

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.688 OF 2023
WITH
INTERIM APPLICATION No.17952 OF 2023
WITH
INTERIM APPLICATION No.15263 OF 2023
IN
SECOND APPEAL NO.688 OF 2023

M/s. Pragatej Builders And Developers Pvt. Ltd.] A Private Limited Company, having its registered] office at, Flat No.B, First Floor, Plot No.185,] Jagdish Building, 15 th Road, Chembur (E),]	... Appellant / Orig. Respondent
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Versus

1. Mr. Abhishek Anuj Sukhadia and] 2. Mrs. Chaya Anuj Sukhadia,] Both having their present common address at] Bombay Dyeing Lane, C-2/62, Texila Society] Off. V. S. Marg, Prabhadevi, Mumbai 400025.]	... Respondents/ Orig. Complainants
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SECOND APPEAL NO.689 OF 2023
WITH
INTERIM APPLICATION No.587 OF 2024
IN
SECOND APPEAL NO.689 OF 2023

M/s. Pragatej Builders And Developers Pvt. Ltd.] A Private Limited Company, having its registered] office at, Flat No.B, First Floor, Plot No.185,] Jagdish Building, 15 th Road, Chembur (E),]	... Appellant / Orig. Respondent
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Versus

1. Mr. Abhishek Anuj Sukhadia and] <i>URS</i>	
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2. Mrs. Chaya Anuj Sukhadia,	]	
Both having their present common address at	]	
Bombay Dyeing Lane, C-2/62, Texila Society	]	... Respondents /
Off. V. S. Marg, Prabhadevi, Mumbai 400025.	]	Orig. Complainants

Mr. K.K. Malpathak a/w Mr. Indravadan Buddhadev for Appellants in both Appeals.

Mr. Farhan Khan a/w Mr. Rubin Vakil, Mr. Manish Doshi, Ms. Heena T. & Ms. Ankita i/b Vimadalal & Co. for Respondents in both Appeals and for Applicants in IA No.15263/2023.

CORAM :- SANDEEP V. MARNE, J.

DATE :- 23 JANUARY, 2024

JUDGMENT :

1. These two Appeals are filed by the Promoter challenging common Judgment and Order dated 7 February 2023 in Appeal No.AT0006000000053317 of 2021 filed by the Respondents/flat purchasers and in Appeal No.AT0006000000093905 of 2022 filed by the promoter. Both Appeals were filed by the Respondents / flat purchasers and the Appellant / promoter challenging the order dated 27 July 2021 passed by the Maharashtra Real Estate Regulation Authority, Mumbai ('MahaRERA'). The Appellant / Promoter is aggrieved by the MahaRERA Tribunal's decision in directing payment of interest to the Respondents from 1 July 2016 instead of 1 January 2020. The Appellant is also aggrieved by rejection of prayer for exclusion of COVID pandemic period from 25 March 2020 to 27 July 2021 and 27 July 2021 to 30 September 2021 for interest liability.

2. Briefly stated, facts of the case are that the Appellant / Promoter undertook construction of building by implementing Slum

Rehabilitation Scheme on Plot No.21/5, 21/6 (pt), South Estate Scheme No.57, Rafi Ahmed Kidwai Marg, Wadala (West), Mumbai, under which it is expected to accommodate 182 eligible slum dwellers. It is Appellant's case that it has constructed the building made for rehabilitation of slum dwellers and Occupancy Certificate of that building was issued in the year 2013. That, the Appellant thereafter commenced construction of sale component building and clubhouse on the plot.

3. By registered Agreement for Sale executed with the Respondents, the Appellant agreed to sell, transfer and assign Flat No.901 admeasuring 68.41 sq.mtrs. carpet area on the 9th floor of the building 'Vishnuchandra Sky' together with 2 car parking spaces for total consideration of Rs.2,02,40,000/- plus taxes and other amount. Out of the said agreed amount of consideration, Respondents paid Rs.1,49,40,000/- to the Appellant with Rs.53,00,000/- remaining payable towards balance consideration. It is Respondents' case that as per the agreement, possession of the flat was to be handed over on or before 31 December 2015 with a further grace period of 6 months i.e. by 30 June 2016.

