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

**SECOND APPEAL NO. 391 OF 2025
WITH
INTERIM APPLICATION NO. 10454 OF 2024**

Linker Shelter Pvt. Ltd.
C/o. Paranjape Scheme Construction Limited,
Paranjape Bungalow, 34, M. G. Road,
Vile Parle (East), Mumbai - 400057 ... Appellant

Versus

1. Charmaine Chougule, Adult
2. Arvind D. Chougule, Adult
Both R/o. Flat No. 7, Aashis, Plot No. 22,
Tarun Bharat Society, Opp. Hotel Oriental
Aster, Andheri (East), Mumbai - 400099 ... Respondents

**WITH
SECOND APPEAL NO. 392 OF 2025
WITH
INTERIM APPLICATION NO. 3601 OF 2024**

Linker Shelter Pvt. Ltd.
C/o. Paranjape Scheme Construction Limited,
Paranjape Bungalow, 34, M. G. Road,
Vile Parle (East), Mumbai - 400057 ... Appellant

Versus

1. Annie E. Pinto, Adult
2. Edwin M. Pinto, Adult,
Both R/o, A/401, Shringeri CHS Ltd.
Near Vrishi Complex, Holy Cross Road,
I. C. Colony, Borivali (West), Mumbai - 400103 ... Respondents

**WITH
SECOND APPEAL NO. 393 OF 2025
WITH
INTERIM APPLICATION NO. 12371 OF 2024**

Linker Shelter Pvt. Ltd.
C/o. Paranjape Scheme Construction Limited,
Paranjape Bungalow, 34, M. G. Road,
Vile Parle (East), Mumbai - 400057 ... Appellant

Versus

1. Ramdas S. Gadiyar, Adult
2. Veena R. Gadiyar, Adult
Both R/o. 202, Shree Shiv Sadan CHS Ltd.
Sant Muktabai Road, Vile Parle (East)
Mumbai – 400057 ... Respondents

**WITH
SECOND APPEAL NO. 394 OF 2025
WITH
INTERIM APPLICATION NO. 13186 OF 2024**

Linker Shelter Pvt. Ltd.
C/o. Paranjape Scheme Construction Limited,
Paranjape Bungalow, 34, M. G. Road,
Vile Parle (East), Mumbai - 400057 ... Appellant

Versus

1. Sanny M. Pinto, Adult
2. Nina S. Pinto, Adult
Both R/o. B-02, Silver Cloud,
Sundernagar, Kalina, Santacruz (E)
Mumbai - 400098 ... Respondents

Mr. G. S. Godbole, Senior Advocate a/w. Mr. Sarthak Diwan and Mr. Avesh A. Ghadge for the Appellant in all Second Appeals.
Mr. Yogesh Patki a/w. Mr. A. S. Ramesan for the Respondents in all Second

Appeals.

Mr. Pradeep J. Thorat, Amicus Curiae appointed by Court (assisted by Ms. Aditi Naikare and Mr. Aniesh S. Jadhav)

CORAM : M. M. SATHAYE, J.

DATED : 18th JULY 2025

JUDGMENT :

1. These four Second Appeals are arising out of common Judgment and Order 30/01/2024 passed by Maharashtra Real Estate Appellate Tribunal, Mumbai ('the Appellate Tribunal' for short) in Appeal Nos. AT001000000053706 of 2022, AT001000000053684 of 2022, AT001000000053692 of 2022 and AT001000000053686 of 2022. The Appellant is a common developer. The Respondents are Complainants / Allottees in respect of flat nos. 4E-502, 4H-302, 4C-104 and 4E-504 in project Aaryavarta at Mahale Farm, Off Mumbai-Agra Road, Nashik – 422 009. By the said impugned Order, the common order dated 17/02/2022 passed in 4 complaints filed by Respondent allottees, was set aside and the Appellant/promoter was directed to refund to the Respondents all the amounts including amounts paid for taxes, registration fees etc. with interest from the date of receipt of the amount. It was directed that if there is failure to pay the said amount, the Appellant/Promoter will pay interest on the total outstanding amount as on 29/02/2024 till realization. Charge of this amount is continued on the respective flats till the amounts are refunded.

