

BEFORE THE MAHARASHTRA REAL ESTATE

APPELLATE TRIBUNAL, MUMBAI

Appeal No. AT00600000010992/19

In

Complaint No. CC006000000056005

M/s. L & T Parel Projects LLP

L & T Business Park, Tower A,
Gate No.5, Saki Vihar Road,
Powai, Mumbai 400072

... Appellant

Versus

Shamsunder Jairamdas Bajaj

Sai Deep, 17, Cuff Parade,
Mumbai 400005

... Respondent

Adv. Mr. Yashesh Kamdar for Appellant/Promoter

Adv. Mr. Dharam Jumani for Respondent/Allottee

**CORAM : SHRIRAM R. JAGTAP, MEMBER (J) &
SHRIKANT M. DESHPANDE, MEMBER (A)**

DATE : 24th October, 2024

(THROUGH VIDEO CONFERENCING)

JUDGEMENT

[PER : SHRIKANT M. DESHPANDE, MEMBER (A)]

1. The captioned Appeal arises from Order dated 06.12.2018 passed by learned Member and Adjudicating Officer, MahaRERA (for short "the Authority") in Complaint No.CC006000000056005 whereby the Authority passed the following Order.

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"The respondent (Promoter in the Appeal) shall refund to the complainant (Allottee in the Appeal) and his wife Sharda S. Bajaj the amount mentioned in the payment format marked Exh. 'A' except Rs.22,220/- with simple interest at the rate of 10.5% per annum from the date of their receipt/payment till refund.

The Exh. 'A' shall form part of the order.

The respondent shall pay Rs.2,00,000/- by way of genuine pre-estimated agreed liquidated damages and Rs.20,000/- towards the cost of the complaint.

The charge of the complainant's claim shall be on the booked flats till its satisfaction.

On satisfaction of the claim the complainant and his wife Sharda S. Bajaj shall execute the Deeds of Cancellation of agreement for sale.

The respondents shall bear their cost.

It is hereby clarified that in case, the respondents' failure to satisfy the claim of the complainant and his wife within five years from the date of agreements for sale, they shall refund the amount of stamp duty of both the agreements of sale also."

2. For the sake of convenience, parties to the Appeal hereinafter will be referred to as "Promoter" and "Allottee/Complainant" respectively.
3. Brief facts gathered from the pleadings, documents on record, and impugned Order are that the Allottee/Complainant Mr. Shamsundar Jairamdas Bajaj, HUF and his wife Mrs. Sharda Shamsundar Bajaj jointly booked two flats bearing no.2603 and 2604 in Tower 4 of the Promoter's registered project in the name and style as

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"Crescent Bay" situated at Parel, Mumbai. Two separate agreements for sale dated 14.12.2015 came to be executed and registered by and between the Promoter and Mr. and Mrs. Bajaj. The date of possession as stipulated in the said agreements for sale is on or before 30.09.2017 provided that all the amounts due and payable by the Allottee are paid in full, as demanded by the Promoter. Further, Clause 15.1 of the said agreements provides that Promoter is entitled to a reasonable grace period of 6 months over and above the said due date and further provided, however, that the Promoter shall also be entitled to further reasonable extension of time for giving delivery of the said flats if completion of the said building in which the said flats are situated is delayed on account of any of the event of *force majeure* as set out in the said clause. The Promoter completed the construction of the said building and obtained part Occupation Certificate dated 15.03.2018, which covers the said flats. The Promoter however failed to hand over possession of the said flats as per the date stipulated in the said agreements for sale. Therefore, Allottee filed the captioned Complaint and sought relief of interest and compensation of Rs.1,00,000/- as stipulated in the agreement for

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sale on account of delay in delivering possession and cost of the complaint.

4. The Promoter appeared in the Complaint and remonstrated the Complaint by filing reply. The Promoter submitted that the said flats were to be handed over by September, 2017 with a grace period of 6 months. The Promoter received part Occupation Certificate on 15.03.2018 and offered possession before the lapse of the agreed date as stipulated in the agreements for sale by sending demand/possession letter on 29.03.2018 to the Complainant. The Promoter further contended that in view of the above submission, they have not failed to hand over possession of the said flats by the agreed date. The Promoter further submitted that the Complainant was entitled to get possession only by making full payment of the balance outstanding amount. The Complainant made 12 defaults in making the payments and avoided to pay interest on delayed payments. Therefore, the Complainant is not entitled to claim possession. The Promoter further contended that though water connection has been confirmed by the MCGM on 04.07.2018, adequate and sufficient water supply of potable water was provided through tankers. The Promoter further contended that the Complainant, being an

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investor, is not genuinely interested in taking possession of the flats. With these submissions the Promoter prayed to dismiss the complaint.

5. After hearing both the parties, the Authority passed the impugned Order dated 06.12.2018. While passing the said Order, the Authority has observed that the Occupation Certificate dated 15.03.2018 is conditional. The Promoter was required by the said Occupation Certificate to comply with the conditions of LOI, IOA, amended plans at respective stages before the premises are occupied. Further, the crucial condition in the said Occupation Certificate is that the Promoter is required to obtain Certificate under Section 270A of Mumbai Municipal Corporation Act, 1888 (for short "MMC Act") and submit the same to SRA, the competent Authority. The Promoter applied for water connection on 26.03.2018. 'P' Form was issued on 14.06.2018 by Hydraulic Department of MCGM and the connection was confirmed on 14.08.2018. It means that till 14.08.2018 the building did not have a water connection. The Authority further observed that Occupation Certificate does not disclose compliance to the requirement as defined under Section 2(q) of RERA. Further, Section 2(zf) of RERA provides that Occupation Certificate should

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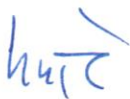
be issued by the competent authority permitting occupation of any building, as provided under local laws, which has provision for civic infrastructure such as water, sanitation and electricity. From this point of view, though the competent authority issued part Occupation Certificate on 15.03.2018, there was no provision for permanent water connection till 14.08.2018. In view of this, the Authority concluded that the project was incomplete till 14.08.2018. The Authority also observed that the possession demand letter was issued on 29.03.2018 which clearly mentions that on payment of all the outstanding amounts, the possession would be scheduled between 1st and 31st May, 2018. This means, the Complainant was not able to receive possession on 31.03.2018 even after payment of the dues. The Authority observed that the Promoter was not able to hand over possession of the subject flats before 1st May, 2018. In view of this, the Authority came to the conclusion that the Promoter has failed to complete construction and hand over possession of the said flats in accordance with the terms of the agreements for sale. The Authority therefore granted relief of refund of the paid amount together with interest under the provisions of Section 18 of RERA. The Authority also observed that as per Clause 15.3 of the agreements for sale, the Promoter



has agreed to give sum of Rs.1,00,000/- by way of genuine pre-estimated agreed liquidated damages if the Promoter fails to give possession of the flats on or before the date stipulated in Clause 15.1 of the agreements. Therefore, the Authority also directed the Promoter to pay Rs.1,00,000/- for each flat to the Complainant as genuine pre-estimated agreed liquidated damages.