4. It appears that the building could not be constructed and possession of the flat could not be handed over to the Respondents before 30 June 2016. Real Estate (Regulation and Development) Act, 2016 (**RERA**) came into force with effect on 1 May 2016 with 61 of 92 sections notified. The remaining provisions came into force on 1 May 2017. The Appellant registered its ongoing project with MahaRERA under the provisions of Section 4 of RERA Act by indicating the date of completion of building as 31 December 2019. Since possession of the flat was not handed over, the Respondents filed Complaint No.CC006000000023718 of 2018 before MahaRERA, Mumbai. When the complaint came up for hearing, the Appellant made a statement before MahaRERA that the project could not

be completed due to financial issues and that financiers were arranged and it committed to hand over possession of the flat to the Respondents by 31 December 2019. On account of the statement so made by the Appellant, the Respondents did not insist for payment of interest at that stage and accordingly the complaint was disposed of directing the Appellant to hand over possession of the flat to the Respondent before 31 December 2019 granting liberty for the Respondents to demand interest at an appropriate stage as per Section 18 of RERA.

5. Despite committing before MahaRERA, Appellant did not hand over possession of the flat to Respondents by 31 December 2019. Respondents therefore approached MahaRERA once again by filing Complaint No.CC006000000195842. The complaint was disposed of by MahaRERA vide order dated 27 July 2021 directing the Appellant to pay interest from 1 January 2020 at the rate prescribed under Rule 18 of Maharashtra Real Estate (Regulation and Development) (Registration of Real Estate Projects, Registration of Real Estate Agents, Rate of interest and Disclosures on website) Rules 2017 (**‘Maharashtra Regulations’**) till handing over possession of the flat. Immediately after passing of order dated 27 July 2021, the Respondents filed Appeal No.AT0006000000053317 of 2021 before MahaRERA Appellate Tribunal to the limited extent of denial of interest from 1 July 2016. Subsequently, the Appellant also filed Appeal No. AT0006000000093905 of 2022 challenging the order dated 27 July 2021 to the extent of non-grant of exemption from payment of interest during the period of Covid-19 pandemic. Both the Appeals have been heard and decided by the MahaRERA Appellate Tribunal by common Judgment and Order dated 7 February 2023. The Appellant’s Appeal No. AT0006000000093905 of 2022 is dismissed. Appeal No.AT0006000000053317 of 2021 filed by Respondents is allowed by modifying the order dated 27 July 2021 by directing Appellant to pay

interest to Respondents from 1 July 2016 till handing over possession of the flat to them. The Appellant is further directed to adjust the interest amount payable to Respondents against the balance amount and other charges payable by them at the time of possession of the flat. The Appellant is also directed to pay costs of Rs.10,000/- to the Respondents.

6. Aggrieved by common Judgment and Order dated 7 February 2023, the Appellant has filed the present Appeal. Second Appeal 688/2023 arises out of the direction to pay interest to the Respondents in Appeal No. AT0006000000053317 of 2021 filed by the Respondents. Second Appeal No.689/2023 arises out of rejection of Appeal No. AT0006000000093905 of 2022 relating to non-grant of exemption from interest in respect of Covid-19 pandemic.

7. Mr. Malpathak, the learned Counsel appearing for the Appellant in both the Appeals would submit that the Appellate Tribunal has erred in granting interest to the Respondents from 1 July 2016 ignoring the effect of the order dated 4 July 2018 passed in the previous round of litigation. That, as per the order dated 4 July 2018, the Respondents gave up their right of claiming interest and were prepared to accept possession by 31 December 2019 without payment of any interest. That, therefore, the MahaRERA authority had rightly directed payment of interest from 1 January 2020. That, the order dated 4 July 2018 was not challenged by the Respondents and that the same has attained finality. Therefore, the effect of the order dated 4 July 2018 could not have been indirectly altered by the Appellate Tribunal while examining challenge to the subsequent order of MahaRERA dated 27 July 2021.

8. Mr. Malpathak would further submit that while registering the project under RERA Act, the Appellant changed the date of completion of

project to 31 December 2019. That, there is an enabling provision under Section 4(2) of the RERA Act under which the promoter is supposed to indicate the date of completion of pending project. That, once such date is indicated at the time of registration of project, the said date becomes the relevant date for the purpose of determining liability of the developer to hand over possession and to pay interest. That, the date of possession indicated in the agreement then becomes irrelevant on account of the provisions of Section 4(2) of the RERA Act. That, the date indicated in the registration application is sacrosanct and so long as the same is not challenged, the flat purchasers are bound by that date. That, if a flat purchaser is not desirous of continuing in the project on account of altered date indicated under the provisions of Rule 4(2) of the Maharashtra Regulations, he/she has an option of making an exit from the project. Once he/she does not exercise the option of exiting from the project, the flat purchaser is bound by the date indicated at the time of registration of the project.

