IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 181 OF 2026

M/S.Anmol Alliance ...Appellant

Versus

Rohit Satish Shah ...Respondent

Mr. Gaurav Sharma, a/w Rushikesh Bhadre, for the Appellant.
Mr. Rupesh Sohni, for the Respondent.

CORAM: N. J. JAMADAR, J.
DATED: 22nd APRIL, 2026

ORDER:-

1. Heard Mr. Sharma, the learned Counsel for the appellant and, Mr. Sohni, the learned Counsel for the Respondent.

2. This appeal is directed against a judgment and order dated 23rd January, 2026 passed by the Maharashtra Real Estate Appellate Tribunal, Mumbai, ("the Appellate Tribunal"), whereby the appeal preferred by the appellant promoter against an order date 11th April, 2022, passed by the Maharashtra Real Estate Regulatory Authority, ("the Authority") in the complaint filed by the respondent – allottee came to be dismissed. The Appellate Tribunal has also modified the order passed by the Authority so as to reverse the benefit of moratorium period in the matter of payment of interest granted to the appellant by the Authority.

3. The appellant is the promoter of a project 'Eleganzia Royale'. It is a redevelopment project approved by the Slum Rehabilitation Authority. The respondent – allottee booked an apartment bearing No.1704 in the said project. An Agreement for Sale was executed on 15th October, 2011, under which the promoter agreed to sell the said apartment for a consideration of Rs.1,52,00,000/-. The allottee paid a substantial consideration of Rs.1,46,00,000/-, with the balance Rs.6,00,000/- to be paid at the time of delivery of possession; which the promoter agreed to deliver within three years of the completion of the plinth, i.e. by June, 2016.

4. As there was an inordinate delay in the delivery of the possession of the apartment, the allottees filed a complaint before the Authority. It was, *inter alia,* asserted that in addition to the aforesaid amount of Rs.1,46,00,000/- a further sum of Rs.1,17,61,700/- was paid to Mr. Narendra Amratlal Popal, the Director of Amkhim Holdings Private Limited, who was stated to be a partner of the promoter in the said project.

5. By an order dated 11th April, 2022, the Authority partly allowed the complaint. It was declared that the allottees were entitled to interest for the delayed delivery of the possession on the amount of consideration parted with by the allottees i.e. Rs.1,46,00,000/- from 1st July, 2016 at the prescribed rate. The promoter was, however, granted benefit of moratorium period under the notifications/orders No.13, 14 and 21 issued by the Authority, in the wake of Covid-19 Pandemic. The promoter was also directed to deliver the possession of the apartment alongwith occupation certificate.

6. Being aggrieved, the appellant preferred an appeal before the Appellate Tribunal.

7. By the impugned order, the Appellate Tribunal dismissed the appeal repelling the contentions of the appellant that in view of the default on the part of the allottee to pay the balance consideration of Rs.6,00,000/- the Agreement for Sale was terminated, and on account of the events beyond the control of the promoter, the project could not be completed and the possession of the apartment could not be delivered. The Appellate Tribunal was also of the view that the Authority had unjustifiably extended the benefit of moratorium period to the promoter and, thus, modified the order to saddle the liability upon the promoter to pay interest for the said period as well.

8. Mr. Sharma, the learned Counsel for the appellant, canvassed multi-pronged submissions. First, the complaint was not filed in the prescribed Form-A of the Regulations framed under the Real Estate (Regulation And Development) Act, 2016 ("RERA 2016"). Secondly, the liability of the promoter to deliver possession of the apartment did not accrue as there was breach on the part of the allottee to perform his reciprocal promise to pay the balance consideration of Rs.6,00,000/-. Thirdly, in view of the provisions contained in Clause 14 of the Agreement for Sale, the parties had agreed that the time to deliver possession would be deferred on account of the specified events, which were in the nature of force majeure. Lastly, in the absence of the cross-objection on behalf of the allottee, the Appellate Tribunal could not have modified the order passed by the Authority and directed the appellant to pay interest even for the moratorium period.

9. None of the aforesaid grounds merit countenance. The contention that the complaint was liable to be dismissed as it was not filed in the prescribed Form-A is required to be stated to be repelled. Having regard to the object of RERA 2016, the failure to file the complaint in the prescribed form, when the Authority has provided an efficacious opportunity of hearing to the parties, does not detract materially from the proceedings before the Authority and the resultant order.

