



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 472 OF 2021

CCI Projects Private Limited Office at Rivali Park, CCI Compound, Western Express Highway, Borivali East, Mumbai 400 066.	]]]]]	<u>...Appellant</u>
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Versus

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| 1. Mr. Sriram Krishnan
having address at
Krishna, E-404, Vasant Sagar Complex
Thakur Village, Kandivali (East), Mumbai –
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| 2. Mrs. Vidya Sriram
having address at
Krishna, E-404, Vasant Sagar Complex,
Thakur Village, Kandivali (East), Mumbai –
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| 3. Mr. Abhijit Kumar Phanikumar
having office at Rivali Park,
CCI Compound, Western Express Highway,
Borivali (East), Mumbai 400 066. |]
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| 4. Ms. Nandini Hiten Khatau
having Office at Rivali Park,
CCI Compound, Western Express Highway,
Borivali (East), Mumbai – 400 066. |]
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| 5. Ms. Maithili Hiten Khatau
having Office at Rivali Park,
CCI Compound, Western Express Highway,
Borivali (East), Mumbai 400 066. |]
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| 6. Mr. Pradip Haridas Udeshi
having Office at Rivali Park, |]
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CCI Compound, Western Express Highway,]
 Borivali (East), Mumbai 400 066.]

7. Ms. Nayna Bharat Pasta]

having office at Rivali Park,]
 CCI Compound, Western Express Highway,]
 Borivali (East), Mumbai – 400 066.]

...Respondents

Mr. Rubin Vakil, Mr. Abir P. and Mr. Kartik Joshi i/b Wadia Ghandy and Co. for Appellant.

Mr. Bhavin Gada i/b Mr. Chirag Desai for Respondent Nos. 1 and 2.

Coram : Sharmila U. Deshmukh, J.

Reserved on : 22nd April, 2026.

Pronounced on : 18th June, 2026.

Judgment :

1. The Second Appeal is filed at the instance of the promoter, challenging the judgment dated 10th March, 2021 passed by Maharashtra Real Estate Appellate Tribunal, Mumbai [for short, ***“Appellate Tribunal”***] quashing the order dated 31st January, 2019 in Complaint No. CC006000000056115 passed by MahaRERA and directing the promoters to pay interest for delayed possession. For sake of brevity, the parties are referred to as Promoter and allottees.
2. By order dated 5th March, 2026, this Court framed the following substantial questions of law:

“(i) Whether in view of provisions of Section 55 of the Indian Contract Act, 1872, the acceptance of delayed performance would disentitle the promisee from compensation claimed on account of non-performance of

contract at the agreed time?

(ii) Whether the provisions of Section 18 of the Real Estate (Regulation and Development) Act, 2016 will override the provisions of Section 55 of the Indian Contract Act, 1872?

(iii) Whether in view of provisions of Section 32 of Indian Contract Act, 1872, the force majeure events listed in the contract could have been ignored?"

(iv) Whether the Appeals would be maintainable at instance of Respondents in view of the concession given by the Respondents that the issue of interest will be considered subsequent to the completion of the project?

3. The facts of the case are that allottees filed a complaint under Section 31 of the Real Estate (Regulation and Development) Act, 2016 [for short, "**RERA Act**"] with the Maharashtra Real Estate Regulatory Authority [for short, "**1st Authority**"] stating that the allottees had booked an apartment in building known as Wintergreen in the project developed by the Promoters. On 18th November, 2014, an agreement was entered into between the promoters and the allottees and as per Clause 17 of the agreement, the promoters agreed to give possession to the allottees on or before 30th June, 2017.

4. The grievance was that till the filing of the complaint, the possession of the flat was not given. The total flat consideration was Rs. 1,95,06,060/- and the allottees had paid part consideration of Rs. 1,85,32,899/- and apart from that had also paid the sum of Rs. 10,09,220/- towards stamp duty and registration charges on 18th

September, 2014. The service tax, VAT, GST and TDS amounts were also paid and thus the allottees have paid sum of Rs. 2,05,89,715/- to the promoter.

5. As per the project registration under RERA, the proposed date of completion of project was 31st December, 2018 and revised proposed date of completion was 31st December, 2019. The allottees sought the relief of handing over possession of the apartments along with payment of interest for delayed possession from 1st July, 2017 till the handing over possession.

6. By order dated 31st January, 2019, the 1st Authority noted the submission of promoters that the construction work of project could not be completed for reasons beyond the promoter's control and that the construction would be completed before the revised completion date set out in the registration web page. The submission of learned counsel for complainants before the 1st Authority was that in Complaint No. CC006000000054636, the 1st Authority had directed the Promoter to handover possession by December, 2019 allowing the Promoter in the interest of completing the project to complete the project first with liberty to allottees to demand interest at an appropriate stage under Section 18 of RERA Act and that similar order be passed in the present complaint also. The 1st Authority directed the promoter to handover the apartments with occupancy certificate to

allottees before 31st December, 2019 and that the allottees shall be at liberty to demand interest at an appropriate stage under Section 18 of the RERA Act for delay in completing the project and disposed of the complaint.

7. As against this, the allottees approached the Appellate Tribunal and by the impugned judgment dated 10th March, 2021, the Appellate Authority quashed and set aside the order of the RERA Authority directing the following :

“iii) Complaint No. CC006000000056115 is allowed as under :

a) Promoters shall pay an interest @ State Bank of India's highest Marginal Cost of Lending Rate plus 2% to Allottees on the amount paid to Promoters for delayed period of possession from 1st July, 2017 till handing over possession of flat to Allottees.

b) Promoters shall pay Rs. 25,000/- towards cost to the Allottees and shall bear own costs.”

