

**BEFORE THE MAHARASHTRA REAL ESTATE  
APPELLATE TRIBUNAL, MUMBAI**

**1] Appeal No. AT00600000053734/22  
In  
Complaint No. CC006000000192353**

**1. Chandrakant N. Shendkar &  
2. Nilima Chandrakant Shendkar**

Flat No.404, Varun CHS Ltd.  
Opp. Shivaji Tech School,  
Samaj Mandir Hall Building,  
Pant Nagar,  
Ghatkopar (East), Mumbai-400075

**... Appellants**

**Versus**

**Shri Sati Builders and Developers**

Private Limited through its Managing Director/  
Authorized signatory,  
Mr. Abhishek Garodia  
149/156, Garodia Shopping Centre,  
Garodia Nagar, Ghatkopar (East)  
Mumbai-400 077

**... Respondent**

**With**

**2] Appeal No. AT00600000093909/22  
In  
Complaint No. CC006000000198500**

**Sharad Bhiku Shetye**

Flat No.105, Mannt Tower,  
Anand Nagar, Near Govandi Bridge,  
Govandi (East),



Mumbai-400 088

... Appellant

**Versus**

**Shri Sati Builders and Developers**

Private Limited through its Managing Director/  
Authorized signatory,

Mr. Abhishek Garodia

149/156, Garodia Shopping Centre,

Garodia Nagar, Ghatkopar (East)

Mumbai-400 077

... Respondent

**With**

**3] Appeal No. AT00600000133986/22**

**In**

**Complaint No. CC006000000192696**

**1. Tanvi Umesh Hindalkar**

**2. Umesh Rajaram Hindalkar**

Flat No.405, Mannat Towers,

Anand Nagar, Borla Village,

Near Govandi Bridge,

Chembur (East),

Mumbai – 400 088

... Appellants

**Versus**

**Shri Sati Builders and Developers**

Private Limited through its Managing Director/  
Authorized signatory,

Mr. Abhishek Garodia

149/156, Garodia Shopping Centre,

Garodia Nagar, Ghatkopar (East)

Mumbai-400 077

... Respondent

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*Adv. Mr. Shakeeb Shaikh for Appellants/ Allottees*  
*Adv. Mr. Uzair Kazi for Respondent/ Promoter*

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

**DATE : 13<sup>th</sup> November, 2024**

**(THROUGH VIDEO CONFERENCING)**

**JUDGEMENT**

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

1. The captioned Appeals arise out of Orders dated 27.01.2022, 08.04.2022 and 28.02.2022 passed by the learned Member I, MahaRERA (for short "the Authority") in Complaint Nos. CC006000000192353, CC006000000198500, CC006000000192696 respectively whereby the Authority directed the Respondent/ Promoter to handover possession of the respective flats to Allottees/Appellants subject to payment of outstanding dues in accordance with respective agreements for sale, within a period of 30 days of the respective Orders. Further, the Authority directed the Promoter to pay interest under Section 18 of RERA on account of delay in handing over possession to Allottees from the dates specified in the said Orders till the date of Occupation Certificate i.e. 04.11.2019 on the amount paid by Allottees towards the consideration amount of the respective flats.

The Authority, however, rejected the other reliefs with respect to demands raised by the Promoter on account of escalation in cost of construction, increased flat area, increased cost of lifts, and interest on delay in payment of these demands.

2. For the sake of convenience, parties to the Appeals hereinafter will be referred to as "Allottees/Complainants" and "Promoter" respectively. Since the Appeals arise from the Orders of the Authority in the captioned Complaints in respect of the same project, the facts being more or less identical, and the issues involved are identical, these Appeals were heard together and decided in this common judgment.
3. The Respondent is Promoter/ Developer and has undertaken development of a piece and parcel of the plot of land bearing survey no.118 (part), 119 (part), 121 to 125, 126 (part), 129 (part) and 155 (part) situated at Village Borala, Govandi, Chembur, Mumbai under the SRA scheme (for short "said property"). The Promoter is constructing the project named "**Mannat Towers**" from the sale component of the SRA project in the said property (for short the "said project").
4. The brief facts gathered from the pleadings, documents on record, and impugned Orders are that Allottees have purchased flats in

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the Promoter's said project. The details of these flats such as flat number, area of the flat, date of execution of agreements for sale, date of possession as per the agreements for sale, consideration, amount paid towards the consideration, etc. are given in the table below.

