 in SA/114/2023.

Mr. Sanjay Chaturvedi a/w Ms. Pooja Gaikwad, Mr. Nikhil Waje and Mr. Gaurav Beri i/b. Mr. Sanjay Chaturvedi & Associates for Respondent in SA/155/2023 and IA/1728/2023 in SA/155/2023.

Ms. Sana Subedar i/b. Jayesh S. Sapra for Respondent in SA/108/2023.

Mr. Chandrakant Sutrave, Respondent No.2 in person in SA/123/2023 and IA(ST)4216/2023 and SA/897/2022.

CORAM : MADHAV J. JAMDAR, J.

DATE : 10th July 2023

JUDGMENT:

1. In a group of 18 Second Appeals, the challenge is to the legality and validity of Orders dated 10th June 2022 in 16 Appeals and 10th December 2022 in 2 Appeals passed by the learned Maharashtra Real Estate Appellate Tribunal, Mumbai (hereinafter referred to as “**Appellate Tribunal**”). The learned Appellate Tribunal passed the impugned order in the Appeals filed by the Respondents-Allottees awarding interest for delay in handing over possession by the Appellant-Promoter of the apartments to the respective Respondents-Allottees.

2. In another group of 22 Second Appeals, the challenge is to the legality and validity of Order dated 7th July 2021 by which the Appeals filed before the learned Appellate Tribunal by the Appellant-Promoter were dismissed for non-compliance of Section 43(5) of the *Real Estate (Regulation and Development) Act, 2016* (hereinafter referred to as

“said Act”).

3. On several earlier occasions as far as group of 18 Second Appeals are concerned, I have heard submissions of Mr. Vineet Naik, learned Senior Counsel along with Mr. Vinod Talreja, learned Counsel appearing for the Appellants as well as submissions of Mr. Naresh Pai a/w Ms. Rupali Padgulekar, Mr. Arun Panickar a/w Mr. Vinay Nair, Mr. Sanjay Chaturvedi a/w Ms. Pooja Gaikwad and Ms. Sana Subedar a/w Mr. Jayesh S. Sapara, learned Counsels appearing for the Respondents in respective Second Appeals. I have also heard Mr. Chandrakant Sutrave-Respondent No.2 in-person, in Second Appeal No.123 of 2023.

4. With respect to the group of 22 Second Appeals, where the impugned order is dated 7th July 2021 passed by the learned Appellate Tribunal by which the Appeals were rejected by the learned Appellate Tribunal for non-compliance of Section 43(5) of the said Act, I have heard submissions of Mr. Vinod Talreja, learned Counsel appearing for the Appellant and the learned Counsels appearing for the respective Respondents.

5. I will first deal with the merits of the group of 18 Second Appeals with respect to challenge to the order dated 10th June 2022 in 16 Appeals and to the order dated 10th December 2022 in 2 Appeals

passed by the learned Appellate Tribunal. Mr. Vineet Naik, learned Senior Counsel appearing for the Appellant raised the following substantial questions of law in these Second Appeals:

- I. Whether delay in handing over possession on account of delays in receiving No Objection Certificate and Occupation Certificate from the Municipal Corporation can be attributed to the Appellant, in view of settled law that in absence of Occupation Certificate, handing over of possession to allottees is impermissible?
 - II. Whether in view of the approval of extension in date of handing over of possession by the allottees, allottees continue to remain entitled to claim interest?
 - III. Whether in respect of an ongoing project can the period of interest awarded be retrospective to the date of registration and the new date of completion of the project as per declaration required to be made under section 4(2)(c) r/w Rule 4 of the RERA Act?
6. Mr. Vineet Naik, learned Senior Counsel submitted that the project is a Rental Housing Scheme and the Appellant was required to obtain various permissions/consents and sanctions in respect of the said project from two Planning Authorities i.e. *Mumbai Metropolitan Region*

Development Authority (“**MMRDA**”) and *Mira Bhaindar Municipal Corporation* (“**Corporation**”). He submitted that the project had been delayed owing to reasons which are beyond reasonable control of the Appellant-Promoter. He pointed out correspondence between the Appellant and the Authorities. He submitted that the said Act came into force with effect from 1st May 2016. The project was registered on 1st May 2017, under the provisions of said Act and thereafter, the date of completion of the project was revised to 31st December 2018 and subsequently further revised to 30th August 2019. The said revisions of completion date were required to be done only on account of non-receipt of No-Objection Certificate (“**NOC**”) from MMRDA and on account of frequent changes in the plans as per the direction of MMRDA. He also pointed out extensive correspondence made by the Appellant with the MMRDA and the Corporation to point out how the issuance of NOC’s, sanctions and permissions was delayed. It is his submission that the Real Estate Regulatory Authority (“**RERA**”) as well as the Appellate Authority are required to apply their mind for deciding the claims in a judicious manner. Time required by the statutory Authorities for granting permissions/sanctions/NOC’s, etc. is required to be taken into consideration by the RERA/Appellate Authority while

passing the order under Section 18(1) of the said Act. He also pointed out Section 19(4) of the said Act. On the basis of the correspondence which is made with the various statutory Authorities, he submitted that on account of delay in procuring NOC for Occupation Certificate from MMRDA and complying with the requirements of MMRDA the period from April 2016 to October 2019 should have been accounted for and factored in while arriving at the period of delay in handing over possession to the Respondents-apartment purchasers. He relied on a Division Bench decision of this court in the case of ***Neelkamal Realtors Suburban Pvt. Ltd. and Anr. V Union of India and Ors.***¹. He particularly relied on paragraph 137 of the said decision, wherein the Division Bench of this Court has observed that in spite of making genuine efforts, if a promoter fails to complete the project, then the concerned authorities, adjudicators, forums, tribunals will certainly look into genuine cases and mould their reliefs accordingly. He submitted that the learned Appellate Tribunal has not taken into consideration the said observations.

7. Mr. Naik, learned Senior Counsel pointed out paragraph 25 of the decision of the Supreme Court in the case of ***Newtech Promoters &***

1. (2018) 1 AIR Bom R 558 : 2017 SCC OnLine Bom 9302

*Developers Pvt. Ltd. V State of U.P and Ors.*² and submitted that the said observations of the Supreme Court are required to be harmoniously interpreted in the light of observations of the Division Bench of this Court in paragraph 137 of *Neelkamal Realtors* (supra). He submitted that awarding of interest cannot be an exercise of applying a strait-jacket formula and it has to be assessed and arrived at after judicious application of mind considering the defences raised by the Appellant-promoter. He also pointed out observations in *Newtech Promoters* (supra) in paragraph 78 and submitted that the same cannot be considered as *ratio decidendi* of the decision. He submitted that the said Act grants right to the promoter to validate and modify its project completion date.

8. Mr. Naik, learned Senior Counsel relied upon the decision of the Supreme Court in the case of *Director of Settlements, A.P and Others V. M.R. Apparao and Another*³ on the aspect of binding precedent. He submitted that the binding element in a Supreme Court's decision, is the *ratio decidendi* of the decision and not any finding of fact from *obiter dictum*. He therefore, submitted that the various observations in

2. 2021 SCC OnLine SC 1044

3. (2002) 4 SCC 638

Newtech Promoters (supra) are not the *ratio* of the said decision. He submitted that the Appellant was unable to give possession as per the terms of the Agreement due to reasons beyond reasonable control of the Appellant. He submitted that owing to the delay in grant of environment clearance, Court litigation and high-handed conduct of MMRDA, the Appellant was contractually entitled to a reasonable extension.

9. On the other hand, Mr. Naresh Pai a/w Ms. Rupali Padgulekar, Mr. Arun Panickar a/w Mr. Vinay Nair, Mr. Sanjay Chaturvedi a/w Ms. Pooja Gaikwad and Ms. Sana Subedar a/w Mr. Jayesh S. Sapara, learned Counsels appearing for the respective Respondents, *inter alia*, raised following submissions :-

- (i) The RERA awarded delayed interest from 1st February 2018 onwards for Phase-1 complainants and April 2018 onwards for Phase-2 complainants, till the developer offers possession of the apartments with Occupation Certificate, instead of the agreed date of possession as mentioned in the Agreement for Sale. Therefore, the respective Respondents preferred appeals and the learned Appellate Tribunal has passed the order by

which the Appellants were directed to pay the interest with effect from the next day of the date of possession as stipulated in the respective Agreements for Sale.