6. Aggrieved by the impugned Order dated 06.12.2018, the Promoter has preferred this Appeal on the grounds set out in the memorandum of Appeal, *inter alia* mainly on the following grounds:

- i. The learned Authority failed to appreciate that the Complainant was not the Allottee under the agreements for sale dated 14.12.2015 nor was the Complainant a party to/or authorized on behalf of the Allottee or either of them to file the captioned complaint.
- ii. The learned Authority failed to appreciate that the date for handover of possession of the said flats was 30.09.2017 with a grace period of 6 months i.e. 31.03.2018 and that Occupation Certificate for the said flats was obtained on 15.03.2018 and the Complainant was offered possession of



the said flats on 29.03.2018, within the period/time limit for handover of possession.

- iii. The learned Authority failed to appreciate that as per terms of the said agreements for sale, delivery of possession of the said flats was conditional on timely payment of the installments and the Complainant has continuously defaulted in performing his obligation under the said agreements on over 12 occasions since September, 2014 aggregating to a period of over 1067 days and had failed to rectify such defaults despite being called upon to do so.
- iv. The learned Authority erred in holding that the Promoter was in breach of Section 18 of RERA.
- v. The learned Authority failed to appreciate that the objection taken by the Complainant that the Certificate under Section 270A of MMC Act with respect to water connection had not been obtained till 14.08.2018 was a hyper technical objection and inconsequential in the facts of the case. In view of the facts that the Promoter had provided constant water supply by tankers and mineral drinking water to all the residents of the building until obtaining of confirmed water connection on 14.08.2018.

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- vi. The learned Authority erred in not holding that it was on account of certain *force majeure* conditions i.e. factors beyond the control of the Promoter that the MCGM did not issue the Certificate under Section 270A of MMC Act, until 14.08.2018.
 - vii. The learned Authority erred in holding that the Complainant was entitled to Rs.2,00,000/- by way of genuine pre-estimated agreed liquidated damages.
 - viii. The policy of the Planning Authority, namely SRA does not require the procurement of Certificate under Section 270A of MMC Act as a pre-condition to issuance of Occupation Certificate.
 - ix. The impugned Order awards refund as well as compensation which is beyond the jurisdiction of the Authority to do in a single complaint.
7. On the grounds mentioned above, the Promoter has sought the relief of setting aside the impugned Order dated 06.12.2018 passed by the Authority.
8. We have heard learned Advocate Mr. Yashesh Kamdar for Promoter and Advocate Mr. Dharam Jumani for Allottee. The submissions made by learned Advocates of the parties are nothing

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but reiteration of the Appeal memo, reply to the Appeal, and written submissions. In addition, the learned Advocate for Promoter has submitted that the subject flats were to be handed over as per the agreements for sale by September, 2017 with a grace period of 6 months. Accordingly, as per the said Clause 15.1 of the agreements, the Promoter was required to handover possession of the said flats by 31.03.2018. The Promoter obtained part Occupation Certificate on 15.03.2018, that is prior to the date of possession as stipulated in the agreements. Further, the Promoter issued possession demand notice dated 29.03.2018 in pursuance of the possession handover modalities towards the said flats, thereby completing the handover of possession in so far as the role of the Promoter is concerned. On receipt of Occupation Certificate, the Allottee was obligated to take possession of the said flats and therefore the liability cannot be fastened on Promoter for the failure on the part of the Allottee to take possession of the said flats within time. Learned Advocate contended that Promoter handed over possession of the said flats within a prescribed timeline and there is no delay in handing over possession of the said flats. Learned Advocate also submitted that once the flats were offered for possession, then the right of the



Allottee to exit from the project by demanding refund with interest does not survive. Therefore, no relief could have been granted to Allottee by the Authority.

9. The learned Advocate for Promoter further submitted that the Authority has no jurisdiction to test the legality and validity of the actions of the competent authority or local Authority, as the case may be. The Authority cannot sit in appeal over the actions of the competent authority acting under the relevant local laws. The Authority therefore cannot question the legality or validity of such Occupation Certificate. Learned Advocate submitted that obtaining Certificate under Section 270A of the MMC Act was not mandatory. The Occupation Certificate requires merely Certificate under Section 270A of MMC Act from the Municipal Commissioner; this however does not mean that there is no provision made for water in the building. Learned Advocate also submitted that the finding of the Authority that there was no water connection available, and the Occupation Certificate was conditional is not sustainable in law because what the law prescribes is only to make the provision in the building and the actual water supply would require Certificate. Learned Advocate also submitted that immediately after receipt of Occupation Certificate, the Promoter applied for water connection.



The delay in granting the said Certificate under Section 270A of MMC Act is not attributable to the Promoter and would constitute *a force majeure* event since the said activity was beyond the control of the Promoter. Learned Advocate has also contended that the impugned Order awards both the refund as well as compensation which is beyond the jurisdiction of the Authority to do in a single complaint.

