

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

**SECOND APPEAL NO. 297 OF 2021
WITH
INTERIM APPLICATION NO.1149 OF 2026
WITH
INTERIM APPLICATION NO.324 OF 2021
IN
SECOND APPEAL NO. 297 OF 2021**

Macrotech Developers Ltd.,
(early known as Bellissima Hi-Rise
Builders Pvt. Ltd.), a private limited
company incorporated under provisions
of the Companies Act, 1956 and having its
registered office at, Lodha Excelus,
N. M. Joshi Marg, Mahalakshmi,
Mumbai – 400 011

...Appellant/
Applicant

vs.

1. Suryakant Yashwant Jadhav,
an adult, Indian Inhabitant, having
address at A/102, Florentine,
Main Street, Hiranandani Gardens,
Powai, Andheri – East,
Mumbai – 400 076
2. Suryakant Jadhav HUF,
having address at A/102, Florentine
Main Street, Hiranandani Gardens,
Powai, Andheri – East,
Mumbai – 400 076
3. Bankim Ashok Doshi
4. Sushant Keru Hirve
5. Palava Dwellers Pvt. Ltd.

Respondent Nos. 3 to 5
Lodha Excelus, N. M. Joshi Marg,
Mahalakshmi, Mumbai – 400 011

...Respondents

**WITH
SECOND APPEAL NO. 298 OF 2021
WITH
INTERIM APPLICATION NO.1152 OF 2026
WITH
INTERIM APPLICATION NO.313 OF 2021
IN
SECOND APPEAL NO. 298 OF 2021**

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Mahalakshmi, Mumbai – 400 011

...Respondents

Mr. Amogh Singh a/w Mr. Rahul Arora, Ms. Silpa Nir and Ms.
Himanshi Mishra i/b Mr. Jeet Gandhi for the Appellant/Applicant

Mr. Nitin Thakkar, Senior Advocate a/w Mr Munaf Virjee and Ms.

Shruti Salian i/b AMR Law for the Respondent Nos.1 and 2

CORAM : SHARMILA U. DESHMUKH
RESERVED ON : APRIL 9, 2026
PRONOUNCED ON : JUNE 8, 2026

JUDGMENT:

1. Both the Second Appeals arise out of common judgment dated 12th January 2021 passed by the Maharashtra Real Estate Appellate Tribunal, Mumbai challenging the common order dated 6th March, 2019 passed by Adjudicating Authority-MahaRERA rejecting the Respondent-allottee's application under Section 18 of The Real Estate (Regulation and Development) Act, 2016 (for short "**RERA**"). Vide impugned judgment dated 12th January, 2021, the Appellant was directed to refund the amount received from the Respondents along with interest with liberty to allottee to file petition for compensation before the Adjudicating Officer under Section 71 and 72 of RERA.

2. The undisputed facts as borne out from the impugned order dated 12th January, 2021 is that Respondents booked two apartments being Flat Nos 901-H and 902-H in the Appellants project being Palava Lakeside A to H situated at Palava, Kalyan. The parties duly executed and registered the Agreements for Sale in respect of the said apartments and claim to have paid about 95% to 96% of purchase consideration in respect of the said flats.

Claiming delay in handing over possession, the Respondents decided to withdraw from the project and sought refund of consideration paid along with interest and compensation. Due to non compliance by the Appellants, an application came to be filed under Section 18 of RERA before MahaRERA, which came to be disposed of and Appeal was preferred in which the impugned judgment came to be passed.

3. By order dated 23rd November 2025, the Appeal came to be admitted on the following substantial question of law:

“(a) Whether the complaint as filed by the Respondents before the Maharashtra Real Estate Regulatory Authority is maintainable under Section 18 of RERA Act ?”

4. During the hearing, this Court framed the following additional substantial questions of law:

(a) Whether the clause in the flat purchasers agreement providing for grace period is contrary to the statutory provisions of RERA ?

