Nalawade,

BEFORE MAHARASHTRA REAL ESTATE APPELLATE TRIBUNAL, MUMBAI

APPEAL NO. AT006000000053230 OF 2021
IN
COMPLAINT NO. CC0060000000 195527

1. **Mr. Jaikishan Udhav Lakhwani**
2. **Mr. Rahul Raju Lakhwani**

Flat No. 2101, 21st floor, Rizvi Heights,
Pitamber Lane, Mahim (West), Mumbai – 400016. ... *Appellants*

~ versus ~

M/s. Kanakia Spaces Realty Private Limited
215 Atrium, Andheri Kurla Road,
Opp. Divine Child School, Andheri East,
Mumbai – 400093. ... *Respondent*

Appearance:

Ms. Fereshte Setna a/w. Mr. Ameya Pant, Advocate for Appellants.
Mr. Abir Patel, Advocate for Respondent.

CORAM : SHRI. SHRIRAM R. JAGTAP, MEMBER (J)

& DR. K. SHIVAJI, MEMBER (A)

DATE : 6th SEPTEMBER 2024

(THROUGH VIDEO CONFERENCE)

J U D G E M E N T

[PER: Dr. K. SHIVAJI, MEMBER (A)]

Present appeal has been preferred under The Maharashtra Real Estate (Regulation and Development) Act, 2016 (in short "the Act") praying for various reliefs *inter alia* to set aside and cancel the order dated 24th May 2021 passed by learned Member, Maharashtra Real Estate Regulatory Authority, ("MahaRERA") in complaint no. CC 006 000000

195527 as well as for direction to respondent to pay/ refund of excess purchase considerations taken by the respondent for the deficit in carpet area, illegal transfer fee, balance interest for the delay in delivery of the possession of the subject flat and also for compensations.

2. Appellants are flat purchasers and Complainants before MahaRERA. Respondent is developer firm, who is constructing a duly registered project known as "Kanakia Miami" located at Mahim, Mumbai, hereinafter to be referred to as ('said project'). For convenience, appellants and respondent will be addressed hereinafter as Complainants and promoter respectively in their original status before MahaRERA.

3. Brief backgrounds behind filing of the present appeal are as under; -

a) **Complainants case**: Complainants booked flat no. 1201, admeasuring 100.055 square meter of carpet area with exclusive balcony area of 2.322 square meter, in the promoter's said project on 28th March 2017 and executed and registered an agreement for sale on 28th June 2017 for total consideration of ₹ 5,38,78,880/- and have cumulatively paid the entire amounts. Clause 9 (i) of the agreement for sale stipulates for delivery of possession of the subject flat by promoter on or before 30th September 2018 subject to reasonable extensions based on certain conditions as set out in the agreement.

b) Captioned complaint came to be filed on 5th January 2021 by appellants before MahaRERA seeking various reliefs including for refund of certain excess payment considerations taken by the promoter as well as for compensations owing to alleged deficit in the carpet area and on the grounds *inter alia* for delay in delivery of the possession of the subject flat.

c) Promoter refuted the contentions of the complainants by submitting *inter alia* that the captioned complaint is liable to be dismissed because,

complainants are no longer allottees and are seeking enforcement of the terms and conditions of the agreement for sale, which is no longer subsisting and binding upon the parties. Appellants have already sold the subject flat on 9th November 2020 itself and have filed the said complaint only thereafter on 5th January 2021 after taking possession of the subject flat on 17th December 2019 with the occupation certificate, which was secured on 16th November 2019. Therefore, appellants are no longer allottees and only the 3rd party subsequent purchaser of the subject flat alone is the allottee.

d) Upon hearing the parties, MahaRERA disposed of the captioned complaint by its order dated 24th May 2021 and held *inter alia* that complainants cannot be permitted to agitate for their claims as allottees at this belated stage and dismissed the captioned complaint, being not maintainable.

e) Aggrieved by this order of MahaRERA, complainants have preferred the captioned appeal, seeking various reliefs *inter alia* to set aside and cancel the said order dated 24th May 2021 passed by MahaRERA, besides directions to respondent to pay/ refund of excess purchase considerations taken by the respondent and interest for the delay in delivery of the possession as elaborated herein above.

