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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 1195 OF 2025

1. Seema Sureshchandra Mehata
R/at.: Manik, Plot No.8,
Acacia Gardens II, Magarpatta
City, Pune 411 013.
 2. Dr. Hrushikesh Surshchandra Mehata
R/at.: Manik, Plot No. 8,
Acacia Gardens II, Magarpatta City,
Pune 411 013. ... Petitioners
- vs.
1. Marvel Realtors & Developers Limited
Through its Director
Vishwajeet Subhash Jhavar
Add.: 301-302, Jewel Towers
Lane No.5, Koregaon Park,
Pune – 411 001.
 2. Maharashtra Real Estate Regulatory
Authority,
Add.: E-Block, 7th Floor, Housefin Bhavan
BKC, near RBI, Bandra Kurla Complex
Bandra East, Mumbai, Maharashtra 400 051,
 3. State of Maharashtra
Through Government Pleader
High Court of Bombay, Mumbai. ... Respondents

Mr. Kaustubh Patil a/w. Dixit Parmar for Petitioners.

Mr. Amit Gharte for Respondent No.1.

Mr. Hamid Mulla, AGP for Respondent No.3-State.

CORAM : GAURI GODSE, J.

DATED : 14th JULY 2025

JUDGMENT:

Events during pendency of this petition:

1. This petition is filed by the original complainants, who are the purchasers of the subject units. They challenge the order passed by the civil court, dismissing their application for execution of the order passed by the Authority under the Real Estate (Regulation and Development) Act, 2016 ('RERA Authority'), which directed respondent no. 1 ('developer') to hand over possession of the three units. By the impugned order, the execution application is dismissed as not maintainable.

2. The developer has filed Writ Petition No. 1794 of 2024 to challenge the recovery warrant issued by the RERA Authority. As per the roster, Writ Petition No. 1794 of 2024 pertains to the assignment of the coordinate bench.

3. On 16th June 2025, after hearing both sides, this petition was directed to be listed for final disposal at the admission stage on 8th July 2025. On 8th July 2025, the petition was partly heard and was directed to be listed today

at 3:00 pm as part heard.

4. Today, when this petition was called out, learned counsel for the developer tendered a copy of the order dated 9th July 2025 passed by the coordinate bench in Writ Petition No. 1794 of 2024. Learned counsel for the developer submits that after giving advance notice to the advocate for the petitioners in the present petition (complainants), Writ Petition No. 1794 of 2024 was mentioned before the coordinate bench on 9th July 2025 at 11:00 am for urgent relief. Learned counsel for the complainants makes a grievance that, as per the intimation received through email, he was present at 11:00 am in the court; however, Writ Petition No. 1794 of 2024 was not mentioned in his presence. I do not find it necessary to get into this controversy, in as much as the learned counsel for the developer fairly submits that he did not state in the mentioning praecipe (urgent circulation note) moved before the coordinate bench that the execution application before the civil court is dismissed as not maintainable and it is challenged in this petition, and that the present petition is substantially heard by this court on 8th July 2025 and is

directed to be listed today as part heard.

5. Learned counsel for the developer submits that in Writ Petition No. 1794 of 2024, the coordinate bench has granted interim protection. I have perused the order. The order dated 9th July 2025 reads as under:

“1. Mentioned. Not on Board. Taken on Board.

2. Perused the praecipe dated 09.07.2025 and the copy of Writ Petition.

3. Heard Mr. Patil, learned Advocate for Petitioner.

4. Mr. Patil, learned Advocate informs the Court that at the instance of the purchaser, Real Estate Regulatory Authority (for short ‘RERA’) has passed an order dated 16.08.2019 stipulating three conditions out of which one condition is obligation required to be completed by purchaser himself regarding payment of the balance outstanding amount to the Developer.

5. He would submit that without paying the said amount the purchaser has approached Executing Court and has got issued a possession warrant which is subject matter of challenge in the present Writ Petition filed in the year 2022.

6. He would submit that since purchaser is pursuing the Executing Court today, Petitioner-Developer is

aggrieved and in view of the fact that Petitioner has already met his twin obligations under the RERA order he would submit that present Petition can be indeed worked out.

7. Hence he would persuade the Court to list the petition at the earliest. Copy of this order shall be served on the Respondents – Purchasers. Advocate for Purchasers is directed to remain present on the next adjourned date to enable the Court to hear the Writ Petition.