(b) Whether the flat purchaser is entitled to withdraw from the project within the grace period upon failure of the developer to adhere to the date of handing over possession to the purchaser for fit

out?

5. Learned counsel for the parties were heard at length and the substantial questions of law are being decided by this common judgment.

6. Mr. Singh, learned counsel for the Appellant would point out Clause 1.13 and Clause 1.14 of the flat purchaser's agreement which defines the date of offer of possession for fit-out and date of offer of possession to mean the date as specified in Annexure-2, which was 28th February, 2017, and the date on which the occupation certificate is issued respectively. He submits that the date of possession is linked to the date of possession for fit outs. Pointing out the pleadings in the complaint, he submits that the case of the Respondents was that possession was to be handed over on 28th February, 2017, which is the date of possession for fit outs and not final possession. He would further point out the admission in the complaint that the Appellants had written to the Respondents on 21st June, 2018 that the apartments are ready for possession. He submits that the date of issuance of occupation certificate is 10th May, 2018.

7. He submits that Section 18 of RERA refers to "date specified", which is required to be considered as per Clause 11 read with Annexure-2 of the flat purchaser's agreement. He

submits that clause 11 of the agreement governs the arrangement as regards handing over possession for fit-outs and final possession and the agreement provided for grace period of one year beyond the dates mentioned for fit-out possession and final possession, and therefore, the outer limit for handing over the possession was 28th February, 2019 by including the grace period. He submits that on 21st June, 2018, the Appellant addressed a letter to the Respondents offering possession of the flats which was within the period as agreed in the flat purchasers' agreement. He submits that in view thereof, there was no cause for complaint of delayed possession and Section 18 of RERA was not applicable and the order of first Authority was rightly passed.

8. He has taken this Court through the judgment of the Appellate Tribunal and would point out that the members of the Appellate Tribunal rendered two different but concurring judgments. He points out the findings of the Appellate Tribunal that there is no concept of fit-out possession and that the final date of possession was taken as 28th February, 2018 and submits that by disregarding the terms of agreement has held that the application was maintainable under Section 18 of the RERA. He submits that relying upon the decision in the case of ***Neelkamal Realtors Private Limited vs Union of India And Ors***¹, the

1 AIR 2018 (NOC) 398 (BOM)

Appellate Tribunal held that provisions of grace period is against the spirit of Section 18 of RERA and will not help the promoter to change the specified date of possession as mentioned in the agreement. He submits that in the concurring decision by the other member of the Tribunal, it is held that once final possession is agreed to be given by 28th February, 2018, there is no question of further grace period of one year. He submits that the learned member has further held that the agreement is one-sided agreement and was executed without disclosing the contents thereof to the allottees prior to its execution and is not binding being unfair and unreasonable, without any such case of the Respondents.

9. He submits that the learned Member has questioned the OC obtained on 10th May, 2018 on the ground that the same was not referred in the communication dated 21st June, 2018. He points out to the communication dated 21st June, 2018 addressed to the Respondents informing them that the flat is ready for possession and would point out that the Respondents were specifically called upon to make the requisite payments by 5th July, 2018 to enable them to initiate the process of hand over of the flats. He submits that in light of the specific contents of the communication dated 21st June, 2018, the non-mention of OC

obtained on 10th May, 2018 does not cast any doubt about the OC having been obtained on 10th May, 2018.