- (ii) The said Act is retroactive and therefore, the contentions raised that the stringent provisions of the said Act will not apply to the present Project is not legal.
- (iii) As far as the orders passed by the RERA are concerned, the same have become final *qua* the Appellant, as the Appeal filed by them has been dismissed for non-compliance of deposit of an amount under the proviso of Section 43(5) of the said Act.
- (iv) The Appellant has not filed any reply before RERA and therefore, the contentions raised on merits are required to be rejected.
- (v) Delay in handing over possession on account of delays in receiving NOC, permissions and sanctions from various authorities is not attributable to the allottees-apartment purchasers and therefore the same is irrelevant. Extension in date of handing over possession to the allottees as granted by RERA is irrelevant for the claim of

interest.

- (vi) It is submitted that stipulation of the fresh/revised date under Section 2(1)(c) of the said Act read with Rule 4(2) of the *Maharashtra Real Estate (Regulation and Development) Rules, 2017* (hereinafter referred to as “**the said Rules**”) is only to absolve the promoter of the penal consequences and the same will have no effect in respect of payment of interest under Section 18 of the said Act for delay in handing over possession by virtue of retroactive operation of the said Act. Stipulation of the fresh/revised date under Section 2(1)(c) of the said Act read with Rule 4(2) of the said Rules does not re-write the contract between the promoter and the purchaser-allottee. The promoter is bound to pay interest under Section 18 of the said Act despite fresh/revised date under Section 2(1)(c) of the said Act read with Rule 4(2) of the said Rules for delay in handing over possession.
- (vii) The factors enumerated under Section 72 of the said Act are not applicable to the complaint filed under Section 31 of the said Act before the Authority read with proviso

to Sections 18 of the said Act seeking interest for delayed possession. The factors enumerated in Section 72 of the said Act are to be considered only while adjudicating the compensation under Section 71 of the said Act.

(viii) In the complaints of respective Respondents, no compensation has been claimed and compensation has not even been awarded under Section 71 of the said Act.

(ix) The impugned order is passed by properly constituted Maharashtra Appellate Tribunal, Mumbai i.e. one Judicial Member and one Administrative or Technical Member under Section 43(3) of the said Act.

(x) Reliance is also placed on Section 18 read with Section 19(4) of the said Act basis which submission is made that the allottees are entitled to interest for every month's delay in handing over the possession.

(xi) Reliance is placed on paragraphs 104, 128 to 142, 242 to 245 and 304 to 311 of ***Neelkamal Realtors*** (supra).

(xii) Reliance is placed on paragraph 25 of the decision of the Supreme Court in the case of ***Imperia Structures Limited***

V Anil Patni & Anr⁴.

(xiii) Reliance is also placed on paragraphs 19 to 25, 41 and 50 and 55 to 56 of ***Newtech Promoters*** (supra).

(xiv) Reliance is also placed on the decision of a learned Single Judge of this Court in the case of ***Bombay Dyeing & Manufacturing Co. Ltd. V. Ashok Narang⁵.***

(xv) No substantial question of law arises in the Second Appeal and therefore the Second Appeals deserve to be dismissed.

(xvi) Learned counsels also raised several contentions and also relied on various decisions, reference to which, is made if necessary.

10. Mr. Chandrakant Sutrave is the Respondent No.2 in Second Appeal No. 123 of 2023 and he appeared in-person. He pointed out various dates of demand notice and date of payments. He submitted that the promoter had charged interest on payment for even a single day's delay. He pointed out various dates showing that he has booked the flat on 31st July 2010 and initially the flat was allotted on 10th floor

4 2020 (10) SCC 783

5 2021 SCC OnLine Bom 12330

and the date of possession was informed to be in December 2013. Thereafter the layout plans were unilaterally changed and he was allotted flat No. 1101 on 11th floor and additional floor rise payment was recovered from him. The possession date was thereafter extended to December 2015. He submitted that 95% of the consideration was paid on 14th January 2015 as per the demand notice dated 22nd December 2014. He submitted that as possession was not handed over, an Appeal was filed in MahaRERA Court in May 2017. He submitted that MahaRERA passed the impugned order on 4th February 2019 and Occupation Certificate for the said Project was received on 7th May 2019. He submitted that the Appeal is filed before the learned Appellate Tribunal in March 2019 and although Occupation Certificate was received in May 2019, the promoter failed to give possession and ultimately possession was given in December 2019. He submitted that as per Section 18 of the said Act, the specified date mentioned in the Agreement for giving possession is absolute and no grace period has been mentioned in the Agreement. He submitted that the learned Appellate Tribunal rightly held that permitting the possession beyond the specified date would lead to disastrous consequences rendering the agreed date of possession as specified in the Agreement for sale

irrelevant. He therefore, submitted that the Second Appeal be dismissed as no substantial question of law is raised. He also submitted that 100% of the amount be directed to be deposited with the learned Appellate Tribunal as per Section 43(5) of the said Act.

11. At the outset, it is to be noted that although the details like Agreement date, date of possession etc. are different in all these Second Appeals, however, the substantial questions of law raised in all these Second Appeals are the same.

12. For appreciating the controversy involved in the Second Appeals, it is necessary to set out factual position in one Second Appeal and, accordingly, the factual aspects as involved in the Second Appeal No. 119 of 2023 are set out herein below.

(i) The Respondents in said Second Appeal No. 119 of 2023 entered into Agreement of Sale with the promoter on 17th December 2014. The said Respondents agreed to purchase flat No.1902 in building No. 5 in Phase-1.

(ii) The said Respondent has paid an amount of Rs.39,97,100/- prior to June 2015, which is about 95% of the agreed consideration amount paid.

(iii) Although the agreed date of possession as per the

Agreement is June 2015 the possession was actually handed over on 4th September 2019.

- (iv) The Appellant received Occupation Certificate with respect to the said building on 7th May 2019.
- (v) The Respondents in said Second Appeal No.119 of 2023 filed Complaint No. CC 006 000 0000 23721. The learned Chairperson, MahaRERA i.e. the RERA has, *inter alia*, passed a common Order in about 53 complaints. The following is the operative part of the common order :

“17. Therefore, in accordance with Section 4(2) (1) of the said Act read with Rule 4(2) of the said Rules, a reasonable time period for completion of this MahaRERA registered project, commensurate to the balance development work should have been only six months from the date of application of registration for Phase I and eight months for Phase II. By January, 2018 for Phase I and March 2018 for Phase II respectively.

18. In view of above, the Respondent is held liable to pay interest on delay from February 1, 2018 onwards for Phase I complainants and from April 1, 2018 onwards for Phase II complainants, till he offers possession of the apartments, with CC, to the complainants. The said interest shall be at the rate as prescribed under Rule 18 of the said Rules.

19. The interest as stipulated in para 18 above shall be adjusted at the time of handing over possession of the complainants. If the Respondents fails to complete the project even by April 2019, steps should be taken by the Association of Allottees for revocation of registration as per the provisions of Section 7 of the said Act and further completion of the balance work as per the provisions of Section 8 of the said Act.

20. Consequently, the matter are hereby disposed of."

(Emphasis added)

(vi) The said order was challenged by the respective Respondents before the learned Appellate Tribunal, Mumbai. The Respondents in Second Appeal No.119 of 2023 filed Appeal No. AT00600 00000 21273. The learned Appellate Tribunal by the common Order dated 10th June 2022 disposed of 20 Appeals. The Appellate Tribunal, *inter alia*, passed the following operative order:

"O R D E R

1. Appeal Nos. AT00 600 00000 21201, AT00 600 00000 21257, AT00 600 00000 21262, AT00 600 00000 21267, AT00 600 00000 21270, AT00 600 00000 21273, AT00 600 00000 21279, AT00 600 00000 21286, AT00 600 00000 21287, AT00 600 00000 21300, AT00 600 00000 21313, AT00 600 00000 21315, AT00 600 00000 21323,

AT00 600 00000 21326, AT00 600 00000 31743, AT00 600 00000 31599, AT00 600 00000 21269, AT00 600 00000 21243, AT00 600 00000 21299 and AT00 600 00000 21306 are partly allowed.

2. Impugned orders dated 04.02.2019, 09.05.2019 and 19.07.2019 to the extent of Appeals under consideration are set aside.