(Table 1)

Name of Allottees	Flat No.	Carpet Area of flat	Date of Agreement for Sale	Date of possession as per agreements	Consideration amount (Rs.)	Paid amount (Rs.)
Chandrakant N.Shendkar & Neelima C. Shendkar	1204	346.50	27.07.2007	30.01.2011	17,36,955/-	17,36,955/-
Sharad Bhiku Shetye	1303	427	28.10.2010	30.06.2011	34,86,760/-	34,86,760/-
Tanvi Umesh Hindalkar & Umesh Rajaram Hindalkar	1203	427	25.05.2010	31.07.2011	34,66,020/-	34,66,020/-

5. The terms and conditions in the said agreements for sale are almost identical. The Clause 10(f) of the said agreements for sale provides that *"the purchaser hereby grants his irrevocable power and consent to the developer and agrees to bear and pay any increment in the prices of the building material due to unavoidable*

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*circumstances as may be decided by the developer".* Clause 15 of the said agreements provides that the developer shall deliver possession of the flats on or after receipt of the Occupation Certificate from the competent Authority within 24 months of obtaining the IOA and Commencement Certificate. The dates of possession in the above table No.1 for the respective flats are arrived at based on the said provision in Clause 15. The Promoter received Occupation Certificate from the competent authority on 04.11.2019, which covers the subject flats. Soon after receipt of Occupation Certificate, the Promoter raised the final demand primarily on account of escalation cost of construction due to delay in completing the project, additional cost of lifts, and an additional carpet area (applicable only in appeal AT00600000053734) and requested Allottees to take possession of the respective flats subject to the payment of the outstanding amount as per the demand raised by the Promoter on account of cost escalation, increased area and increased cost of lift. The details of the additional demand raised by the Promoter over and above the payment of full amount of the consideration is given below.

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(Table 2)

Flat No.	Date of demand	Escalation in Construction Cost (Rs.)	Increased Area (Rs.)	Lift (Rs.)	Total (Rs.)
1204	27.12.2019	10,54,350/-	13,39,500/-	20,857/-	24,14,707/-
1303	19.12.2019	12,99,300/-	-	20,857/-	13,20,157/-
1203	11.12.2019	12,99,300/-	-	20,857/-	13,20,157/-

6. The Allottees disputed the above additional demands raised by the Promoter and interest thereon in subsequent demand letters. The Promoter issued termination notice to the Allottees on the ground that the Allottees failed to pay the amounts as per the additional demands raised. Despite full payment towards consideration amount for the respective flats, the Promoter refused to hand over possession and issued the termination notice. Aggrieved by this conduct of the Promoter, Allottees filed the captioned Complaints before the Authority seeking relief of direction to the Promoter to handover possession of the respective flats, interest on account of delay in handing over possession of the respective flats, setting aside the additional demands raised by the Promoter, and direction to the Promoter to pay arrears of the rent at the rate of Rs.15,000/- per month as agreed by the Promoter.
7. The Promoter appeared in the Complaints and remonstrated the Complaints by filing reply. The Promoter contended that

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Occupation Certificate has been obtained on 04.11.2019 and additional amounts have been demanded on account of escalation in cost of construction, additional cost of lifts, and the additional carpet area in accordance with the terms and conditions of the agreements for sale. Further, the Promoter has paid compensation of Rs.15,000/- per month towards interest on account of delay in handing over possession pursuant to the meeting held with the Allottees on 20.06.2011. The details of the compensation paid are given below.

(Table 3)

<b>Flat No.</b>	<b>Duration for which compensation is paid</b>
1204	April 2012 to 30.04.2017
1303	April 2012 to 30.04.2017
1203	April 2012 to 30.04.2017

8. The compensation in lieu of interest on account of delay in handover of possession was given by the Promoter for the period indicated above are given in Table 3 above as per the agreement between the Promoter and allottees in the meeting held between them on 20.06.2011. The Promoter submitted that the delay in completion of the said project was due to an incident of pipe burst that occurred in the year 2013 causing significant delay. Further,

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the project was delayed due to stop-work notice given by the competent authority. The Promoter contended that these reasons were beyond the control of the Promoter. The Allottees contended that the Promoter has violated the terms and conditions of the agreements for sale by causing delay in construction of the project, hence the Promoter is not entitled to demand additional amounts as they have already paid full consideration amount for the flats. The Allottees further contended that the delay is because of the Promoter who miserably failed to obtain requisite permissions from the concerned authorities which is evident from the fact that IOA was obtained in the year 2003, first Commencement Certificate in 2005 and Full Commencement Certificate only in 2017 after delay of over 12 years. The Allottees further contended that additional cost on account of increased carpet area or cost of the lift is not provided in the agreements for sale. The Promoter however submitted that demand for escalation of construction cost is in accordance with Clause 10(f) of the agreements for sale.