9. Mr. Malpathak would further submit that construction of the building is completed and Occupancy Certificate has been received on 27 April 2022. That, immediately thereafter, the Appellant wrote to the Respondents to take over possession of the flat after paying the balance amount of consideration. That, the Respondents, however, refused to take possession of the flat referring to pendency of Appeal before the Tribunal. That, when the option was given by the Appellant by letter dated 6 May 2022 to pay the balance amount after deducting the amount of interest from 1 January 2020 to 29 April 2022, the Respondents showed willingness to pay CGST on only balance amount of Rs.23,08,000/- and not on the entire balance consideration of Rs.55,00,000/-. That, this conduct on the part of the Respondents is indicative of their disinclination to accept possession of the flat even after the same was offered to them. He would

submit that interest liability of Appellant is therefore required to be frozen as on 29 April 2022. That, the RERA Appellate Tribunal has not taken into consideration this vital aspect while deciding the Appeal filed by the Appellant / Respondents.

10. So far as Second Appeal No.689/2023 is concerned, Mr. Malpathak would submit that the Appellate Tribunal has failed to appreciate the fact that under Order No.21 of 2022 and Circular dated 6 August 2021, the Appellant was entitled for benefit of treating Covid-19 pandemic lockdown period as moratorium period. That, the Appellate Tribunal has erroneously rejected Appellant's Appeal by concentrating on the date of completion as 31 December 2019 without appreciating the fact that moratorium would apply for payment of interest during Covid-19 lockdown. That, therefore, the Appellant is entitled to waiver of interest during the period from 25 March 2020 to 27 July 2021 and 27 July 2021 to 30 September 2021.

11. The Appeals are opposed by Mr. Farhan Khan, learned Counsel appearing for the Respondents in both Appeals. He would submit that the original date agreed for handing over possession as per the agreement was 31 December 2015 with grace period of 6 months i.e. up to 30 June 2016. That, despite passage of about 8 long years from the date agreed in the agreement, the Respondents are still waiting for possession of flat. That, order dated 4 July 2018 was invited by the Appellant by making a solemn statement about completion of project by 31 December 2019. That, the Respondents did not waive their right to claim interest and reserved the same. That, in any event, since the possession of the flat is not handed over by 31 December 2019, the issue of waiver has become hypothetical.

12. Mr. Khan would further submit that indication of date of completion of project at the time of registration under Section 4(2)(1)(C) of RERA or Rule 4(2) of Maharashtra Regulations does not amount to rewriting the contract between the parties. That, this issue is settled by the Judgment of this Court in ***Neelkamal Realtors Suburban Pvt. Ltd. and Anr. Vs. Union of India and Others***¹ and also by Judgment of the Apex Court in ***Imperia Structures Limited Vs. Anil Patni and Another***².

13. So far as the correspondence which has taken place between the parties after issuance of Occupancy Certificate is concerned, Mr. Khan would submit that the Appellant is responsible for non-handing over possession of the flat as it finally insisted vide letter dated 17 June 2022 that the offer of the Respondents for payment of balance consideration after adjustment of amount of interest was rejected. That, the Appellant also insisted for deducting the interest in respect of Covid-19 pandemic period from 25 March 2020 to 30 September 2021 and also demanded various other amounts. That, therefore, the amount of interest cannot be frozen as on 29 April 2022.

14. Mr. Khan would submit that the Respondent No.2 is a senior citizen and is required to reside on leave and license basis by incurring expenses towards license fees. Additionally, the Respondents are required to pay EMIs on the loan raised for payment of consideration to the Appellant. That, in such circumstances, the Appellant must be directed to hand over possession of the flat to the Respondents for which they have filed Interim Application No.15263/2023.

15. Rival contentions of the parties now fall for my consideration.

¹ (2018) 1 AIR Bom R 558

² (2020) 10 Supreme Court Cases 783

URS

16. As observed above, Second Appeal No.688/2023 involves the issue of payment of interest during the period from 1 July 2016 to 31 December 2019 whereas Second Appeal No.689/2023 involves the issue of rejection of prayer of Appellant for exclusion of Covid-19 lockdown period for payment of interest.

17. So far as the direction of the Appellate Tribunal for payment of interest from 1 July 2016 is concerned, the Appellant has essentially relied on two factors for the purpose of avoiding liability to pay interest up to 31 December 2019. Firstly, it has relied upon order dated 4 July 2018 passed by the MahaRERA in previous round of litigation and secondly, it relies on the date of 31 December 2019 indicated in the registration of the project as date of completion of project.