10. He submits that there is no express bar on providing for the grace period, which is not shown to be indefinite, and there is an outer limit to the grace period. He submits that the agreement entered into was executed on 16th May, 2014 before RERA was enacted, and after the enactment of RERA, the possession can be handed over only after receiving OC, which is the communication of 21st June, 2018. He would further submit that under Section 11(4)(b) of RERA, the promoter is responsible for obtaining occupancy certificate and to make it available to the allottee and under Section 19(10) of RERA, every allottee is required to take physical possession of the apartment, plot or building, as the case may be, within a period of two months of the OC issued for the said apartment, plot or building, as the case may be, which the Appellants have done within the specified period. In support, he relies upon the following decisions :

(i) IREO Grace Relatech Pvt. Ltd. vs. Abhishek Khanna & Ors.²

(ii) Supertech Ltd. vs. Rajni Goyal³

(iii) AAJ Legal and Management Consultancy vs. Keltech

² (2021) 3 SCC 241

³ (2019) 17 SCC 681

Infrastructure Ltd.⁴

(iv) Lanco Hills Technology Part Pvt. Ltd. vs. Manisha Balkrishna Kulkarni & Anr.⁵

(v) Kolkata West International City Pvt. Ltd. vs. Devasis Rudra⁶

(vi) Leena Thomas vs. Dominic Fonseca & Ors.⁷

11. *Per contra*, Mr. Thakkar, learned Senior Advocate for the Respondents would point out the communications of 14th May, 2018 and 22nd March, 2018 addressed by the Respondents to the Appellants raising a grievance about the delayed possession which was to be given on 28th February, 2017. He submits that it was specifically mentioned that almost 95% of the total consideration was received and that the Respondents had never consented to such grace period, which is not contemplated under the statutory enactment. He submits that vide communication dated 14th May, 2018, as the possession was not handed over as demanded by the letter of 22nd March, 2018, the Respondents withdrew from the project. He submits that the communication of 21st June, 2018 makes no mention of the OC stated to have been received on 10th May, 2018, and there is no document furnished to

4 2021 SCC OnLine SC 254

5 (2020) 11 SCC 699

6 (2019) SCC OnLine SC 438

7 (2017) SCC OnLine Bom 9388

the Respondents to show receipt of OC. He submits that for the first time before the Appellate Authority, the submission was canvassed about receipt of OC. He would further point out that the architect's certificate submitted by the Appellant before the Appellate Authority dated 21st June, 2018 certifies that the buildings are under construction and that the work status on 21st June, 2018 was that the fit-out possession is initiated, which negates the contention that OC was received on 10th May, 2018. He submits that the OC is in fact uploaded in the year 2021. He submits that the right to receive the interest for the delayed possession under Section 18 of RERA is unqualified. He submits that in the case of ***Venkataraman Krishnamurthy & Anr. vs Lodha Crown Buildmart Pvt. Ltd.***⁸ the Hon'ble Apex Court has considered an identical clause where the possession for fit-out in that case was to be handed over on 30th June 2016, and by grace period of one year, the date of delivery of possession stood extended till 30th June, 2017. He submits that the Hon'ble Apex Court has interpreted the clauses as not applying separate grace period applicable to the possession for fit-out and the final possession, and has held that the date of final possession would be within a period of one year from the date of offer of possession for fit-outs. He submits that the Hon'ble Apex Court

8 2024 (SC) 184

had held that as the Respondents therein did not offer delivery of possession of fit-outs by that date and the consequences which were provided therein, permitted withdrawal from the project.

12. He submits that the Hon'ble Apex Court has held that the allottee can withdraw within the grace period, which has been done in present case. He points out the finding of the Appellate Tribunal that possession with occupancy certificate ought to have been given on or before 28th February, 2018 as per the flat purchasers agreement and that it was offered in June, 2018. Mr. Thakkar would submit that once the final date of possession is not adhered to, the Respondents can withdraw from the project and that the architect's certificate makes it clear that even on 21st June, 2018, it was only the possession for fit-outs initiated which was beyond the period of one year. In support, he relies upon the following decision :

(i) Venkataraman Krishnamurthy & Anr. vs Lodha Crown Buildmart Pvt. Ltd. (Supra).

13. In rejoinder, Mr. Singh would submit that the judgment in the case of ***Venkataraman Krishnamurthy & Anr. (supra)*** did not hold the provision of the grace period to be contrary to the statutory provisions of RERA. He further submits that under Section 3 of RERA, prior registration of a real estate project is

mandatory, including for ongoing projects for which completion certificates have not been issued. He submits that the specified date is the date of OC which in the present case was received on 10th May, 2018.