10. Secondly, the submission that the allottees committed default in the payment of the balance consideration, in the light of the hard facts of the case, does not commend itself. Evidently, out of the agreed consideration of Rs.1,52,00,000/- the allottees had paid a sum of Rs.1,46,00,000/-, almost 10 years ago. The appellant had never been in a position to deliver the possession of the subject apartment. Mr. Sharma fairly submitted before this Court that, even till date the full Occupation Certificate has not been obtained. In these circumstances, the action of the appellant to terminate the contract on the specious ground that a relatively minuscule amount of Rs.6,00,000/- was not paid by the allottees, was wholly illegal and unjustified.

11. Thirdly, the Appellate Tribunal has justifiably repelled the contention that the appellant was precluded from completing the project within the prescribed period on account of the events beyond control of the appellant. An expansive force majeure clause to include even normal and mundane activities which may contribute to delay in the completion of project can never be sustained as a ground to exonerate the promoter from the contractual and statutory obligations under RERA 2016.

12. "Force majeure" is a well recognized juridical concept. The term 'act of god' has a definite legal connotation. In the case of ***The Divisional Controller, KSRTC V/s. Mahadeva Shetty***[1], the Supreme Court enunciated that The expression "Act of God" signifies the operation of natural forces free from human intervention, such as lightening, storm etc. It may include such unexpected occurrences of nature as severe gale, snowstorms, hurricanes, cyclones, tidal waves and the like.

13. In the case of ***Vohra Sadikbhai Rajakbhai and Ors. V/s. State of Gujarat and Ors.***[2], the Supreme Court after referring to the rule of strict liability recognized in ***Rylands V/s. Fletcher***[3], expounded the juridical connotation of 'act of God' as under :

> "22. There are two exceptions to the aforesaid rule of strict liability, which were recognized in Rylands v. Fletcher itself, viz.:
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> (a) where it can be shown that the escape was owing to the plaintiff's default, or
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> (b) the escape was the consequence of vis major or the act of God.
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> An act of God is that which is a direct, violent, sudden and irresistible act of nature as could not, by any amount of ability, have been foreseen, or if foreseen, could not by any amount of human care and skill have been resisted. Generally, those acts which are occasioned by the elementary forces of nature, unconnected with the agency of man or other cause will come under the category of acts of God. Examples are: storm, tempest, lightning, extraordinary fall of rain, extraordinary high tide, extraordinary severe frost, or a tidal bore which sweeps a ship in mid-water. What is important here is that it is not necessary that it should be

1 (2003) 7 SCC 197

2 (2016) 12 SCC 1

3 (1868) LR 3 HL 330

> unique or that it should happen for the first time. It is enough that it is extraordinary and such as could not reasonably be anticipated. We would like to discuss a few cases having bearing on this issue with which we are confronted in the instant appeal.
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> (emphasis supplied)

14. The Explanation to Section 6 of RERA 2016, reads as under :

> "Explanation – for the purpose of this section, the expression "force majeure" shall mean a case of war, flood, drought, fire, cyclone, earthquake or any other calamity caused by nature affecting the regular development of the real estate project."

15. If the promoters are permitted to expand the scope of force majeure by including the ordinary incidents associated with the development of the project, then the very object of RERA 2016 would be completely defeated. As a matter of principle, force majeure events cannot be given an expansive meaning so as to act as a buffer against the contractual obligation of the promoter. Lest the very scheme of RERA 2016 and the transformative change sought to be enshrined thereby, would be completely frustrated. The Appellate Tribunal, thus, committed no error in declining to accept the contention of the Promoter that the obligation of the Promoter was subject to the force majeure events enlisted in the Agreement for Sale.

16. The Division Bench Judgment of this Court in the case of ***Neelkamal Realtors Suburban Pvt. Ltd. and Anr. V/s.***

Union of India and Ors.[4], constitutes a complete answer to the submissions premised on the delay in obtaining regulatory approvals and statutory clearances, sought to be canvassed on behalf of the Promoter :

> "119. Under the provisions of Section 18, the delay in handing over the possession would be counted from the date mentioned in the agreement for sale entered into by the promoter and the allottee prior to its registration under RERA. Under the provisions of RERA, the promoter is given a facility to revise the date of completion of project and declare the same under Section 4. The RERA does not contemplate rewriting of contract between the flat purchaser and the promoter. The promoter would tender an application for registration with the necessary preparations and requirements in law. <u>While the proposal is submitted, the promoter is supposed to be conscious of the consequences of getting the project registered under RERA. Having sufficient experience in the open market, the promoter is expected to have a fair assessment of the time required for completing the project. After completing all the formalities, the promoter submits an application for registration and prescribes a date of completion of project. It was submitted that interest be made payable from the date of registration of the project under RERA and not from the time-line consequent to execution of private agreement for sale entered between a promoter and a allottee</u>. It was submitted that retrospective effect of law, having adverse effect on the contractual rights of the parties, is unwarranted, illegal and highly arbitrary in nature."