18. Respondents had earlier filed Complaint No.CC00600000023718 of 2018, which was disposed of by the MahaRERA by passing the following order:

- “1. *The Complainants have purchased an apartment bearing No.901 in the Respondent's project "Vishnuchandra Sky" situated at Wadala, Mumbai via registered agreement for sale dated March 22, 2014. The Complainants stated that they have paid 75% of the amount towards the consideration of the said apartment and that pursuant to the said agreement the Respondent was to handover possession of the apartment by December, 2015 with a further extension of six months but the Respondents has failed to do so till date. Therefore, they prayed that the Respondents be directed to pay them interest, on delay, as per the provisions of section 18 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as the said Act) and handover possession of the said apartment at the earliest*
2. *The learned Counsel for the Respondent submitted that the project could not be completed due to certain financial issues. Further, he submitted the Respondent has now arranged for finances and is committing to handover possession of the apartment by December 31, 2019.*
3. *Complainants submitted that at this stage, they are interested in having the Project completed and will therefore not insist that the Respondent pay them interest for the delayed possession as on date, provided, the Respondent completes the project by committing to a reasonable-timeline. Further, they submitted that if they do not see the efforts of the Respondent towards the completion of the project, they should-be a liberty to demand interest as per the provisions of section 18 of the Real Estate*

- (Regulation and Development) Act, 2016 and the rules and regulations made to hereunder, from the Respondent for the delay in completing the said project.*
4. *In the view of the above facts, the Respondent shall, therefore handover the possession of the apartment to the complainant before the period of December 31, 2019. The Complainant shall be at liberty to demand interest at an appropriate stage, as per the provisions of section 18 of the Real Estate (Regulation and: Development) Act, 2016 and the rules and regulations made hereunder from the Respondent for the delay in completing the said project. Further, since the Complainants have already paid 75% of the amount towards the consideration of the said apartment, the Respondent shall raise further demands only at the time of handing over possession of the said apartment.*
 5. *Consequently, the matters are hereby disposed of.”*

19. Thus, order dated 4 July 2018 indicates that the Appellant invited the same by making a solemn commitment before the Authority that it would hand over possession of the flat by 31 December 2019. Though some degree of debate has taken place between the parties about the exact effect of statements made on behalf of the Respondents as recorded in para 3 of the order, in my view, the said debate has now become academic. At that time, the Respondents had shown willingness to take over possession of the flat without insisting for interest. One may well argue that the correct interpretation of the statements made by the Respondents before the MahaRERA would mean that they waived their interest if possession was handed over by 31 December 2019. On the contrary, it is contended by the Respondents that specific liberty was granted to claim interest under Section 18 of the RERA even if possession was handed over by 31 December 2019. Be that as it may. It is undisputed position that the possession has not been handed over by 31 December 2019 and therefore it is quite unnecessary to decide the exact effect of the statements made by the Respondents before the MahaRERA on 4 July 2018. Therefore, Appellant cannot rely upon order dated 4 July 2018 for the purpose of escaping the liability to pay interest for the period prior to 31 December 2019.

20. The next issue is whether indication of fresh date of completion of project while registering ongoing project under Section 4(2)(1)(C) of RERA read with Rule 4(2) of Maharashtra Regulations would amount to alteration of agreement between the parties vis-à-vis Promoter's liability to pay interest under Section 18.

21. Section 4 of RERA imposes an obligation on promoter to make an application to the authority for registration of the real estate project. Proviso to Section 3 mandates that ongoing projects on the date of commencement of Act, for which Completion Certificate has not been issued, must be registered under the provisions of the Act. Thus, provisions of Section 4 of the Act also apply to an ongoing project. Section 4 of RERA reads thus:

4. Application for registration of real estate projects.—(1) Every promoter shall make an application to the Authority for registration of the real estate project in such form, manner, within such time and accompanied by such fee as may be 1[prescribed].

(2) The promoter shall enclose the following documents along with the application referred to in sub-section (1), namely:—

(a) a brief details of his enterprise including its name, registered address, type of enterprise (proprietorship, societies, partnership, companies, competent authority), and the particulars of registration, and the names and photographs of the promoter;

(b) a brief detail of the projects launched by him, in the past five years, whether already completed or being developed, as the case may be, including the current status of the said projects, any delay in its completion, details of cases pending, details of type of land and payments pending;

(c) an authenticated copy of the approvals and commencement certificate from the competent authority obtained in accordance with the laws as may be applicable for the real estate project mentioned in the application, and where the project is proposed to be developed in phases, an authenticated copy of the approvals and commencement certificate from the competent authority for each of such phases;

(d) the sanctioned plan, layout plan and specifications of the proposed project or the phase thereof, and the whole project as sanctioned by the competent authority;

(e) the plan of development works to be executed in the proposed project and the proposed facilities to be provided thereof including fire fighting facilities, drinking water facilities, emergency evacuation services, use of renewable energy;