10. With these submissions learned Advocate for Promoter has prayed to allow the Appeal and set aside the impugned Order. The learned Advocate for Promoter has placed reliance on the following citations:

- i. **Subodh M Joshi Vs. Municipal Corporation of Greater Mumbai & Ors.** [2022 SCC Online Bom 3816]
- ii. **Kailash Nath Associates Vs. Delhi Development Authority and Anr.** [(2015) 4 SCC 136]
- iii. **Sanvo Resorts Pvt. Ltd. & Ors. Vs. Mrs. Shital Nilesh Deshmukh & Anr.** [Second Appeal No. 512 of 2022]
- iv. **Ireo Grace Realtech Pvt. Ltd. Vs. Abhishek Khanna & Ors.** [Civil Appeal No. 5785 of 2019 (2021) 3 SCC 241]
- v. **(1) Prakash Shah (2) Niket Shah Vs. Era Realtors Private Limited** [Appeal No.AT006000000052805 of 2021]

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vi. **Satra Plaza Premises Co-op. Soc. Ltd. Vs. Navi Mumbai Municipal Corporation** [Writ Petition No. 1374 of 2017]

11. Learned Advocate for Allottee has submitted that Promoter was required to handover possession of the said flats by the date specified in the agreements for sale i.e. by September, 2017. Further, while the agreements for sale provide for grace period of 6 months for handover of possession by 31.03.2018, it is not up to the Promoter to unilaterally invoke and/ or claim the said grace period without ascribing the genuine reason and intimating the same to the Allottee. The Promoter has not made out the case that he entails to avail the said grace period. Learned Advocate contended that it is not upon for the Promoter to contend that the date of handover of possession was 31.03.2018. Learned Advocate also submitted that the part Occupation Certificate was conditional i.e. subject to *inter alia* the requirement of water connection Certificate under Section 270A of the MMC Act, which did not occur until 14.08.2018. Learned Advocate also submitted that the Promoter offered possession of the said flats which were scheduled between the period from 1st May to 31st May, 2018. Therefore, the Promoter failed to handover possession in terms of

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the date specified in the agreements for sale and therefore allottee is entitled to relief of refund together with interest under Section 18 of RERA. Learned Advocate for Allottee has placed reliance on the following citations:

1. **Ms. Nirmala Gill & Ors. Vs. L & T Parel Project LLP** [Order dated September 4, 2018 in Complaint No.CC006000000054619]
2. **L & T Parel Project LLP Vs. Ms. Nirmala Gill & Ors.** [Order dated February 12, 2024 in Appeal No.AT00600000010735]
3. **Axis Bank Ltd. Vs. National Stock Exchange of India Ltd. & Ors.** [Order dated May 17, 2021 in Appeal No. 140 of 2021]
4. **Sea Princess Realty Vs. Manoj Votavot** [Order dated June 8, 2023 in Appeal No.AT006000000000159]
5. **Neelkamal Realtors Vs. Union of India** [2017 SCC Online Bom 9302]
6. **Imperia Structure Vs. Anil Patni** [Supreme Court's Order dated November 2, 2020]
7. **Sanvo Resorts Vs. Ranveer Sharma** [REAT Order dated July 19, 2021]

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8. **Suryakant Yashwant Jadhav Vs. Bellissimo Hi-Rise Builders Pvt. Ltd.** [REAT Order dated on January 12, 2021]
9. **Pioneer Urban Land Vs. Govindan Raghvan** [2019 Supreme Court Cases 725]
10. **Mr. Nayan Nanasaheb Gandhi Vs. M/s. Kolte Patil Real Estate Pvt. Ltd.** [REAT Order dated September 30,2019 in AT00600000001049]
11. **Pinaki Chatterjee Vs. Nirmal Lifestyle Pvt. Ltd.** [Order dated October 11, 2023 in Appeal No.AT006000000031657]
12. **Subodh M. Joshi Vs. MCGM & Ors.** [Order dated August 17, 2022 in Writ Petition (L) No.21683 of 2022]
13. **Shrusti Sangam Developers Pvt. Ltd. Vs. Sarvapriya Leasing (P) Ltd. & Anr.** [Order dated January 29, 2019 in AT006000000010557]
14. **Balaji Construction Company Vs. Suresh Ramchand Varlani** [Order dated February 22, 2019 in AT006000000010828]
15. **Balaji Construction Company Vs. Suresh Ramchand Varlani** [Order dated February 22, 2019 in AT006000000010827]



16. **M/s. Satra Buildcon Pvt. Ltd. & Ors. Vs. M/s. Krian Habitat LLP** [M. A. No.434/22 Appeal No.AT0060000000031819]
17. **Panchasheela D/O Vaijnath Patil Vs. President/Secretary, Yavatmal & Ors.** [Order dated March 17, 2021, High Court of Bombay (2021) 3 AIR Bombay (2021) 3 AIR Bom R 801]
18. **Pandurang & Ors. Vs. State of Maharashtra** [Order dated September 30, 1986, Supreme Court of India (1986) 4 SCC 436]
19. **Man Global Limited Vs. Bharat Prakash Joukani** [Order dated October 1, 2019, High Court of Bombay Second Appeal (St) No.14845 of 2019 a/w Civil Application No.787of 2019.
20. **Larsen and Toubro Limited vs. Ms. Rekha Sinha** [Order dated October 17,2019, High Court of Bombay Second Appeal (St.) No.14061of 2019 with Civil Application No. 894 of 2019]
21. **Sushil Kumar Mehta vs. Gobind ram Bohra (Dead) through his LRs** [Order dated November 10, 1989, Supreme Court of India (1990) 1 SCC 193]

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22. **I.C. Golaknath and Ors. Vs. State of Punjab and Anr.**
[1967 AIR 1643]
23. **Union of India Vs. I.P. Awasthi** [2015 17 SCC 340]
24. **State of H.P. & Ors. Vs. Nurpur Pvt. Ltd.** [1999 9 SCC
559]
25. **Indira Gandhi Memorial General Marketing Society
Ltd. Vs. Roys Abraham & Ors.** [2017 SCC Online Ker
10912 (Kerala High Court Single Judge)]
26. **Surendra Kumar Pandey & District Inspector of
Schools, Basti and Ors.** [2007 SCC Online All 1042
Allahabad High Court Single Judge]
27. **Mukesh Kumar Vs. Ajay Kumar Dwivedi** [Contempt
Application (CIVIL) (L.) 5299 of 2019 (Allahabad High
Court-Single Judge)]
28. **The Management of Hukkeri & Ors. Vs. S. R.
Vastrad & Ors.** [ILR 2005 Kar 3882 (Karnataka High
Court-Single Judge)]
29. **Newtech Promoters and Developers Pvt. Ltd. Vs.
State of UP & Ors.** [Order dated November 11, 2021 by
the Hon'ble Supreme Court in Civil Appeal No. (s) 6745-
6749 of 2021]

