

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO. 2792 OF 2026
IN
SECOND APPEAL NO. 177 OF 2026

Sarvoday Builders & Developers ..Appellant
Versus
Bhikhubhai Thakarshibhai Chauhan
(Mistry) ...Respondent

Ms. Pranita Saboo, a/w Mr. Ameet Mehta, Mr. Nirav Marjadi,
Mr. Sahil Gada i/b Solicis Lex, for the Appellant.
Mr. Makarand Raut a/w Hima Khoman, Ms. Bhavika Solanki,
for the Respondent.

CORAM : N. J. JAMADAR, J.

DATE : 15th APRIL 2026

Oral Order :

1. Heard the learned Counsel for the parties.
2. The challenge in this appeal is to an order dated 12th March, 2026, whereby the Maharashtra Real Estate Appellate Tribunal ('the Appellate Tribunal') has directed the petitioner to make pre-deposit of an amount of Rs. 13,72,917/- (Rupees Thirteen Lakhs Seventy Two Thousand Nine Hundred and Seventeen) under Section 43(5) of the Real Estate (Regulation and Development) Act, 2016.
3. Appeal No. AT06/01515 of 2025 has been preferred by the appellant, being aggrieved by an order dated 09th October, 2025

passed by the Maharashtra Real Estate Regulatory Authority ('the Authority') thereby declaring that the respondent/complainant at Serial No. 03 is entitled to claim interest for the delay caused in delivery of possession of the total amount paid to the respondent.

4. The interest was directed to be paid from the date of payment till the date of actual delivery of possession alongwith occupancy certificate and parking space in terms of the agreement for sale. The Authority has further directed that, the total arrears of rent accrued shall be set off/adjusted against any outstanding dues required to be paid by the complainant - respondent herein towards the cost of the subject flat.

5. Ms. Saboo, the learned Counsel for the appellant submitted that, the Appellate Tribunal has committed an error in ordering the pre-deposit as in terms of the aforesaid order passed by the Authority, the appellant is not required to pay any amount and the amount that is required to be paid by the respondent - allottee in Complaint No. 03 towards the balance consideration and interest exceeds the amount to be paid by the appellant towards the interest.

6. The Appellate Tribunal was not persuaded to accede to the aforesaid submissions. The Appellate Tribunal noted that, the

promoter had not obtained the occupation certificate and, therefore, the promoter could not deliver the possession of the subject flat. In such circumstances, the direction issued by the Regulatory Authority to adjust the amount of interest payable by the allottee to the promoter is conditioned upon the date of delivery of possession of the subject flat, which has yet not arrived. Therefore, the promoter was required to make the pre-deposit.

7. Evidently, the questions sought to be raised in this appeal are in the realm of factual disputes as to the computation of the exact amount to be paid or adjusted. The fact remains that, the appellant has yet not obtained the occupation certificate and is, therefore, not in a position to deliver the possession of the subject flat to the allottee.

8. Under the provisions of Section 18(1) of Act, 2016, the right of the allottee to receive interest for the delayed delivery of the possession of apartment is an unqualified right. In the case of *Newtech Promoters and Developers Pvt. Ltd. v. State of U.P. & ors.*¹, with reference to the provisions contained in Section 18(1) and 19(4), the Supreme Court has enunciated in clear and

¹ (2021) 18 SCC 1

explicit terms that, it is an absolute and unqualified right of the allottee.

9. Since the appellant is not in a position to deliver possession of the subject flat as occupation certificate is still awaited the liability of the appellant to pay the interest on the amount of consideration already parted with by the allottee from the agreed date of delivery of possession would subsist till the actual delivery of the apartment.

10. In these circumstances, no substantial question of law arises for consideration in this appeal against an order of pre-deposit.

11. In the event, the amount is deposited before the Appellate Tribunal, it is needless to clarify that, it would abide the final order in the appeal that may be passed by the Appellate Tribunal.

12. The Second Appeal stands dismissed.

13. In view of the dismissal of the Second Appeal, the Interim Application also stands dismissed.

[N. J. JAMADAR, J.]