

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL (ST) NO.41415 OF 2025
WITH
INTERIM APPLICATION NO.469 OF 2026**

Mahanagar Realty	...	Appellant
versus		
Anita Jayant Oswal	...	Respondent

**WITH
SECOND APPEAL (ST) NO.41413 OF 2025
WITH
INTERIM APPLICATION NO.471 OF 2026**

Mahanagar Realty	...	Appellant
versus		
Anita Jayant Oswal	...	Respondent

**WITH
SECOND APPEAL (ST) NO.41417 OF 2025
WITH
INTERIM APPLICATION NO.475 OF 2026**

Mahanagar Realty	...	Appellant
versus		
Anita Jayant Oswal	...	Respondent

Mr. Anuj Desai i/by Mr. Ashwin Pimpale, for Appellant - Applicant.
Mr. Nimay Dave with Mr. Mohit Advani i/by Mr. Dinesh Parmar, Mr. Suneet Tyagi, for Respondent.

CORAM: N.J.JAMADAR, J.

DATE : 21 JANUARY 2026

ORDER :

1. Heard the learned Counsel for the parties.
2. These appeals are directed against the orders dated 15 October 2025

and 15 December 2025 passed by the Maharashtra Real Estate Appellate Tribunal in Misc. Application Nos.907 of 2025, 908 of 2025 and 909 of 2025 for possession of the subject flats in Appeal No.52215 of 2020, 52216 of 2020 and 52217 of 2020, respectively.

3. The background facts can be stated, as under :

3.1 In the year 2013, Agreements for Sale were executed in respect of three flats in building 'A' of the project developed by the Appellant-Promoter. The latter claimed, there was failure on the part of the Respondent-allottee to make payment of the amount of consideration, in installments, as agreed. Additionally, the force majeure circumstances prevented the Promoter from delivering possession of the subject flats to the Respondent-allottee, and, consequentially, the date of delivery of possession of the flats stood extended under Clause 14 of the Agreements. Yet, the Respondent-allottee filed complaint before the Maharashtra Real Estate Regulatory Authority. As the Respondent-allottee committed default in payment of the entire consideration, as agreed, on 24 January 2019, the Appellant terminated the Agreements for Sale by addressing a notice.

3.2 By an order dated 6 December 2019, MAHARERA set aside the termination of the Agreements for Sale and referred the complaint to the Adjudicating Officer for deciding the interest payable to the complainant under Section 18 of the Act, 2016. For the rest of the grievances, the Respondent-

allottee was directed to approach the concerned Planning Authority.

3.3 Being aggrieved and dissatisfied with the order dated 6 December 2019, both the allottee and the Promoter preferred appeals before the Appellate Tribunal.

3.4 In the appeals filed on behalf of the Promoter, by an order dated 29 October 2021, the Appellate Tribunal stayed the execution and operation of the order passed by the MAHARERA, till the disposal of the appeals.

3.5 The Respondent, however, took out applications seeking possession of the subject flats. By an order dated 15 October 2025, the Appellate Tribunal was persuaded to allow the applications, while directing the Respondent-allottee to pay the balance consideration of Rs.42,60,773/- alongwith interest @ MCLR of SBI plus 2% and also to pay all outstanding charges as per the terms of the Agreements for Sale, before the Tribunal. The Appellant-Promoter was directed to handover possession of the subject flats to the allottee within a month of receipt of intimation of deposit of the amount, subject to final orders that may be passed in the Appeals.

3.6 It appears, further orders were passed by the Appellate Tribunal in regard to the compliance of the said order dated 15 October 2025. Eventually, by an order dated 15 December 2025, the Appellate Tribunal ordered the delivery of possession of the subject flats, subject to deposit of a sum of Rs.1,97,239/- towards the balance outstanding maintenance charges and

corpus fund. It was further ordered that the claim of the Promoter with respect to interest on account of delayed payment will be addressed at the time of final hearing of the Appeals.

3.7 Being further aggrieved, the Promoter has preferred these appeals.

4. Mr. Desai, learned Counsel for the Appellants, would submit that, the Appellate Tribunal was clearly in error in modifying its earlier order dated 15 October 2025, whereby the Appellate Tribunal had directed the Appellant to deposit the balance consideration of Rs.42,60,773/- with interest 2 MCLR of SBI plus 2% and pay the outstanding charges. The Appellate Tribunal had no jurisdiction to review the said order and direct the delivery of possession of the subject flats, upon payment of a partly sum of Rs.1,97,239/- towards the balance outstanding maintenance charges and the corpus fund. Therefore, substantial question of law, as to whether the Appellate Tribunal could, in law, modify its earlier order dated 15 October 2025 without a case having been made out for review, arises for consideration.