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30. **Shree Tirupati Greenfield Developers Vs. Mr. Pramod Krishna Sail & Anr.** [Order dated September 23, 2021 in Appeal No.AT006000000052344]
31. **Mr. Paresh Parihar & Anr. Vs. Kiyana Ventures LLP** [Order dated October 13, 2021 in Appeal No.AT005000000052700]
32. **TATA Housing Development Co. Ltd. Vs. Arunesh Chopra and Riddhima Chanda** [Order dated September 24, 2021 in Appeal No.AT006000000053028]
33. **Ashok Sadarangani & Anr. Vs. Union of India & Ors.** [Order dated March 14, 2012 by the Hon'ble Supreme Court in Writ Petition (CRL.) No.26 of 2011]
34. **UOI Vs. I.P. Awasthi & Ors.** [Order dated February 16, 2006 by the Hon'ble Supreme Court in Civil Appeal No.8568 of 2002]
35. **Pankaj Chawla Vs. Vijay Jain** [Order dated March 26, 2021 in Appeal No.AT006000000031804]
36. **Soham Estate Vs. Chirag Darji** [Order dated March 22, 2021 in Appeal No.AT006000000021136]
37. **Ashdan Developer Vs. Arun Philip** [Order dated March 24, 2021 in Appeal No.AT005000000052161]



38. **Shubhan Properties Vs. Jayesh Parmar** [Order dated March 15, 2021 in Appeal No.AT005000000052378]
39. **Acme Housing India Ltd. Vs. Rajesh Poddar** [Order dated March 24, 2021 in Appeal No.AT005000000041931]
40. **M/s. Sakla Enterprise Vs. Nitin Sonkusale** [Order dated March 15, 2021 in Appeal No.AT006000000041926]
41. **Mahimkar Builder & Developer Pvt. Ltd. Vs. Mr. Dayaram Shetty** [Order dated March 17, 2021 in Appeal No.U-13/2020 SC10001357]
42. **Neelkamal Realtors Vs. Bhaftendu Vatsya** [Order dated June 7, 2021 in Appeal No.AT006000000041893]
43. **Neelkamal Realtors Vs. Praveen Kumar Harkawat** [Order dated June 7, 2021 in Appeal No.AT006000000041905]
44. **Shubhan Properties Vs. Shashi Arora** [Order dated March 31, 2021 in Appeal No.AT006000000052319]
45. **Rushi Builders & Developers Vs. Vijay Chinduji Bhakane** [Order dated June 7, 2021 in Appeal No.AT006000000052843]
46. **Hagwoods Commercial Vs. Rahul Deshmukh** [Order dated June 7, 2021 in Appeal No.AT004000000042071]



47. **Avarsekar Realty Pvt. Ltd. Vs. Ashok Paranjpe**
[Order dated May 5, 2021 in Appeal
No.AT006000000052775]
48. **Kumar Sinev Developers Vs. Sunil Kumar Tiwari**
[Order dated June 30, 2021 in Appeal
No.AT005000000042029]
49. **Pankaj Chawla Vs. Vishalakhshy Vishwanath** [Order
dated June 29, 2021 in Appeal No.AT006000000052723]
50. **Nergish Minoov Pavri & Anr. Vs. Pramod
Kishanchand Gupta** [2010 1 Mah. L J 264]
51. **Ganesh Lonkar Vs. D.S. Kulkarni Developers Pvt.
Ltd.** [Order dated December 26, 2017 in Complaint
No.CC005000000000317]
52. **Renaissance Infrastructure Vs. Parth B. Suchak**
[Bombay High Court Order dated September 25, 2020 in
Second Appeal (ST.) No.92626 of 2020]
53. **Ketan Gajarat Vs. JVPD Properties** [Order dated April
11, 2018 in Complaint No.CC006000000001312]
54. **Jyoti K Narang Vs. CCI** [Order dated November 24,
2020 passed in Appeal No.AT006000000010841]

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55. **Rekha Sinha Vs. L & T** [Order dated March 14, 2019
passed in Appeal No.AT006000000010425]
56. **Platinum Properties Vs. Ashok Tukaram Khaladkar**
[Order dated April 2, 2019]
57. **Kiran Jadhav Vs. Sunil Mittal** [Order dated February 3,
2021 in Complaint No.CC005000000022758]
58. **M/s. Proview Realtech Pvt. Ltd. Vs. State of U.P. &
5 Ors.** [Judgment dated January 12, 2021 of the Hon'ble
Allahabad High Court]
59. **Rajesh Kumar Choudhary Vs. CCI** [Order dated March
10, 2021 in Appeal No.AT006000000010733]
60. **Parinee Realty Vs. Mr. Rajiv Govin** [Order dated
February 22, 2021 in Appeal No.AT006000000031724]
61. **Karan Janhavi Development Corporation Vs. Nitin
Patil** [Order dated March 25, 2021]

12. Having considered the detailed and comprehensive submissions of the respective parties supported by various documents, the points that arise for our consideration and findings thereon for the reasons to follow are as under:

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Sr. No.	Points	Finding
1.	Whether the Allottee is entitled to relief of refund together with interest under Section 18 of RERA?	In the affirmative
2.	Whether the impugned Order dated 06.12.2018 warrants interference in this Appeal?	Partly
3.	What Order?	As per final Order

REASONS

Point No. 1

13. On ensembling the facts as submitted above by the parties reveals that, it is not in dispute that the Complainant and his wife jointly booked the subject flats in the Promoter's said project. It is also not in dispute that two separate agreements for sale dated 14.12.2015 came to be executed and registered by and between the Promoter and the Allottee. The date of possession as stipulated in the said agreements for sale is on or before 30.09.2017 provided that all the amounts due and payable by the

Allottee are paid in full, as demanded by the Promoter. Further, Clause 15.1 of the said agreements provides that the Promoter is entitled to reasonable grace period of 6 months over and above the said due date and further, however, provides that the Promoter was also to be entitled to further reasonable extension of time for delivery of the said flats, if the project is delayed on account of *force majeure* factors as set out in the said clause. The Promoter completed construction of the said building and obtained part Occupation Certificate dated 15.03.2018, which covers the said flats. The Promoter issued a demand/possession letter dated 29.03.2018 and offered possession of the said flats to the Allottee subject to payment of the balance dues.