8. The Appellate Authority held that there is no authentic evidence to show that the allottees had accepted the revised date of possession or had acquiesced or waived their right to interest. It held that the allottees stayed with the project despite the promoters failing to give the possession as per the agreed date and gets the statutory right to claim interest for delayed possession. It held that the promoters unilaterally extended the date of possession which is not binding on the allottees. In a concurrent judgment, the non-judicial member

agreed with the observations and conclusion recorded by the judicial member that as the promoters have failed to give possession on the date i.e. 30th June, 2017 agreed in the Agreement for Sale registered on 18th November, 2014 for non-justifiable reasons, the allottees are entitled to interest for the delayed period of possession.

9. Mr. Rubin Vakil, learned counsel appearing for Appellants would submit that the date mentioned in Section 18 of RERA Act is the contractual agreement between the parties and Section 55 of the Indian Contract Act, 1872 [for short, ***“the Contract Act”***] takes note of the fact that the party is accepting delayed possession. He would point out that Section 55 deals with performance of reciprocal promises and where delayed possession is accepted, it in fact, constitutes addendum to main agreement accepting the alteration of date. He would submit that under Section 62 of the Contract Act, the parties by conduct can alter the original contract and in the present case, the allottees by their conduct had altered the dates specified in the Agreement for sale. He would further point out that clause 17 of the Agreement for sale provided that possession shall be handed over on or before 30th June, 2017 automatically stand extended when delay is in beyond the control of the promoter.

10. He would further point out the communication addressed by the promoter to the allottees updating the allottees about the challenges

faced in the subject project and revising the date of possession from March, 2018 to December, 2018. He submits that the first communication was addressed on 15th April, 2015 and there was no response or denial to the said communication by allottees which constitutes an acceptance of revised timelines. He submits that by communication of 9th June, 2017, the Promoter communicated a revised payment schedule to the allottees which was also accepted and payments were made accordingly.

11. He submits that provisions of Section 88 of RERA Act provides that the provisions of RERA Act is in addition to and not in derogation to other enactment and there is no conflict between the provisions of RERA Act and Contract Act. He submits that Section 18 of RERA Act is compensatory in nature and provides for payment of interest without any proof of loss occasioned on account of delayed possession. He submits that it is only the obligation to prove loss which is obviated and not the provisions of the Contract Act.

12. He would further point out that the initial dates in the schedule of payments provided for payment on the basis of slabwise construction and from 30th June, 2015 was based on fixed dates and thereafter, payments were made by the allottees as per the revised timelines which constitutes an acceptance of delayed possession. He submits that by their conduct, the allottees have given go-by to the

original date. He would further point out that payments were made even beyond 30th June, 2017, which was the date set out in the agreement for sale for handing over the possession.

13. He would further submit that the order of 1st authority is an order in invitum and the Appellate Authority did not consider the issue of maintainability of appeal though raised. He submits that the only remedy available to the Appellate Authority was to remand the matter and by failing to do so as the order was in invitum, the promoter's right to set up the case of acceptance of delayed possession and consequences thereof as provided under Section 55 of the Contract Act was taken away. He points out that in the written submissions before the Appellate Authority, specific plea of maintainability was raised. He would further point out that the impugned order does not consider the aspect of concession granted by the allottees by inviting the order. He submits that the promoter's remedy of opportunity of being heard before the 1st Authority cannot be substituted by right of hearing granted at the appellate stage. He would further submit that the allottees have not canvassed any submission that no concession was made by them before the Appellate Authority and even in the present proceedings, there is no such submission canvassed. In support, he relies upon the following decisions :

Era Realtors Private Limited vs. Prakash Shah and

***Another*¹**

***Institute of Chartered Accountants of India vs. L. K. Ratna and Others*²**

***Sports Authority of India and Another vs. Dr. Kulbir Singh Rana*³**

***Rajasthan State Industrial Development and Investment Corporation and Another vs. Diamond and Gem Development Corporation Limited and Another*⁴**

***Municipal Corporation of Delhi vs. Gurnam Kaur*⁵**

14. *Per contra*, Mr. Gada, learned counsel appearing for the Allottees would submit that the complaint before the 1st Authority was filed in September, 2018 and the order came to be passed in January, 2019 and till that time, there was no reply filed by the promoter and no stand taken and therefore, now it is too late to contend that they have lost an opportunity for placing their stand before the 1st Authority. He would submit that in Affidavit-in-reply filed before the Appellate Authority, there is no ground of Section 55 of the Contract Act taken and only case, which was set up was delay beyond their control and waiver and acquiescence. He submits that for the first time, in the present Second Appeal, the ground of Section 55 of the Contract Act is taken.

15. He would further submit that whenever the demand was made

- 1 Second Appeal (St.) No. 27241 of 2023, decided on 14th March, 2024.
- 2 (1986) 4 SCC 537.
- 3 (2025) 10 SCC 819.
- 4 (2013) 5 SCC 470.
- 5 (1989) 1 SCC 101.

by the promoter, the payments were made by the allottees and there is no submission that there is any delay in payment. He would further submit that the communications which were addressed to the allottees were in the year 2015 and 2017 and 85% of the amount was demanded and already paid. He would further point out the additional Affidavit filed before the Appellate Authority by the promoters contending that project is at the stage of nearing completion which Affidavit was filed in November, 2020 and therefore, even at the Appellate stage, the project was not complete.

