

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 537 OF 2025
WITH
INTERIM APPLICATION NO. 11757 OF 2025

Keyana Estate LLP (Earlier Known as Kiyana Ventures LLP) ..Appellant

Versus

Paresh Parihar & Anr ...Respondents

Mr. Nimay Dave, with Kartik Joshi, i/b Wadia, Ghandy & Co, for the Appellant.

Mr. Manish Gala, with Khyati Bora, i/b Nilesh Gala, for the Respondents.

CORAM: N. J. JAMADAR, J.

DATE : 8th OCTOBER 2025

ORDER:

1. This Second Appeal is directed against a judgment and order dated 24th June 2025, whereby the Maharashtra Real Estate Appellate Tribunal (“Appellate Tribunal”) dismissed the Appeal No. AT00600000052700 preferred by the Appellant against an order dated 28th September 2020 passed by the learned Member, Maharashtra Real Estate Regulatory Authority (“MahaRERA”) in Complaint No. CC006000000171743, and, the consequent order whereby, the Appellate Tribunal directed the release of an amount of Rs.52,10,000/-

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deposited by the Appellant to the Allottees with the accrued interest thereon.

2. The Appellant is a promoter of a real estate project “Kalpataru Radiance”. The Respondents had booked the flats in the said project. On 29th December 2014 an Agreement for Sale came to be executed under which the Appellant had agreed to deliver the possession of the subject flat by December 2016, with a grace period of six to nine months. The development was retarded on account of stop work notice issued by the Municipal Corporation of Greater Mumbai (“MCGM”). On 18th July 2017, the Appellant registered wing “A” of the project as an ongoing project.

3. The Respondents filed a compliant with MahaRERA asserting that the Appellant failed to deliver the possession of the subject flat within the agreed period. By an order dated 28th September 2020, the Authority allowed the complaint and directed the Appellant to pay interest at 9% from 1st July 2017 till the delivery of possession of the subject flat.

4. Being aggrieved, the Appellant preferred Appeal before the Appellate Tribunal. In pursuance of the order passed under Section 43 (5) of the Real Estate (Regulation & Development) Act, 2016 (“the Act, 2016”), the Appellant deposited the sum of Rs.52,10,000/-.

5. The Appellant obtained Occupation Certificate ("O.C.") in respect of the subject project on 10th April 2023. It is the claim of the Appellant that in the month of May 2023, the Appellant offered possession of the subject flat to the Respondents. The later avoided to take possession of the subject flat on one or the other pretext. Instead the Respondents filed an Application for possession of the subject flat before the Authority. Eventually, the possession of the subject flat was accepted by the Respondents on 26th January 2024.

6. By the impugned order dated 24th June 2025, the Appellate Tribunal dismissed the Appeal preferred by the Appellant and directed the release of the amount of Rs. 52,10,000/- to the Allottees by 16th July 2025.

7. Being aggrieved, the Appellant has filed this Appeal under Section 58 of the Act, 2016.

8. I have heard Mr. Nimay Dave, the learned Counsel for the Appellant, and Mr. Manish Gala, the learned Counsel for the Respondents. With the assistance of the learned Counsel for the parties, I have perused the material on record.

9. Mr. Dave submitted that the Appellate Tribunal committed a gross error in law in going behind the O.C. granted by the Planning Authority. In view of the provisions contained in Section 19 of the Act, 2016, the liability of the Promoter to pay interest can be enforced only for a

period of two months of the grant of O.C. If an Allottee deliberately declines to accept the possession of the flat, he would not be entitled to seek interest on the ground of the delayed delivery of the flat. Thus, in the case at hand, according to Mr. Dave, the substantial questions of law, as to whether the Appellate Tribunal could have gone behind the O.C., and the Allottee could decide when to take possession of the flat, and still claim interest for the delayed period, arise for consideration.

10. It was further submitted by Mr. Dave that material on record would indicate that there were *force majeure* circumstances which prevented the Appellant from completing the project within the stipulated period. In any event, the Respondents also contributed to the delay by not making the payment of the outstanding amount in accordance with the terms of the contract. In such circumstances, both the MahaRERA and Appellate Tribunal, were in error in saddling the Appellant with the liability to pay interest for no fault on the part of the Appellant .

11. To buttress these submissions, Mr. Dave placed reliance on a judgment of this Court in the case of **Linker Shelter Pvt Ltd Vs Charmaine Chougule & Anr**,¹ wherein it was *inter alia* enunciated that once the possession was offered along with O.C., Section 19(10) of the Act, 2016 starts to operate, making it necessary for flat purchaser/allottee to take a decision whether he/she wishes to

1 SA No. 391 of 2025 with connected matters decided on 18th July 2025.

withdraw from the project or continue therewith because taking possession is inseparably connected to that decision. Offer of possession brings the case out of Section 18(1) because it is based on failure of developer to give the possession.