2. In this judgment, the Real Estate (Regulation and Development) Act, 2016 is referred to as 'the said Act'. Completion Certificate is referred to as 'CC'. Occupation Certificate is referred to as 'OC'. Maharashtra Real Estate Regulatory Authority, Mumbai is referred to as 'MahaRERA'.

3. By earlier order dated 19/06/2025, following two questions of law were framed by this Court and parties were heard on the said questions of law. Learned counsel for both sides have filed compilation of documents and referred to them. Considering the issues involved, the appeals are admitted on following substantial questions of law and heard finally by consent of parties.

“(A) ‘Whether the allottee, under section 18 of Real Estate (Regulation And Development) Act, 2016, has an unqualified right to withdraw from the project to mean that he can choose to decide withdrawal from project after whatever time he decides at his own will, when possession of a flat/apartment/plot/building with Occupation Certificate is already offered?

(B) Also it needs to be considered whether the possession being offered by the developer alongwith Occupation Certificate (with reference to section 19(10) of the said Act) can only be possession without any litigation over the subject property ?”

4. Few facts necessary for disposal of these Appeals, are as under:

(a) In January 2013 and October 2013 the said 4 flats were agreed to be sold by Appellant in favour of respective Respondents.

(b) The date promised for handing over possession was 31/12/2017.

(c) The Respondents paid various amounts under the agreement to the Appellant.

(d) Some time in 2013, an *ex-parte* injunction order was passed by this Court and it was served upon the Appellant/Developer in a litigation filed by 3rd party.

(e) By letters dated 22/05/2013, 12/07/2013 and 23/12/2015, the Appellant/Developer informed various developments in the pending litigation to the Respondents/allottees.

- (f) Appellant/Developer on 16/02/2016 informed the Respondents that the decision of the Court has come in favour of the Developer.
- (g) On 11/07/2018, Occupancy Certificate ('Occupation Certificate' or 'OC') for the building in which said flats are situated was obtained.
- (h) By first letter dated 21/12/2018 the Appellant/Developer specifically informed the Respondents/Allottees that since OC has been obtained, possession of the suit flats can be given and the Respondents/allottees were called upon to take possession. Copy of OC was attached and balance payment was demanded.
- (i) Thereafter again on 01/09/2019, the Appellant/Developer issued another communication to the Respondents / Allottees asking them to make remaining payment and take possession. This time, it was informed that CC was also obtained, of which copy was annexed.
- (j) On 18/02/2020, the Respondents/Allottee demanded refund of amounts paid, in effect deciding to withdraw from the project. This letter gives a reason that 'title of the land on which construction has been carried out is defective' and therefore it was alleged that the Appellant is not in a position to offer possession for use and occupation of the flat.
- (k) On 23/03/2020, the Respondents/Allottees filed aforesaid complaints before MahaRERA for refund of entire amount with interest, under section 18 of the said Act.
- (l) Member 1/MahaRERA by common order dated 17/02/2022 rejected the complaints refusing to refund, however, keeping open the claim of compensation under section 18(2) and 18(3) of the said Act.

(m) The Respondents/Allottees filed the aforesaid Appeals before the Appellate Tribunal.

(n) By common impugned judgment and order, the Appeals are allowed as indicated above.

(o) In these facts and circumstances, the parties are before this Court. The facts are really not disputed.