17. The last submission that the Appellate Tribunal could not have awarded interest for the moratorium period in the absence of a cross-objection having been filed by the allottee, though appears attractive at the first blush, does not stand to judicial scrutiny.

18. In the case of ***Banarsi and Ors. V/s. Ram Phal***[5], the

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4 (2017) SCC Online Bom 9302.

5 (2003) 9 SCC 606.

Supreme Court considered the import of the 1976 Amendment and postulated the three situations which may arise where the Respondent professes to assail the finding and decree of the Court of the first instance. The observations of the Supreme Court in paragraphs 10 and 11 are instructive and hence extracted below.

> "10. CPC Amendment of 1976 has not materially or substantially altered the law except for a marginal difference. Even under the amended Order 41 Rule 22 sub-rule (1) a party in whose favour the decree stands in its entirety is neither entitled nor obliged to prefer any cross objection. However, the insertion made in the text of sub-rule (1) makes it permissible to file a cross objection against a finding. The difference which has resulted we will shortly state. A respondent may defend himself without filing any cross objection to the extent to which decree is in his favour; however, if he proposes to attack any part of the decree he must take cross objection. The amendment inserted by 1976 amendment is clarificatory and also enabling and this may be made precise by analysing the provision. There may be three situations:
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> (i) The impugned decree is partly in favour of the appellant and partly in favour of the respondent;
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> (ii) The decree is entirely in favour of the respondent though an issue has been decided against the respondent;
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> (iii) The decree is entirely in favour of the respondent and all the issues have also been answered in favour of the respondent but there is a finding in the judgment which goes against the respondent.
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> 11. In the type of case (i) it was necessary for the respondent to file an appeal or take cross objection against that part of the decree which is against him if he seeks to get rid of the same though that part of the decree which is in his favour he is entitled to support without taking any cross objection. The law remains so post amendment too. In the type of cases (ii) and (iii) pre-amendment CPC did not entitle nor permit the respondent to take any cross objection as he was not the person aggrieved by the decree. Under the amended CPC, read in the light of the explanation, though it is still not necessary for the respondent to take any cross objection laying challenge to any finding adverse to him as the decree is entirely in his favour and he may support the decree without cross objection; the amendment made in the text of sub-rule (1), read with the

> explanation newly inserted, gives him a right to take cross objection to & finding recorded against him either while answering an issue or while dealing with an issue."

19. Following the aforesaid pronouncement, in the case of ***Saurav Jain and Anr. V/s. A.B.P. Design and Anr.***[6], it was enunciated that only when a part of the decree was assailed by the Respondent, should a memorandum of cross-objection be filed. Otherwise, it is sufficient to raise a challenge to an adverse finding of Court of first instance before the Appellate Court without a cross-objection.

20. Rule 33 of Order XLI of the Code from which support and sustenance was drawn by the Appellate Tribunal provides that the appellate Court shall have power to pass any decree and make any order which ought to have been passed or made and to pass or make such further or other decree or order as the case may require, and this power may be exercised by the Court notwithstanding that the appeal is as to part only of the decree and may be exercised in favour of all or any of the respondents or parties, although such respondents or parties may not have filed any appeal or objection. Rule 33 of Order XLI confers power on the Appellate Court in wide terms. Such powers are vested in the Appellate Court with the object of equipping the Appellate

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6 (2022) 18 SCC 633

Court to pass such orders as are necessary to do complete justice between the parties. Rule 33 of Order XLI is, in a sense, an enabling provision, which empowers the Appellate Court to pass such orders which ought to have been passed by the trial Court.