8. In view of this order, it is directed that no coercive steps shall be taken by Execution Court against Petitioner – Developer in respect of the subject Units.

9. Needless to state that purchaser shall be heard by this Court on the next adjourned date.

10. List on 16th July 2025.”

6. I am constrained to record that this attempt on behalf of the developer is nothing but an attempt to protract the further hearing of this petition and to overreach the orders likely to be passed in this petition for the execution of the order in favour of the purchasers. The same advocate who appears for the developer in this petition is the advocate on record in the Writ Petition No. 1794 of 2024 for the developer. An

advocate is first an officer of the court and is expected to place before the court all the true and correct facts. On perusal of the aforesaid order, it is apparent that the correct facts were suppressed before the coordinate bench. Unfortunately, the coordinate bench was not informed that the civil court had dismissed the execution application, which was challenged by the purchasers, who filed a separate writ petition, which was partly heard by me. *It is apparent that false and misleading submissions were made before the coordinate bench that the purchaser has approached the Executing Court and has got issued a possession warrant and the purchaser was pursuing the executing court on the 9th July 2025.* It is necessary to note that on 9th July 2025, the purchasers' application for execution was neither pending nor was any possession warrant issued.

7. Thus, by making false submissions before the coordinate bench, the developer persuaded the coordinate bench to grant interim relief that *"no coercive steps shall be taken by execution Court against Petitioner – Developer in respect of the subject Units."* Learned counsel for respondent no.1 - developer agrees that it was not informed to the

coordinate bench that the execution application had already been dismissed. He further submits that the directions issued by the coordinate bench that “the executing court shall take no coercive steps” would not be any impediment in concluding the arguments in this petition.

8. Hence, heard the learned counsels for the parties.

Basic facts:

9. A few facts would be necessary before examining the rival contentions of the parties. The petitioners are claiming possession of three units bearing A-3010, A-3020, and A-3130, pursuant to three separate agreements executed on 31st December 2012. According to the agreements, possession was to be handed over by 31st December 2014. Since the possession was not handed over, a complaint was made before the RERA Authority. The complaints were allowed on 16th August 2019, by passing the following order:

“ ORDER

a. The respondents shall pay simple interest on the complainants amount from 1-1-2015 till 4-12-2018 @ 10.4% per annum.

b. The complainants shall pay the infra charges agreed by them with the same rate of interest from the dates agreed for their payments till they are paid.

c. The parties are at liberty to adjust their respective claims and pay the balance, if any.

d. On receiving the full agreed amount from the complainants, the respondents shall handover the possession of the offices with the copy of OC to the complainants.

e. Payment detail shall form part of the order.”

10. For the execution of the order, the petitioners applied to the RERA Authority for the issuance of a possession warrant on 28th February 2021, by uploading the application online in accordance with the procedure followed before the RERA Authority. On this application, the RERA Authority passed the following order :

“ Recovery warrant is already issued. For possession the complainant has to approach civil court u/s 40 read with Rule 4 of the Maha RERA Rules (Recovery of Interest, Penalty, etc. Place before the Secretary”

11. Pursuant to this direction, the petitioners contended that they had applied to the civil court for the execution of the order passed by the RERA Authority and had prayed for the issuance of a possession warrant. The civil court rejects this application for execution. Hence, this petition is on behalf of the purchasers, the original complainants.

Submissions on behalf of the petitioners:

12. Learned counsel for the petitioners submitted that after the order dated 16th August 2019 was passed, the rectification order was uploaded on 14th October 2019 along with the calculations about the revised payments for all three units. He submits that the said schedule of revised payment was signed by the complainants, their advocate, as well as by the respondent, i.e. the developer. He therefore submits that the calculations regarding the amount due and payable by the complainants to the developer were agreed between the parties as per the statement uploaded along with the rectification order dated 14th October 2019.

13. Learned counsel for the petitioners further submits that, considering the agreed-upon calculations, the petitioners

filed an application for non-execution of the order on the grounds that no amount was due and payable by the complainants to the developer. He relied upon a letter dated 4th March 2020 issued by post to the developer intimating that there was no amount due and payable from the complainants, and after adjusting the amount that was due and payable by the complainants, the balance amount of Rs. 14,07,165.67 was to be paid by the developer to the complainants. Since there was no response to this letter, the petitioners, by email, intimated to the developer regarding their request to make payment of the balance consideration and hand over possession. He submits that since there was no response, the application was filed with the RERA Authority for recovery of the due amount. On this application, the order was passed on 20th November 2020, directing the complainants to file a claim statement, and an order was put for execution by directing the issuance of a recovery warrant under Section 40(1) of the RERA. He submits that, accordingly, the claim statement was uploaded by the petitioners.