3. Respondent Promoter is directed to pay Appellants Allottees interest @ 2% above the highest MCLR of the State Bank of India prevailing at the time of passing the impugned orders w.e.f. the next day of the date of possession as stipulated in the agreements for sale till the date of date of actual possession within a period of two months from the date of this order failing which further interest at the aforesaid rate shall be payable by Respondent Promoter on the total amount payable on the date of actual possession till the payment of amount as directed.

4. Liberty to Allottees to approach appropriate Forum for redressal of the grievance relating to parking or compensation therefor and/or any other issue raised in the complaints / Appeals as per law.

5. Promoter to pay costs of Rs.20,000/- to Appellants in each appeal.

6. Copy of this order be sent to the parties and the Authority as per Section 44(4) of RERA."

(Emphasis added)

(vii) The learned Appellate Tribunal passed similar order on
10th December 2022 in 2 Appeals.

13. The Appellant-Promoter has challenged the said common Orders dated 10th June 2022 and two Orders dated 10th December 2022 by filing the first set of 18 Second Appeals under Section 58 of the said Act. As noted herein above, Mr. Vineet Naik, learned Senior Counsel has raised the above referred substantial questions of law in this set of 18 Second Appeals.

14. The relevant details of most of the flat purchasers i.e. the respective Respondents are noted herein below:-

Sr. No.	Second Appeal No.	Name of Allottee	Flat No.	Building No.	Phase	Date of Agreement for sale	Possession as per the Agreement	Actual possession	Amt. paid prior to June 2015	Percentage of the amt paid
1	108/2023	Jitendra Jain	1502	5	1	25/01/2014	June-15	23/11/2019		
2	109/2023	Amreen Bhimani	1403	2	1	29/12/2014	June-15	27/09/2019	39,58,650	95
3	110/2023	Meenal M. Parab	1602	6	2	05/09/2015	Dec-2016	08/05/2021	24,67,202	72
4	111/2023	Deepak Agarwal	702	5	1	22/06/2014	June-15	07/12/2019	32,23,265	95
5	112/2023	Neha Chaube	1106	4	1	13/03/2014	June-15	28/08/2019	55,11,216	95
6	113/2023	Brijesh Mathur	1001	3	1	26/04/2017	Dec-16	05/09/2019	47,06,079	95
7	114/2023	Sangeeta U. Ved	1501	2	1	31/12/2013	June-15	09/11/2019		

8	115/ 2023	Azim Qureshi	1101	4	1	18/02/2014	June-15	02/09/2019	38,43,938	95
9	116/ 2023	Sadiqali Mankar	1103	2	1	21/04/2014	June-15	04/10/2019	1,28,52,090	100
		Sadiqali Mankar	1703	2	1	21/04/2014	June-15	04/10/2019		
10	117/ 2023	Rakesh H. Parmar	202	2	1	14/10/2013	June-15	09/09/2019	22,22,570	95
11	118/ 2023	Rakesh Kumar Jha	203	5	1	25/02/2015	June-15	17/10/2019	43,35,827	95
12	119/ 2023	Simin Aasif	1902	5	1	17/12/2014	June-15	04/09/2019	39,97,100	95
13	120/ 2023	Jitendra Jain	1501	5	1	25/01/2014	June-15	23/11/2019		
14	121/ 2023	Vikas Khanna	1003	4	1	25/11/2013	June-15	03/11/2019	40,38,654	95
15	122/ 2023	Anthony D'Souza	2101	2	1	31/12/2013	June-15	05/09/2019	54,17,098	95
16	123/ 2023	Monali C. Sutrave	1101	5	1	31/07/2010	14 Jan-15	03/12/2019	41,72,883/-	95
17	138/ 2023	Nikhil K. Kathane	803	8	1	28/05/2015	Dec-16	05/10/2019	41,98,011	94
18	155/ 2023	Alok Ravindranath Chaturvedi	1404	4	1	29/01/2014	June-15	23/11/2019	34,42,400	95

Even, if details in a few cases are not furnished, it is undisputed that even in those cases the respective allottees have made substantial payments.

15. The First substantial question of law raised by Mr. Naik, learned Senior Counsel appearing for the Appellant, is as follows :

First substantial question of law:

Whether delay in handing over possession on account of delays in receiving No Objection Certificate and Occupation / Certificate from the Municipal Corporation can be attributed to the Appellants, in view of settled law that in absence of

Occupation Certificate, handing over of possession to allottees is impermissible?

16. In substance, it is the contention of Mr. Vineet Naik, learned Senior Counsel appearing for the Appellants that the Appellant-Promoter cannot be held liable for the delay, which has been caused by various authorities in issuing permissions, sanctions, occupation certificates etc..

17. Before considering the above substantial question of law, it is necessary to see that in case of most of the allottees i.e. the respective Respondents, the agreed date of possession as per the Agreement was June 2015 and only in case of three allottees, the date of possession was in December 2016. The details of the same are already set out herein above. It is also an admitted position that the actual possession was handed over to most of the respective Respondents between August 2019 to November 2019. To the remaining three allottees, possession has been handed over on 28th August 2020, 7th December 2019 and 8th May 2021 respectively. Therefore, it is clear that there is a substantial delay in handing over the possession than the agreed contractual date of possession. It is also admitted position that almost

all the allottees have made payments of consideration of more than 95%.

18. It is necessary to consider relevant provisions of the said Act and the legal position in that behalf to appreciate the submissions, of Mr. Vineet Naik, learned Senior Counsel that for the delay which has been caused by various authorities in issuing permissions, sanctions, occupation certificates etc., the Appellant-Promoter cannot be held liable.

19. Section 18 of the said Act reads as under:

"Section 18: Return of amount and compensation.

18. (1) If the promoter fails to complete or is unable to give possession of an apartment, plot or building,—

(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or

(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason, he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:

Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest

for every month of delay, till the handing over of the possession, at such rate as may be prescribed".

(2) The promoter shall compensate the allottees in case of any loss caused to him due to defective title of the land, on which the project is being developed or has been developed, in the manner as provided under this Act, and the claim for compensation under this sub-section shall not be barred by limitation provided under any law for the time being in force.

(3) If the promoter fails to discharge any other obligations imposed on him under this Act or the rules or regulations made thereunder or in accordance with the terms and conditions of the agreement for sale, he shall be liable to pay such compensation to the allottees, in the manner as provided under this Act."

(Emphasis added)

Section 18 of the said Act, *inter alia*, clearly provides that if there is a delay in handing over possession of an apartment, the allottee can seek refund of the amount by withdrawing from the project and such refund is to be made together with interest as may be prescribed and in addition to that, the allottee can claim compensation. However, the allottee has been granted liberty in case if the allottee does not intend to withdraw from the project, such allottee will be required to be paid interest by the promoter for every month of delay till handing over the possession, at such rate as may be prescribed.

20. The Supreme Court in ***Imperia Structures Limited*** (supra) has,

inter alia, considered the scope of Section 18 of the said Act. In paragraph 25 of the said decision, after analysing the scope of Section 18 of the said Act, the Supreme Court has held as under:

*"25. In terms of Section 18 of the RERA Act, if a promoter fails to complete or is unable to give possession of an apartment duly completed by the date specified in the agreement, the Promoter would be liable, on demand, to return the amount received by him in respect of that apartment if the allottee wishes to withdraw from the Project. Such right of an allottee is specifically made "without prejudice to any other remedy available to him". The right so given to the allottee is unqualified and if availed, the money deposited by the allottee has to be refunded with interest at such rate as may be prescribed. **The proviso to Section 18(1) contemplates a situation where the allottee does not intend to withdraw from the Project. In that case he is entitled to and must be paid interest for every month of delay till the handing over of the possession. It is upto the allottee to proceed either under Section 18(1) or under proviso to Section 18(1). The case of Himanshu Giri came under the latter category.**"*

(Emphasis added)

Thus, the Supreme Court in ***Imperia Structures Limited*** (supra) has held in paragraph 25 that in case of delay, the allottee is entitled to and must be paid interest till handing over of the possession.