16. He would further submit that the provisions of Section 55 of the Contract Act cannot be read for the purpose of determining date of possession as envisaged by Section 18 of RERA Act. He submits that by reason of the complaint being filed, there is already an objection raised and even the applicable test of Section 55 of the Contract Act stands satisfied as the complaint makes a specific reference for payment of interest. He submits that the provisions of Section 55 of the Contract Act provides that at the time of acceptance of performance, the notice is required to be given and in the present case, the possession was given in the year 2021 and the complaint would constitute notice to claim compensation.

17. He submits that the provisions of RERA Act does not extend the date mentioned in the Agreement for sale which is sacrosanct. He

would further submit that in the communication of 15th April, 2015, the promoter does not seek for consent and neither mentions that payment timelines would be revised. He submits that as and when demand was made, the payments were made. He would further submit that by the time, communication of 2017 was issued, the allottees had already paid 90% of consideration. He would submit that the Appellate Authority has appropriately dealt with the case of waiver which was set up by the promoter.

18. He would submit that being part of the same project and as order was already passed by the 1st Authority in identical matter, the 1st Authority was requested to pass same order which would not constitute concession. He submits that the allottees were entitled to the remedy of appeal and there can be no estoppel against law. He would further submit that there was no argument canvassed on the aspect of concession and by way of amendment to Appeal memo, the said issue is raised and being question of fact or mixed question of fact or law cannot be raised in the Second Appeal. He submits that concession is what is given up and cannot be withdrawn. He submits that the right to claim interest was not given up by the allottees. He would further submit that even the defence of Section 55 of the Contract Act have been raised for the first time in the Second Appeal, which is not pure question of law.

19. He would submit that in any event, Section 55 of the Contract Act cannot override the provisions of RERA Act in view of Section 89 of RERA Act. He submits that allottees have filed the appeal in 2019 and even at the appellate stage, as the possession was not given, there is no question of Section 55 of the Contract Act being triggered.

20. He would further submit that the promoter did not argue the aspect of concession before the Appellate Court and in fact, had argued delay and would point out the findings of the Appellate Authority dealing with the submissions canvassed. He submits that by way of amendment, in the year 2023, the issue of Section 55 of the Contract Act and the order being an order *in invitum* has been raised. He would further submit that the arguments canvassed that no opportunity of taking the defense of Section 55 of the Contract Act by reason of the concession given by the allottees is not a ground taken in the present Second Appeal. He submits that the decision in the case of ***Newtech Promoters and Developers Private Limited vs. State of Uttar Pradesh***⁶ covers the issue raised in the present case that Section 18 of RERA Act gives an unqualified right to the allottees to stay with the project and demand interest. He would submit that the concession which is being argued would be a benefit which is altogether given up and not a benefit which is deferred and therefore, it cannot be said

6 (2021) 18 SCC 1.

that the Appeal is not maintainable. In support, he relies upon the following decisions :

Newtech Promoters and Developers Private Limited vs. State of Uttar Pradesh and Others (supra)

Imperia Structures Limited vs. Anil Patni and Another⁷

Director of Elementary Education, Odisha vs. Pramod Kumar Sahoo⁸

Pathan Murtazakhan Dadamkhan and Others vs. Pathan Pirkhan Amdumiyani (dead) by LRs.⁹

Krishnapasuba Rao Kundapur (dead) after him his L.R. and Another vs. Dattatraya Krishnaji Karani¹⁰

Babu Ram alias Durga Prasad vs. Indra Pal Singh (dead) by LRs.¹¹

K. Chelliah Servai vs. P. Muthusami Servai¹²

Hardayal Gir vs. Sohna Ram¹³

Boodireddy Chandraiah and Others vs. Arigela Laxmi and Another¹⁴

Municipal Committee, Amritsar vs. Hazara Singh¹⁵

Director of Settlements, A.P. and Others vs. Mr. Apparao and Another¹⁶

M/s. Pragatej Builders and Developers Pvt. Ltd. vs.

7 (2020) 10 SCC 783.
 8 (2019) 10 SCC 674.
 9 1993 Supp (2) SCC 518.
 10 1965 SCC OnLine SC 251.
 11 (1998) 6 SCC 358.
 12 1995 Supp. (1) SCC 202.
 13 1970(3) SCC 635.
 14 (2007) 8 SCC 155.
 15 (1975) 1 SCC 794.
 16 (2002) 4 SCC 638.

Mr. Abhishek Anuj Sukhadia and Another¹⁷

21. In rejoinder, Mr. Vakil would submit that the written submissions filed before the Appellate Authority raised the issue of maintainability. He would further submit that in the Second Appeal, what is required to be set out is the substantial question of law and not the grounds on which the order is assailed as in the case of First Appeal. He submits that once the question of law is framed, the Court can decide the same. He would submit that by reason of concession given by the allottees, the promoter's statutory right to raise appropriate defence before the 1st authority is taken away which would also constitute violation of principles of natural justice. He submits that once the promoters have acted on the concession, the allottees are estopped from claiming interest. He submits that by reason of concession granted, there was no question of raising the issue of Section 55 of the Contract Act. He submits that the provisions of Section 55 of the Contract Act will have to be considered for the purpose of deciding the date of performance which can be determined by the regulatory authority under RERA Act. He would further submit that act of acceptance of the delayed performance is implied from acceptance of revised payment schedule. He would submit that decision in the case of ***Newtech Promoters and Developers Private Limited vs. State of Uttar Pradesh and Others***

¹⁷ Second Appeal No. 688 of 2023 and Second Appeal No. 689 of 2023, decided on 23rd January, 2024.

(supra), the issue as to the applicability of Section 55 of the Contract Act was not dealt with and is therefore, distinguishable.