14. Learned counsel for the petitioners submits that no

dispute was raised on the claim statement uploaded by the petitioners. However, after the recovery warrant was issued, the developer filed Writ Petition No. 1794 of 2024 in this court. He submits that the petition was verified sometime in February 2022; however, the same was never moved before the court for any order. He submits that the said petition remained pending, and in the meantime, the purchasers proceeded to execute the order passed by the RERA Authority for the purpose of obtaining possession.

15. Learned counsel for the petitioners submits that since the RERA Authority had directed the Secretary of the RERA Authority to send the papers to the civil court, the petitioners had approached the division bench of this court seeking various directions. Learned counsel for the petitioners pointed out the prayers made in the writ petition, which reads as follows:

“a) That this Honourable High Court may be pleased to call for the records and documents of Complaint No. CCO05000000022798 and after perusal and examination thereof;

b) That this Honourable High Court may be pleased to issue a Writ of Mandamus or any other appropriate

Writ, direction or order directing the Respondent No. 1 to frame appropriate rules ad regulations and make available appropriate mechanism for implementation of orders passed by Respondent No. 2 under Section 40(2) and Rule 5 of the said Rules by conferring the Secretary of Respondent No. 2 or any other officer with powers to issue Possession Warrant and enforce the same through the Respondent No.2's officers and to consider Petitioners application for issuing Possession Warrant.

c) In the alternative this Honourable High Court may be pleased to issue a Writ of Mandamus or any other appropriate Writ direction or order directing the Respondent No. 2 to send the order dated 16.08.2019 being a decree within the meaning of Code of Civil Procedure, 1908 for its execution to the Pune District Court in order to enable the Petitioner's to obtain possession of the said units.

d) That this Honourable High Court may be pleased to issue a Writ of Mandamus or any other appropriate Writ, direction or order directing the Respondent No. 2 to exercise its powers and jurisdiction and levy penalty upon the Respondent Nos. 3 and 4 for its failure to comply with its order dated 16.08.2021.

e) That this Honourable High Court may be pleased to issue Writ of Mandamus or any other appropriate Writ, direction or order directing the Respondent No. 7 to

take steps for recovery of the amounts payable to the Petitioners under the Recovery Warrant issued by the Respondent No. 2 by attachment and sale of the movable and immovable property of the Respondent No. 3 and 4 in accordance with law,

f) Pending the hearing and final disposal of the present Writ Petition, this Honourable High Court may be pleased to grant INTERIM RELIEF by directing the Respondent No. 1 to frame appropriate rules and regulations and make available appropriate mechanism for implementation of orders passed by Respondent No. 2 under Section 40(2) and Rule 5 of the said Rules by conferring the Secretary of Respondent No. 2 or any other officer with powers to issue possession warrant and enforce the same through the Respondent No.2's officers and to consider Petitioners application for issuing Possession Warrant.

g) Ad-interim relief in terms of Prayer Clause (e) above.

h) To pass such other and further Orders, as this Honourable High Court deems fit, on the facts and in the circumstances of the case.

i) That cost of this Petition be provided for.”

16. Learned counsel for the petitioners submits that the division bench of this court partly allowed the writ petition

filed by the petitioners on 8th June 2022 and directed the executing court to decide the execution proceedings expeditiously. He submits that by accepting the contentions raised on behalf of the petitioners, the division bench of this court observed that MahaRERA had already transferred execution proceedings to the civil court and thus held that the adjudicating authority had already exercised power under sub-section (2) of Section 40 read with MahaRERA Rules, 2017.