- (f) the location details of the project, with clear demarcation of land dedicated for the project along with its boundaries including the latitude and longitude of the end points of the project;
- (g) proforma of the allotment letter, agreement for sale, and the conveyance deed proposed to be signed with the allottees;
- (h) the number, type and the carpet area of apartments for sale in the project along with the area of the exclusive balcony or verandah areas and the exclusive open terrace areas appurtenant with the apartment, if any;
- (i) the number and area of garage for sale in the project;
- (j) the names and addresses of his real estate agents, if any, for the proposed project;
- (k) the names and addresses of the contractors, architect, structural engineer, if any and other persons concerned with the development of the proposed project;
- (l) a declaration, supported by an affidavit, which shall be signed by the promoter or any person authorised by the promoter, stating:—**

(A) that he has a legal title to the land on which the development is proposed along with legally valid documents with authentication of such title, if such land is owned by another person;

(B) that the land is free from all encumbrances, or as the case may be details of the encumbrances on such land including any rights, title, interest or name of any party in or over such land along with details;

(C) the time period within which he undertakes to complete the project or phase thereof, as the case may be;

(D) that seventy per cent. of the amounts realised for the real estate project from the allottees, from time to time, shall be deposited in a separate account to be maintained in a scheduled bank to cover the cost of construction and the land cost and shall be used only for that purpose:

Provided that the promoter shall withdraw the amounts from the separate account, to cover the cost of the project, in proportion to the percentage of completion of the project:

Provided further that the amounts from the separate account shall be withdrawn by the promoter after it is certified by an engineer, an architect and a chartered accountant in practice that the withdrawal is in proportion to the percentage of completion of the project:

Provided also that the promoter shall get his accounts audited within six months after the end of every financial year by a chartered accountant in practice, and shall produce a statement of accounts duly certified and signed by such chartered accountant and it shall be verified during the audit that the amounts collected for a particular project have been utilised for that project and the withdrawal has been in compliance with the proportion to the percentage of completion of the project.

Explanation.—For the purpose of this clause, the term “scheduled bank” means a bank included in the Second Scheduled to the Reserve Bank of India Act, 1934 (2 of 1934);

(E) that he shall take all the pending approvals on time, from the competent authorities;

(F) that he has furnished such other documents as may be prescribed by the rules or regulations made under this Act; and

(m) such other information and documents as may be prescribed.

(3) The Authority shall operationalise a web based online system for submitting applications for registration of projects within a period of one year from the date of its establishment.

(emphasis added)

Thus under Section 4(2)(1)(C) of RERA, the promoter is required to make a declaration about the time period within which he undertakes to complete the project.

22. In exercise of power exercised under Section 84 of the RERA, Maharashtra Regulations have been made. Rule 4 of Maharashtra Regulations provide for details of disclosure to be made by a promoter in respect of ongoing real estate project as required under sub-section (1) and (2) of Section 4 of RERA Act. Sub-rule (2) of Rule 4 of Maharashtra Regulations reads thus :

“(2) The Promoter shall disclose all details of ongoing real estate project as required under Sub-section (1) and (2) of section 4 and Rule 3 including the extent of development carried out till the date of application for registration under sub-rule (1), as per the last approved sanctioned plan of the project and the extent of development of common areas, amenities etc. completed in respect of buildings along with expected period of completion of the on-going real estate project. The promoter shall also disclose the original time period disclosed to the allottees, for completion of the project at the time of sale including the delay and the time period within which he undertakes to complete the pending project, which shall be commensurate with the extent of development already completed. The Promoter shall submit a certificate from the practicing project Architect certifying the percentage of completion of construction work of each of the building/wing of the project, a certificate from the Engineer for the estimated balance cost to complete the construction work of each of the building/wing of the project, and a certificate from a practicing Chartered Accountant, for the estimated balance cost to complete the project. The promoter shall submit a

certificate from a practicing Chartered Accountant, certifying the balance amount of receivables from the apartments/flats/premises sold or allotted and in respect of which agreement have been executed and estimated amount of receivables in respect of unsold apartments/flats/premises calculated at the prevailing ASR rate on the date of certificate.”

23. Thus, under the provisions of Section 4(2)(1)(C) of RERA read with Rule 4(2) of Maharashtra Regulations, it is incumbent for a promoter to make declaration of the period within which he undertakes to complete the pending project. It is Appellant’s case that since it has declared 31 December 2019 as the date for completion of the project, the said date must be taken into consideration for the purpose of determination of interest under the provisions of Section 18 of the Act.