REASONS AND CONCLUSION :

22. In identical facts arising in Second Appeal No. 479 of 2021, identical questions of law were raised except the fourth substantial question of law as regards the maintainability of appeal in view of concession granted by the allottees. Both the Second Appeals were listed together from time to time, however, were argued separately. The submissions canvassed on the questions of law are broadly similar and as the questions stand answered in Second Appeal No. 479 of 2021, the findings are reproduced hereinbelow with necessary variations. This Court in Second Appeal No. 479 of 2021 have answered the first three substantial question of law, which would also answer the first three substantial questions of law raised in this Appeal as under.

23. The first substantial question of law framed by this Court seeks an answer as to whether there was acceptance of delayed performance and secondly, whether such acceptance of delayed performance disentitles the allottees from claiming compensation under Section 18 of RERA Act in the absence of notice by the allottees of their intention to do so as contemplated by Section 55 of the Contract Act.

24. The RERA Act was enacted for regulating and promoting real estate sector and to infuse transparency in the sale of real estate

projects and to protect the interest of consumer in the real estate sector providing mechanism under the Act itself for adjudicating the grievances. The scheme of RERA Act statutorily regulates the development project creating rights and obligations aimed at ensuring that the flat purchaser's interest is protected by imposing obligations on the promoters to complete the development project in a time bound schedule and conferring various rights on the allottees upon failure of the promoter to perform its obligations.

25. Section 18 of RERA Act, reads as under :

“18. Return of amount and compensation.—(1) If the promoter fails to complete or is unable to give possession of an apartment, plot or building,—

(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or

(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason, he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:

Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed.

(2) The promoter shall compensate the allottees in case of any loss caused to him due to defective title of the

land, on which the project is being developed or has been developed, in the manner as provided under this Act, and the claim for compensation under this subsection shall not be barred by limitation provided under any law for the time being in force.

(3) If the promoter fails to discharge any other obligations imposed on him under this Act or the rules or regulations made thereunder or in accordance with the terms and conditions of the agreement for sale, he shall be liable to pay such compensation to the allottees, in the manner as provided under this Act.”

26. Section 18 of RERA Act codifies the summary nature of the proceedings by discharging the onus of proof of loss upon failure by the Promoter to hand over possession as per terms of the agreement or date specified therein. It gives an option to the allottee to exit from the project with refund of the amounts paid alongwith interest including compensation or to stay in the project and get interest for every month of delay till handing over possession. Section 18 thus confers a statutory right of the allottees to interest for the delayed possession, if they choose to remain with the project.

27. Section 55 of the Contract Act deals with the consequences of failure to perform the contract at fixed time in cases where time is of essence and where time is not of essence. Section 55 reads as under:

“55. Effect of failure to perform at fixed time, in contract in which time is essential.— When a party to a contract promises to do a certain thing at or before a specified time, or certain things at or before specified times, and fails to do any such thing at or before the specified time, the contract, or so much of it as has not been performed, becomes voidable at the option of the

promisee, if the intention of the parties was that time should be of the essence of the contract.

Effect of such failure when time is not essential.—If it was not the intention of the parties that time should be of the essence of the contract, the contract does not become voidable by the failure to do such thing at or before the specified time; but the promisee is entitled to compensation from the promisor for any loss occasioned to him by such failure.

Effect of acceptance of performance at time other than that agreed upon.—If, in case of a contract voidable on account of the promisor's failure to perform his promise at the time agreed, the promisee accepts performance of such promise at any time other than that agreed, the promisee cannot claim compensation for any loss occasioned by the non-performance of the promise at the time agreed, unless, at the time of such acceptance, he gives notice to the promisor of his intention to do so."

28. In cases where time is of essence, Section 55 of the Contract Act provides that the contract, if not performed, becomes voidable at the option of the promisee, who forgoes the right to compensation for any loss occasioned by the non-performance in absence of notice at the time of acceptance of delayed performance. Where time is not of essence, the contract is not voidable by failure to perform at specified time, however the promisee is entitled to compensation.

29. In the present case, the flat purchaser's agreement has been executed under Maharashtra Ownership Flats Act, 1963 [for short, "**MOFA**"]. Section 4 of MOFA prescribes the particulars of flat purchaser agreement to include *inter alia* the date on which the possession shall be handed over to the flat purchaser. The statutory

provisions of RERA Act providing for registration of the project requires the promoter to give the time period within which the project shall be completed and provides for consequences of failure to hand over possession as per the date duly specified. Clause 17 of the flat purchaser's agreement sets out that the possession of the premises shall be given by 30th June, 2017. The consequence of failure to hand over possession is provided in Clause 18 giving the purchaser the option to terminate the agreement. The clauses in the agreement makes it clear that the intention of the parties was to make time essence of contract. As the flat purchaser's contract is of the nature demanding compliance with the fixed date for performance and provides consequence for non-compliance, time is essence of the contract.

30. The consequence of failure to hand over possession by the date specified in the agreement in respect of real estate project is provided under Section 18 of RERA Act. Plain reading of Section 18 does not indicate that the rights conferred on the allottee upon failure of the promoter to hand over possession by the date duly specified is qualified by any contingency. Neither any provision of RERA Act has been demonstrated which would have the effect of qualifying the rights under Section 18.

31. Section 18 of RERA Act gives option to the allottees upon failure

of the promoter to hand over possession by the date specified in the agreement or as per the terms of the agreement either to withdraw from the project with refund of amounts paid along with interest including compensation or to stay with the project and get interest for every month of delay. In the context of real estate project, where the performance of promise of the promoter is to hand over possession by a specified date, the right given by Section 18 of RERA Act to continue with the project is nothing but permitting acceptance of delayed performance without foregoing the right to claim interest for every month of delay.