17. Learned counsel for the petitioners submits that despite these directions issued by the division bench of this court, the civil court has dismissed the execution proceedings on hyper-technical grounds that a certificate is not issued by the RERA Authority as contemplated under Rule 4 of the Maharashtra Real Estate(Regulation and Development) (Recovery of Interest, Penalty, Compensation, Fine payable, Forms of Complaints and Appeal, etc) Rules, 2017 (**'the 2017 Rules'**). Learned counsel for the petitioners submits that the calculations regarding the amount payable by the petitioners are already a part of the order under execution. He submits that the developer did not dispute the statement uploaded by

the petitioners, as per the order passed by the RERA Authority, which directed the petitioners to submit a claim statement. He therefore submits that once the statements were already uploaded and calculations indicate that there was no amount due and payable by the purchasers-original complainants, the execution court, i.e. the civil court ought to have issued possession warrant directing the developer to hand over possession of the three units, pursuant to the order dated 16th August 2019, which is under execution.

18. Learned counsel for the petitioners relies upon Section 40(1) of the RERA. He submits that if any amount is due and payable under an order passed by the RERA Authority, it shall be recoverable either from the promoter or the allottee, and such amounts are recoverable as arrears of land revenue. He submits that so far as execution of the order directing handing over possession is concerned, the same has been complied with as prescribed under Rule 4 of the Rules of 2017. He submits that in the event, the adjudicating officer or the authority is unable to execute the order, it has to send copy of such order to the principal civil court to execute the said order either within the local limits of principal civil

court at original jurisdiction within the local limit of whose jurisdiction the person against whom the order is issued resides or carry on business. He therefore submits that in view of Rule 4 of the Rules of 2017, the RERA Authority on the application filed by the complainants had already passed an order for placing the matter before the Secretary. He thus submits that it was only an administrative or ministerial act to be performed by the Secretary for sending papers to the civil court. He submits that since this was not done, the division bench of this court accepted the petitioners' contentions that the procedure as contemplated for executing the order for possession was passed by the RERA Authority and thus, directed the civil court to decide the Darkhast Proceedings expeditiously. He therefore submits that, for no fault on the part of the petitioners, possession has still not been handed over to them, inspite of various directions issued as recorded above.

19. To support his submissions, learned counsel for the petitioners relied upon the following decisions:

1. ***Shaikh Salim Haji Abdul Khayumsab Vs. Kumar and***

Others¹.

2. *Uday Shankar Triyar Vs. Ram Kalewar Prasad Singh and Anr².*

3. *Sugandhi (Dead) by Legal Representatives and Anr Vs. P. Rajkumar represented by his Power Agent Imam Oli³.*

4. *Commissioner of Central Excise, New Delhi Vs. Hari Chand Shri Gopal and Ors⁴.*

20. Learned counsel for the petitioners thus submits that the substantial compliance for the purpose of executing the order of possession was only with regard to the calculations to be made towards the amount payable by the complainants to the developer, which is part of the orders which is under execution. He submits that the only controversy with regard to the amount claimed by the developer from the petitioners is in lieu of the directions issued in clause (b) of the order dated 16th August 2019. He submits that even if the developer challenges the calculations before this court in the pending Writ Petition No. 1794 of 2024, the only issue to be

1 (2006) 1 SCC 46.

2 (2006) 1 SCC 75

3 (2020) 10 SCC 706

4 (2011) 1 SCC 236

decided is whether any amount is due and payable by the complainants to the developer. He, however, submits that there is no reason for the civil court to dismiss the application for executing the order to hand over possession.

21. Learned counsel for the petitioners submits that the order issuing a recovery warrant would be appealable under Section 43(5) of the RERA. He thus submits that the Writ Petition No. 1794 of 2024 would not be maintainable in view of the remedy of appeal under Section 43(5) of the RERA.

22. Learned counsel for the petitioners points out that the developer had filed complaints seeking directions against the petitioners to pay the amount towards consideration, along with the interest. However, the said complaints were withdrawn on 2nd May 2023. Learned counsel for the petitioners submits that once the complaints filed by the developer for recovering the amount are withdrawn, the calculations made on behalf of the petitioners are required to be accepted in view of the statements uploaded at the time of uploading the order, which is under execution. Learned counsel for the petitioners, therefore, submits that this petition be allowed by issuing necessary directions to the

executing court to proceed with the execution by issuing a possession warrant.