14. The contention of the Promoter is that Clause 15.1 of the said agreements for sale stipulates that Promoter shall complete construction and handover possession of the said flats by September, 2017 subject to payment of all balance amounts payable in respect of the said flats. However, the Promoter would be entitled to a grace period of 6 months. Accordingly, as per the said Clause 15.1 of the agreements for sale, the Promoter was required to handover possession of the said flats to the Allottee by 31.03.2018 which includes the grace period of 6 months. The



Promoter has also submitted that the said Clause 15.1 also provides for a further extension of time for delivery of possession of the said flats in case of delays beyond the control of the Promoter on account of *force majeure* events as set out in the said Clause 15.1. The Promoter has also submitted that the proposed date of completion in the registration certificate issued by MahaRERA is 31.03.2018; the date has been further revised to 31.08.2018. The same was brought to the notice of all the flats purchasers including the Allottee/Complainant that the date of completion of the said project and consequently date of possession of their respective apartments has been extended to 31.08.2018. The Occupation Certificate was obtained by Promoter on 15.03.2018 i.e. prior to the date of possession stipulated in the said agreements for sale and also prior to the proposed date of completion as disclosed at the time of registration. The Promoter has also submitted that Promoter issued possession demand notice dated 29.03.2018 in pursuant of the possession handover modalities towards the said flats, thereby completed the handover of possession, in so far as role of the Promoter is concerned. On receipt of Occupation Certificate dated 15.03.2018, the Allottee was obligated to take possession of the said flats, and no liability



can be fastened on the Promoter for the failure on the part of Allottee to take possession of the flats within time. The Promoter contended that in view of this, there was no delay at all on the part of the Promoter who not only obtained Occupation Certificate within the time stipulated in the said agreements but also offered possession of the said flats within such prescribed timeline.

15. The said Clause 15.1 in the said agreements is reproduced below.

*"15.1 The developer shall hand over the quiet, vacant and peaceful possession of he said unit to the purchaser with respect to the said Building around about September 2017 -T4 ("Due Date"); PROVIDED THAT all amounts due and payable by the Purchaser hereinabove including the amounts payable as provided in clause hereinafter are paid, in full, as demanded by the Developer. **PROVIDED HOWEVER the Developer is entitled to reasonable grace period of 6 (six) months over and above the said Due Date** and further PROVIDED HOWEVER that the Developer shall also be entitled to further reasonable extension of time for giving delivery of the said Unit, if the completion of the said Building in which the said Unit are situated, is delayed on account of any event of force majeure including the following ("Force Majeure"):*

- i. Non availability of steel, cement, other building material, water, or electric supply; and/or*
- ii. War, civil commotion, or any terrorist attach/ threat; and/or*
- iii. Any notice, order, rule, notification of the Government and/or other public or local or competent authority and/or any change in law; and/ or*
- iv. Any strike, lockout, band, or other like cause.*
- v. Act of God, which includes earthquake, cyclone, tsunami, flooding and any other natural disaster or unforeseen naturally accruing event.*

- vi. *Any change in law and/or changes in policies of the Government from time to time.*
- vii. *Any event beyond the reasonable control of the Developer and/or*
- viii. *Any restrain and/or injunction and/or prohibition order of the court and/or any other judicial or quasi-judicial authority and/or statutory authority”.*

The said Clause reveals that the Promoter is entitled to reasonable grace period of 6 months over and above the said due date i.e. the outer limit being 31.03.2018. It also further provides that the Promoter shall also be entitled to further reasonable extension of time **if the completion of the said building is delayed on account of any *force majeure events*** which have been set out in the said Clause. It is pertinent to note that entitlement of grace period of 6 months over and above the due date has been agreed by the parties as per said agreements for sale, which is **not linked** to any “*force majeure*” clause. However, further reasonable extension of time beyond the grace period of 6 months will have to be justified on account of any event of *force majeure* as set out in the said clause. Thus, the said agreements for sale have made clear distinction between the grace period of 6 months and any further extension beyond the said grace period. Therefore, we are of the view that the Promoter is entitled to grace period of 6 months over and above the due date as per the said Clause 15.1, which is independent of any “*force majeure*” events and therefore



the Promoter was expected to handover possession latest by 31.03.2018. However, any extension beyond 31.03.2018 must qualify for *force majeure* reasons. Thus, the Promoter was obligated to hand over possession of the said flats on or before 31.03.2018 in terms of the said agreements for sale.

16. The contention of Promoter that the project was registered with MahaRERA on 10.08.2017 with revised completion date as 31.08.2018 and Allottees were put to the notice that possession would be accordingly handed over by 31.08.2018. The Allottee, after registering project with revised completion date has made payments as per demands raised by Promoter without demur or protest. The Allottee through their email correspondence between the said period did not raise grievance with respect to the purported delay, whereas the aforesaid payments certify the acquiescence and waiver on the part of Allottee. We cannot accept this contention of Promoter which in effect extends/modifies the date of possession to 31.08.2018. The date of possession as stipulated in the agreements for sale can be modified or extended only by the consent of the parties to the agreements. The extended date of completion of the project as per MahaRERA certificate cannot re-write the terms of the agreements for sale.

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Besides, there is no cogent documentary evidence submitted by the Promoter suggesting a consent of the Allottee to the extended date of possession.

17. The Promoter has contended that obtaining Certificate under Section 270A of the MMC Act was not mandatory for occupation of the premises. The Promoter has submitted that the definition of Occupation Certificate under Section 2(zf) of RERA contemplates the issuance of Occupation Certificate in respect of a building which has the **provision** for water, sanitation and electricity. In the said project all of these provisions were made well before obtaining Occupation Certificate. Occupation Certificate requires merely a Certificate under Section 270A from the Municipal Commissioner. This does not mean that there is no provision made for water in the building. The Promoter further submitted that the finding of the Authority that there was no water connection available, and Occupation Certificate was conditional is unsustainable in law because what a law prescribes is only to make the provision in the building and the actual water supply would require the Certificate under section 270A of MMC Act; that would not mean that there is no valid Occupation Certificate. There was more than sufficient supply of water in the building by providing



potable drinking water by water tankers on or from receipt of the Occupation Certificate till such time as the water supply was obtained from municipal lines. The Promoter submitted that procurement of Certificate under Section 270A of MMC Act, did not have any bearing on issuance of Occupation Certification by the competent authority, SRA. Occupation Certificate issued by the SRA permitted occupation of the said premises *in praesenti* with the requirement to obtain a Certificate under Section 270A of MMC Act in due course. Procurement of such certificate under Section 270A of MMC Act was not a condition precedent to occupying the said premises as erroneously construed by the Authority. The SRA Ease of Doing Business Circular dated 09.03.2017 has expressly stipulated that the submission of Certificate under Section 270A of MMC Act, as one of the mandatory prerequisites for the issuance of Occupation Certificate would not be insisted upon. The sub-Clause 6 of Clause XX of the said circular is reproduced below:

*"6. On submission of BCC by Architect/L.S. for each of a building or a wing in the layout (except for the last building/wing) OC and BCC shall be issued simultaneously and within 15 days by executive engineer (SRA), subject to compliances of the approved conditions in respect of such building/wing and **without insisting certificate u/s 270A of MMC Act.** Layout completion shall not be precondition for*



issue of OC and BCC for each of a building/wing (except for the last building/wing) in the layout and on layout compliance as stated in para XI below. The OC and BCC of the last building or wing in the layout shall be issued simultaneously with layout completion certificate”.