32. Section 55 of the Contract Act permits the same option to the promisee when it gives the right to the promisee to accept the performance of the promise at a date other than that agreed but qualifies the right to claim compensation only upon giving notice while accepting delayed performance.

33. If the right under Section 18 of RERA Act is an unqualified absolute right, the acceptance of revised timelines and delayed performance cannot lay fetters on the right to claim interest. The Hon'ble Apex Court in *Imperia Structures Limited vs. Anil Patni*¹⁸ while interpreting Section 18 of RERA Act has held in paragraph 25 as under:

“25. In terms of Section 18 of the RERA Act, if a promoter fails to complete or is unable to give possession of an

18 (2020) 10 SCC 783.

apartment duly completed by the date specified in the agreement, the promoter would be liable, on demand, to return the amount received by him in respect of that apartment if the allottee wishes to withdraw from the Project. Such right of an allottee is specifically made "without prejudice to any other remedy available to him". The right so given to the allottee is unqualified and if availed, the money deposited by the allottee has to be refunded with interest at such rate as may be prescribed. The proviso to Section 18(1) contemplates a situation where the allottee does not intend to withdraw from the Project. In that case he is entitled to and must be paid interest for every month of delay till handing over of the possession. It is up to the allottee to proceed either under Section 18(1) or under proviso to Section 18(1)

34. The above interpretation of Section 18 of RERA Act was noted in the case of ***Newtech Promoters and Developers Private Limited vs. State of U.P.*** (supra). The Hon'ble Apex Court was considering *inter alia* the issues as to the retroactive operation of RERA Act and the jurisdiction of the Regulatory Authority to direct refund under the provisions of RERA Act including Section 18 and other ancillary issues. The Hon'ble Apex Court considered the statutory scheme of RERA Act and observed in paragraph 24 as under:

"24. The unqualified right of the allottee to seek refund referred under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottee, if the promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the court/tribunal, which is in either way not attributable to the allottee/homebuyer, the promoter is under an obligation to refund the amount on demand

with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act with the proviso that if the allottee does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed.”

(emphasis supplied).

35. The Hon’ble Apex Court has interpreted the statutory provisions of Section 18 and Section 19(4) of RERA Act noting the legislative intent. It has held that Section 18 of RERA Act confers an unqualified, unconditional absolute right upon the allottee to claim under Section 18 of RERA Act. Though it is sought to be contended, that the decision in ***Newtech Promoters and Developers Pvt. Ltd. vs. State of UP*** (supra) was not founded on considerations which arise in the present case, the Hon’ble Apex Court has interpreted the statutory scheme of the RERA Act to hold that the right of allottee under Section 18(1)(a) of the Act is unqualified right not affected by any contingencies or stipulations or an unforeseen event or even stay orders of the Court or Tribunals. On appreciation of the legislative intent, it places the right of allottee to seek refund on demand beyond the impact of any enactment by interpreting the right to be an unqualified absolute right. The interpretation of Section 18 of RERA Act by the Hon’ble Apex Court would bind this Court.

36. As the Hon’ble Apex Court has held the provisions of Section 18 to be beyond the pale of any qualification or condition, Section 55 of

Contract making the right to demand interest conditional upon giving notice to the promisor of his intention, would have the effect of qualifying the absolute right of the allottee under Section 18 of RERA Act, which runs contrary to the statutory provisions and the interpretation by the Hon'ble Apex Court.

37. Under the provisions of Section 18 of RERA Act, primacy is given to the due date specified in the agreement by linking the failure to hand over possession to the terms of agreement or as per the date specified, whereas Section 55 of Contract Act contemplates a situation of extension of time *de-hors* the date specified in the agreement. The unqualified absolute right of the allottee stands statutorily recognized in Section 18 of RERA Act and the continuation with the project, which if expressed in the language of Section 55 of the Contract Act constitutes acceptance of delayed performance, does not impact the unfettered statutory right conferred by Section 18 of RERA Act to claim interest.

38. The Appellate Authority has come to a finding of fact that there is no authentic evidence to show that the allottees accepted revised date of possession or that the allottees have in fact acquiesced. The revised timelines were unilateral and the contention of Mr. Vakil of acceptance of delayed performance is premised on the basis that by accepting the revised dates of payment in accordance with revised

schedule, the allottees have accepted the delayed performance by their conduct. The payment schedule agreed between the parties enumerates that the initial payments from Serial No 1 to 9 were construction linked payments and would show that at Serial No 9, the casting work of terrace slab would commence. From Serial No 10 to 15, the payments are linked to specified dates. For Serial No 10 to 15 to apply, the commencement of casting work of terrace slab was required to be completed. If the construction itself was delayed, the payments at Serial No 1 to 9 would be delayed and consequently the subsequent payments.

39. The acceptance of delayed possession is premised on the communications of 15th April, 2015, 14th March, 2017 and 19th August, 2017. The contents of the communications dated 15th April, 2015 and 14th March, 2017 indicate that the same is mere information to the allottees about the reasons for the delay and an assurance of handing over final possession by March, 2018. In the communication of 19th August, 2017, the allottees are informed about the RERA date of handing over possession of December, 2019 and that they would endeavour to complete the project in or around December, 2018 and that such early completion would lead to earlier demands for payment.

40. The communications, at the highest conveys information about the delay and gives assurance to complete the project. The revised

timelines are couched in a manner so as to be in nature of information requiring no further acts by the allottees.

41. Even accepting that there was acceptance of revised date of possession, considering Section 18 of RERA Act, the allottees were well within their rights to accept the delayed performance without foregoing their right to interest for delayed possession.