Submissions on behalf of respondent no. 1:

23. Learned counsel for respondent no.1, the developer, submits that in view of the grounds raised by the developer before the RERA Authority, the amount payable by the complainants to the developer needs to be calculated from the date of the amount due and payable. According to the learned counsel for the developer, the amount would be due and payable as of 13th December 2014, which is the date agreed upon by the respondent to hand over possession of the three units. He submits that the occupancy certificate was received on 6th June 2018; thus, the complainants would be liable to make payment towards the balance consideration as per the agreement on or before 31st December 2014. Hence, according to the learned counsel for the developer, as per clause (b) of the operative order dated 16th August 2019, the payment to be made by the complainants towards infra charges agreed by them should be paid with the same rate of interest from the date agreed till it is paid. He thus submits that if the interest is calculated from the date the

complainants were liable to make payment to the developer, they would be entitled to recover approximately Rs. 72,00,000/-. Therefore, until the amount is paid, the developer would not be liable to hand over possession. He therefore submits that the developer has filed Writ Petition No. 1794 of 2024, which is still pending before this court. He therefore submits that there would be no question of issuing a possession warrant until the amount is paid to the developer.

Consideration of the facts and submissions:

24. I have perused the papers of the petition. Initial facts, as contended by the petitioners, are not in dispute. The only dispute raised on behalf of the developer appears to be regarding the amount due and payable to the developer, as directed in clause (b) of the order dated 16th August 2019. Learned counsel for the petitioners rightly pointed out the relevant clause in the agreements, which provides for making payment as per the payment schedule in the agreement. There is no dispute that all amounts due and payable by the complainants as per the payment schedule have already been paid by them, and the statement of the revised

payments has been uploaded as per the rectification order dated 14th October 2019. The developer has never raised any objections to the revised payment statements. In fact, the respondent-developer has also endorsed the revised payment statements that are uploaded.

25. I do not find any substance in the argument raised on behalf of the developer that the amount would be due and payable as on 31st December 2014. Though the date agreed for handing over possession was 31st December 2014, and the occupation certificate was received on 6th June 2018, the developer had failed to hand over possession. Hence, the RERA Authority has already passed an order dated 16th August 2019. This order is not challenged by the developer. The issue regarding the payment of Infra charges agreed between the parties is clearly stated in the agreement. The revised payment uploaded also refers to the amount received by the developer. Thus, the amount due and payable, as reflected in the revised payment statements, would be payable at the time of handing over possession, as recorded in the agreement and also directed by the order dated 16th August 2019.

26. So far as the calculation of the rate of interest as per clause (a) of the order dated 16th August 2019 is concerned, pursuant to the directions issued by the RERA Authority on 20th November 2020, the complainants have already uploaded the claim statement as directed by the RERA Authority. Learned counsel for the developer could not point out any objections raised on behalf of the developer to the claim statement uploaded by the complainants, pursuant to the order dated 20th November 2020. The order passed by the RERA Authority on the application uploaded by the complainants for execution of possession warrant was also never challenged by the developer.

27. Thus, the order written by the RERA Authority on the online application for issuing possession warrant was accepted by the division bench of this court as a compliance for forwarding the order to the civil court for execution. The order passed by the division bench on 8th June 2022 has also attained finality. The directions issued by the division bench of this court to the executing court are to execute the order in an expeditious manner. The division bench observed that, as contended by the complainants, the adjudicating authority

has already exercised power under sub-section (2) of Section 40 read with the 2017 Rules. Hence, in light of the directions issued by the division bench, I see no substance in the objections raised on behalf of the developer that there is no compliance as contemplated under Rule 4 of the 2017 Rules. As there was compliance with the requirements as contemplated under Rule 4, coupled with the directions issued by the division bench, there was no reason for the executing court to dismiss the application as not maintainable. The pendency of the writ petition filed by the developer was no ground to object to the issuance of the possession warrant, as it was admitted that no orders had been passed in Writ Petition No. 1794 of 2024.

28. Thus, the conduct on the part of the developer in keeping the petition pending and seeking interim protection only on 9th July 2025, by suppressing the correct facts before the coordinate bench warrants imposition of costs for making misleading and incorrect statements before the coordinate bench in Writ Petition No. 1724 of 2024.

Legal Position:

29. The Hon'ble Apex Court in the decision of ***Shaikh Salim Haji Abdul Khayumsab***, held as under:

“10. All the rules of procedure are the handmaid of justice. The language employed by the draftsman of processual law may be liberal or stringent, but the fact remains that the object of prescribing procedure is to advance the cause of justice. In an adversarial system, no party should ordinarily be denied the opportunity of participating in the process of justice dispensation. Unless compelled by express and specific language of the statute, the provisions of CPC or any other procedural enactment ought not to be construed in a manner which would leave the court helpless to meet extraordinary situations in the ends of justice.