4. Heard learned counsel for parties *in extenso.*

5. Complainants made multifarious submissions as follows; -

a. Promoter has handed over the possession of subject flat only on 17th December 2019 despite agreeing for its delivery on or before 30th September 2018. Therefore, complainants are entitled to claim the interest for this said delay in possession under the Section 18 of the Act for an additional amount of ₹ 5,60,730/-.

b. The actual carpet area of the flat, which has been handed over is short by 148 square feet for which, complainants are entitled to be compensated for ₹72,60,732 together with interest thereon.

c. Promoter ought to have submitted an application within 3 months upon booking of 51% of the premises and form a co-operative society and this number was achieved in 2017 itself. But the society has not yet been formed even with the lapse of 3 years. Despite that, while selling the subject flat to 3rd party, Complainants were compelled to pay illegal transfer fee of ₹10,62,000 on 2nd November 2020 including 18% GST in violation of various provisions of law and also the clause 24 (xi) of the agreement for sale itself (p. 53). Therefore, complainants are entitled for refund of this excess amount paid for carpet area deficit.

d. Complainants continue to be allottees under the provisions of Section 2 (d) of the Act even after the said transfer of the ownership of the subject flat to 3rd party purchaser after handling over the possession. Therefore, complainants, being personally affected and being aggrieved persons, are eligible to file the captioned complaint under Section 31 of the Act and are also entitled to claim interest for delay, refund of the excess payments/ amounts and compensations under the provisions of the Act. However, MahaRERA has failed to understand that the said transfer of the subject flat to 3rd party purchaser has been undertaken with the prior consent of the promoter. Accordingly, urged to allow the appeal by referring and relying on the following citations:

- *(i) Rameshwar and Ors. vs State of Haryana and Ors. (Misc. Application No.50 of 2019 in Civil Appeal No.8788 of 2025, (ii) Hamdard (Wakf) Laboratories vs. Labour Commr. (2007) 5 SCC 281, (iii) DDA vs. Bhola Nath Sharma (2011) 2 SCC 54, (iv) Manish Kumar vs. Union of India (2021) 5 SCC 1, (v) CCT vs. T.T.K. Health Care Ltd., (2007) 11 SCC 796, (vi) Shri Sitaram Sugar Co. Ltd. Vs. Union of India (1990) 3 SCC 223, (vii) Bhuwalka Steel Industries Ltd. Vs. Bombay Iron*

& Steel Labour Board, (2010) 2 SCC 273, (viii) Bengal Iron Corporation vs. Commercial Tax Officer, 1994 Suppl (1) SCC 310, (ix) Dilip Kumar Ghosh & Ors. vs. Chairman & Ors. AIR 2005 SC 3485, (x) Swastik Gases (P) Ltd. Vs. Union Oil Corpn. Ltd. (2013) SCC Online SC 564, (xi) Mahachandra Prasad Singh (Dr.) vs. Chairman, Bihar Legislative Council (2004) 8 SCC 747.

6. Per Contra, learned counsel for promoter vehemently opposed these contentions of appellants by submitting the followings; -

a. The subject project was complete after the receipt of its occupation certificate on 16th November 2019 and form (iv) was also uploaded on 19th November 2019. Promoter and complainants have mutually agreed for an one-time settlement for rebate of ₹7,50,000 against their alleged claims of the complainants for the delay in delivery of the possession of the subject flat. Accordingly, complainants have paid the final instalment amount after deducting the said agreed rebate and has taken over the possession of the subject flat on 17th December 2019 upon signing the possession letter dated 13th December 2019. As such, clause 10 of the possession letter, complainants have confirmed that they have no objection to the fact that the society of the flat purchasers have not been formed. As such this letter shows that complainants have taken possession without any protest except with respect to the deficit in its carpet area. Therefore, the present complaint is contrary to the terms of the possession letter and is filed to misuse the beneficial legislation for securing undue gains.