42. As the terms of the agreement provided for the possession to be handed over by 30th June, 2017, the Appellate Tribunal has rightly directed payment of interest from 1st July, 2017 till handing over of possession.

43. The contention of Mr. Vakil is that the date mentioned in Section 18 is contractual agreement and Section 55 of the Contract Act constitutes an addendum to the main agreement. The provisions of Section 18 of RERA Act would militate against such contention as primacy is given to the date specified in the agreement, which under Section 4 of MOFA is required to be in writing. The purported alteration based on conduct of parties cannot be accepted as an addendum to the main agreement. Accepting such contention would require an inquiry for determining the agreed date of possession for purpose of Section 18 of RERA Act. It needs to be noted that the claim for interest is to be filed with the Regulatory Authority as opposed to the Adjudicatory Authority, which is tasked with the function of

adjudicating compensation. Section 38 of RERA Act confers the power on the Regulatory Authority to impose penalty or interest for contravention of obligations by the promoters, the allottees etc or the rules or regulations made thereunder.

44. Rule 6 of Maharashtra Real Estate (Regulation and Development) (Recovery of Interest, Penalty, Compensation, Fine payable, Forms of Complaints and Appeal, etc.) Rules, 2017 provides for manner of filing complaints with the Authority and the manner of holding of inquiry by the Authority and Rule 6(2)(c) provides that on the date so fixed, the Authority to explain the Respondent or his authorized representative about the alleged contravention and if the Respondent pleads guilty, the Authority shall record the plea and pass such orders including the imposition of penalty and if he does not plead guilty and contests then the Authority must demand explanation from him. Rule 6(2)(h) provides that where upon consideration of evidence produced before it, the Authority is satisfied that the Respondent is in contravention of provisions of Act or rules and regulations made therein, it shall pass such orders including imposition of penalty as it may think fit and if not, dismiss the complaint. The provisions indicate the summary nature of inquiry contemplated to be conducted while deciding Section 18 complaint.

45. The Hon'ble Apex Court in ***Newtech Promoters and Developers***

(P) Ltd. (supra), considered whether the jurisdiction to direct return/refund of amount to the allottee under Sections 12, 14, 18 and 19 of RERA Act vests with the Regulatory Authority or Adjudicating Authority. It noted the delineation of jurisdiction conferred upon the Adjudicating Authority and Regulatory Authority under RERA Act. It held in paragraph 76 as under:

"76. The further submission made by the learned counsel for the appellants is that the return of the amount adversely impacts the promoter and such a question can be looked into by the adjudicating officer in the better prospective. The submission has no foundation for the reason that the legislative intention and mandate is clear that Section 18(1) is an indefeasible right of the allottee to get a return of the amount on demand if he promoter is unable to hand over possession in terms of the agreement for sale or failed to complete the project by the date specified and the justification which the promoter wants to tender as his defence as to why the withdrawal of the amount under the scheme of the Act may not be justified appears to be insignificant and the Regulatory Authority with summary nature of scrutiny of undisputed facts may determine the refund of the amount which the allottee has deposited, while seeking withdrawal from the project, with interest, that too has been prescribed under the Act, as in the instant case, the State of Uttar Pradesh has prescribed MCLR +1% leaving no discretion to the Authority and can also claim compensation as per the procedure prescribed under Section 71(3) read with Section 72 of the Act."

46. The decision makes it clear that the legislative intent was to invest the Regulatory Authority with the jurisdiction to decide the complaints under Section 18 by conducting summary nature of scrutiny of undisputed facts, which may not fit in the scheme of determination

of agreed date of possession in context of Section 55 of Contract Act, which would require an adjudicating process.

47. Perusal of the statutory provisions of RERA Act would indicate that the date referable to Section 18(1) of the Act as the date specified in the agreement is sacrosanct and where the project is ongoing and covered by the RERA Act, the only manner in which the extension can be sought is under Section 6 of RERA Act by extension of registration. Section 18 of RERA Act confers an unqualified absolute right upon the allottee to accept delayed performance without foregoing their right to claim compensation for every month of delay, which right is not affected by non issuance of notice of intention to claim compensation. The first substantial question of law is answered accordingly. In light of the discussion above, the Appellate Authority has rightly granted interest for every month of delayed performance.

48. In so far as the second question of law as to the overriding effect of Section 18 of RERA Act *qua* Section 55 of Contract Act, the contention of Mr. Vakil is that there is no conflict between the two provisions as the question is what is the agreed date for handing over possession as the revision of timelines was pre-RERA. In ***Newtech Promoters and Developers Pvt Ltd*** (supra), the Hon'ble Apex Court considered whether RERA Act is retrospective or retroactive in its operation and legal consequences and held in paragraph 40 as under:

“40. The clear and unambiguous language of the statute is retroactive in operation and by applying purposive interpretation rule of statutory construction, only one result is possible i.e. the legislature consciously enacted a retroactive statute to ensure sale of plot, apartment or building, real estate project is one in an efficient and transparent manner so that the interest of consumers in the real estate sector is protected by all means and Sections 13, 18(1) and 19(4) are all beneficial provisions for safeguarding the pecuniary interest of the consumers/allottees. In the given circumstances, if the Act is held prospective then the adjudicatory mechanism under Section 31 would not be available to any of the allottees for an ongoing project. Thus it negates the contention of the promoters regarding the contractual terms having an overriding effect over the retrospective applicability of the Act, even on facts of this case.”

49. The Hon’ble Apex Court has held that RERA Act being retroactive will apply after getting the ongoing projects and future projects registered under Section 3 to prospectively follow the mandate of RERA Act and specifically negated the contention of the contractual terms having an overriding effect over the retrospective applicability of the Act.