SUBMISSIONS

5. Mr. Godbole, learned senior counsel submitted that there cannot be a strait-jacket formula for all the contingencies arising between a developer and allottee, however, in the present case, the time for delivery of possession under the agreement expired on 31.12.2017. Occupation certificate was obtained on 11.07.2018. First letter was issued by the Appellant Developer offering possession alongwith OC on 21.12.2018. Thereafter on 01.09.2019, second letter was issued offering possession with CC. In such circumstances, he submitted that the Respondents allottees have waited till 18.02.2020 to decide about withdrawal from the project and demand refund. He submitted that it is not permissible to wait indefinitely and demand refund at the sweet will of the allottee when it is his/her duty to take possession within two months from the receipt of OC. He submitted that the decision must be made by the allottee within reasonable time of which indication is found in the statute itself in the form of section 19(10) of the said Act. He further submitted that the time period during which the allottee does not decide, the market prices may go up and the developer also cannot sell the flat/apartment to any third party.

6. Per contra, Mr. Patki appearing for the Respondents / Allottees

submitted that the provisions of sections 18(1)(a), 19(4), 19(10) of the said Act must be harmoniously construed and the possession has to be 'in terms of agreement' for section 19(10) to come into force. He submitted that it was informed under letter dated 18 February 2020 that the title of the land is defective and therefore the possession which was offered was not as per Agreement. He submitted that allottees have unqualified right to seek refund and it cannot be bound in terms of time period for demand. He has relied upon following judgments :

(i) **Newtech Promoters & Developers Pvt. Ltd. Vs. State of U.P. & Ors. [(2021) 18 SCC 1]**

(ii) **Imperia Structures Ltd. Vs. Brigadier Harit Pant [(2022) 7 SCC 703]**

7. Mr. Thorat, who was appointed as an Amicus Curiae by the Court has assisted the Court by taking me through various provisions of the said Act. He has shown the earlier judgment of **Imperia Structures Ltd Vs. Anil Pant & Anr. [(2020) 10 SCC 783]**.

CONSIDERATION

8. I have carefully considered the rival submissions and various provisions of the said Act and perused the record with the assistance of learned counsel for the parties. Facts are not really disputed.

9. Considering the issues involved, following provisions of the said Act will have to be considered together :

Section 2(q) : "Completion Certificate" means the completion certificate, or such other certificate, by whatever name called, issued by the competent authority certifying that the real estate project has been developed according to the sanctioned plan, layout plan and specifications, as approved by the competent authority under the local laws;

Section 2(zf) : "Occupancy Certificate" means the occupancy

certificate, or such other certificate by whatever name called, issued by the competent authority permitting occupation of any building, as provided under local laws, which has provision for civic infrastructure such as water, sanitation and electricity;

Section 4. Application for registration of real estate projects

(1)

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

x

x

(I) 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;

x

x

Section 12 - Obligations of promoter regarding veracity of the advertisement or prospectus :

Where any person makes an advance or a deposit on the basis of the information contained in the notice advertisement or prospectus, or on the basis of any model apartment, plot or building, as the case may be, and sustains any loss or damage by reason of any incorrect, false statement included therein, he shall be compensated by the promoter in the manner as provided under this Act:

Provided that if the person affected by such incorrect, false statement contained in the notice advertisement or prospectus, or the model apartment, plot or building as the case may be, intends to withdraw from the proposed project, he shall be returned his entire investment along with interest at such rate as may be prescribed and the compensation in the manner provided under this Act.

Section 18. Return of amount and compensation.

(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 subsection 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

Section 19 : Rights and duties of allottees

x

x

(4) The allottee shall be entitled to claim the refund of amount paid along with interest at such rate as may be prescribed and compensation in the manner as provided under this Act, from the promoter, if the promoter fails to comply or is unable to give possession of the apartment, plot or building, as the case may be, in accordance with the terms of agreement for sale or due to discontinuance of his business as a developer on account of suspension or revocation of his registration under the provisions of this

Act or the rules or regulations made thereunder.