b. After taking over the possession of the flat and after availing the mutually agreed rebate against their alleged claims towards the delay in delivery of possession, complainants have remained silent for considerable time and after getting no objection certificate from respondent promoter in accordance with the clause 24 (xi) of the agreement for sale dated 28th June 2017, have sold the subject flat to

3rd party for ₹5,40,00,000 with profits by executing an agreement for sale dated 09th November 2020. Thereafter, only in the next year on 5th January 2021, appellants have filed the captioned complaint. Therefore, subsequent 3rd party purchasers have stepped into the shoes of the captioned appellants by replacing them as allottees. Therefore, appellants have ceased to have any right, title or interest in the said flat nor in the said project nor there subsists any promoter - allottee relationship after the said sale. Moreover, only the allottee alone can become the member of the cooperative housing society or the flat owners associations and two different allottees cannot become the members in respect of the same flat. The Act certainly does not contemplate a dual allottee system, where two such parties can continue to avail the provisions of the Act.

c. Hence, appellants have no locus to invoke for any benefits under the Act or for any claim or relief thereunder. Accordingly, the captioned complaint is not maintainable under the law. As such, the claims of the appellants are purely civil in nature. Thus, recourse, if any will lie elsewhere and cannot be adjudicated under the Act.

d. Complainants are not aggrieved even in respect of their claims for the alleged carpet area deficit.

e. MahaRERA has rightly dismissed the captioned complaint on the issue of maintainability without going into the merits of the controversy. But appellants filed this appeal and are agitating their case even on merits, which are legally impermissible. Otherwise, if the claim of the appellant is accepted then, it will create a bad precedent leading to anomalous situation of making the liabilities of promoter infinite and with no limitation whatsoever, rendering this legislation meant for benefit of the home buyers into a money-making mechanism on frivolous and

belated grounds. Therefore, urged that the captioned appeal be dismissed with costs and referred following citations: - *(i) Godan Namboothiripad vs Kerala Financial Corporation, Vellayambalam & Ors., (ii) Ishwar Singh Bindra & Ors. vs State of UP (1969) 1 SCR 219, (ii) Wing Commander Arifur Rahman Khan & Ors. vs DLF Southern Homes Pvt. Ltd. Civil Appeal No.6239 of 2019, (iii) Istekar Shaikh vs Dhruva Wollen Mills Pvt. Ltd, (iv) State of Maharashtra vs Ramdas Shrinivas Nayak (1982) 2 SCC 463.*

7. Upon hearing the learned counsel for parties, perusal of material on record, following points arise for our determination in this appeal and we have recorded our findings against each of them for reasons to follow: -

	POINTS	**FINDINGS**
1.	Whether impugned order is sustainable in law?	In the negative.
2.	Whether appellants are entitled for interest for the delay in possession of the subject flat as prayed for?	In the negative.
3.	Whether appellants are entitled for the refund of the transfer fee taken by the respondent as prayed for?	Partly entitled
4.	Whether appellants are entitled for refund for lesser carpet area of the subject flats as prayed for?	In the negative.
5.	Whether appellants are entitled for the compensations as prayed for?	In the negative.
6.	Whether impugned order calls for interference in this appeal?	In the affirmative.
7.	If yes, What Order?	As per the Order.

REASONS

Point No. 1: <u>Maintainability</u>

8. It is not in dispute that subject flat was booked on 28th March 2017, Agreement for sale was executed on 28th June 2017, promoter has agreed to deliver possession of the subject flat on or before 30th

September 2018, promoter has obtained occupation certificate of the subject flat on 16th November 2019 and Complainants have paid the final payments to promoter on 20th November 2019 after getting certain rebates and have taken possession of the subject flat in December 2019 by signing possession letter dated 17th December 2019, wherein, the only condition/ protest, which has been recorded therein by complainants, is "*subject to the verification of the area of the flat*". Thereafter, complainants have sold the subject flat to 3rd party by executing and registering agreement for sale on 9th November 2020 after obtaining NOC from the promoter. Thereafter, appellants have filed the captioned complaint on 5th January 2021 under Section 31 of the Act. Thus, it is apposite to reproduce Section 31 of the Act as follows; -