REASONS AND CONCLUSION:

14. This Court framed three substantial questions of law and the first substantial question of law is as regards the maintainability of the complaint under Section 18 of RERA Act. The first Authority has held that the provisions of Section 18 of RERA applied only till the project is incomplete or promoter is unable to give possession. The submission canvassed by the Appellants before the first Authority was that part occupation certificate was received on 10th May, 2018. The Appellate Authority held that Section 18 of RERA was attracted to the dispute by holding that the date specified in flat purchaser's agreement is 28th February, 2018 and the Appellants are not entitled to extension of specified date on basis of the clause regarding grace period.

15. The complaint filed by the Respondents stated that the possession was to be handed over on 28th February, 2017, which has been delayed, and by communications dated 14th March, 2018 and 22nd March, 2018, the Respondents had called upon the

Appellant to hand over possession within a period of 30 days, which was not adhered to, as a result of which the Respondents withdrew from the project vide communication dated 14th May, 2018. The complaint sought a direction, *inter alia*, for refund of the total amount paid by the Respondents along with interest under Section 18 of RERA.

16. The adjudication of the first substantial question of law is fact laden and will have to be considered in light of the various clauses in the flat purchasers' agreement to determine the applicability of Section 18. Before proceeding to the facts, it would be apposite to refer to Section 18(1) of RERA, which 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."

17. Section 18(1) is triggered upon the failure of the promoter

to complete the construction or hand over possession either; (a) as per the terms of the agreement; or (b) by the date specified in the agreement, the consequence being the entitlement of the allottee to withdraw from the project and refund of the amounts paid along with interest and compensation.

18. Section 18 of RERA gives primacy to the terms of the agreement entered into between the parties. The expression used therein indicates that parties are at liberty to decide the manner and the date on which possession will be handed over. There is no statutory embargo on provision of grace period. The object of RERA is to make the promoters accountable for completing the project and handing over project in a time bound programme. The parties are free to contract the timelines within which possession is required to be handed over. There is no provision demonstrated which prohibits the timelines to be computed by factoring in grace period.

19. Section 18 of RERA discloses that the statutory right to claim refund of amounts along with interest and compensation accrues to the flat purchasers upon failure of promoter to hand over final possession. Taking advantage of this criteria, the Appellant seeks to contend that as final possession was to be handed over in 2019 and possession was sought to be handed

over on 21st June, 2018, there was no cause of action for Section 18 of RERA. In the present facts, the maintainability of Section 18 application would involve a determination as to whether the Appellants have failed to hand over final possession by the date specified in the agreement.

20. The flat purchaser's agreement was executed in 2014, which was pre-RERA enactment, and thereafter, as the project was an ongoing project, the project came to be registered under RERA. Clause 1.13 of the flat purchaser's agreement defines the date of offer of possession for fit-outs to mean the date as specified in Annexure-2. Annexure-2 specifies the date of offer of possession for fit-outs as 28th February, 2017. Clause 1.14 of the agreement defines the date of offer of possession to mean the date on which the OC is issued or deemed to be issued as per the relevant provisions of legislation. Relevant for our purpose are Clauses 11.1, 11.2, 11.3 and 20(w), which read as under:

"11. FIT OUTS AND POSSESSION

11.1 Subject to the Purchaser not being in breach of any of the terms hereof and the Purchaser having paid all the dues and amounts hereunder including the Total Consideration. The Company shall endeavor to provide the Unit to the Purchaser for fit outs on or before the date as set out in Annexure "2" hereto. The Company shall endeavor to make all necessary submissions to obtain the occupation certificate in respect of the Unit of the Building and make available the key Common Areas and Amenities in respect of the Building within a period of 1 (One) year from the Date of Offer of Possession (for Fit Outs) as set out in Annexure "2" hereto and this shall be deemed to be the final possession of the Unit.