5. It was further submitted that, in the event, the subjects flats are delivered to the allottee, the promoter would suffer grave prejudice if the Promoter succeeds in appeals. Thus, both the orders deserve to be quashed and set aside.

6. In opposition to this, Mr. Dave, learned Counsel for the Respondent-allottee joined the issue by canvassing a submission that, in fact, there was

no dispute over the amount which was to be paid by the allottee to the promoter towards the balance consideration. On 25 November 2025, upon instructions of the Appellant, a statement was made before the Appellate Tribunal that the Appellant – Promoter was ready to handover possession of the subject flats to the allottee. However, there was dispute with regard to the outgoing charges. Having made such a categorical statement and agreed to deliver possession of the subject flats upon payment of the proportional outgoing charges, it was not open for the Appellant to again prefer an appeal, submitted Mr. Dave.

7. Evidently, the initial order dated 15 October 2025, directing the delivery of possession of the three subject flats, subject to payment of the balance amount of Rs.42,60,773/- with interest at the prescribed rate and all the outstanding charges, was not promptly assailed by the Promoter. In contrast, upon balance consideration and the outstanding charges, having been paid by the allottee, the promoter had agreed to deliver possession of the subject flats. The Appellate Tribunal, in its order dated 25 November 2025 has recorded the statements made by the parties with regard to the compliance of the order dated 15 October 2025. It reads as under :

“1. Mr. Nimay Dave submits that pursuant to the order dated 15.10.2025, the allottees have deposited Rs.70,60,690/- towards balance consideration plus interest as per para No.2 of operative part of the order. So far as outgoing charges are

concerned, the allottees have deposited Rs.24,54,980/- as per letter of promoter dated 17.11.2018. After depositing the said amount, the allottees have communicated the same to the promoter by letter dated 18.11.2025. Besides, by email also the allottees has also communicated the same to the promoter. Despite this, the promoter has not handed over the possession of flats to the allottee.

2. Per contra, Adv. Anuj Desai upon instructions submits that promoter is ready to handover the possession of subject flats to the allottee. However, there is dispute with regard to the outgoing charges. He will furnish furnish the details of the outgoing charges. Promoter will handover the possession of the subject flats to the allottee within a week after depositing the difference amount by the Appellant.”

8. In view of the aforesaid clear and categorical statement, purportedly on the instructions of the promoter that, the Promoter was ready to handover possession of the subject flats to the allottee, upon payment of the balance outgoing charges, the compliance of the order dated 15 October 2025 was subject to the payment of the outstanding outgoing charges only.

9. It is the claim of the allottee that, despite the payment of the balance outgoing charges, the Promoter committed default in delivery of the possession of the subject flats, and, therefore, the Appellate Tribunal was again moved.

10. In the face of the aforesaid situation, the factual controversy sought to

be raised on behalf of the Appellant in regard to the exact liability of the allottee to pay the balance consideration, need not be delved into. The Appellate Tribunal, therefore, held that the rights and contentions of the Promoter with regard to the interest on account of delayed payment be kept open at the time of final hearing of the Appeals. Thus, finding no impediment in directing the Promoter to handover possession of the subject flats after deposit of Rs.1,97,239/- towards maintenance and corpus fund, the Appellate Tribunal directed the Promoter to handover possession of the subject flats.

11. Mr. Desai, attempted to salvage the position by submitting that, notwithstanding the offer made by the Appellant to deliver possession of the subject flats, the Appellate Tribunal could not have directed the delivery of possession upon payment of a sum of Rs.1,97,239/- only, when in the order dated 15 October 2025, the allottee was directed to pay interest on the balance consideration at the rate of MCLR of SBI plus 2%.

12. I find it rather difficult to accede to the aforesaid submission. The Appellate Tribunal has noted the amounts which the Respondent – allottee paid, after the order dated 15 October 2025. Moreover, the promoter had made a specific statement that the Promoter was ready to deliver possession of the subject flats and the controversy revolved around the outgoing charges only. Having taken such a stand, the Appellant could not have resiled from its representation and assailed the order dated 15 December 2025 passed by

the Appellate Tribunal.

13. At any rate, the liability of the allottee to pay interest, being in the nature of a loss, which can be computed in terms of money, the order for delivery of possession of the subject flats, at an interim stage, cannot be faulted at. The Appellate Tribunal was, thus, justified in holding that the said issue would be determined at the stage of the final adjudication of the Appeals.

14. Thus, no question of law, much less a substantial question of law, arises for consideration.

15. The Second Appeals, thus, stand dismissed.

16. In view of the dismissal of the Second Appeals, Interim Applications also stand dismissed.

(N.J.JAMADAR, J.)