"*31. Filing of complaints with the Authority or the adjudicating officer.—(1) Any aggrieved person may file a complaint with the Authority or the adjudicating officer, as the case may be, for any violation or contravention of the provisions of this Act or the rules and regulations made thereunder, against any promoter, allottee or real estate agent, as the case may be.*"

9. Learned counsel for the promoter has emphasized the clause 1 of the agreement for sale executed on 9th November 2020 by the complainants with the 3rd party purchaser of the subject flat, which depicts *inter alia* that ".... "*1. the sellers here by sell, transfer and assign all their undivided share, right, title and interest in the premises in favour of the purchasers and the purchasers here by purchase, acquire and take over from the sellers, all their undivided share, right, title an interest in the premises. .....*". and submit that all the rights, title, ownership etc., of the flat have already been transferred to the 3rd party purchaser, who has not made any claim whatsoever and is not even a party in the current proceeding. He further submits that appellants, after having sold the subject flat, are no longer allottees of the subject flat nor have any connection with the said project

and in the absence of subsistence of allottees - promoter relationship, complainants have no locus to file the captioned complaint. He contended that under Section 31 of the Act, only an aggrieved person having interest in such registered project can file a complaint against an allottee, promoter or against the real estate agent provided that there has been some violation/s of the provisions of the Act. He added that if the arguments of the complainants in relation to the Section 14 (3) of the Act providing rights to them up to 5 years to report for any defects in the workmanship or the quality of flat is accepted then, the outgoing and the incoming purchaser both can make claims against the promoter for the same defect from time to time thereby, will double jeopardise the promoter. He further submits that there can never be two allottees of the same flat at the same time and such situations are not even contemplated under the Act and thus, being no longer allottees on the date of filing of the complaint under Section 2 (d) of the Act, complainants have no locus to file complaint under the Act. At the same time, subsequent purchaser has no grievance as regards to the same and therefore, the said disputes are infructuous. According to the promoter, the complaint is not maintainable.

10. However, bare perusal of Section 31 of the Act shows that two conditions are required to be satisfied for any complaint under the Act to become legally maintainable, namely that the complainant must be an aggrieved person for any violations or contraventions of the provisions of the Act/ Rules / Regulations and the complaint must be filed against a promoter, allottee or against a real estate agent. Admittedly, respondent here in is promoter of the said duly registered real estate project.

11. But, learned counsel for the complainants also controverted the contentions of promoter by submitting that it is the original

allottees/complainants, who have suffered personal injuries on account of the said delay in possession and not the 3rd party subsequent purchaser transferee of the said flat and thus, original allottees/complainants continue to be the aggrieved-on account of the said violations of the Act, by promoter.

12. However, upon diligent perusal of these admitted facts as elaborated here in above, clearly demonstrate that promoter has failed to handover the possession of the subject flat on or before the agreed timeline of 30th September 2019 as stipulated in the agreement for sale duly executed between the parties. Therefore, we find that Section 18 of the Act, will be attracted, promoter has violated the provisions of the Section 18 of the Act and complainants are the aggrieved persons on this count.

13. Careful perusal of the agreement for sale executed between complainants and the 3rd party purchaser of the subject flat reveals that there is no explicit clause therein specifying the transfer of such said personal rights, which have accrued on account of personal injuries caused to the original allottees/complainants owing to the said violations of the Act by promoter. Moreover, these rights accrued to the original allottees/complainants are statutory rights accrued under the Act and are due to personal injuries. We find that it is the complainants, who have suffered on account of the delay in possession and not the 3rd party purchaser and complainants have also claimed to have suffered on account of the receipt of only the alleged reduced carpet area of the flat, because they could sell only the reduced flat area to the 3rd party purchaser and have suffered tangible real losses. Beside this, complainants were compelled to pay certain illegal transfer fee for getting NOC, while selling the flat to 3rd party. Therefore, these accrued rights cannot be transferred nor can be alienated without any expressed

consent in writing. Moreover, such rights to sue continues to subsist in the case of such personal injuries. This is not seen expressly written in the agreement for sale, executed with 3rd party purchaser.