12. Reliance was also placed on a judgment of a learned Single Judge of this Court in the case of **M/s Savita Homemakers LLP Vs Mayur Ramchandra Akade**,² wherein it was observed that the interest to which the allottee is entitled as per the provisions of Act, 2016, particularly in view of Section 19(10) read with Section 18 is still the date O.C. is issued and two months thereafter.

13. In opposition to this, Mr. Gala would submit that the impugned order does not warrant any interference. No question of law, much less, a substantial question of law, arises for consideration. It was submitted that, in view of the decision of the Supreme Court in the case of **M/s Newtech Promoters and Developers Pvt Ltd Vs State of U.P. & Ors**,³ the allottee has an unqualified right to seek the interest on the delayed handing over the possession of the flat, as agreed.

14. Mr. Gala would urge, the offer of possession was on paper. The Respondents were relentlessly pursuing the Appellant to deliver the possession. All the payments, as demanded by the Appellant, were duly made by the Respondents and, yet, there was default on the part of the

² SA(St) No. 19304 of 2025 with connected matters decided on 15th July 2025.

³ 2021 SCC OnLine SC 1044.

Appellant to deliver the possession of the subject flat. In these circumstances, the Appellate Tribunal was justified in dismissing the Appeal, submitted Mr. Gala.

15. I have perused the material on record and given anxious consideration to the submissions canvassed by the learned Counsel for the parties. The Appellate Tribunal has noted that, upon a diligent perusal of the O.C. dated 10th April 2023, it becomes evident that the said O.C. was issued subject to the condition that a Certificate under Section 270 (A) of the Mumbai Municipal Corporation Act 1888 (“the MMC Act”) shall be obtained before giving possession of the flat to the buyers for which the O.C. was thereby granted. Despite providing ample opportunities, the Promoter had failed to provide any details regarding the compliance of the said condition before handing over the possession of the subject flat to the Respondents.

16. The submission of Mr. Dave that the Appellate Tribunal could not have embarked upon an enquiry as to whether the conditions subject to which the O.C. was issued, were fulfilled or not, does not merit acceptance. A mere offer to deliver possession of the subject flat, without complying with the necessary conditions subject to which the O.C. has been issued, where those conditions bear upon the occupation of the subject flat as a habitable unit, cannot be considered as the compliance of the obligation of the promoter under the Act, 2016.

Section 270A of the MMC Act, *inter alia* provides that no person shall occupy or permit to be occupied, or use or permit to be used, any premises or part thereof until he has obtained a certificate from the Commissioner to the effect that there is adequate supply of water to the persons intending to occupy or use such premises.

17. Thus, existence of adequate water supply to the project in question was a pre-condition subject to which the O.C. was granted. It is pertinent to note that, the observations of the Appellate Tribunal that the Appellant had failed to produce documents to show the compliance of the conditions could not shown to be incorrect. Only a bill for the month of April 2024, evidencing that the subject project had water connection could be placed on record. Evidently, that was after the possession was delivered to the Respondents.

18. It is true, there was a lengthy exchange of correspondence between the Appellant and the Respondents as regards the delivery of possession of the subject flat. However, the tenor of the correspondence indicates that the Respondents had been insisting upon the delivery of possession of the subject flat in a habitable condition with the necessary facilities and amenities, as agreed.

19. The claim of the Appellant that there was delay in payment on the part of the Respondents is required to be appreciated in the light of the fact that 95% of the sale consideration was paid by the Respondents

by December 2017. The Respondents had also paid the outstanding interest, despite repeated requests for inspection of the subject flat with a view to take possession thereof.

20. In these circumstances, the Appellate Tribunal was justified in holding that the Appellant committed default in the delivery of the possession of the subject flat, even after the grant of O.C. At any rate, the grant of O.C. was also much beyond the agreed date of delivery of possession of the subject flat. A clear case of violation of the provisions of Section 18 of the Act, 2016 was made out.

21. The submission of Mr. Dave premised on the *force majeure* is required to be noted to be repelled as in view of the decision of the Supreme Court in the case of **Newtech Promoters and Developers (Supra)** such submission cannot be readily acceded to. Even otherwise, no case of unforeseen event resulting in delay has been made out.

22. In the aforesaid view of the matter, this Court does not find any question of law, much less a substantial question of law, arises for consideration.

23. Hence the following order:

: O R D E R :

- (i) Appeal stands dismissed.

(ii) In view of the dismissal of the Appeal, the Interim Application stands disposed of.

No costs.

[N. J. JAMADAR, J.]