The Promoter has submitted that in view of this, the finding of the Authority to the effect that the said Occupation Certificate and more particularly the said building was not ready for occupation/incomplete is patently erroneous. The Promoter has acted in conformity with the prevalent statutory regime as implemented by the competent authority.

18. The Promoter has submitted that the proforma of the "P" form, which is pre-modality to the said Certificate under section 270A of MMC Act, as well as the said Certificate under section 270A of MMC Act, and that a copy of Occupation Certificate is a necessary prerequisite for the issuance of the said Certificate under section 270A of MMC Act. Therefore, the contention that Occupation Certificate ought not to be issued without the said Certificate under Section 270A of MMC Act and the finding that Occupation Certificate cannot be said to be complete without the Certificate under Section 270A of MMC Act is evidently paradoxical and untenable.

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19. The Promoter also submitted that the Promoter applied for permanent water connection on 26.03.2018, however, received the reply from MCGM as late as 14.08.2018 confirming the said water connection. Further, owing to road widening activities, the Certificate under Section 260A of MMC Act could not be granted within mandated time frame by MCGM.
20. In view of the aforesaid submissions, the Promoter has contended that he has complied with his obligation of completing the construction of the said project as per approvals and permissions. The Promoter followed the practice and procedures prevailing in 2018 and acted in furtherance of the aforesaid SRA Ease of Business Circular regarding water connection. Soon after receipt of Occupation Certificate, the Promoter as per the said circular applied for water connection and the delay in granting of the said Certificate under Section 270A of MMC Act is not attributable to Promoter and therefore would construe *force majeure* event since the same was beyond the control of the Promoter. The Promoter further submitted that the Authority has no jurisdiction to test the validity and legality of the action of the competent Authority or the local Authority as the case may be. The Authority cannot sit in appeal on the actions of the competent Authority which acted



under the relevant local laws. The power to issue Occupation Certificate is to be found in MMC Act read with DCR framed under the MRTTP 1966. Thus, the said power is independent of and cannot be questioned by the Authority established under the provisions of RERA. The validity or otherwise of the Occupation Certificate can only be determined by a court of competent jurisdiction, which is either a civil court or a writ court and cannot be determined or questioned by the Authority under the provisions of RERA. Occupation Certificate issued by the competent authority is conclusive evidence of completion of building and cannot be questioned by the Authority. No provision of RERA empowers or entitles the Authority to go behind the Occupation Certificate and test its legality or validity on any grounds. In the light of aforesaid submissions, the Promoter contended that the finding of the Authority that the building was not complete and therefore the Allottee was justified not to take possession of the said flats even though Occupation Certificate was received and the possession was offered, is erroneous and unsustainable in law.

21. Closer examination of the Occupation Certificate dated 15.03.2018 issued by the competent Authority reveals that it stipulates that the said building may be occupied on the following conditions:



"4. That you shall take at most necessary precautions and safety measures for the occupant tenant, during the construction of balance work of building under reference.

5. That the balance conditions of LOI/IOA/ Amended plans shall be complied at respective stages".

6. The certificate under section 270A of BMC Act shall be obtained from A.E.W.W, -'F/S' ward and a certificate copy of the same shall be submitted to this office".

22. It is pertinent to note that one of above conditions requires that Certificate under Section 270A of MMC Act shall be obtained and the certificate copy of the same shall be submitted to the competent Authority. Section 270A of MMC Act prescribes the requirement that premise should not be occupied without Commissioner's Certificate in respect of the adequate water supply. The extract of said Section is reproduced below.

"270A No person shall occupy or permit to be occupied, or use or permit to be used, any premises or part thereof constructed or reconstructed after the date of the coming into force of the Bombay Municipal Corporation (Amendment) Act. 1953, until he has obtained a certificate from the Commissioner to the effect that there is provided within or within a reasonable distance of the premises, a supply of pure water to the persons intending to occupy or use such premises or, where the premises are situated within any portion of Brihan Mumbai in which a public notice has been given by the Commissioner under section 141, until he has obtained a certificate from the Commissioner to the effect that a supply of pure water has been provided for the premises from a municipal water work"

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23. From the provisions above, it is clear that the said Certificate under Section 270A of MMC Act is mandatory in order to occupy the premises. The requirement of obtaining the Certificate under Section 270A of MMC Act is relaxed only for the purpose of obtaining the Occupation Certificate by the said Ease of Business Circular issued by SRA. It, however, does not mean that the said statutory provision of Section 270A of MMC Act is waived for the purpose of occupying the premises. Compliance to the statutory provision of Section 270A of MMC Act is mandatory before occupying the premises.

24. The Section 2(zf) of RERA defines the Occupation Certificate as:

"Occupancy Certificate means the Occupancy Certificate or such other Certificate by whatever name called, issued by the competent Authority permitting Occupation of any building, as provided under local laws, which has provision of civic infrastructure such as water, sanitation and electricity".

It clearly stipulates that the provision of water is one of the essential ingredients of the Occupation Certificate. It is not in dispute that the Promoter applied for water connection to the competent authority on 26.03.2018 and received confirmation of the said water connection on 14.08.2018. In our view, the Authority in the impugned Order has not challenged or examined validity or legality of the Occupation Certificate, however, it has

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examined merely compliances of the conditions stipulated in the said Occupation Certificate particularly with regard to water connection. The Occupation Certificate required from the Promoter the compliances to the conditions therein more particularly Certificate under Section 270A of MMC Act, which would be essential in order to qualify the Occupation Certificate, and by implication occupation of the premises by flat purchases, in terms of Section 2(zf) of RERA. The provision of water by tankers as contended by the Promoter cannot replace the statutory requirement of Section 270A of MMC Act. We, therefore, conclude that the permanent water connection, which is signified by the Certificate under Section 270A of MMC Act, was available only on 14.08.2018.

25. It is also pertinent to note that Promoter has issued a letter of demand/possession of the said flats on 29.03.2018. Closer examination of the said letter reveals that Promoter has communicated the receipt of the Occupation Certificate in respect of the said building. The Promoter also staggered the possession to be given to allottees. It further says that the possession to the Allottee can be scheduled between 1st and 31st of May, 2018 and requested the Allottee to indicate to the relationship manager as



to which date suits the Allottee within the specified dates range.