14. Moreover, The Hon'ble Supreme Court in para 38 of its judgement in the case of HUDA vs. Raje Ram has held that subsequent transfer, 3rd party purchasers are not entitled to claim compensations and other reliefs and observed further as follows; -.

"38 ..... The written submissions which have been filed before this Court indicate that "the two buyers stepped into the shoes of the first buyers" as a result of the assignment of rights and liabilities by the first buyer in favour of the second buyer. In HUDA v. Raje Ram, this Court while holding that a claim of compensation for **delayed possession by subsequent transferees is unsustainable, observed** that:

"7. .....Respondents in the three appeals are not the original allottees. They are re-allottees to whom re-allotment was made by the appellant in the years 1994, 1997 and 1996 respectively. They were aware, when the plots were re- allotted to them, that there was delay (either in forming the layout itself or delay in delivering the allotted plot on account of encroachment etc). In spite of it, they took re-allotment. ***Their cases cannot be compared to cases of original allottees who were made to wait for a decade or more for delivery and thus put to mental agony and harassment****. They were aware that time for performance was not stipulated as the essence of the contract and the original allottees had accepted the delay." Even if the three appellants who had transferred their interest in the apartments had continued to agitate on the issue of delay of possession,* ***we are not inclined to accept the submission that the subsequent transferees can step into the shoes of the original buyer for the purpose of benefiting from this order.*** *The subsequent transferees in spite of being aware of the delay in delivery of possession the flats, had purchased the interest in the apartments from the original buyers.* ***Further, it cannot be said that the subsequent transferees suffered any agony and harassment comparable to that of the first buyers, as a result of the delay in the delivery of possession in order to be entitled to compensation****. (2008) 17 SCC 407 Amenities"*

15. Therefore, contentions of the learned counsel for the promoter that there cannot be two allottees for the same flat at the same time and

subsequent purchaser has entirely stepped into the shoes of complainants, are also not legally tenable, because these two allottees have two distinct and separate natures and scopes for their rights. As such, perusal of the provisions of the Section 2(d) of the Act, also clearly demonstrates *inter alia* that " .....***and includes the person, who subsequently acquire the said allotment***, *through sale, transfer or otherwise* ....". Accordingly, we do not find any substance in the contention of the learned counsel for the promoter, and it cannot be accepted.

16. In view of above, both the two required conditions for a legally maintainable complaint filed under Section 31 are squarely/entirely satisfied in the instant case and in view of foregoings, we are of the considered view that the captioned complaint is legally maintainable. But MahaRERA has held the captioned complaint as not maintainable, and it has been dismissed by the impugned order dated 24th May 2021. Consequently, we hold that impugned order passed by MahaRERA is also legally not sustainable and we answer point 1 as above.

Point 2. <u>Refund of interest due to delay in possession</u>

17. Perusal of the impugned order reveals that captioned complaint has been disposed of without going into the merits of the issues raised therein by concluding that the subject complaint itself is legally not maintainable. After considering that as far as possible, appeal be disposed of on merit without relegating the parties to the lower forum by remanding the matter more particularly in view of the facts that considerable time has already passed in the instant case, it was felt that remaining reliefs sought herein be also considered and adjudicated on merits without subjecting the parties to go for another round of the litigation by remanding the matter for adjudication before MahaRERA.

18. As determined here in above, promoter has violated the provisions of the Section 18 of the Act on account of its failure to deliver possession of the subject flat on or before the agreed timeline. Therefore, complainants are entitled for the interest at prescribed rate for the delay in delivery of the possession of the subject flat.

19. However, this claim of the complainants was vehemently opposed by the learned counsel for the promoter by pointing out that this issue has been amicably settled jointly by the parties by providing a rebate of ₹7,50,000 out of the total amount due to be paid by complainants as final installment before taking possession of the subject flat.