X

x

(6) Every allottee, who has entered into an agreement or sale to take an apartment, plot or building as the case may be, under section 13, shall be responsible to make necessary payments in the manner and within the time as specified in the said agreement for sale and shall pay at the proper time and place, the share of the registration charges, municipal taxes, water and electricity charges, maintenance charges, ground rent, and other charges, if any.

x

x

(10) Every allottee shall take physical possession of the apartment, plot or building as the case may be, within a period of two months of the occupancy certificate issued for the said apartment, plot or building, as the case may be.

x

Circular No. 28/2021

No. MahaRERA/Secy/File No.27/34/2021, dated 8th March, 2021

(Note: Refer to Circular No. 28A /2021 Dated 22-7-2021

- Clarification regarding Formats for consent of allottees)

Subject: Standardized Formats for (A) Legal Title Report (B) Extension u/s 7(3)(C) Correction u/s 14(2)

D. Whereas Section 4 of Real Estate (Regulation & Development) Act, 2016 prescribes the procedure for real estate project registration and Rule 3(2)(c) of Real Estate (Regulation and Development) (Registration of real estate projects, Registration of real estate agents. rates of interest and disclosures on website) Rules, 2017 mandates submission of a copy of the latest legal title report with every project registration application reflecting the flow of title of the owner or promoter to the land on which development is proposed, with authentication of such title by practicing advocate.

c. Now, therefore it has been decided to provide a format for Legal Title Report. This format is Annexed as "Format A" and the applicant should upload this format at the place of "Legal Title Report" in the application for registration of the project.

X

X

X

FORMAT – A

(Circular No. 28 of 2021)

FLOW OF THE TITLE OF THE SAID LAND

Sr. No.

- 1) 7/12 extract/ P.R. Card as on date of application for registration.
- 2) Mutation Entry No. ...
- 3) Search report for 30 years from...Taken from sub-registrar' office at..
- 4) Any other relevant title.
- 5) Litigations if any.

Advocate
(Stamp)

(Emphasis Supplied)

REASONS AND CONCLUSIONS

10. The said Act was introduced to regulate and promote the real estate sector and to ensure sale of flat etc. in an efficient and transparent manner while protecting the interest of allottees and providing an adjudicatory mechanism for speedy dispute redressal. It is a salutary principle of interpretation of statutes that an Act must be looked at as a whole.

11. The Hon'ble Supreme Court in **Imperia Vs Anil Patni (supra)** has held in paragraph 25 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 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.”

12. The Hon’ble Supreme Court in **Newtech Promoters (supra)**, after considering the Statement of Objects and Reasons of the said Act, has observed as under :

“9. It was introduced with an object to ensure greater accountability towards consumers, to significantly reduce frauds and delays and also the current high transaction costs, and to balance the interests of consumers and promoters by imposing certain responsibilities on both, and to bring transparency 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.”

(Emphasis Supplied)

13. Keeping in view that interest of both sides are to be balanced and minimum standard of accountability is to be set and standardization is to be inducted, it is cardinally important that rights and liabilities of the parties are interpreted keeping in view the duties provided.

14. While taking stock of relevant provisions of the said Act, before framing the issues under consideration, the Hon’ble Supreme Court observed about unqualified right of the allottee to seek refund under section 18(1)(a) of the said Act, as under :

“18. 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/homebuyer holds an unqualified right to seek refund of the amount with interest at such rate as may be prescribed in this behalf.

21. 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.

24. 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/homebuyer, 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.”

15. Thereafter, the Hon’ble Supreme Court has indicated / framed following issues under the said Act, in paragraph 30 which were under consideration :

“30. After we have heard the learned counsel for the parties at length, the following questions emerge for our consideration in the present batch of appeals as under :

30.1. (1) Whether the 2016 Act is retrospective or retroactive in its operation and what will be its legal consequence if tested on the anvil of the Constitution of India ?

30.2. (2) Whether the Authority has jurisdiction to direct return/refund of the amount to the allottee under Sections 12, 14, 18 and 19 of the Act or the jurisdiction exclusively lies with the adjudicating officer under Section 71 of the Act?

30.3. (3) Whether Section 81 of the Act authorises the Authority to delegate its powers to a Single Member of the Authority to hear complaints instituted under Section 31 of the Act?

