

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 588 OF 2025  
WITH  
INTERIM APPLICATION NO. 13746 OF 2025  
IN  
SECOND APPEAL NO. 588 OF 2025

Propel Developers Pvt Ltd ...Appellant

**Versus**

Mikunj Kiran Joshi ...Respondent

SANTOSH  
SUBHASH  
KULKARNI

Digitally signed by  
SANTOSH SUBHASH  
KULKARNI  
Date: 2026.01.07  
18:08:56 +0530

WITH  
SECOND APPEAL NO. 586 OF 2025  
WITH  
INTERIM APPLICATION NO. 13865 OF 2025  
IN  
SECOND APPEAL NO. 586 OF 2025

Propel Developers Pvt Ltd ...Petitioners

**Versus**

Manoj Nautamlal Gandhi ...Respondent

Mr. Vikramjit Garewal, a/w Abir Patel (through VC) and  
Protyusha Thanawala, i/b Wadia Ghandy & Co, for the  
Appellant in both Appeals.

Mr. Jairam Chandnani (through VC), a/w Shraddha Jadhav,  
i/b Lexim Associates, for the Respondent in both the  
Appeals.

CORAM: N. J. JAMADAR, J.  
DATED: 7<sup>th</sup> JANUARY, 2026

PC:-

SA/588/2025 and SA/587/2025

1. Heard the learned Counsel for the parties.

2. The following substantial questions of law arise for consideration:

- (i) Whether in respect of one and the same project and in matters arising out of identical facts-situation, one Bench of the Appellate Tribunal could take a contrary view on the aspect of the liability of the allottee to pay additional consideration upon purported increase in the carpet area, and the liability of the promoter to pay interest for the delay in delivery of possession, till the actual delivery of possession or only till the date of offer of delivery of possession, when one Honorable Member is a part of both the Benches, and, if not, whether failure to follow the earlier view or refer the matter to a larger Bench, vitiated the impugned judgment and order?
- (ii) Whether in the facts and circumstances of the case, the liability of the promoter to pay interest for the delayed delivery of possession of the subject flat, came to an end after two months of the offer to deliver the possession and, thus, the Appellate Tribunal was in error in directing the Promoter to pay interest till the actual delivery of possession?

3. **Admit.**

4. Issue notice to the respondent.
5. Mr. Chandnani, the learned Counsel, waives notice for the respondent.
6. The appellant shall file private paper-book within a period of eight weeks.
7. The appeals be listed for final hearing on 18<sup>th</sup> March, 2026.

**IA/13746/2025 and IA/13865/2025**

8. The second appeals have been admitted by framing substantial questions of law.
9. These interim applications have been preferred seeking stay to the execution and operation of the impugned orders passed by the Appellate Tribunal thereby directing the applicant - promoter to refund the additional amount of consideration of Rs.10,85,000/- and GST of Rs.1,30,200/- along with interest at the rate of State Bank of India's Highest Marginal Cost Leading Rate (MCLR) plus 2% interest, from the date of respective payment till realization and interest under Section 18 of the Real Estate (Regulation and Development) Act, 2016 ("RERA, 2016") on the amount paid by the allottee towards consideration from 1<sup>st</sup> January, 2016 till the date of handing over physical

possession of the respective flat to the allottee, at the State Bank of India's MCLR plus 2% within 30 days of the said order.

10. In another appeal being Appeal No.AT0006000000052847 in respect of the very same project and arising out of identical facts-situation, another Bench of the Appellate Tribunal by a judgment and order dated 31<sup>st</sup> January, 2023, has held that the allottee in the said case was liable to pay the said additional consideration of Rs.10,85,000/- and GST Rs.1,30,200/- on account of increase in the carpet area and restricted the liability of the promoter to pay interest for the delayed delivery of possession from 1<sup>st</sup> January, 2016 till 11<sup>th</sup> July, 2018, the date the possession was offered to be given to the allottee. One Honorable Member was a party to both the impugned judgment and the judgment in Appeal No.AT0006000000052847.

11. In the aforesaid view of the matter, the question of entitlement of the respondents/allottees to the refund of the additional consideration alongwith interest, and interest for the delayed period of possession up to the date of actual physical delivery of possession, warrants consideration.

12. Since there is not much controversy over the liability to pay interest for the delayed delivery of possession from 1<sup>st</sup> January, 2016 to 1<sup>st</sup> April, 2018 and, in the impugned order, the

Appellate Tribunal has categorically recorded that there has been no change in the area of the subject flats initially offered to be sold and the area shown in the revised sanctioned plan, and no additional area has been allotted to the allottee, this Court considers it necessary to put the applicant/promoter to terms while staying the execution and operation of the impugned judgment and order.

13. Hence, the following order:

**: O R D E R:**

- (I) The applications stand partly allowed.
- (II) The execution, operation and implementation of the impugned common judgment and order is stayed till final hearing of the appeals subject to the following conditions:
  - (a) The applicant promoter shall deposit the amount of additional consideration of Rs.10,58,000/- and GST Rs.1,30,200/- before the Appellate Tribunal, within a period of one month from today.
  - (b) The applicant promoter shall pay interest under Section 18 of the RERA, 2016 on the amount of consideration paid by the respondent allottee in respect of the respective subject flats from 1<sup>st</sup> January, 2016 to 1<sup>st</sup> April,

2018 at the rate of State Bank of India's MCLR plus 2%, within one month from today.

- (c) In the event of default, the Authorities under RERA, 2016 shall be at liberty to enforce the order of the Appellate Tribunal, in accordance with law.

Applications disposed.

[N. J. JAMADAR, J.]