21. The proviso to Section 18(1) contemplates the situation where the allottee does not intend to withdraw from the project and provides

that, in that case, he or she is entitled to and must be paid interest for every month of delay till the handing over of the possession. The Supreme Court clarified that it is up to the allottee to proceed either under Section 18(1) or under proviso to Section 18(1). Thus, it is very clear that as per the provisions of Section 18 of the said Act, the allottee has got two distinct options: one option is to withdraw from the project and other option is to continue in the project. In both the cases two separate and distinct rights are provided. In this group of Second Appeals, the second option is relevant as concerned allottees i.e. respective Respondents have not withdrawn from the project and have continued in the project. The question is what are the rights of such allottees, who do not intend to withdraw from the project as there is a delay in handing over possession and whether they are entitled for interest.

22. As noted herein above proviso to Section 18 of the said Act clearly provides that where an allottee does not intend to withdraw from the project, he shall be paid by the promoter interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed. The word used in Section 18 is 'shall' indicating that if there is delay in handing over possession the promoter is mandatorily

liable to pay interest for every month till the handing over of the possession. It is a settled legal position that the use of word ‘shall’ raises a presumption that particular provision is imperative; but this *prima facie* inference may be rebutted by other considerations such as object and scope of the enactment and the consequences flowing from such construction [*Burjore and Bhawani Pershad v. Bhagana, ILR 10 Cal 557*]. The word ‘shall’ is ordinarily mandatory but is sometimes not so interpreted if the context or the intention otherwise demands [*Sainik Motors v. State of Rajasthan, AIR 1961 SC 1480*]. Thus it is necessary to consider object and reasons for enacting the said Act, scope of the said Act and related aspects.

23. In this context it is necessary to set out the Preamble of the said Act, which reads as under :-

“An Act to establish the Real Estate Regulatory Authority for regulation and promotion of the real estate sector and to ensure sale of plot, apartment or 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 and also to establish the Appellate Tribunal to hear appeals from the decisions, directions or orders of the Real Estate Regulatory Authority and the adjudicating officer and **for matters connected therewith or incidental thereto.***”

(Emphasis added)

24. In ***Newtech Promoters*** (supra), the Supreme Court in paragraphs 6 to 14 discussed the object and reasons of the said Act and also the scope of the said Act. The said paragraphs read as under:-

“Object and Reasons of the Act 2016

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:—*

“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;

(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 allottees 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 financier 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)

25. Thus, the said Act was enacted, *inter alia*, to achieve following objectives:-

- A. 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.
- B. The real estate sector has been largely unregulated, with absence of professionalism and standardisation and lack of adequate consumer protection.
- C. Regulation and promotion of the real estate sector.
- D. To ensure sale of plot, apartment or building, as the case may be, or sale of real estate project, in an efficient and transparent manner.
- E. To protect the interest of consumers in the real estate sector.
- F. 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.

- G. 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.

26. In paragraphs 19 to 25 of *Newtech Promoters* (supra), the scheme of the said Act particularly of Section 18 and relevant provisions are also discussed. The said paragraphs read as under :

*"19. Section 18(1) of the Act spells out the consequences if the promoter fails to complete or is unable to give possession of an apartment, plot or building either in terms of the agreement for sale or to complete the project by the date specified therein or on account of discontinuance of his business as a developer either on account of suspension or revocation of the registration under the Act or for any other reason, **the allottee/home buyer holds an unqualified right to seek refund of the amount with interest at such rate as may***

be prescribed in this behalf.

20. Section 18(2) of the Act mandates that in case, loss is caused to allottee due to defective title of the land, on which the project is being developed or has been developed, the promoter shall compensate the allottee and such claim for compensation under Section 18(2) shall not be barred by limitation provided under any law for the time being in force.

21. Section 18(3) of the Act states that where the promoter fails to discharge any other obligation under the Act or the rules or regulations framed thereunder or in accordance with the terms and conditions of the agreement for sale, the promoter shall be liable to pay 'such compensation' to the allottees, in the manner as prescribed under the Act.

22. If we take a conjoint reading of subsections (1), (2) and (3) of Section 18 of the Act, the different contingencies spelt out therein, (A) the allottee can either seek refund of the amount by withdrawing from the project; (B) such refund could be made together with interest as may be prescribed; (C) in addition, can also claim compensation payable under Sections 18(2) and 18(3) of the Act; (D) the allottee has the liberty, if he does not intend to withdraw from the project, will be required to be paid interest by the promoter for every months' delay in handing over possession at such rates as may be prescribed.

23. Correspondingly, Section 19 of the Act spells out "Rights and duties of allottees". Section 19(3) makes the allottee entitled to claim possession of the apartment, plot or building, as the case may be. Section 19(4) provides that if the promoter fails to comply or being unable to give possession of the apartment, plot or building in terms of the agreement, it makes the allottees entitled to claim the refund of amount paid along with interest and compensation in the manner prescribed under the Act.

24. Section 19(4) is almost a mirror provision to Section

18(1) of the Act. Both these provisions recognize right of an allottee two distinct remedies, viz, refund of the amount together with interest or interest for delayed handing over of possession and compensation.

25. The unqualified right of the allottee to seek refund referred under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottee, if the promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the allottee/home buyer, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act with the proviso that if the allottee does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed."

(Emphasis added)

27. Thus, object and reasons of the said Act and the very peculiar position of allottee as explained by the Supreme Court to the effect that the buyer borrows money to pay for a house and simultaneously plays the role of a financier as building projects collect money upfront and this puts the buyer in a very vulnerable position-the weakest stakeholder with a high financial exposure clearly shows that the legislative intent to use 'shall' used in Section 18 of the said Act is to make the same mandatory.

28. Thus, the object and reasons for enacting said Act, the scope of the said Act, relevant provisions of the said Act and the decision of the Supreme Court in *Imperia Structures Limited* (supra) and *Newtech Promoters* (supra) make it very clear that the allottee has an unqualified right to either withdraw from the Project and to seek refund of compensation and/or interest and if the allottee does not intend to withdraw from the project in spite of delay, then the allottee has been given the right to receive interest per month till receipt of possession. It is very clear that the same is an unqualified right of the allottee and there cannot be any embargo or constraints on the exercise of said right.

29. In the above background, it is necessary to consider the submission of Mr. Vineet Naik, learned Senior Counsel that for the delay which has been caused by various authorities in issuing permissions, sanctions, occupation certificates etc., the Appellant-Promoter cannot be held liable. It is significant to note that Section 71 of the said Act provides the power of adjudication of the compensation under Sections 12, 14, 18 and 19. The same is to be done by the adjudicating officer. For that purpose, it is provided that Section 72 of the said Act sets out the factors, which can be taken into consideration while determining

the compensation. Section 71 and Section 72 reads as under:

"Section 71: Power to adjudicate.

71. (1) For the purpose of adjudging compensation under sections 12, 14, 18 and section 19, the Authority is appointed 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:

Provided that any person whose complaint in respect of matters covered under sections 12, 14, 18 and section 19 is pending before the Consumer Disputes Redressal Forum or the Consumer Disputes Redressal Commission or the National Consumer Redressal Commission, established under section 9 of the Consumer Protection Act, 1986, on or before the commencement of this Act, he may, with the permission of such Forum or Commission, as the case may be, withdraw the complaint pending before it and file an application before the adjudicating officer under this Act.

(2) The application for adjudging compensation under sub-section (1), shall be dealt with by the adjudicating officer as expeditiously as possible and dispose of the same within a period of sixty days from the date of receipt of the application:

Provided that where any such application could not be disposed of within the said period of sixty days, the adjudicating officer shall record his reasons in writing for not disposing of the application within that period.

(3) While holding an inquiry the adjudicating officer shall have power to summon and enforce the attendance of any person acquainted with the facts and circumstances of the case to give evidence or to produce any document which in the opinion of the adjudicating officer, may be useful for or relevant to the subject matter of the inquiry and if, on such

inquiry, he is satisfied that the person has failed to comply with the provisions of any of the sections specified in sub-section (1), he may direct to pay such compensation or interest, as the case may be, as he thinks fit in accordance with the provisions of any of those sections.

72 : Factors to be taken into account by the adjudicating officer.

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."