24. The issue as to whether the provisions of Section 4(2)(1)(C), of RERA Act enables the promoter to give fresh timeline in violation of the time period stipulated in the agreement came up before the Division Bench of this Court in ***Neelkamal Realtors*** (*supra*). In that case, constitutional validity of certain provisions of RERA were challenged. The two learned Judges of the Division Bench have rendered separate Judgments with same conclusion in ***Neelkamal Realtors***. Justice Naresh Patil (as he then was) in his Judgment has held in para 128 that RERA does not contemplate rewriting of contract between the flat purchaser and the promoter. In para 128 of the Judgment authored by *Patil J*, it is held as under:

“128. Under the provisions of Section 18, the delay in handing over the possession would be counted from the date mentioned in the agreement for sale entered into by the promoter and the allottee prior to its registration under RERA. Under the provisions of RERA, the promoter is given a facility to revise the date of completion of project and declare the same under Section 4. **The RERA does not contemplate rewriting of contract between the flat purchaser and the promoter. The promoter would tender an application for registration with the necessary preparations and requirements in law. While the proposal is submitted, the promoter is supposed to be conscious of the consequences of getting the project registered under RERA. Having sufficient experience in the open market, the promoter is expected to have a fair assessment of the time required for completing the project. After completing all the formalities, the promoter submits an application for registration and prescribes a date of completion of project. It was submitted that interest be made payable from the date of registration of the**

project under RERA and not from the time-line consequent to execution of private agreement for sale entered between a promoter and a allottee. It was submitted that retrospective effect of law, having adverse effect, on the contractual rights of the parties, is unwarranted, illegal and highly arbitrary in nature.
(emphasis added)

25. Justice R. G. Ketkar, in his supplementing Judgment, has dealt with the issue of ongoing projects and has upheld the constitutional validity of first proviso to Section 3(1). He took note of the Affidavit filed on behalf of the Union of India in para 244 of the Judgment in which it was stated that promoters in respect of ongoing projects can prescribe fresh time period independent of period stipulated in the agreements for sale entered into between the promoter and the allottee. It is held in para 244 as under :

“244. In the affidavit dated 4.10.2017 filed on behalf of Union of India, it is clearly stated that in respect of on-going projects the promoter can prescribe fresh time period independent of the time period stipulated in the agreements for sale entered into between the promoter and the allottees at the time of registration of the project as per Section 4(2)(I)(C). Thus the promoter is given opportunity for completing the project or phase, as the case may be by prescribing fresh time period so that he is not visited with the penal consequences laid down under RERA. If the promoter has all the permissions specified in Section 4(2) in place and is permitted to prescribe new time period, I do not find that first proviso to Section 3(1) is unreasonable. That apart, in terms of first proviso to Section 6, the Authority has discretion, in reasonable circumstances, without default on the part of the promoter, based on the facts of each case, and for reasons to be recorded in writing, to extend the registration granted to a project for such time as it considers necessary, which shall, in aggregate, not exceed a period of one year.”

26. Thereafter *Ketkar J.* decided the effect of enabling provision under Section 4(2)(I)(C) to revise the date of completion of project vis-a-vis the obligation of the promoter arising out of agreement executed with flat purchasers. He held in paras 304 and 305 in his Judgment as under :

“304. Section 18 provides for refund of amount and compensation on account of - (a) failure of the promoter to complete or his inability to give possession of an apartment, plot or building either 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 revocation or suspension of the registration under the Act or for any other reason. The plain language of Section 18(1)(a) shows that if the promoter fails to complete or is unable to give possession of an apartment, plot or building in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein, he would be liable to return the amount received by him together with interest including compensation. In case the allottee does not intend to withdraw from the project, the promoter is liable to pay interest for every month's delay till handing over of possession. The purpose of Section 18(1)(a) is to ameliorate the buyers in real estate sector and balance the rights of all the stake

holders. The provisions of RERA seek to protect the allottees and simplify the remedying of wrongs committed by a promoter. The intention of RERA is to bring the complaints of allottees before one Authority and simplify the process. If the interpretation suggested by the petitioners, namely, that the provision is applicable only after coming into force RERA is accepted, this would result in allottees having to approach different fora for interest prior to RERA and subsequent to RERA. In fact Section 71 of RERA provides that the cases pending before the Consumer Court can be transferred to Authority. Reference to pending cases is obviously a reference to claims for interest and/or compensation pending when the RERA came into force.

305. Section 4(2)(1)(C) enables the promoter to revise the date of completion of project and hand over possession. The provisions of RERA, however, do not rewrite the clause of completion or handing over possession in agreement for sale. Section 4(2)(1)(C) enables the promoter to give fresh timeline independent of the time period stipulated in the agreements for sale entered into between him and the allottees so that he is not visited with penal consequences laid down under RERA. In other words, by giving opportunity to the promoter to prescribe fresh timeline under Section 4(2)(1)(C) he is not absolved of the liability under the agreement for sale.”