30.4. (4) Whether the condition of pre-deposit under the proviso to Section 43(5) of the Act for entertaining substantive right of appeal is sustainable in law?

30.5 (5) Whether the Authority has power to issue recovery certificate for recovery of the principal amount under Section 40(1) of the Act?"

16. Ultimately in paragraph 77 of the Judgment, the Hon'ble Supreme Court has re-iterated para 25 of the **Imperia Vs. Anil Patni (supra)**, which is already reproduced above. In the case of **Imperia Vs. Brig. Harit Pant (supra)**, Hon'ble Supreme Court has followed the same course as in **Imperia Vs. Anil Patni (supra)**. From the above issues it is clear that the questions of law framed in this case were not directly under consideration of Hon'ble Supreme Court.

17. Learned counsel for the Respondents has based his arguments on this unqualified right. However counter argument about possession being offered with OC has given rise to a little deeper issues as formulated by me above. Hence this consideration. The allottee certainly has unqualified right to seek refund; question is - till what time decision to exercise such right can be postponed? The issues framed by me in this Judgment are about 'when' such unqualified right can be exercised and if it can be 'postponed indefinitely' and about 'offer of possession with OC during litigation'. Of course all the judgments of the Hon'ble Supreme Court relied upon, have been a guiding light for me for the purpose of deciding the deeper issues and the view being taken.

18. Close look at the provisions narrated above indicates that under section 4(2) of the Act, the promoter is required to enclose various documents with the application for registration of project including declaration supported by affidavit stating that the developer has legal title to the land on which development is proposed along with valid documents and stating that the land is free from all encumbrances, or as the case may be, the details of the encumbrances on such land including right, title, interest or claim of any party in or over such land alongwith details. The promoter is obliged under section 12 of the said Act to compensate any person who makes an advance or deposit on the basis of information contained in the notice, advertisement or prospectus or on the basis of model apartment and sustains loss or damage by reason of incorrect false statement included therein. This is the requirement to safeguard the allottees or flat purchasers from incorrect or false information and it is also for the flat purchaser to make an informed choice. The proviso to section 12 provides that if the person affected by any incorrect false statement intends to withdraw from the proposed project, he shall be entitled to return of his entire investment along with interest at such rate as may be prescribed and compensation in the manner provided under the said Act.

19. Coming to section 18 of the said Act, it provides for 3 contingencies in which the allottee or flat purchaser has an option to continue with the project or withdraw from the same. They are as under :

Contingency 1 - The promoter is unable to complete and handover possession in accordance with terms of the agreement.

Contingency 2 - The promoter is unable to complete and handover possession by the date specified in the agreement.

Contingency 3 - The promoter is unable to complete the project on account of discontinuance of his business as a developer on account of suspension or revocation of registration under the said Act or for any other reason.

20. Close scrutiny of these contingencies indicate that handover of possession can be only in first two contingencies and not in the third. Therefore, in the cases where the promoter is unable to complete the project on account of reasons mentioned in third contingency, there is no question of handover of possession. This is obviously because 'occupancy' means habitability and comprises of essential requirement of basic amenities. Definitions of OC and CC (narrated above) clearly indicate provision of civic infrastructure such as water, sanitation and electricity as well as construction being accordance with sanctioned plan and layout as approved by competent authority under local laws.

21. Now let us consider the first two contingencies. Inability to handover 'possession in accordance with terms of agreement' can cover wide range of possibilities as the flat purchaser/allottee may feel differently in different situations and may perceive that handover of possession is not possible because it is not in accordance with terms of the agreement. This depends on facts and circumstances of each case. Inability to hand over 'possession by date specified in agreement' has a definitive character related to time, which has to be interpreted keeping in view the standardisation sought to be achieved, considering various provisions relating to time frames mandated in the said Act.