11.2 The Company shall without being liable to the Purchaser, be entitled to a grace period of 1 (One) year beyond the aforesaid dates mentioned in the Clause 11.1. The date on which the occupation certificate is issued (or deemed to be issued as per the relevant provisions of legislation) shall be deemed to be the "Date of Offer of Possession".

*11.3 Delay in handover of possession (for fit outs) Subject to the provisions of Clause 11.5 hereof and the Purchaser having paid all the amounts due and payable hereunder, in the event the Company fails to **give** the possession of the Unit (for fit outs) by the date stated in Annexure-2 and the aforesaid grace period, then within 30 (thirty) days of expiry of such grace period, the Company shall inform the Purchaser the revised date by which the Unit is likely to be ready for being offered for possession for fit out. Upon expiry of such grace period, the Purchaser may elect to continue with this Agreement in which case, the date of offer of possession for fit outs mentioned in Annexure-2 shall stand revised to and substituted by the revised date of offer of possession for fit outs as communicated by the Company. Alternatively, the Purchaser may by giving notice in writing elect to terminate this Agreement. Provided that such right to terminate shall be exercised by the Purchaser within a period of 90 days from the expiry of the aforesaid grace period. In the event the letter of termination is not received by the Company within the said period of 90 days or is received after the said period of 90 days, the Purchaser shall, without the Company being liable to the Purchaser, be deemed to have elected to continue with the Agreement to Sell and the Purchaser shall be deemed to have waived his right to terminate this Agreement. In the event that the termination, is done within 90 days from the expiry of the aforesaid grace period, the Company shall refund to the Purchaser the Total Consideration amount or part thereof paid by the Purchaser in 12 equal monthly installments through post dated cheques together with simple interest thereon at the rate of 12% per annum from the date of receipt of the Total Consideration or part thereof till repayment. The first monthly installment shall commence from the 13th month of the date of receipt of the said letter of termination and ending on the 24th month thereof."*

"20(w) The Purchaser acknowledges that as on the Date of offer of Possession (for fit outs) work in the Unit shall be complete and the Unit shall have regular water and electricity supply, as well as lift access. There may be certain works which may be ongoing in the Building/development/Property at such time but all due care shall be taken to ensure that the fit outs of the Units are not affected in any manner by such works. It is clarified that the Offer of Possession (for fit outs) entitles the Purchaser to carry on interior and other related works in the Unit but does not entitle the said Unit to be occupied till such time that the occupation

*Certificate is received in relation to the said Unit.
....."*

21. The clauses in the agreement indicates that the parties linked the date of handing over final possession to the date of possession for fit outs. As per Clause 11.1 of the flat purchaser's agreement, the date of possession for fit outs was 28th February, 2017 and the final possession was to be handed over within period of one year from date of offer of possession for fit outs. Clause 11.2 provides for grace period of one year beyond the dates mentioned in Clause 11.1.

22. In the case of ***Venkatraman Krishnamurthy & Anr. (supra)***, the Hon'ble Apex Court was considering identical clauses relating to date of possession for fit-outs and final possession. The Hon'ble Apex Court held that the grace period extended the date of delivery of possession for fit outs by one year. The Hon'ble Apex Court noted in paragraph 10 as under:

"10. Cursory overview of the above clauses manifests that the respondent-company was to deliver possession of the apartment to the appellants for fit outs by 30th June, 2016 but grace period of one year was provided under Clause 11.2, whereby the date of delivery of such possession stood extended till 30th June, 2017. Clause 21u indicates that the works in the apartment, so far as the respondent-company is concerned, were to be completed by that date and the apartment was to have regular water and electricity supply, apart from lift access and the appellants could carry on interior and other related works therein. Further as per Clause 11.1, the respondent company was required to obtain completion certificate in respect of the apartment and make available the key common areas and amenities in the building within one year from the date of offer of possession for fit outs. That was deemed

to be the final possession of the apartment in terms of Clause 11.2, This date for final possession was also extendable by one year i.e. upto 30.06.2018."