(Emphasis added)

30. Thus, it is clear that the factors which can be taken into consideration while determining the compensation and interest under Section 71 are not required to be taken into consideration for determination of the interest which the allottee is entitled to for delay in handing over of the possession. It is very clear that for adjudication of the compensation and interest, various factors are enumerated including the amount of disproportionate gain or unfair advantage gained as a result of the default or the amount of loss caused as a result

of the default. However, the enquiry which is contemplated for determination of the interest, is very limited in scope. The enquiry, which is contemplated to decide right of allottee as far as proviso to Section 18(1) is concerned i.e. seeking interest for delayed possession, is only concerning the contractual date of handing over of possession and the delay in handing over of possession. It is very clear that the causes for delay are immaterial as the allottee has already paid the substantial consideration to the promoter with the expectation that he or she will get the possession on a particular date. As noted earlier the Supreme Court in ***Newtech Promoters*** (supra) observed that the real estate market in India has a peculiar feature. The buyer borrows money to pay for a house and simultaneously plays the role of a financier as promoters collect consideration upfront and this puts the buyer in a very vulnerable position-the weakest stakeholder with a high financial exposure. Thus, for the allottee who does not wish to withdraw from the project where possession is delayed, an unqualified right is given to the allottee to receive interest per month till receipt of the possession of the apartment. It is significant to note that the legislature has given only right to get interest and not the compensation to such an allottee who does not withdraw from the project in spite of delay in receiving

possession. Thus, it is clear that the factors enumerated in Section 72 of the said Act are not applicable in such a case.

31. Mr. Vineet Naik, learned Senior Counsel appearing on behalf of the Appellants has relied on paragraph 308 of *Neelkamal Realtors* (supra). The same reads as under :-

“308. A perusal of Section 18 indicates that payment of interest including compensation or interest, as the case may be, is payable on account of default committed by the promoter. Although this Section does not consider a situation where the promoter is unable to complete or handover possession for no fault of his own, it would be open to him to claim frustration in such a case and return the money to the allottee with interest thereby stopping the interest that is to be paid till handing over possession. The provisions of RERA ensure that the allottees’ money is not misused or unreasonably retained by the promoter.”

(Emphasis added)

Above paragraph shows that the same recognises the right of the allottee to receive interest, compensation or interest in terms of Section 18 of the said Act. Thus, right of allottee to receive interest for delayed possession is recognised.

32. Perusal of the said Division Bench decision in *Neelkamal Realtors*

(supra) shows that from paragraph 1 to paragraph 203, opinion of Justice Naresh H. Patil, (as he then was) was recorded and thereafter, opinion of Justice R. G. Ketkar, (as he then was), has been recorded. Justice Ketkar was considering whether first proviso to Section 3(1), Section 3(2)(a), first proviso to Section 6, Sections 7, 8, 18, 22, 38, 40, 46, 59, 60, 61, 63 and 64 of the said Act are penal in nature. The relevant discussion is from paragraph 302 to 312. Thus, it is clear that paragraph 308 cannot be read in isolation.

33. In any case, the decision of the Supreme Court in *Newtech Promoters* (supra) as well as in *Imperia Structures Limited* (supra) makes it clear that the Supreme Court has held that right of the allottees as provided under Section 18 of the said Act is an unqualified right. As already set out, the allottee has got right to withdraw from the project and in that case, the allottee is entitled to refund with interest as well as for compensation and if an allottee does not withdraw from the project then his or her only right is to get interest per month for delayed possession and both these rights are unqualified. As far as the right to compensation is concerned, it has to be determined by the Adjudicating Officer and while determining the quantum of compensation or interest under Section 71, the factors which are enumerated in Section 72 are

required to be taken into consideration. Therefore, there is no substance in the contention raised by Mr. Naik that the promoters are not liable to pay interest if delay in handing over possession is on account of delay in receiving NOC and Occupation Certificate from the Corporation. The said factors will be relevant for determination of the compensation or interest in case the concerned allottee withdraws from the project.

34. In these Second Appeals almost all the allottees i.e. buyers have paid almost 95% or more of the agreed consideration in or around the year 2015. The date of Agreements are in 2013-2014/ 2015 and in most of the cases the agreed date of possession was in June 2015. It is an undisputed position that the possession has been actually handed over to the allottees after about more than 4 years. Thus, this is a case where the promoter had accepted the huge consideration and received almost entire consideration about 4 years ago and the possession has been handed over after a delay of more than 4 years.

35. In paragraph 25 of ***Newtech Promoters*** (supra), it has been held that the unqualified right of the allottee to seek refund under Section 18(1)(a) and Section 19(4) of the said Act is not dependent on any contingencies or stipulations thereof. The same will also apply to the allottees who do not intend to withdraw from the project and are

entitled to receive interest for delayed possession. It is very clear that the allottees are not responsible for obtaining required permissions/sanctions and Occupation Certificate from the relevant statutory authorities.

36. Mr. Vineet Naik, learned Senior Counsel has also raised the contention that the observations of the Supreme Court regarding Section 18 of the said Act constitute as *obiter dicta* and, therefore, the same do not form a binding precedent. He relied on the decision of the Supreme Court in *Director of Settlements, A.P and Ors. V. M.R. Apparao and Anr.*⁶ and more particularly on paragraph 7 of the same, which reads as under :

“7. So far as the first question is concerned, Article 141 of the Constitution unequivocally indicates that the law declared by the Supreme Court shall be binding on all courts within the territory of India. The aforesaid Article empowers the Supreme Court to declare the law. It is, therefore, an essential function of the Court to interpret a legislation. The statements of the Court on matters other than law like facts may have no binding force as the facts of two cases may not be similar. But what is binding is the ratio of the decision and not any finding of facts. It is the principle found out upon a

⁶ (2002) 4 SCC 638

reading of a judgment as a whole, in the light of the questions before the Court that forms the ratio and not any particular word or sentence. To determine whether a decision has “declared law” it cannot be said to be a law when a point is disposed of on concession and what is binding is the principle underlying a decision. A judgment of the Court has to be read in the context of questions which arose for consideration in the case in which the judgment was delivered. An “obiter dictum” as distinguished from a ratio decidendi is an observation by the Court on a legal question suggested in a case before it but not arising in such manner as to require a decision. Such an obiter may not have a binding precedent as the observation was unnecessary for the decision pronounced, but even though an obiter may not have a binding effect as a precedent, but it cannot be denied that it is of considerable weight. The law which will be binding under Article 141 would, therefore, extend to all observations of points raised and decided by the Court in a given case. So far as constitutional matters are concerned, it is a practice of the Court not to make any pronouncement on points not directly raised for its decision. The decision in a judgment of the Supreme Court cannot be assailed on the ground that certain aspects were not considered or the relevant provisions were not brought to the notice of the Court (see Ballabhadras Mathurdas Lakhani v. Municipal Committee, Malkapur [(1970) 2 SCC 267 : AIR 1970 SC 1002] and AIR 1973 SC

794 [(sic)]). ***When the Supreme Court decides a principle it would be the duty of the High Court or a subordinate court to follow the decision of the Supreme Court.*** A judgment of the High Court which refuses to follow the decision and directions of the Supreme Court or seeks to revive a decision of the High Court which had been set aside by the Supreme Court is a nullity. (See *Narinder Singh v. Surjit Singh* [(1984) 2 SCC 402] and *Kausalya Devi Bogra v. Land Acquisition Officer* [(1984) 2 SCC 324] .) We have to answer the first question bearing in mind the aforesaid guiding principles. We may refer to some of the decisions cited by Mr Rao in elaborating his arguments contending that the judgment of this Court dated 6-2-1986 [*State of A.P. v. Rajah of Venkatagiri*, (2002) 4 SCC 660] cannot be held to be a law declared by the Court within the ambit of Article 141 of the Constitution. Mr Rao relied upon the judgment of this Court in the case of *M.S.M. Sharma v. Sri Krishna Sinha* [AIR 1959 SC 395 : 1959 Supp (1) SCR 806] wherein the power and privilege of the State Legislature and the fundamental right of freedom of speech and expression including the freedom of the press was the subject-matter of consideration. In the aforesaid judgment it has been observed by the Court that the decision in *Gunupati Keshavram Reddy v. Nafisul Hasan* [(1952) 1 SCC 343 : AIR 1954 SC 536 : 1954 Cri LJ 1704] relied upon by the counsel for the petitioner which entirely proceeded on a concession of the counsel cannot be regarded

as a considered opinion on the subject. There is no dispute with the aforesaid proposition of law.”