21. In the case of ***Banarsi*** (supra), the Supreme Court expounded the import of Rule 33 of Order 41, as under :

> "15……While dismissing an appeal and though confirming the impugned decree, the appellate court may still direct passing of such decree or making of such order which ought to have been passed or made by the court below in accordance with the findings of fact and law arrived at by the court below and which it would have done had it been conscious of the error committed by it and noticed by the Appellate Court. While allowing the appeal or otherwise interfering with the decree or order appealed against, the appellate court may pass or make such further or other, decree or order, as the case would require being done, consistently with the findings arrived at by the appellate court. The object sought to be achieved by conferment of such power on the appellate court is to avoid inconsistency, inequity, inequality in reliefs granted to similarly placed parties and unworkable decree or order coming into existence. The overriding consideration is achieving the ends of justice. Wider the power, higher the need for caution and care while exercising the power. Usually the power under Rule 33 is exercised when the portion of the decree appealed against or the portion of the decree held liable to be set aside or interfered by the appellate court is so inseparably connected with the portion not appealed against or left untouched that for the reason of the latter portion being left untouched either injustice would result or inconsistent decrees would follow. The power is subject to at least three limitations: firstly, the power cannot be exercised to the prejudice or disadvantage of a person not a party before the Court; secondly, a claim given up or lost cannot be revived; and thirdly, such part of the decree which essentially ought to have been appealed against or objected to by a party and which that party has permitted to achieve a finality cannot be reversed to the advantage of such party. A case where there are two reliefs prayed for and one is refused while the other one is granted and the former is not inseparably connected with or necessarily depending on the other, in an appeal against the latter, the former relief cannot

> be granted in favour of the respondent by the appellate court exercising power under Rule 33 of Order 41."
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> (emphasis supplied)

22. The Supreme Court has in terms enunciated that the overriding consideration is achieving the ends of justice. Usually the power under Rule 33 is exercised when the portion of the decree appealed against or the portion of the decree held liable to be set aside or interfered by the appellate court is so inseparably connected with the portion not appealed against or left untouched that for the reason of the latter portion being left untouched either injustice would result or inconsistent decrees would follow.

23. The aforesaid nature of the power of the Appellate Court under the Code, especially the inter-play between Rules 22 and 33 of Order XLI of the Code, deserves to be appreciated in the context of the nature of the jurisdiction exercised by the Appellate Tribunal under RERA 2016. The provisions of Section 53 of RERA 2016 spell out the powers of the Appellate Tribunal. The relevant part of Section 53 reads as under :

> "53. Powers of Tribunal
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> (1) The Appellate Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908 but shall be guided by the principles of natural justice.
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> (2) Subject to the provisions of this Act, the Appellate Tribunal shall have power to regulate its own procedure.
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> (3) The Appellate Tribunal shall also not be bound by the

rules of evidence contained in the Indian Evidence Act, 1872. ...."

24. Sub-section (1) of Section 53 declares that the Appellate Tribunal shall not be bound by the procedure prescribed in the Code, but shall be guided by the principles of natural justice. Nor the Appellate Tribunal is constrained in discharge of its adjudicatory functions by the rules of evidence contained in the Indian Evidence Act, 1872. RERA 2016, thus, professes to unshakle the Appellate Tribunal of the strict rules of procedure and evidence. Conferment of such power on the Appellate Tribunal is to mitigate the rigours of the technical rules of procedure and evidence for achieving the object of RERA 2016, inter alia, for regulation and promotion of the real estate sector, ensure the transparency and efficiency of the transactions in the real estate and protect the interest of consumers in the real estate sector.

25. It could thus be inferred that, the technical and fashioned notions of absolute necessity of a cross-objection may not apply with the strict rigour. If the matter is open before the Appellate Tribunal and the Appellate Tribunal follows the fundamental principles of judicial process and adheres to the rules of natural justice and hears the parties on the aspect of the legality and correctness of a part of the order passed by the Authority, and the eventual order passed by the Appellate Tribunal otherwise satisfies the dictates of command of justice, such order may not be suspectible to interference by the High Court under the regime of Section 100 of the Code, 1908.

26. In the case at hand, the most significant factor is the failure on the part of the Appellant to deliver possession, even after lapse of almost ten years of the agreed date of possession. Incontrovertibly, the agreed date of possession was well prior to four year of the onset of Covid-19 Pandemic. In such a situation, the Authority could not have granted the benefit of the moratorium on the payment of interest. In a sense, this dispensation of moratorium ought not to have been extended by the Authority and the interest ought to have been granted throughout till the delivery of possession of the subject flat.

27. From this standpoint, the order passed by the Appellate Tribunal appears to be in consonance with the overarching objective of achieving ends of justice. Therefore, this Court does not find any fault with the approach adopted by the Appellate Tribunal.

28. The conspectus of aforesaid consideration is that, no substantial question of law arises for consideration. The Appeal, thus, deserves to be dismissed.

29. The second appeal stands dismissed.

[N. J. JAMADAR, J.]