23. In that case, the date of offer of possession for fit outs was 30th June, 2016 as per Annexure-2 of the agreement therein. The Hon'ble Apex Court has interpreted identical terms of contract to hold that the date of offer of possession for fit outs was extendable by virtue of the grace period by period of one year i.e. till 30th June, 2017 and the date of final possession was also extendable by one year i.e. up to 30th June, 2018. Applying the said interpretation to the present facts, the date of possession for fit outs was 28th February 2017 and by virtue of grace period stood extended to 28th February, 2018. The date of final possession was also extendable by one year i.e. 28th February, 2019. In the Interim Application, it is pleaded that the actual specified date of handing over possession after taking into consideration the contractual grace period would be 28th February, 2020. The grace period cannot be applied twice over, once to date of possession for fit outs and thereafter again to the date for final possession. Pertinently, in the list of dates and events tendered by the Appellants, it is stated that as per the agreement for sale, the last date for handing over possession after taking grace period into consideration and after obtaining

OC would come to 28th February, 2019 and that the occupation certificate was received on 10th May, 2018.

24. The contention of Mr. Singh is that the date of final possession would be determinative of applicability of Section 18 and even accepting the extendable date of 28th February, 2019, the occupation certificate had been obtained on 10th May, 2018 within the period specified. It is not demonstrated that the Appellants has met the date of handing over possession of the flats for fit outs even by the extended period of 28th February, 2018. Straightaway by the communication of 21st June, 2018, the Respondents were directed to take possession. The communication does not mention about receipt of OC or possession is handed over for fit outs or is final possession. The statutory provisions of RERA do not recognise any concept of possession for fit outs and provides for the rights and obligations of the parties with respect of the date of handing over final possession. The date of possession for fit outs would be relevant only for determining the date of final possession. Where the Appellant failed to hand over possession for fit outs by 28th February, 2018, the Appellants cannot take disadvantage of their own failure to comply with the terms of agreement to factor in the grace period applicable to date of possession for fit outs and

defer the date of final possession. The date of possession for fitouts could be put in action only where there is compliance and not otherwise. As the possession of the flats were not handed over for fit outs, as per the agreed terms, the date of final possession would have to be determined in accordance with Clause 11.1 by taking into consideration the date mentioned in Annexure-2 without the grace period and by doing so, the date of final possession would be one year from the date mentioned in Annexure-2 i.e. 28th February, 2018.

25. As there was failure to hand over final possession by 28th February, 2018, the statutory right granted under Section 18 of RERA accrued to the Respondents. The application under Section 18 of RERA was maintainable. The first authority had accepted the submission of the Appellants that part occupation certificate was obtained on 10th May, 2018 and therefore Section 18 would not apply. The first Authority failed to notice the language of Section 18 (1)(a) and the terms of the agreement to ascertain the date by which final possession was required to be handed over. It also failed to notice that part occupancy certificate could not be construed as completion of project. The Appellate Tribunal has rightly considered the date of final possession as 28th February, 2018 and there is no perversity demonstrated. The first

substantial question is answered accordingly.

26. The second substantial question of law framed was whether the provision of grace period is contrary to the statutory provisions of RERA. The said question of law was framed in view of the finding of the Appellate Authority that Section 18 of RERA is absolute on specified date, which is not extendable. In the present case, the flat purchaser's agreement is pre-RERA enactment and was governed by MOFA regime. Section 4 of MOFA prescribes the flat purchaser's agreement to specify the date by which possession is to be handed over to the purchaser. The date of final possession though linked to the date of possession for fit outs was not open ended and specified the date as one year from the date of handing over possession for fit outs. There is no statutory embargo under MOFA preventing the parties for deciding the manner of computation of date of final possession. The Appellate Tribunal failed to notice that the flat purchasers agreements were executed in the year 2014. It is well settled that RERA does not contemplate re-writing of contract between the parties. The question as framed, in view of the factual scenario of the agreements being pre-RERA does not arise for consideration. The decisions cited by Mr. Singh were in the context of determination of date for handing over possession by

including grace period. As the question of grace period being contrary to RERA does not arise in present factual scenario, the decisions do not require consideration.