20. Perusal of the record (P. 69, vide invoice dated 30th November 2019 shows that it has an item written as "*Less: rebate on account of the delayed possession (d) for ₹7,50,000")*, which clearly demonstrates that both the parties have jointly agreed and have settled this issue, besides this, admittedly, complainants have already availed this rebate, while making the payments of final installment before taking possession. Therefore, we are of the view that Complainants are not entitled to agitate/ seek further interest as prayed for the very same issue again after having already settled and after having availed this rebate on this very count. Accordingly, we answer the point no. 2 in the negative.

Point no. 3: <u>Refund of transfer fee</u>

21. Complainants have prayed for refund of ₹10,62,000, which has been claimed to have been paid by the complainants by cheques and has purported to have been been taken illegally by the promoter by contending that complainants were forced to pay this amount despite clear provisions in clause 24(xi) of the agreement for sale duly executed with the promoter.

22. Learned counsel for the promoter opposed this claim by submitting that this amount has not been paid by the complainants and as such, the 3rd party purchaser has paid it. Therefore, complainants are not entitled to claim refund of this amount.

23. Perusal of this clause 24(xi) of the agreement for sale shows *inter alia* that " ..... *in the event the allottee is desirous of transferring the same premises or any part thereof and/ or it's right under the agreement* ***prior to making such full and final payment, then,*** *the allottee cell be entitled to effectuate such transfer* ***only with prior written permissions of the promoter****...*" Whereas in the instant case, this transfer of the subject flat has taken place after taking possession and only after making full payments to promoter. Therefore, the said demand for the transfer fee for NOC on 6th November 2020 by the promoter is illegal.

24. Diligent perusal of record more particularly clause 5 (xvi) of subsequent agreement for sale, depicts *inter alia* that...."*5 (xvi) .....Fee of ₹9,00,000 is payable to Kanakia Spaces Realty private limited by the sellers and purchasers* ***in equal proportion*** *for issuance of NOC and noting of lien in favour of the purchasers. there is no society so far formed and as such, no transfer fees is payable to the society.*"

25. In view of foregoing, we are of the considered view that promoter is not entitled to claim for such transfer fees for issuing NOC as per the agreement and at the same time, complainants/new purchaser were required to pay this amount of ₹9,00,000 **in equal proportion** with the 3rd party purchaser, which is more than evident in clause 5(xvi) of the agreement executed with the 3rd party purchaser. Moreover, the copies of the cheque numbers produced on record (Pg. 80–83) by claiming that the complainants themselves have paid these amounts, have same cheque numbers. Be it as it may, in view of the clause 5(xvi) agreement, complainants are entitled to the refund of only the half of the said amount

of ₹9,00,000, which was required to be paid by complainants as per the agreement and this amount comes to ₹4,50,000 only. Accordingly, we answer point 3 as above.

Point 4: <u>Refund for carpet area deficit</u>

26. Complainants have alleged that the actual carpet area of the subject flat has been reduced. Therefore, they have claimed for refund of these excess paid amounts from the promoter. Clause 3 (i) of the agreement for sale stipulates for the carpet area of 100.055 square meter plus balcony area of 2.322 square meters besides for the exclusive right to use of hatched area of 11.426 square meter as a common area and facilities. Whereas the joint measurement undertaken in the presence of the representative of the respondent on 18th January 2020, shows that the carpet area is only 1018.74 square feet against the required area of 1223 square feet, which is also written in the internal office memo in the booking dated 28th March 2017 (vide p.71). Moreover, Complainants have paid the entire amounts to promoter for the total area of 1223 square feet. Thus, complainants have claimed for shortfall of 148 square feet in the carpet area and have prayed for compensations of an amount of ₹72,60,732 together with interest thereon.

27. Learned counsel for the promoter opposed it by submitting that complainants are relying on the contents of the internal office memo entitling *inter alia* to 1223 square feet of carpet area only. As such, no common area was sold to the complainants. Both the carpet area and the consideration stated in the said agreement, differ marginally from the internal office memo. Even, the price summary sheet clearly shows that the party had agreed to revise price and the area, when the said agreement was signed. The marginal difference in the area of only 21

square feet, which is 1.75% of the total area and under clause 3 (vii) of the said agreement, parties have already agreed that the carpet area of the subject flat can vary up to 3% without any liability of the either party. Therefore, there is no violation on the part of the promoter.