(emphasis added)

27. In my view, therefore, mere indication of date 31 December 2019 by the Appellant while registering the project under the provisions of Section 4(2)(1)(C) of RERA and Regulation 4(2) of Maharashtra Regulations does not affect the obligations on his part arising out of agreement executed with the Respondents. Under that agreement, the Appellant undertook to hand over possession of the flat to the Respondents on 30 June 2016. Therefore, the Tribunal has rightly directed the Appellant to pay interest to the Respondents from 1 July 2016. I do not find any serious error being committed by the Tribunal in directing payment of interest by taking into consideration the timeline specified in the agreement and by ignoring the timeline declared at the time of registration of the project.

28. The next aspect is about the liability of the Appellant to pay interest after issuance of Occupancy Certificate on 27 April 2022. According to the Appellant, the Respondents were called upon to take possession of the flat by paying balance amount of consideration and

charges by letter dated 29 April 2022 and therefore the liability to pay interest must be frozen as on 29 April 2022. Some correspondence has taken place between the parties between 29 April 2022 to 17 May 2022 which is relevant for the purpose of determining the issue at hand. The correspondence between the parties is as under:

- (i) By letter dated 29 April 2022, the Appellant informed the Respondents that the Occupancy Certificate was issued on 27 April 2022 and demanded an amount of Rs.62,21,561/- (Rs.55,00,000/- towards balance amount of consideration plus Rs.7,21,561/- towards other charges) with a further demand for payment of applicable taxes thereon. By this time, MahaRERA authority had passed order dated 27 July 2021 directing the Appellant to pay interest to the Respondents for the period from 1 January 2020 onwards. However in its letter, Appellant did not adjust the amount of interest payable to Respondents as per the MahaRERA's order dated 27 July 2021.
- (ii) Respondents immediately wrote back to the Appellant on 6 May 2022 seeking adjustment of amount of Rs. 35,29,398/- towards interest from 1 January 2020 till 30 April 2022. Respondents further wrote to Appellants that they had challenged the MahaRERA's order before the Appellate Tribunal to the extent of denial of interest from 1 July 2016 to 31 December 2019 and that, therefore, no amount was due and payable by them to Appellant. However, without prejudice, the Respondents showed willingness to accept possession of the flat without making any further payment. It must be observed here that the Respondents were slightly unreasonable in denying any payment to Appellant on expectation of positive result from the Appellate Tribunal.
- (iii) On 6 May 2022, Appellant wrote to Respondents agreeing for

adjustment of interest for the period of 1 January 2020 to 29 April 2022 and calling upon the Respondents to pay the balance amount in addition to taxes of Rs.95,633/-.

- (iv) Respondents replied vide letter dated 10 May 2022 showing willingness to pay Rs.23,08,000/- towards balance consideration by adjusting interest of Rs.31,92,000/- from the amount of Rs.55,00,000/-. They also showed willingness to pay arrears of service tax of Rs.95,633/- and showed willingness to pay GST only on Rs.23,08,000/- instead of Rs.55,00,000/-.
- (v) Appellant replied on 17 May 2022, para-7 whereof shows that it was not willing to hand over possession without deducting interest in respect of Covid-19 pandemic period. Para 7 of the letter dated 17 May 2022 reads thus :

*7. With reference to paragraph 2 of your letter under reply, **we submit that your offer for conditional payment as stated in your Letter under reply is not acceptable to us, and hence it is rejected.** We submit that you cannot dictate any unilateral change in terms upon us, which are not specified in the agreement. We repeat that interest awarded in the impugned order dated 27.07.2021 is not crystallized, and moreover you have challenged the said Order in Appeal. In the circumstances, we need to wait upto the outcome of the Appeal as stated aforesaid. **Simultaneously without prejudice to what is stated aforesaid, we submit that the period of COVID-19 pandemic from 25.03.2020 to 30.09.2021 would be required to be excluded**, while determining total amount of interests claim, as entire building activities in the state as well as the country during lockdown period was at stand still, and the said contention has been duly taken by us in our reply. We submit that you are required to pay the following amounts as stated in paragraph 8 hereunder and on payment of which you may obtain possession of the Flat and car parking space.”*

- (vi) This is how Appellant demanded the amount of Rs.67,14,563/- from Respondents as a pre-condition for handing over possession of the flat. The details of the said amount of Rs.67,14,563/- as indicated in para 8 of the letter are as under:

Total consideration amount payable in respect of	Rs.2,02,40,000/-
the said Flat and parking spaces	
LESS : Amount Paid by you	Rs.1,47,40,000/-

PRINCIPAL SUM BALANCE PAYABLE – I	Rs.55,00,000/-
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ADD : Deficit amount paid towards Service Tax and VAT (Total 4.5% on Rs.1,47,40,000/-)	Rs.1,45,723	
Interest for delayed payment at 9.3% from 3-01-2017 to till 31.05.2022 (about 64 months)	Rs.72,279/-	
TOTAL – II	Rs.2,18,002	Rs.2,18,002/-
ADD : Amount payable under clause 19 and 20 of the Agreement (Inclusive of 5% GGST to be paid on the maintenance amount as per clause no.20)	Rs.7,21,561/-	
ADD : 5% GST payable on Balance sum of Rs.55,00,000/-		
TOTAL III		Rs.9,96,561/-
Net Total of I + II + III		Rs.67,14,563/-

(vii) Thus, far from adjusting the interest payable in respect of the period from 1 January 2020 onwards, the Appellant, in fact, demanded interest @ 9.3% on deficit amount of service tax and VAT of Rs.1,45,723/- from the Respondents from 3 January 2019 onwards.

29. In my view, the conduct on the part of the Appellant exhibited vide letter dated 17 May 2022 in not adjusting the amount of interest payable from 1 January 2020 and in demanding interest from the Respondents is totally unreasonable and exhibits disinclination to hand over possession of the flat to the Respondents. I am therefore of the view that the Appellant is responsible for non-handing over of possession of the flat even after issuance of Occupancy Certificate and must be made liable to pay interest till possession of the flat is delivered. In fact during the course of hearing of the present Appeals, the dispute was referred to mediation which unfortunately failed. Even this Court made efforts to ensure if the Appellants would hand over possession of the flat to the

Respondents so as to stop the interest clock from ticking. However, the Appellant continued its adamant approach and has, in fact, added various amounts as a pre-condition for handing over possession including property tax and interest on amount of Rs.55,00,000/- from 1 June 2022 onwards. Before me, the demand of Appellant escalated to Rs.77,97,286/-. The conduct exhibited by the Appellant leaves no manner of doubt that it is solely responsible for non-handing over of possession of the flat to the Respondents after issuance of Occupancy Certificate. Therefore, no solace can be provided to the Appellant in respect of liability to bear interest after issuance of Occupancy Certificate.

30. So far as Appeal No.689/2023 is concerned, the same merits no consideration in view of the fact that the Appeal is filed for claiming benefit of circulars issued by MahaRERA for moratorium during Covid-19 pandemic period. The Appellant was under obligation to hand over possession of the flat initially on 30 June 2016 and in any case as per its own commitment before the Authority by 31 December 2019. Therefore, Covid-19 pandemic lockdown declared subsequently cannot come to the aid of the Appellant for claiming any relief for payment of interest. The Appellate Tribunal has rightly considered and rejected the request of the Appellant for grant of benefit of moratorium during Covid-19 pandemic in para 28 of its Judgment. It must also be borne in mind that initially the Appellant has not challenged MahaRERA's Order before the Tribunal and filed the Appeal only when Respondents' appeal was taken up for hearing. Mr. Malpathak has submitted that initially Appellant filed cross objections in Respondents' appeal but later thought of filing a substantive appeal so as not to leave any technical objection. Be that as it may. Appellant violated its commitment made before the MahaRERA to complete construction and to deliver possession by 31 December 2019. It now cannot seek to take advantage of COVID 19 pandemic to escape the liability to

pay interest. I therefore do not find any serious error being committed by the Appellate Tribunal in dismissing Appeal No.AT0006000000093905 of 2022 filed by the Appellant.

31. After considering the overall conspectus of the case, I do not find that any substantial question of law is involved in the Appeals filed by the Appellant. Second Appeals filed by the Appellant therefore deserve to be rejected. Respondents would be at liberty to withdraw the amount deposited by the Appellant in RERA Appellate Tribunal along with accrued interest. It is observed that it would be in the interest of the Appellant to forthwith hand over possession of the flat to the Respondents with a view to stop the liability to pay interest to the Respondents, which is mounting with passage of each day. Since the amount of interest payable by Appellant to Respondents now exceeds the balance amount, taxes and charges payable by Respondents to it, the Appellant needs to handover possession of the flat forthwith.

32. Second Appeals filed by the Appellant are accordingly rejected. There shall be no order as to costs.

33. In view of disposal of Second Appeals, Interim Applications do not survive and the same are also disposed of.

(SANDEEP V. MARNE, J.)

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