It makes it clear that the Allottee could take possession only between the said period from 1st to 31st May, 2018.

26. In view of the discussion hereinabove, we come to the conclusion that the Promoter was not able to give possession of the said flats to Allottee before 14.08.2018, the date on which the water connection to the said building was confirmed by MCGM. The Allottee was therefore justified not to take possession, as the water connection was not confirmed within the timeline of the date of possession as stipulated in the said agreements for sale i.e. 31.03.2018, which includes the grace period of 6 months. We therefore conclude that the view taken by the Authority in the said impugned Order that the Promoter failed to hand over possession of the subject flats in terms of the date specified in the said agreements for sale is in accordance to law and we do not see any perversity in the said Order.

27. In view of the discussion hereinabove, it is clear that the Promoter failed to hand over possession of the said flats to the Allottee in accordance with the terms of the said agreements. The Promoter has contended that as soon as the Occupation Certificate was received, the Promoter had applied for water connection to the

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MCGM. The delay in the grant of Certificate under Section 270A of MMC Act is not attributable to the Promoter and would therefore constitute a *force majeure* event since the same was beyond the control of the Promoter.

28. The *force majeure* factors as demonstrated by the Promoter do not fall within the ambit of explanation to Section 6 of RERA which clearly clarifies that "*force majeure*" shall mean case of war, food drought, fire, cyclone, earthquake or any other calamities caused by nature affecting the regular development of real estate project. None of the grounds demonstrated by the Promoter falls within the scope of explanation to Section 6 of the Act, which could have justified the delay. Therefore, we are of the considered view that delays in the granting of certificate/permissions/ sanctions from various competent authorities, etc. cannot be construed as *force majeure*.

29. Considering the liability of Promoter to assess the likely date of completion of project, the Allottees have very limited liability of discharging their own obligations as per the terms of the agreement for sale *inter alia* relating to primarily to make payments from time to time so that the project is not starved of funds to cause delay in completion. It is not in dispute that the

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Allottee has made a substantial payment out of total consideration to the Promoters. Allottee can be held responsible only if failure to discharge his obligations as per the agreement for sale has caused a delay in completion of the project. Allottee is not responsible for the reasons for the delay, he is entitled to relief under Section 18 of the Act and cannot be saddled with the consequences for delay in completing the project.

30. The language employed in Section 18(1)(a) makes it clear that the Promoter is obligated to handover the possession of flat as per the agreement for sale by date specified therein. The ratio laid down by the Hon'ble Supreme Court in **M/s. Imperia Structures Ltd. Vs. Anil Patni & Ors.** [in Civil Appeal No.3581-3590 of 2020] is that-

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



handing over of the possession. It is upto the allottee to proceed either under Section 18(1) or under proviso to Section 18(1)."

31. Even if, *force majeure* factors as demonstrated by the Promoter are given some consideration, we are of the view that the Promoter is not entitled to get benefit of the same for the reason that the same are not attributable to the Allottee nor is the case of the Promoter that the Allottee in any way has caused delay in completion of the Project. While explaining the scope of Section 18 of RERA, the Hon'ble Supreme Court in **M/s. Newtech Promoter and Developers Pvt. Ltd. V/s. State of Uttar Pradesh** [2021 SCC Online 1044] dated 11 November, 2021 held that;

"Para 25. 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/home buyer, 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

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project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed.

32. Section 18 of RERA spells out the consequences that if Promoter fails to complete or is unable to give possession of apartment by the date specified in the agreement for sale, the Allottee holds an unqualified right to seek refund of the amount with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under RERA. Therefore, we are of the view that the Allottee is entitled to seek relief of refund with interest under Section 18 of RERA. In view of the discussions hereinabove we are of the view that the relief granted by the Authority is in accordance with the provisions of Section 18 of RERA. We accordingly answer Point No.1 in the affirmative.

Point No.2

33. The Authority has also directed the Promoter to pay Rs.2,00,000/- by way of genuine pre-estimated liquidated damages. It is pertinent to note that Clause 15.3 of the said agreements for sale stipulates that "*if the Promoter does not give possession to the flat purchaser on or before time stipulated in Clause 15.1 of the said agreement, the Promoter shall pay sum of Rs.1,00,000/-as and by way of genuine pre-estimated agreed liquidated damages*". The Promoter has submitted that the learned Member has acted in dual

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capacity of both regulatory Authority and Adjudicating Officer and has exercised jurisdiction in both capacities in the single complaint while passing the impugned Order. Further, it is impermissible as clarified by the Hon'ble Supreme Court in its decision in **M/s. Newtech Promoters and Developers Pvt. Ltd.** (supra). The Promoter has submitted that the impugned Order is passed without application of mind. The Authority ought to have segregated the reliefs which were to be adjudicated by the Adjudicating Officer and should not have granted relief of the compensation. While explaining jurisdiction of Regulatory Authority and Adjudicating Officer under the provisions of RERA, the Hon'ble Apex Court in **M/S Newtech Promoters and Developers Pvt. Ltd.** (supra) has observed the following:

"86. From the Scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the act indicates the distinct expressions like 'Refund', 'Interest', Penalty and 'Compensation', a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest of the refund amount, or directing payment of interest on refund amount, or directing payment of interest for delayed possession, or penalty and interest thereon, it is the regulatory authority which has the power to examine and determine the outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudicating



compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act. If the adjudication under section 12, 14, 18, and 19 other than compensation as envisaged, if extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and functions of the adjudicating officer under section 71 and that would be against the mandate of the Act 2016"

34. The Promoter has submitted that the Authority in its capacity of Adjudicating Officer has erroneously awarded the refund, although the Adjudicating Officer did not have the power to do so under the provisions of the Act. Therefore, the impugned Order is liable to be struck down. The Promoter had submitted that the learned Adjudicating Officer cum Member vide the impugned Order awarded purported pre-estimated liquidated damages to the tune of Rs.2,00,000/- to the Allottee without ever correctly assessing the quantum of loss suffered by the Allottee, which is essentially an essence of awarding liquidated damages. The Hon'ble Apex Court in **M/S Newtech Promoters and Developers Pvt. Ltd.** (supra) has categorically laid down that assessment/ awarding of liquidated damages and other reliefs of a compensatory nature are solely within the confines of the powers of the Adjudicating Officer and not the regulatory Authority. The learned Adjudicating Officer



and Member has acted in a dual capacity, exercising powers of Adjudicating Officer and a regulatory Authority concomitantly in a single complaint without segregating the reliefs, which is impermissible.