22. In all the three contingencies, the allottee has an option to withdraw from the project. But in first two contingencies, the allottee has an option to

withdraw from the project or continue with the same.

23. The case of an allottee where he or she wants to claim compensation for loss caused 'due to defective title of the land' covers the aspect of litigation about title of the land. This is specifically provided under section 18(2) of the said Act and it cannot be included or confused with the remedy provided under section 18(1) or the proviso thereto.

24. The said Act also provides for a residuary clause that if the promoter fails to discharge any other obligation under the Act or Rules made thereunder or in accordance with terms and conditions of the agreement, compensation is payable to flat purchaser/allottee under section 18(3). Since section 18(1)(a) specifically contemplates a situation where promoter fails to 'give possession in accordance with terms of the agreement', it has to be held that 'other breaches of terms of agreement' are covered under section 18(3) of the said Act. Obviously, the legislature was conscious of the usual problem faced by the flat purchasers of not getting possession of the flat/unit in time, despite paying consideration from hard-earned money.

25. In my considered view therefore, section 18(1) provides for failure to give possession under three contingencies, section 18(2) provides for compensation for loss due to defect in title and section 18(3) is a kind of residuary provision, providing for compensation in case of breach of any other obligation under the terms and conditions of the agreement including obligation imposed under the said Act or Rules made thereunder.

26. Having said that, if it is found in a given case that the objection of the flat purchaser/allottee is about title of the land being defective, then this

claim cannot be brought within the scope of section 18(1)(a) and (b) and proviso, because remedy for such grievance is specifically provided under 18(2) of the said Act. Having understood thus, it is clear in my view that the choice available with the flat purchaser/allottee to either withdraw from the project or continue therewith is not available if the grievance is about 'title of the land' and that grievance can be independently raised under section 18(2) of the said Act.

27. Section 19(4) of the said Act is a reflection of section 18(1)(a) and (b). Section 19(6) of the said Act requires the allottee to make necessary payments in the manner and within the time as specified in the agreement including share of registration charges, municipal taxes etc. Section 19(10) of the said Act mandates the flat purchaser/allottee that he/she shall take physical possession of the apartment, plot or building as the case may be within a period of two months of occupancy certificate issued for the said apartment, plot or building.

28. It is therefore clear that in cases where the promoter/developer fails to complete or is unable to give possession of premises by the date specified in the agreement, the liability of the developer depends on the decision taken by the allottee whether to withdraw from the project or continue therewith as provided under section 18(1)(a) & (b) and the proviso.

29. Having found that the flat purchaser/allottee is duty bound to take physical possession of the flat/apartment within a period of two months from the occupancy certificate (OC) issued, it does not stand to reason that the allottee can postpone his/her decision about whether to withdraw from the project or continue with the same beyond the period of two months. At

the most, it can be said that the allottee/flat purchaser must make the decision about whether to withdraw from the project or continue therewith within two months from the date on which the fact of OC issued for the concerned building is brought to his/her notice and of course when possession is offered along with OC. Offer of possession brings the case out of the clutches of section 18(1) because it is based on failure of developer to give possession. Once possession is offered along with OC, section 19(10) starts to operate, making it necessary for the flat purchaser/allottee to take a decision whether he/she wishes to withdraw from the project or continue therewith because taking possession is inseparably connected to that decision. It must be noted that under Section 19(6) of the said Act, the allottee is responsible to make necessary payment in the manner and time specified in the agreement and also pay the share of registration charges alongwith municipal, water, electricity, maintenance, ground rent and other charges which indicates final steps towards completion of transaction.

30. It must be kept in mind that during the time when the flat purchaser/allottee has paid part consideration towards purchase of flat under an agreement, the developer cannot sell the same to third person. In such situation, if the allottee/flat purchaser keeps postponing this decision about whether to withdraw from the project or continue therewith, during the entire time of such postponement, the developer remains bound not to sell the said flat to third person during which time, the market price may escalate. This has to be pitched against duty of the allottee to take possession, if a balance is to be reached or standardization is to be achieved.