11. The mortality of justice at the hands of law troubles a Judge's conscience and points an angry interrogation at the law reformer.

12. The processual law so dominates in certain systems as to overpower substantive rights and substantial justice. The humanist rule that procedure should be the handmaid, not the mistress, of legal justice compels consideration of vesting a residuary power in Judges to act ex debito justitiae where the tragic sequel otherwise would be wholly inequitable. Justice is the goal of jurisprudence, processual, as much as substantive. (See Sushil Kumar Sen v. State of Bihar [(1975) 1 SCC 774] .)

13. No person has a vested right in any course of procedure. He has only the right of prosecution or defence in the manner for the time being by or for the court in which the case is pending, and if, by an Act of Parliament the mode of procedure is altered, he has no other right than to proceed according to the altered mode. (See Blyth v. Blyth [(1966) 1 All ER 524 : 1966 AC 643 : (1966) 2 WLR 634] .) A procedural law should not ordinarily be construed as mandatory, the procedural law is always subservient to and is in aid to justice. Any interpretation which eludes or frustrates the recipient of justice is not to be followed. (See Shreenath v. Rajesh[(1998) 4 SCC 543 : AIR 1998 SC 1827] .)

14. Processual law is not to be a tyrant but a servant, not an obstruction but an aid to justice. Procedural prescriptions are the handmaid and not the mistress, a lubricant, not a resistant in the administration of justice.”

30. In the decision of **Uday Shankar Triyar**, the Hon'ble Apex Court held that procedural defects and irregularities that are curable should not be allowed to defeat substantive rights or to cause injustice. It is held that procedure, a handmaiden to justice, should never be made a tool to deny justice or perpetuate injustice. In the decision of **Sugandhi**, the Hon'ble Apex Court held that procedure is the handmaid of justice and that the procedural and technical hurdles shall

not be allowed to come in the way of the court while doing substantial justice. It is further held that if the procedural violation does not seriously cause prejudice to the adversary party, courts must lean towards doing substantial justice rather than relying upon procedural and technical violations.

31. In the decision of *Commissioner of Central Excise, New Delhi*, the Hon'ble Apex Court in paragraphs 32 and 34 held as under:

“Doctrine of substantial compliance and “intended use”

32. The doctrine of substantial compliance is a judicial invention, equitable in nature, designed to avoid hardship in cases where a party does all that can reasonably be expected of it, but failed or faulted in some minor or inconsequent aspects which cannot be described as the “essence” or the “substance” of the requirements. Like the concept of “reasonableness”, the acceptance or otherwise of a plea of “substantial compliance” depends upon the facts and circumstances of each case and the purpose and object to be achieved and the context of the prerequisites which are essential to achieve the object and purpose of the rule or the regulation. Such a defence cannot be pleaded if a clear statutory prerequisite which effectuates the object and the purpose of the statute has not been met. Certainly, it means that the Court should determine whether the statute has been followed sufficiently so as to carry out the intent for which the statute was

enacted and not a mirror image type of strict compliance. Substantial compliance means “actual compliance in respect to the substance essential to every reasonable objective of the statute” and the Court should determine whether the statute has been followed sufficiently so as to carry out the intent of the statute and accomplish the reasonable objectives for which it was passed.”

“34. The test for determining the applicability of the substantial compliance doctrine has been the subject of a myriad of cases and quite often, the critical question to be examined is whether the requirements relate to the “substance” or “essence” of the statute, if so, strict adherence to those requirements is a precondition to give effect to that doctrine. On the other hand, if the requirements are procedural or directory in that they are not of the “essence” of the thing to be done but are given with a view to the orderly conduct of business, they may be fulfilled by substantial, if not strict compliance. In other words, a mere attempted compliance may not be sufficient, but actual compliance with those factors which are considered as essential.”

32. In the present case, Section 40 of the RERA provides for the enforcement of orders. Section 40 reads as under:

“40. Recovery of interest or penalty or compensation and enforcement of order, etc.