35. The Promoter has further submitted that Hon'ble Supreme Court in **Kailash Nath Vs. Delhi Development Authority and Anr.** [2015 4 SCC 136] has held that even when awarding liquidated damages, proof of loss or damages has not been dispensed with under Section 74 of the Indian Contract Act, 1874. Therefore, it was incumbent on the part of the Authority to assess the loss and damage suffered by the Allottee before awarding any amount as compensation. However, such exercise cannot be cumulatively done in a complaint which also claims refund and interest under provisions of Section 18 of RERA. The Promoter contended that the impugned Order is liable to be set aside on this ground as well.
36. It is pertinent to note that the judgement in **M/S Newtech Promoters and Developers Pvt. Ltd.** (supra) has delineated the powers of Regulatory Authority and Adjudicating Officer and has held that when it comes to the question of seeking relief of compensation and interest thereon under Section 12, 14, 18 and 19, the Adjudicating Officer is the one where it lies the jurisdiction.



37. Although the said judgement delineates the roles of Regularity Authority and Adjudicating Officer, it does not envisage a situation where both the roles of Regulatory Authority and Adjudicating Officer are exercised by the same person, who happens to be "Member and Adjudicating Officer". We therefore are of the view that a person in the dual capacity as "Member and Adjudicating Officer" while exercising both the roles as Regulatory Authority and Adjudicating Officer can decide on the reliefs sought in the single complaint and there is no necessity to first segregate the reliefs before passing the Order under appropriate provisions of the Act.
38. The Clause 15.3 the agreements for sale is necessarily required to be interpreted in terms of the provision of Section 74 of Indian Contract Act, 1872 which is reproduced below.

"74. Compensation for breach of contract where penalty stipulated for- when a contract has been broken, if a sum named in the contract as the amount to be paid in case of such breach, or the contract contains any other stipulation by way of penalty, the party complaining of the breach is entitled, whether or not actual damage is proved to have been caused thereby, to receive from the party who has broken the contract reasonable compensation not exceeding the amount so named or, as the case may be, the penalty stipulated for".

A view has been taken in various judicial pronouncements that the notion is that the genuine pre-estimate of liquidated damage can

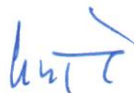
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be recovered under Section 74 of the Indian Contract Act without requiring to prove any loss or damage suffered due to breach of contract is not correct. Under both the provisions of Section 73 and 74 of the Indian Contract Act, the requirement of proving loss or damage consequent to the alleged breach is mandatory for claiming any compensation. The Division Bench judgement of Hon'ble Delhi High Court in the case of **Vishal Engineers & Builders v/s Indian Oil Corporation Ltd.** [2012(1) Arb. L.R. 253 (Delhi) (DB)] has held that-

"22.....All that was said (in ONGC Case) was that the court was competent to award a reasonable compensation in case of breach even if no actual damage is proved to have suffered in consequence of the breach of contract as in some contracts it would be impossible for the court to assess compensation arising from the breach....."

*23. In our view these observations have to be read in the context of the pronouncement of the Constitution Bench in **Fateh Chand case**.....It cannot be read to mean that even if no loss whatsoever is caused to party it can still recover amounts merely by reason of the opposite party being in breach."*

Thus, as per the established law, no liquidated damages can be claimed or recovered merely on the strength of the term in the contract, unless loss or damage suffered due to breach is actually proved in the adjudication process. On the aspect of measure of liquidated damages consequent upon a breach, the Hon'ble



Supreme Court of India has exhaustively laid down the law in

Kailash Nath Associates (supra) as follows:

"43. On a conspectus of the above authorities, the law on compensation for breach of contract under Section 74 can be stated to be as follows:

43.1. Where a sum is named in a contract as a liquidated amount payable by way of damages, the party complaining of a breach can receive as reasonable compensation such liquidated amount only if it is a genuine pre-estimate of damages fixed by both parties and found to be such by the Court. In other cases, where a sum is named in a contract as a liquidated amount payable by way of damages, only reasonable compensation can be awarded not exceeding the amount so stated. Similarly, in cases where the amount fixed is in the nature of penalty, only reasonable compensation can be awarded not exceeding the penalty so stated. In both cases, liquidated amount or penalty is the upper limit beyond which the Court cannot grant reasonable compensation.

46.6. The expression "whether or not actual damage or loss is proved to have been caused thereby" means that where it is possible to prove actual damage or loss, such proof is not dispensed with. It is only in cases where damage or loss is difficult or impossible to prove that the liquidated amount named in the contract, if a genuine pre-estimate of damage or loss, can be awarded."

39. In view of the above ratio and dictum laid down by the Hon'ble Apex Court, it was incumbent on the part of Allottee to prove the loss or damage as result of breach of the contract. We are of the view that the Authority has awarded the genuine pre-estimated liquidated damage as stipulated in the Clause 15.3 of the agreements for sale mechanically without having assessment of the loss or damage and coming to conclusion of the reasonable

amount. Therefore, in our view the compensation of Rs. 2,00,000/- awarded by the Authority is not sustainable in law. We therefore conclude that the impugned Order requires interference in this appeal only to the extent of award of compensation. Accordingly, we answer the point no. 2 in the affirmative. Further, it is pertinent to note that the Allottee has not proved the loss or damage sustained consequent to breach of terms of agreements for sale with cogent documentary proof in both the complaint proceeding and the Appeal. Nor the Allottee has claimed that the assessment of the quantum of loss or damage is impossible to measure. Therefore, the Allottee's claim of pre-estimated liquidated damage as per Clause 15.3 is not justified and therefore rejected.

40. With the discussions hereinabove, we proceed to pass the following Order.

ORDER

- i. Appeal No.AT006000000010992 is partly allowed only to extent of setting aside the following part of the impugned Order.

"The respondent shall pay Rs.2,00,000/- by way of genuine pre-estimated agreed liquidated damages"

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The rest of the reliefs granted in the impugned order stand upheld.

- ii. Parties to bear their own costs.
- iii. Copy of this Order be communicated to the Authority and the respective parties as per Section 44(4) of RERA Act, 2016.

(SHRIKANT M. DESHPANDE)

Talekar/

(SHRIRAM R. JAGTAP)