(Emphasis added)

37. The Supreme Court in the case of ***Union of India & Ors. V Dhanwanti Devi & Ors.***⁷ discussed the aspect of binding precedent. The relevant discussion is in paragraphs 9 and 10 which reads as under :

“9. Before advertng to and considering whether solatium and interest would be payable under the Act, at the outset, we will dispose of the objection raised by Shri Vaidyanathan that Hari Krishan Khosla case [1993 Supp (2) SCC 149] is not a binding precedent nor does it operate as ratio decidendi to be followed as a precedent and is per se per incuriam. It is not everything said by a Judge while giving judgment that constitutes a precedent. The only thing in a Judge's decision binding a party is the principle upon which the case is decided and for this reason it is important to analyse a decision and isolate from it the ratio decidendi. According to the well-settled theory of precedents, every decision contains three basic postulates—(i) findings of material facts, direct and inferential. An inferential finding of facts is the inference which the Judge draws from the direct, or perceptible facts; (ii) statements of the principles of law applicable to the legal problems disclosed by the facts; and (iii) judgment based on

⁷ (1996) 6 SCC 44

the combined effect of the above. A decision is only an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically follows from the various observations made in the judgment. Every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expressions which may be found there is not intended to be exposition of the whole law, but governed and qualified by the particular facts of the case in which such expressions are to be found. It would, therefore, be not profitable to extract a sentence here and there from the judgment and to build upon it because the essence of the decision is its ratio and not every observation found therein. The enunciation of the reason or principle on which a question before a court has been decided is alone binding as a precedent. The concrete decision alone is binding between the parties to it, but it is the abstract ratio decidendi, ascertained on a consideration of the judgment in relation to the subject-matter of the decision, which alone has the force of law and which, when it is clear what it was, is binding. It is only the principle laid down in the judgment that is binding law under Article 141 of the Constitution. A deliberate judicial decision arrived at after hearing an argument on a question which arises in the case or is put in issue may constitute a precedent, no matter for what reason, and the precedent by long recognition may mature into rule

of stare decisis. It is the rule deductible from the application of law to the facts and circumstances of the case which constitutes its ratio decidendi.

10. Therefore, in order to understand and appreciate the binding force of a decision it is always necessary to see what were the facts in the case in which the decision was given and what was the point which had to be decided. No judgment can be read as if it is a statute. A word or a clause or a sentence in the judgment cannot be regarded as a full exposition of law. Law cannot afford to be static and therefore, Judges are to employ an intelligent technique in the use of precedents.”

(Emphasis added)

38. In the decision of *Shah Faesal v. Union of India*⁸, the Constitutional Bench of the Supreme Court while considering the constitutional challenge to two Constitution Orders issued by the President of India in exercise of his powers under Article 370 of the Constitution of India, *inter alia*, quoted with approval above decision of the Supreme Court in *Union of India* (supra). The said concepts of *ratio decidendi* and the *obiter dictum* are explained in paragraphs 25 and 26, which read as under :

25. *In this line, further enquiry requires us to examine, to*

⁸ (2020) 4 SCC 1

what extent does a ruling of coordinate Bench bind the subsequent Bench. A judgment of this Court can be distinguished into two parts : ratio decidendi and the obiter dictum. The ratio is the basic essence of the judgment, and the same must be understood in the context of the relevant facts of the case. The principal difference between the ratio of a case, and the obiter, has been elucidated by a three-Judge Bench decision of this Court in Union of India v. Dhanwanti Devi [Union of India v. Dhanwanti Devi, (1996) 6 SCC 44] wherein this Court held that : (SCC pp. 51-52, para 9) ...

26. *The aforesaid principle has been concisely stated by Lord Halsbury in Quinn v. Leathem [Quinn v. Leathem, 1901 AC 495 (HL)] in the following terms : (AC p. 506)*

“... that every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expressions which may be found there are not intended to be expositions of the whole law, but governed and qualified by the particular facts of the case in which such expressions are to be found. The other is that a case is only an authority for what it actually decides.”

(emphasis supplied)

39. Thus, it is settled legal position that in order to understand and appreciate the binding force of a decision it is always necessary to see

what were the facts in the case in which the decision was given and what was the point which had to be decided. The enunciation of the reason or principle on which a question before a court has been decided is alone binding as a precedent. A deliberate judicial decision arrived at after hearing an argument on a question which arises in the case or is put in issue may constitute a precedent, no matter for what reason, and the precedent by long recognition may mature into rule of *stare decisis*. It is the rule deductible from the application of law to the facts and circumstances of the case which constitutes its *ratio decidendi*.

40. In view of the above legal position, it is necessary to discuss the decision of ***Imperia Structures Limited*** (supra) and ***Newtech Promoters*** (supra) to ascertain the *ratio* of the same.

41. The challenge in ***Imperia Structures Limited*** (supra) was to the common Judgment and Order dated 12th September 2018 passed by the National Consumer Dispute Redressal Commission, New Delhi. In group of consumer cases, the Supreme Court was considering whether the allottee under the said Act can also approach the consumer Courts established under the provisions of Consumer Protection Act, 1986. From that perspective, the Supreme Court has analysed the rights of the allottee under the said Act. The relevant discussion is to be found in

paragraphs 23 to 30, which read as under :

“23. It has consistently been held by this Court that the remedies available under the provisions of the CP Act are additional remedies over and above the other remedies including those made available under any special statutes; and that the availability of an alternate remedy is no bar in entertaining a complaint under the CP Act.

24. Before we consider whether the provisions of the RERA Act have made any change in the legal position stated in the preceding paragraph, we may note that an allottee placed in circumstances similar to that of the complainants, could have initiated the following proceedings before the RERA Act came into force:

(A) If he satisfied the requirements of being a “consumer” under the CP Act, he could have initiated proceedings under the CP Act in addition to normal civil remedies.

(B) However, if he did not fulfil the requirements of being a “consumer”, he could initiate and avail only normal civil remedies.

(C) If the agreement with the developer or the builder provided for arbitration:

(i) in cases covered under Clause (B) hereinabove, he could initiate or could be called upon to invoke the remedies in arbitration.

(ii) in cases covered under Clause (A) hereinabove, in accordance with law laid down in *Emaar MGF Land Ltd. v. Aftab Singh* [Emaar MGF Land Ltd. v. Aftab Singh, (2019) 12 SCC 751 : (2018) 5 SCC (Civ) 652] , he could still choose to proceed under the CP Act.

25. In terms of Section 18 of the RERA Act, if a promoter fails to complete or is unable to give possession of an apartment duly completed by the date specified in the agreement, the promoter would be liable, on demand, to return the amount received by him in respect of that apartment if the allottee wishes to withdraw from the Project. Such right of an allottee is specifically made “without prejudice to any other remedy available to him”. The right so given to the allottee is unqualified and if availed, the money deposited by the allottee has to be refunded with interest at such rate as may be prescribed. The proviso to Section 18(1) contemplates a situation where the allottee does not intend to withdraw from the Project. In that case he is entitled to and must be paid interest for every month of delay till the handing over of the possession. It is up to the allottee to proceed either under Section 18(1) or under proviso to Section 18(1). The case of Himanshu Giri came under the latter category. The RERA Act thus definitely provides a remedy to an allottee who wishes to withdraw from the Project or claim return on his investment.

26. *It is, therefore, required to be considered whether the remedy so provided under the RERA Act to an allottee is the only and exclusive modality to raise a grievance and whether the provisions of the RERA Act bar consideration of the grievance of an allottee by other fora.*

27. *Section 79 of the RERA Act bars jurisdiction of a civil court to entertain any suit or proceeding in respect of any matter which the Authority or the adjudicating officer or the Appellate Tribunal is empowered under the RERA Act to determine. Section 88 specifies that the provisions of the RERA Act would be in addition to and not in derogation of the provisions of any other law, while in terms of Section 89, the provisions of the RERA Act shall have effect notwithstanding anything inconsistent contained in any other law for the time being in force.*

28. *On plain reading of Section 79 of the RERA Act, an allottee described in Clause (B) stated in para 24 hereinabove, would stand barred from invoking the jurisdiction of a civil court. However, as regards the allottees who can be called “consumers” within the meaning of the CP Act, two questions would arise; (a) whether the bar specified under Section 79 of the RERA Act would apply to proceedings initiated under the provisions of the CP Act; and (b) whether there is anything inconsistent in the provisions of the CP Act with that of the RERA Act.*

29. *In Malay Kumar Ganguly v. Sukumar Mukherjee*

[Malay Kumar Ganguly v. Sukumar Mukherjee, (2009) 9 SCC 221 : (2009) 3 SCC (Civ) 663 : (2010) 2 SCC (Cri) 299] , it was held by this Court: (SCC p. 252, para 43)

“43. ... The proceedings before the National Commission are although judicial proceedings, but at the same time it is not a civil court within the meaning of the provisions of the Code of Civil Procedure. It may have all the trappings of the civil court but yet it cannot be called a civil court. (See Bharat Bank Ltd. v. Employees [Bharat Bank Ltd. v. Employees, 1950 SCC 470 : AIR 1950 SC 188 : 1950 SCR 459] and Nahar Industrial Enterprises Ltd. v. Hong Kong & Shanghai Banking Corpn. [Nahar Industrial Enterprises Ltd. v. Hong Kong & Shanghai Banking Corpn., (2009) 8 SCC 646 : (2009) 3 SCC (Civ) 481])”

30. On the strength of the law so declared, Section 79 of the RERA Act does not in any way bar the Commission or Forum under the provisions of the CP Act to entertain any complaint.”