(1) If a promoter or an allottee or a real estate agent, as the case may be, fails to pay any interest or penalty or compens-

ation imposed on him, by the adjudicating officer or the Regulatory Authority or the Appellate Authority, as the case may be, under this Act or the rules and regulations made thereunder, it shall be recoverable from such promoter or allottee or real estate agent, in such manner as may be prescribed as an arrears of land revenue.

(2) If any adjudicating officer or the Regulatory Authority or the Appellate Tribunal, as the case may be, issues any order or directs any person to do any act, or refrain from doing any act, which it is empowered to do under this Act or the rules or regulations made thereunder, then in case of failure by any person to comply with such order or direction, the same shall be enforced, in such manner as may be prescribed.”

Analysis and conclusions:

33. In the present case, threefold directions are issued by the order dated 16th August 2019, passed by the Member & Adjudicating Officer of MahaRERA. Firstly, it directs the developer to pay interest on the delayed possession, secondly, it directs the complainants, i.e. the petitioners to pay the infra charges and, thirdly it directs that on receiving the full agreed amount from the complainants, the developer shall handover the possession of the three units to the complainants with a copy of the occupation certificate. The order further grants the parties the liberty to adjust their

respective claims and pay the balance, if any. This order, dated 16th August 2019, is put into execution by the complainants.

34. At the cost of repetition, I find it necessary to note here the following dates and events:

- a) On 16th August 2019, the order under execution was passed.
- b) On 14th October 2019, the rectification order was uploaded, along with the agreed-upon calculations for the revised payments for all three units.
- c) On 4th March 2020, the complainants issued a letter by post to the developer intimating that there was no amount due and payable from the complainants, and after adjusting the amount that was due and payable by the complainants, the balance amount of Rs. 14,07,165.67 was to be paid by the developer to the complainants. Since there was no response, an email was sent to the developer regarding the request to make payment of the balance consideration and hand over possession.

- d) Since there was no response, the application was filed with the RERA Authority for recovery of the due amount.
- e) On 20th November 2020, the Member-II, MahaRERA, passed an order in this application, directing the complainants to file a claim statement. The order was put into execution by directing the issuance of a recovery warrant under Section 40(1) of the RERA. The petitioners uploaded the claim statement.
- f) On 26th February 2021, the petitioners applied to the RERA Authority for the issuance of a possession warrant by uploading the application online in accordance with the procedure followed before the RERA Authority. On this application, the RERA Authority directed that the recovery warrant was already issued, and for possession, the complainant has to approach the civil court under section 40 read with Rule 4 of the 2017 Rules. Directions were also issued to place it before the Secretary.
- g) On 28th August 2021, the petitioners filed a writ petition

before the division bench of this court seeking various directions for the implementation of the order dated 16th August 2019.

- h) Sometime in January 2022, the developer filed Writ Petition No. 1794 of 2024 challenging the recovery warrant issued on 20th November 2020.
- i) 8th June 2022, the division bench of this court accepted the petitioners' contention that MahaRERA had already transferred the proceedings to the civil court by exercising power under sub-section (2) of Section 40 read with the 2017 rules and partly allowed the petitioners' petition and directed the executing court to decide the execution application expeditiously.
- j) On 16th August 2022, the developer filed a complaint before the RERA Authority for directing the complainants to pay an amount of Rs. 66,14,503/-, Rs. 12,61,385/- and Rs. 10,55,060/- with interest.
- k) On 6th August 2022, the petitioners applied to the civil court for the execution of the order dated 16th August 2019 and prayed for the issuance of a possession

warrant.

- I) On 27th April 2023, the developer withdrew the complaint for recovering the amount from the complainants.

35. Thus, in view of the aforesaid facts and circumstances, it is contended by the complainants that after adjusting the amount payable by the developer to the complainants, there is no amount due and payable by the complainants to the developer; hence, the complainants are entitled to receive possession of the units. It is thus contended by the complainants that, after adjusting the amount due and payable by the complainants to the developer, the balance amount is recoverable from the developer, for which a recovery warrant has already been issued. Hence, there is no pending procedural compliance regarding the payments; therefore, the civil court is required to execute the order for possession. Hence, the order for possession is required to be executed as contemplated under Rule 4 of the 2017 Rules, which provides the manner of implementing the order of the Adjudicating Officer, the Authority, or the Appellate Tribunal. Rule 4 of the 2017 Rules reads as under:

“4. Manner of implementation of order, direction or decision of the Adjudicating Officer, the Authority or the Appellate Tribunal.—For the purpose of sub-section (2) of section 40, every order passed by the Adjudicating Officer, Authority or Appellate Tribunal, as the case may be, under the Act or the rules and regulations made thereunder, shall be enforced by the Adjudicating Officer, the Authority or the Appellate Tribunal in the same manner as if it were a decree or order made by the principal civil court of original jurisdiction in a suit. In the event such Adjudicating Officer, the Authority or Appellate Tribunal is unable to execute the order, it shall send a copy of such order to the principal civil court, to execute such order either within the local limits of whose jurisdiction the real estate project is located or in the principal civil court of original jurisdiction within the local limits of whose jurisdiction the person against whom the order is being issued, resides, or carries on business, or personally works for gain alongwith a certificate stating that such an order has not been executed by it.”

36. Thus, the purpose of a certificate, as contemplated under Rule 4, is for verification that the order has not already been executed. The said Rule further stipulates that if the Authority under the RERA is unable to execute the order, it must be executed by the civil court. Thus, the object of this Rule is to ensure that the directions for handing over possession are executed by the civil court within whose

jurisdiction the project is situated. Thus, this is a beneficial Rule to implement the orders passed under the provisions of RERA. In the present case, the absence of a certificate cannot be interpreted as an impediment to maintaining an execution application before the civil court for executing the order of possession. As held by the Hon'ble Apex Court in the decisions as discussed above, the procedure, a handmaiden to justice, should never be made a tool to deny justice or perpetuate injustice. I have already held in the preceding paragraphs that all compliance has been completed regarding the payments as directed in the order under execution, and the RERA Authority has also directed to approach the civil court for recovery of possession.

37. In view of the facts and circumstances of the case, the legal principles as discussed above and settled in the decisions relied upon by the learned counsel for the petitioners squarely support the grounds raised on behalf of the petitioners.

38. Learned counsel for the respondent-developer relies upon the decision of the Hon'ble Apex Court in the case of

*Zuari Cement Ltd Vs. Regional Director, E.S.I.C., Hyderabad*⁵. Learned counsel for the developer argued that when the particular procedure as prescribed in the statute is to be done in a particular manner, it has to be done in the prescribed manner. He thus submits that non-compliance with issuing the necessary certificate, as contemplated under Rule 4 of the 2017 Rules, would not confer any jurisdiction on the civil court to implement the order. There is no substance in this argument in light of the directions issued by the division bench of this court in the petition filed by the complainants.

39. The developer has succeeded in keeping the execution proceedings pending and depriving the purchasers-original complainants of possession inspite of the order passed by the RERA Authority on 30th August 2019, which has attained finality. Such conduct on the part of the developer amounts to defeating the true spirit and object of the RERA, which is for the benefit of the purchasers who are deprived of getting possession inspite of the agreed terms and conditions for handing over possession on a particular date. Hence, in the

5 AIR 2015 SC 2764

facts and circumstances of the case, it would be appropriate to impose exemplary costs on the developer for unnecessarily depriving the purchasers of possession of the units, making false and misleading submissions before the coordinate bench, and suppression, more particularly recorded in the preceding paragraphs.

40. Learned counsel for the developer was called upon to explain why exemplary costs should not be imposed, to which learned counsel for the developer submitted that he would submit to the orders passed by this court.

41. In the facts and circumstances of the case, as discussed above, and for the reasons recorded in the preceding paragraphs, the amount towards the cost is quantified as Rs. 5,00,000/-.

42. For the reasons recorded above, the writ petition is allowed by passing the following order:

I) The impugned order dated 4th December 2024, passed by the learned Civil Judge, Senior Division, Pune in Special Darkhast No. 116 of 2022 is quashed and set aside.

II) Special Darkhast No. 116 of 2022 is restored to file.

III) The executing court shall follow the directions issued by the division bench of this court in the order dated 8th June 2022 in Writ Petition No. 5453 of 2021 and decide the execution application by passing appropriate orders for issuing a possession warrant in accordance with law.

IV) The executing court shall decide the execution application as expeditiously as possible and in any case, within three months from today.

V) Respondent No.1 - Developer, shall pay the cost of Rs. 5,00,000/- to the petitioners. The payment of cost shall be directly transferred to the petitioners' bank account within four weeks from today.

43. The Writ Petition is allowed in the aforesaid terms.

(GAURI GODSE, J.)