50. The retroactive nature of RERA Act would result in creating new obligations under Section 18 applicable to the flat purchaser’s agreement. Section 18 confers a right on the allottees to claim interest for every month of delay, where the possession is not handed over by the due date, by continuing with the project. To express Section 18 of RERA Act in the language of Section 55 of Contract Act, is that even though the flat purchaser’s agreement is voidable at the option of the

allottee as the possession was not handed over by due date, by continuing with the project, the allottee accepts the performance at a time other than that agreed. The distinction between Section 18 of RERA Act and Section 55 of Contract Act, comes upon such acceptance and where Section 18 confers right upon the allottee to continue with the project and be entitled to claim interest for every month of delayed possession, Section 55 permits compensation to be claimed only when he gives notice to the promoter of his intention to do so. Whereas Section 18 of RERA Act gives an unqualified absolute statutory right to claim interest unimpeded by any condition, Section 55 of Contract Act lays fetters on that right making it subject to giving notice of intention to claim compensation. The inconsistency between the two provisions appears on the aspect of right to claim compensation.

51. RERA Act being a special enactment will prevail over Contract Act, a general law. Section 89 of RERA Act gives it an overriding effect over anything inconsistent with the other laws and the retroactive application of RERA Act would impose an obligation on the promoter to pay interest for the delayed possession computed from the date of handing over possession as specified in the agreement even in the absence of any notice to the promoter by the allottee of its intention to do so.

52. Coming to the third question of law as to whether the force majeure events listed in the contract could be ignored, Covid 19 pandemic falls within the ambit of force majeure clause. The date of handing over possession under the agreement for sale was June, 2017 and as per RERA registration, the possession was to be handed over by 2019. The force majeure event of Covid-19 was subsequent to the due date of performance by the Appellant and does not impact the performance of the contract.

53. Mr. Vakil has emphasised on the RERA Order dated 18th May, 2020 seeking to exclude period of six months which was clarified to be treated as moratorium period for purpose of calculating interest under Section 18 of RERA Act. In ***M/s Pragatej Builders and Developers Pvt Ltd vs Abhishek Anju Sukhadia*** (supra), the Co-ordinate Bench of this Court considered the circulars issued by MahaRERA for moratorium during Covid-19 pandemic. It held that where the possession was to be handed over before the Covid 19 pandemic, the subsequent Covid 19 pandemic lockdown cannot come to the aid of the promoter for claiming any relief for payment of interest and it cannot seek to take advantage of Covid 19 pandemic to escape the liability to pay interest. As the issue is settled by the decision of the Co-ordinate Bench, the same does not constitute substantial question of law.

54. The fourth substantial question of law is the maintainability of

Appeal as according to Mr. Vakil, the order of 1st Authority was passed in view of the concession given by the allottees and thereafter the allottees could not have appealed against the said order. He would submit that the Appeal ought to have been remanded to the 1st Authority as the decision takes away the right of the promoter to raise their defense to the complaint under Section 18 of RERA Act.

55. In the written submissions before the Appellate Authority, the Promoters had pleaded, under the heading of “Appeal Misuse of Legal Process”, that the allottees prayed for a similar order as passed in the connected complaint and that the appeal is *mala fide*. There is no specific plea raised to the maintainability of the appeal on the ground of concession granted by the allottees and there is no pleading or argument canvassed seeking remand of the matter to the 1st Authority, which is sought to be pleaded for the first time in Second Appeal proceedings. There is no foundation in the pleadings on maintainability of Appeal in view of the purported concession granted by the allottees. As there was no such pleading or argument of concession, the allottees did not have the chance to meet the case of concession before the Appellate Authority.

56. The allottees in the present case are identically placed in the same project as the allottees in CC006000000054636, who had filed identical complaint before the 1st Authority. Similar submissions were

raised in the other complaint and as the 1st Authority had already passed the order in the other complaint, the allottees requested for similar order to be passed. The submission recorded in paragraph 3 of the 1st Authority's order reads as under:

"3. The learned counsel for the Complainants submitted that MahaRERA in Complaint no. CC006000000054636, has directed the Respondent to handover possession by December, 2019 allowing the Respondent, in the interest of completing the project, to complete the project first with liberty to Complainants to demand interest at an appropriate stage, as per the provisions of Section 18 of the Real Estate (Regulation and Development) Act, 2016 and that similar order be passed in the present complaint also. Further, he submitted that the Respondent be directed to initiate process of society formation."

57. The above submissions canvassed by learned counsel for allottees was a plea of parity being fully aware of the earlier order and that same consequences would follow. The request for identical order does not explicitly abandon the right to interest and the intent was to follow the same course as the allottees in other complaint. The contention of Mr. Vakil is in fact an argument on estoppel and waiver of right to file appeal, which principle is traceable to Section 96(3) of Code of Civil Procedure, 1908 precluding the filing of appeal against a consent decree. For estoppel to operate it must be shown that there was express waiver, compromise or relinquishment of some benefit which is now sought in the appeal. The submissions does not indicate any express waiver by the allottees. The request for similar order is not

a concession as there is no waiver or abandonment of right. Even accepting that the submission of the Advocate for the allottees constitutes a concession, the allottees had a right under Section 18 of RERA Act to demand interest for every month of delayed possession and deferment of the statutory right to demand interest, if accepted as concession, amounts to concession given by the Advocate on question of law, which would not preclude the allottees from filing the appeal as there can be no estoppel against law.