31. Therefore in my considered view, interpreting that the allottee has an unqualified right to withdraw from the project and seek refund and

compensation to mean that he/she can postpone the decision about withdrawal indefinitely beyond two months, when possession of flat is already offered with Occupation Certificate and when there is no injunction order prohibiting such hand-over of possession, would be an absurd interpretation resulting into frustrating the balance and standardization expected under the said Act.

32. Therefore I hold that the allottee under section 18(1) of the said Act can not indefinitely postpone the decision about withdrawing from the project or continuing therewith beyond a period of 2 months from the date of possession being offered alongwith OC / CC as the case may be, provided there is no injunction against the developer from doing so.

33. Now coming to the aspect of whether existence of litigation would vitiate the offer of possession by the Developer. Section 4(2) of the said Act mandates the Developer to enclose / file documents declaring legal title, authentication and details of encumbrance if any as the case may be, at the time of registration of project. Circular No. 28 of 2021 provides for Format-A in which the promoter is required to submit / file legal title report and flow of the title. Thus, the provisions merely require disclosure of litigations pertaining to the project. The Developer under the said Act can inform about litigation if any, in the format provided as per circular issued. There is no indication that pendency of litigation is fatal to the offer of possession by the promoter as long as the competent planning authority has issued the OC/CC (as the case may be) and there is no order of injunction restraining the promoter from doing so. No such prohibition is either pointed out or seen in the scheme of the said Act.

34. Therefore in my view, the possession offered by the developer can not be compulsorily meant as only without any litigation over the subject property; of course it has to be offered with OC / CC (as the case may be) duly obtained from competent planning authority and there has to be no order of injunction restraining the developer from doing so.

ABOUT FACTS OF THIS CASE

35. In the present case, the facts are not disputed. The injunction granted by the Court was vacated in the pending litigation and OC was obtained in July 2018 and under first letter of December 2018 the possession was offered with copy of OC received. The Respondents allottees did not reply. In September 2019, second letter was issued by the Appellant Developer, again offering possession and informing that CC is also received, enclosing its copy and demanding balance consideration. Still the Respondents allottees did not take decision. On 18.02.2020, it is informed for the first time to the Developer that the allottees want refund and the reason given for demanding refund is 'defect in title'. It is already clarified above that this situation is covered under Section 18(2) of the said Act and it is basically compensation for loss caused to the allottees due to defect in the title. When the allottees were under duty to take possession of the flat within a period of 2 months of OC issued to the said premises, it cannot be said that despite possession being offered, the allottees can wait indefinitely and decide on some day of their choice to demand refund. Therefore it has to be held that the Appellant developer will be liable to refund with interest till end of 2 months from the date when possession was offered with OC (21.12.2018).

36. The appeals are accordingly partly allowed by passing following order:

A. The common impugned judgment and order dated 30.01.2024

is quashed and set aside.

B. In the peculiar facts of this case, the Respondents are permitted to withdraw from the project.

C. The Appellant Developer is directed to refund to the Respondents the respective amounts paid by Respondents (including amounts of taxes, registration fees and other statutory payments) with interest (at the rate of highest marginal cost of lending rate of State Bank of India plus 2%) **from date of receipt of payments till 21.02.2019**. This amount is to be paid within a period of 4 weeks from today. Charge of these amounts will continue on the respective flats, till payment is fully made.

D. The Respondents are at liberty to file separate claims under section 18(2) for compensation towards loss caused to them on their case of defective title of the land. Such claims if filed, shall be decided independently in accordance with law. Rival contentions in that regard are kept open.

E. All appeals and pending applications are disposed of in above terms. No order as to costs.

37. Before parting, a word of appreciation for Mr. Thorat with his associates is necessary, who has assisted the Court by taking it through various provisions of law and caselaw and filing a detailed note.

38. All concerned to act on duly authenticated or digitally signed copy of this order.

(M. M. STHAYE J)