(Emphasis added)

42. Thus, the Supreme Court in *Imperia Structures Limited* (supra) was considering rights of allottee under Section 18 of the said Act to determine whether the allottee has remedy under the Consumer Protection Act as well as under the said Act. To determine the

availability of remedies, the Supreme Court considered whether under the said Act an allottee has a right to get refund of the entire amount collected from the allottee towards consideration of the flat in case allottee seeks withdrawal from the project and if he or she does not intend to withdraw from the project then whether he or she is entitled to receive interest for delayed possession. The Supreme Court was considering the said aspect as it wanted to ascertain the remedies available to these allottees. It is in this context that, the Supreme Court has considered the rights given under Section 18 of the said Act and has held that an allottee can adopt remedies under Consumer Protection Act as well as the remedies under the said Act. Thus, the Supreme Court has considered the rights of allottees under the said Act. On the touchstone of the law laid down by the Supreme Court in *Director of Settlements* (supra), *Union of India* (supra) and *Shah Faesal* (supra), it cannot be said that the observation in paragraph 25 of the *Imperia Structures Limited* (supra) constitutes as *obiter*.

43. In *Newtech Promoters* (supra), the dispute before the Supreme Court is set out in paragraphs 2 to 4. The relevant portion of the said paragraphs, reads as under :

“2. The present batch of appeals are filed at the instance of promoter/real estate developer assailing the common issues and certain provisions of The Real Estate(Regulation and Development) Act, 2016 (hereinafter being referred to as “the Act”), The Uttar Pradesh Real Estate(Regulation and Development) Rules, 2016 (hereinafter referred to as “the Rules”) and the functioning of the Uttar Pradesh Real Estate Regulatory Authority (hereinafter referred to as “the Authority”), although being decided by separate orders by the High Court of Allahabad, since the self-same questions are involved with the consent are being decided by the present judgment.

3. The respondents herein are the allottees/home buyers who have made their substantial investment from their hard earned savings under the belief that the promotor/real estate developer will hand over possession of the unit in terms of home buyer's agreement but their bonafide belief stood shaken when the promoters failed to hand over possession of a unit/plot/building in terms of the agreement and complaints were instituted by the home buyers for refund of the investment made along with interest under Section 31 of the Act.

4. The impugned orders came to be passed by the single member of the authority on the complaint instituted at the instance of the home buyers/allottees after hearing the parties with the direction to refund the principal amount

along with interest(MCLR + 1%) as prescribed by the State Government under the Act. In the ordinary course of business, the order passed by the authority is appealable under Section 43(5) of the Act provided the statutory compliance of pre-deposit being made under proviso to Section 43(5) before the Appellate Tribunal but the promoter/real estate developers approached the High Court by filing a writ petition under Articles 226 and 227 of the Constitution questioning the order passed by the authority holding it to be without jurisdiction as it has been passed by a single member of the authority who according to the appellants holds no jurisdiction to pass such orders of refund of the amount as contemplated under Section 18 of the Act and have also challenged the condition of pre-deposit as envisaged under proviso to Section 43(5) of the Act for filing of a statutory appeal and raised certain ancillary questions for consideration in writ jurisdiction of the High Court of Allahabad. Being aggrieved by the orders passed by the High Court dismissing their writ petitions, the present batch of appeals have been preferred at the instance of the promoters/real estate developers.”

(Emphasis added)

44. Thus, it is clear that in ***Newtech Promoters*** (supra), the Supreme Court was considering the rights of allottees/home buyers who have made a substantial investment from their hard earned money/loan and

the promoters have failed to hand over the possession in terms of the Agreement. The only difference is that in that case, the claimants have sought refund along with interest. In that context, the Supreme Court has considered the scheme of the Act and also scheme of Section 18 of the said Act. The relevant discussion is to be found in paragraphs 19 to 25 of the same, which read as under :

“19. Section 18(1) of the Act spells out the consequences if the promoter fails to complete or is unable to give possession of an apartment, plot or building either in terms of the agreement for sale or to complete the project by the date specified therein or on account of discontinuance of his business as a developer either on account of suspension or revocation of the registration under the Act or for any other reason, the allottee/home buyer holds an unqualified right to seek refund of the amount with interest at such rate as may be prescribed in this behalf.

20. Section 18(2) of the Act mandates that in case, loss is caused to allottee due to defective title of the land, on which the project is being developed or has been developed, the promoter shall compensate the allottee and such claim for compensation under Section 18(2) shall not be barred by limitation provided under any law for the time being in force.

21. Section 18(3) of the Act states that where the promoter fails to discharge any other obligation under the Act

or the rules or regulations framed thereunder or in accordance with the terms and conditions of the agreement for sale, the promoter shall be liable to pay 'such compensation' to the allottees, in the manner as prescribed under the Act.

22. *If we take a conjoint reading of sub-sections (1), (2) and (3) of Section 18 of the Act, the different contingencies spelt out therein, (A) the allottee can either seek refund of the amount by withdrawing from the project; (B) such refund could be made together with interest as may be prescribed; (C) in addition, can also claim compensation payable under Sections 18(2) and 18(3) of the Act; (D) the allottee has the liberty, if he does not intend to withdraw from the project, will be required to be paid interest by the promoter for every months' delay in handing over possession at such rates as may be prescribed.*

23. *Correspondingly, Section 19 of the Act spells out "Rights and duties of allottees". Section 19(3) makes the allottee entitled to claim possession of the apartment, plot or building, as the case may be. Section 19(4) provides that if the promoter fails to comply or being unable to give possession of the apartment, plot or building in terms of the agreement, it makes the allottees entitled to claim the refund of amount paid along with interest and compensation in the manner prescribed under the Act.*

24. *Section 19(4) is almost a mirror provision to Section*

18(1) of the Act. Both these provisions recognize right of an allottee two distinct remedies, viz, refund of the amount together with interest or interest for delayed handing over of possession and compensation.

25. The unqualified right of the allottee to seek refund referred under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottee, if the promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the allottee/home buyer, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act with the proviso that if the allottee does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed.”

(Emphasis added)

45. By no stretch of imagination, it can be said that the discussion of the Supreme Court in *Newtech Promoters* (supra) concerning Section 18 is *obiter*. Therefore, there is no substance in the contention raised by

Mr. Naik, learned Senior Counsel that the observations in ***Imperia Structures Limited*** (supra) and ***Newtech Promoters*** (supra) are *obiter* and not binding on this Court.

46. It is also relevant to note that the Supreme Court in ***Secundrabad Club v. CIT***⁹ has held that even *obiter* of the Supreme Court under Article 141 is binding on the Courts. The relevant paragraph reads as under :-

*“76. As against the ratio decidendi of a judgment, an obiter dictum is an observation by a court on a legal question which may not be necessary for the decision pronounced by the court. However, the obiter dictum of the Supreme Court is binding under Article 141 to the extent of the observations on points raised and decided by the Court in a case. **Although the obiter dictum of the Supreme Court is binding on all courts, it has only persuasive authority as far as the Supreme Court itself is concerned.**”*

(Emphasis added)

47. Thus, even assuming that the observations in ***Imperia Structures Limited*** (supra) and ***Newtech Promoter*** (supra) with respect to Section

9 2023 SCC OnLine SC 1004

18 are *obiter*, the same will be binding on Courts. Therefore, there is no substance in the first substantial question of law raised by, Mr. Naik, learned Senior Counsel.