27. The next substantial question of law is as to the entitlement of flat purchaser to withdraw from the project within the grace period, which question arises from interpretation of the terms of the agreement and the statutory provisions of RERA. Clauses 11.1 and 11.2 of the agreement imposes an obligation on the Appellants to hand over possession of the flats for fit outs within the extendable period i.e. upto 28th February, 2018. Admittedly the possession of the flats were not handed over for fit outs till 28th February, 2018. The Respondents addressed communication dated 22nd March, 2018 calling upon the Appellants to hand over possession of the flats within a period of 30 days failing which the Respondents shall withdraw from the project. As there was non-compliance, vide letter dated 14th May, 2018, the Respondents withdrew from the project.

28. The Respondents were entitled to withdraw from the project under Section 18 of RERA upon the Appellant's failure to hand over final possession by 28th February, 2018 as well as under the terms of the flat purchaser's agreement. Clause 11.3 of the agreement gave an option to the purchaser, where there is a

delay in handing over possession for fit-outs, to terminate the agreement within a period of 90 days. In the present case, the extendable grace period for handing over possession for fit-outs expired on 28th February, 2018 and within a period of 90 days, the Respondents elected to withdraw from the project as per Clause 11.3 of the agreement.

29. The flat purchaser's agreement provided for fit outs by 28th February, 2017 with grace period of one year i.e. till 28th February, 2018. The final possession was to be handed over within period of one year from date of fit outs i.e. till 28th February, 2019. The communication of 21st June, 2018 calls upon the Respondents to take possession of the said apartments. Clause 1.14 of the agreement refers to the date of offer of possession as the date on which the occupation certificate is issued. The communication of 21st June, 2018 does not make any reference to the OC having been received and does not specify as to whether the possession was being handed over for the purpose of fit-out or was final possession. The communication of 21st June, 2018 calls upon the Respondents to make the requisite payment by 5th July, 2018 to enable the Appellants to initiate the process of handing over the residence. Pertinently, the architect's certificate of the same date, i.e., 21st June, 2018, which is produced before the Appellate

Authority, certifies that the building is under construction, and the work status as on 21st June, 2018 was at the stage of initiation of fit-out possession. The order of first Appellate Authority records the submission of the Appellants that part occupation certificate for the project was obtained on 10th May, 2018. Clause 1.14 defines the date of offer of possession as the date on which the occupation certificate is issued. Reading the order of first Appellate Authority with the architect's certificate and the terms of the agreement, the Respondents having withdrawn from the project within 90 days of expiry of extendable grace period of date of possession for fit outs were well within their right to seek the reliefs contemplated under Section 18 of RERA. The question of law is answered accordingly.

CONCLUSION:

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

- (a) The application under Section 18 of RERA was maintainable as there was failure on part of Appellants to hand over possession as per the date of final possession computed under Clause 11.1 of the flat purchaser's agreement i.e. 28th February, 2018.
- (b) The question as to whether provision of grace

period is contrary to statutory provisions of RERA, does not arise for consideration as the flat purchaser's agreements were pre-RERA enactment.

(c) The Respondents were well within their right to withdraw from the project under Section 18 of RERA as well as under the terms of the flat purchaser's agreement and were entitled to the reliefs granted by the impugned judgment.

31. In view of the findings of the substantial questions of law, the order of Appellate Authority does not deserve interference.

32. Second Appeals stand dismissed.

33. Interim Applications do not survive for consideration and stands disposed of.

(SHARMILA U. DESHMUKH, J.)