58. Dealing with the citations relied upon by Mr. Vakil, the decision in the case of ***Era Realtors Private Limited vs. Prakash Shah and Another***¹⁹ was pressed into service in support of the contention that the Appeal was not maintainable in view of the concession of the allottees. In the case of ***Era Realtors Private Limited*** (supra), the complaint was filed under Section 18 of RERA Act for a direction to Developer to execute a registered Agreement for sale, to pay interest for delayed possession and to pass GST credit on to the Respondents therein. The RERA Authority directed handing over possession and payment of interest on the amounts collected after May, 2017 with the finding recorded that the amount post May, 2017 had already been collected after executing registered agreement for sale in accordance with Section 13 of RERA Act. The Appellate Authority was moved to

19 S.A. (St.) No. 27241 of 2023, decided on 14th March, 2024.

the extent of denial of payment of interest before May, 2017, which was entertained by the Appellate Tribunal. The contention before this Court was that the Respondents specifically agreed before the Regulatory Authority that the interest can be only paid after the implementation of the RERA Act and therefore, the regulatory authority directed the payment of interest post May, 2017. It is in such facts where the Respondents therein gave up their claim for interest prior to May, 2017 that this Court held that the Appeal was not maintainable. Before the Appellate Authority, the Respondents therein claimed that no such concession was given by them before the Regulatory Authority and as the Respondent's neither filed an application before the Regulatory Authority complaining about erroneous recording of concession nor any specific ground was raised in Appeal, this Court held that the Appellate Authority could not have entertained the Appeal. In the facts of that case, there was an express waiver of the benefit by the Respondents which was thereafter, questioned before the Appellate Authority on the ground that no such concession was given. The present factual scenario is completely distinguishable as there is no express waiver of any benefit.

59. The decision in the case of *Institute of Chartered Accountants of India vs. L. K. Ratna* (supra) holds that if natural justice is violated at first stage, the right of appeal is not so much a true right of appeal as a

corrected initial hearing. Essentially, it holds that the defense of natural justice before the Trial Court cannot be cured by giving a hearing at the Appellate stage. There is no quarrel with the said proposition. In the present case, the order of 1st authority notes the submission of learned counsel for Promoter in the order of 31st January, 2019. It is not the case of Promoters that there was no hearing which was given to them. The complaint was filed in September, 2019 and there was an ample opportunity available to the promoter to file their reply. In the hearing of 31st January, 2019, it is not even the submission of promoter that the time be given for the purpose of filing reply. It was open for the promoters to advance arguments now sought to be raised before this Court for payment of interest before the 1st Authority. The only submission canvassed is that the construction work or project could not be completed for reasons beyond the Promoter's control. The order of 31st January, 2019 was not passed without without giving an opportunity of hearing to the promoter, merely on the basis of submissions of learned counsel appearing for Allottees. The violation of principles of natural justice is an afterthought raised in the present case.

60. The decision of *Sports Authority of India vs. Dr. Kulbir Singh Rana* (supra) is on the aspect of maintainability of the Appeal, once the concession has been given. As this Court has already held that the

order of the 1st Appellate Authority was only on parity and not a concession given, the decision does not assist the case of the promoter. Similarly, the decision in the case of ***Rajasthan Industrial Development and Investment Corporation vs. Diamond and Gem Development Corporation Limited*** (supra) reiterates the principles of estoppel which does not assist the case of the promoter.

61. In light of the above discussion, the substantial questions of law are answered as under:

(a) Under the provisions of Section 18 of RERA Act, the handing over possession as per terms of agreement or as per the date specified is sacrosanct remaining unqualified by any contingencies outside the terms of the agreement and is not affected by the acceptance of delayed performance. The allottee would be well within their statutory right to claim interest for every month of delayed possession for the period specified in the flat purchaser's agreement till the date of handing over possession.

(b) Whereas Section 18 of RERA Act gives an unqualified absolute statutory right to claim interest unimpeded by any condition, Section 55 of Contract

Act lays fetters on that right making it subject to giving notice of intention to claim compensation. The inconsistency between the two provisions is on the aspect of claim of compensation. RERA Act being a special enactment will prevail over Contract Act, a general law. Section 89 of RERA Act gives it an overriding effect over anything inconsistent with the other laws and the retroactive application of RERA Act would impose an obligation on the promoter to pay interest for the delayed possession computed from the date of handing over possession as specified in the agreement even in the absence of any notice to the promoter by the allottee of its intention to do so.

(c) The aspect of seeking benefit of moratorium is covered by decision of this Court in ***M/s. Pragatej Builders and Developers Pvt. Ltd. vs. Abhishek Anju Sukhadia*** (supra) and being settled does not give rise to substantial question of law.

(d) The submission of the allottees before the 1st authority was plea of parity and the request for identical order does not explicitly abandon the right to interest and for estoppel to operate, there must be express waiver, compromise or relinquishment of the benefit. The allottees have a right under Section 18 of RERA Act to demand interest for every month of delayed possession and deferment of the statutory rights, if accepted, as concession, amounts to concession given by the Advocate on question of law which would not preclude the allottees from filing the Appeal.

62. In light of the substantial questions of law answered as above, the Second Appeal stands dismissed.

63. In view of above, nothing survives for consideration in pending Applications, if any, and the same stand disposed of.

[Sharmila U. Deshmukh, J.]

64. At this stage, learned counsel appearing for the Appellant seeks relief of stay of execution proceedings for period of four weeks from today. Though the said request is opposed by learned counsel

appearing for the Respondent, considering that the statement was operating during the pendency of Second Appeal, the execution proceedings to be deferred by period of four weeks from 24th June, 2026.

[Sharmila U. Deshmukh, J.]