48. The second substantial question of law raised by Mr. Naik, learned Senior Counsel appearing for the Appellant is as follows:-

Second substantial question of law:

“Whether in view of the approval of extension in date of handing over of possession by the allottees, allottees continue to remain entitled to claim interest?”

49. Mr. Naik submitted that the present project was not an ongoing project when the said Act came into force. He submitted that on 1st May 2017 the project was registered under the provisions of the said Act and subsequently, the date of completion of project was revised to 3rd December 2018 and subsequently further revised to 30th August 2019 only on account of non-receipt of NOC from MMRDA and on account of frequent changes in plan as requested by MMRDA. Therefore, he submitted that as the extension has been granted by RERA, the allottees will not be entitled for the interest till the extension of period granted for handing over possession has been revised by RERA. However, it is to be seen that as per the various Agreements

executed with individual allottees, the Appellant-Promoter has agreed to hand over possession on particular dates and therefore, the said right to receive possession of the apartment is a contractual right. The said right cannot be wiped out only because the Authorities under the said Act have extended the date. The objective of extending the said dates is totally different. The aim is to bring the projects which are ongoing on the date of commencement of the said Act and for which the Completion Certificate has not been issued within the ambit of the said Act so that the promoters and the allottees will be entitled for the rights and obligations provided under the said Act and the aggrieved home buyer/person can approach the RERA and thereafter, the Appellate Tribunal. However, granting registration of such ongoing project under the said Act and extension of period for such registration or for the date of completion of the project in any manner will not wipe out the contractual obligations between the parties promoter/developer and apartment/flat purchaser. Therefore, there is no substance in the second substantial question of law raised by Mr. Naik.

50. The third substantial question of law raised by Mr. Naik, learned Senior Counsel appearing for the Appellant is as follows:-

Third substantial question of law:

“Whether in respect of an ongoing project can the period of interest awarded be retrospective to the date of registration and the new date of completion of the project as per declaration required to be made under section 4(2)(c) r/w Rule 4 of the RERA Act?”

51. In this behalf, it is also important to note that in ***Newtech Promoters*** (supra), the Supreme Court was considering the question whether the said Act is ‘retrospective’ or ‘retroactive’ in its operation and what will be its legal consequences. The Supreme Court, after considering the scheme of the said Act, has held that the said Act, in its application is retroactive in character. It has been further held that the project which has already been completed and to which the Completion Certificate has already been granted will not come under the purview of the said Act and, therefore, vested or accrued rights, if any, in no manner are affected. It has been further clarified that, it will apply prospectively after getting the ongoing projects registered under Section 3 of the said Act and, then such projects will have to follow the mandate of the said Act.

52. It is significant to note the discussion in ***Neelkamal Realtors*** (supra), in this behalf in Paragraph 137, which reads as under :-

*“137. The another plea raised is as to why a promoter shall pay interest for the past contractual rights, in case of failure to complete the project after registration under RERA, till the possession is handed over. Under the scheme of the RERA it is clear by now that a promoter has to self assess and declare time period during which he would complete the project. But in case, inspite of making genuine efforts, a promoter fails to complete the project, then the concerned authorities, adjudicators, forums, tribunals would certainly look into genuine cases and mould their reliefs accordingly. We do not find that on that count the provisions of Section 18(1)(a) are to be declared as contrary and violative of Articles 14 and 19(1)(g). Considering the scheme of the RERA and the provisions of Section 18(1)(b), we are of the view that the same are not contrary to Articles 14 and 19(1)(g) of the Constitution. The provisions cannot be struck down on the ground of **challenge that its operation is retroactive in nature**. Neither the provisions of Section 18(1)(a) and (b) violate Article 20 of the Constitution.”*

(Emphasis added)

It is obvious that the said discussion of **Neelkamal Realtors** (supra) is regarding compensation and for the purpose of determining the

compensation what is required to be noted is that Section 72 of the said Act specifies the factors which can be taken into consideration. With regards to the delay in completing the project or in handing over possession, if compensation is sought by the allottees by withdrawing from the project then various factors can be taken into consideration including the delay by the Municipal Authorities, Sanctioning Authority, etc. However, if the allottee does not intend to withdraw from the project and there is a delay in handing over possession than the agreed date of possession then, the allottee is entitled for the interest per month till possession is handed over. It is clear that in such a case, the allottee has already paid substantial amount to the promoter and, in spite of the same fails to get possession of the purchased apartment. Therefore, there is no substance in the third substantial question of law raised by Mr. Vineet Naik, learned Senior Counsel.

53. Therefore, there is no substance in any of the substantial questions of law raised by Mr. Naik, learned Senior Counsel appearing for the Appellants in first group of Second Appeals.

54. As far as second group of 22 Second Appeals are concerned, which are regarding the dismissal of the Appeals filed before the Appellate Tribunal for non-compliance of Section 43(5) of the said Act,

it is the contention of Mr. Vinod Talreja, learned counsel appearing for the Appellants that the said Section 43(5) is not mandatory. However, it is to be noted that in ***Newtech Promoters*** (supra), the Supreme Court was specifically considering the point where the condition of pre-deposit under the proviso to Section 43(5) of the said Act for entertaining substantive right of the Appeal is sustainable in law. The said aspect has been discussed in ***Newtech Promoters*** (supra) from paragraph 122 to 138 of the said judgment. The Supreme Court, in paragraph 138, has held as follows :-

“138. In our considered view, the obligation cast upon the promoter of pre-deposit under Section 43(5) of the Act, being a class in itself, and the promoters who are in receipt of money which is being claimed by the home buyers/allottees for refund and determined in the first place by the competent authority, if legislature in its wisdom intended to ensure that money once determined by the authority be saved if appeal is to be preferred at the instance of the promoter after due compliance of pre-deposit as envisaged under Section 43(5) of the Act, in no circumstance can be said to be onerous as prayed for or in violation of Articles 14 or 19(1)(g) of the Constitution of India.”

(Emphasis added)

55. While considering the provisions of Sub-Section (5) of Section 43 of the said Act, the Supreme Court in paragraph 123 has held that as far as imposition of penalty is concerned, the promoter has to deposit at least 30% of the penalty amount or such higher amount as may be directed by the Appellate Tribunal and if the Appeal is against any other Order which involves the return of the amount to the allottee, then the promoter is under obligation to deposit with the Appellate Tribunal the total amount to be paid to the allottee which includes interest and compensation imposed on him or her, if any, or with both, as the case may be, before the appeal is to be instituted. Paragraph 123 reads as under :

“123. It may straightaway be noticed that Section 43(5) of the Act envisages the filing of an appeal before the appellate tribunal against the order of an authority or the adjudicating officer by any person aggrieved and where the promoter intends to appeal against an order of authority or adjudicating officer against imposition of penalty, the Promoter has to deposit at least 30 per cent of the penalty amount or such higher amount as may be directed by the appellate tribunal.

Where the appeal is against any other order which involves the return of the amount to the allottee, the promoter is under obligation to deposit with the appellate tribunal the total amount to be paid to the allottee which includes interest and compensation imposed on him, if any, or with both, as the case may be, before the appeal is to be instituted.”

(Emphasis added)

56. It is an admitted position that in the present case, awarded amount is interest for delayed payment. Therefore, in terms of the Supreme Court decision in ***Newtech Promoters*** (supra), the Appellant was required to deposit 100% amount as directed by the RERA before the Appellate Tribunal. Therefore, there is no illegality committed by the learned Appellate Tribunal in dismissing the 22 Appeals for non-compliance of requirement of Section 43(5) of the said Act. Therefore, there is no substance in the second set of 22 Second Appeals and the same are also dismissed.

57. In view of the above discussion all the Second Appeals are dismissed, however, with no order as to costs. In view of dismissal of the Second Appeals, nothing survives in the Interim Applications and the same are also disposed of.

58. At this stage, the learned counsel appearing for the Appellant seeks stay of this order. However, the Appellant has not deposited any amount before the learned Appellate Tribunal in compliance with Section 43(5) of the said Act which is a mandatory provision, and in any case, there is a delay of more than 4 years in handing over possession of the flats after receipt of the consideration amount of more than 95% of the Agreement consideration amount. Therefore, the said request of stay is rejected.

[MADHAV J. JAMDAR, J.]