28. The Perusal of Clause 3 (i) of the agreement for sale shows that complainants have agreed to purchase the subject flat admeasuring 100.055 sq. mtrs. plus, balcony area of 3.322 sq. mtrs. and certain hatched common area. Internal office memo dated 28th March 2017 shows that the carpet area of the subject flat is 1223 sq. ft. However, Clause 30 of the agreement clearly stipulates that this agreement along with its schedules and annexures etc., supersede any and all understandings, any other agreements, booking form, letter of acceptance, allotment letter, correspondences, arrangements whether written or oral, if any between the parties. Therefore, the contentions of the complainants with regard to the contents in the internal office memo after having agreed by executing and registering agreement for sale, are legally not tenable.

29. In the email dated 5th February 2020, sent to the promoter, Complainants further claimed that after the joint measurement, carpet area of subject flat came to be of 1052.48 sq. ft., which is equivalent to 97.73 sq. mtrs., which is claimed to be short by 2.33 sq. mtrs. in comparison to 100.055 sq. mtrs stipulated in the agreement. Moreover, this claim is not supported by the joint measurement of the competent architect, and also perusal of the note as on page no.74 reflects that the area of the flat after adding dry balcony and common area, the total carpet area is shown as 1168.75 sq. ft. In addition, this measurement is further subjected to two qualifying conditions as *(i) final area of flat will be verified and approved by Design and Drawing department of Kanakia and (ii) Internal walls, columns, etc not counted in above measurement, which has to be included later on.*

30. Considering the above, we are of the view that complainants have failed to produce convincing evidence in their supports with regard to the deficit in the carpet area and therefore, complainants are not entitled for refund for alleged carpet area deficit as prayed for in the appeal and we answer point 4 in the negative.

Point 5: Compensations

31. Complainants are claiming compensations of ₹10,00,000 for the interest paid to the housing loan and loss of a stamp duty/ registration charges, besides further claim for ₹10,00,000 as compensations for the mental agony and hardship and for the poor quality of the constructions. However, complainants have not put forth any further details nor any required evidence in support thereof for such equitable compensations, which are otherwise needed for appropriate considerations.

32. Additionally, complainants herein have opted to continue with the project by taking possession of the subject flat. Whereas perusal of the proviso to the Section 18 of the Act, reflects *inter alia* that "... *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.* ".Therefore, complainants are entitled to reliefs under Section 18 of the Act, and as per Section 18 of the Act,, complainants are not entitled to compensations.

33. Thus, we are of the view that complainants are entitled for interest at prescribed rate for every month of delay till the handing over of the possession of the subject flat, for which, complainants have already jointly settled it for rebate of ₹7,50,000 and hence, are not entitled to interest for the delay in possession and are also not entitled for the compensations as prayed for. Accordingly, we answer point 5 in the negative.

Point no. 6:

34. Upshot of the above discussion reflects that captioned complaint is maintainable, impugned order dated 24th May 2021 passed by MahaRERA suffers from infirmities and calls for interference in this appeal as determined herein above, as a result thereof, we proceed to pass the order as follows; -

: O R D E R :

a) Appeal is partly allowed.

b) Impugned order dated 24th May 2021 passed in Complaint No. CC 0060000000 195527 stands set aside.

c) Respondent Promoter is directed to refund ₹4,50,000, which has been received for the issuance of NOC for transfer of the subject flat to 3rd party purchaser, within 30 days to appellants, failing which, promoter shall pay interest thereon after the expiry of said 30 days at the rate of highest marginal cost of lending rate of State Bank of India plus 2% till its complete refund.

d) No order as to costs.

e) In view of the provisions of Section 44(4) of the Act of 2016, a copy of this order shall be sent to the parties and to MahaRERA.

(Dr. K. SHIVAJI) **(SHRIRAM. R. JAGTAP, J.)**