9. After hearing the parties, the Authority passed the impugned Orders. While passing these Orders, the Authority observed that the additional demands raised by the Promoter are in accordance

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with Clause 10(f) of the agreements for sale, whereby the Allottees have agreed to pay any increase in price of building material due to unavoidable circumstances as may be decided by the Promoter. Allottees after signing the said agreements for sale in the year 2007-2010 cannot now be permitted to make any grievance about various clauses of the agreements for sale after a lapse of over 13 years. If any escalation clause is mentioned in the said agreements for sale, the Allottees now cannot make any grievance about the same. The Authority observed that there is no merit in the submissions of the Allottees in respect of the additional demand raised by the Promoter. Therefore, the Authority rejected the same. Regarding the claim of interest on delayed possession under Section 18 of RERA, the Authority observed that the Promoter has already compensated Allottees at the rate of Rs.15,000/- per month on account of delay in handing over of possession up to the period as mentioned in above Table 3. Since the Promoter failed to handover possession as per the due dates of possession as stipulated in the agreements for sale, the Promoter should had continued to pay the said compensation to the Allottees till actual date of possession of the flats with Occupation Certificate. However, the Promoter failed to pay the same. The Authority

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further observed that since the Promoter completed the construction, obtained the Occupation Certificate, and offered possession of the said flats to Allottees but not by the dates specified in the agreements for sale, the Authority granted interest on account of delayed possession under Section 18 of RERA from the date up to which the Promoter had paid compensation to Allottees in lieu of interest for delayed possession till the date of Occupation Certificate i.e.04.11.2019.

10. Aggrieved by the impugned Orders passed by the Authority, the Allottees have filed these captioned Appeals on the grounds set out in the respective memorandums of Appeal, *inter alia* mainly on the following grounds:

- i. The impugned Orders are contrary to the legal provisions, and that the said impugned Orders are arbitrary and bad in law and liable to be set aside to the extent of setting aside the additional demands raised by the Promoter.
- ii. The learned Authority while considering the fact that admittedly there is delay in completing the project by the Promoter, however, erred in holding that Allottees are liable to pay escalation cost even though Allottees are not at fault.

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- iii. The learned Authority erred in taking into consideration the alleged cost escalations due to delay in completing the project, which transpires post due date of possession as stipulated in the agreements for sale, for making Allottees liable to pay the alleged increment in cost of construction, installation of lifts and also towards the payment for the alleged additional area.
- iv. The learned Authority failed to take into consideration the demand letters raised by the Promoter which did not set out as to how and in which manner the flat area is increased and the cost of building material is increased.
- v. The learned Authority erred in holding that Allottees are still liable to pay the increase in costs due to the default and breach committed by the Promoter by not completing the building within the time period stipulated in the agreements for sale.
- vi. The learned Authority failed to take into consideration that the Promoter has not given any reason as to why there was a delay in completing the buildings within the period set out in the agreements for sale.

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vii. The learned Authority erred in making Allottees liable to pay the escalation costs even though Allottees have made payment of full consideration amount under the agreements for sale.

11. On the grounds mentioned above, Allottees have sought the following reliefs in these Appeals:

- i. Setting aside the impugned Orders to the extent of additional demands by the Promoter on account of escalation in construction costs due to delay in completing the project, additional flat area, increase in cost of the lifts, and interest on delay in making the payments in the additional demands.
- ii. Direction to the Promoter to handover possession of the subject flats to Allottees.
- iii. Direction to the Promoter to not create any third-party rights or interests in the subject flats.

12. We have heard learned Advocate Mr. Shakeeb Shaikh for Allottees and Advocate Mr. Uzair Kazi for the Promoter. The submissions made by the learned Advocates are nothing but reiteration of the contents of the memorandums of Appeal, affidavits in reply, and written submissions.



13. Learned Advocate for Allottees has placed reliance on the following citations:

- i. **Neelkamal Realtors Suburban Pvt. Ltd. V/s. Union of India** [(2018) 1 AIR Bom R 558]
- ii. **Madhu Sareen V/s. M/s. BPTP Ltd.** [RERA-PKL-Comp.113/2018]

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

<b>Sr. No.</b>	<b>Points</b>	<b>Finding</b>
1.	Whether the Allottees are entitled to relief of interest on account of delay in handing over possession of the respective flats under Section 18 of RERA?	In the affirmative
2.	Whether the impugned Orders passed by the Authority warrant interference in these Appeals?	In the affirmative
3.	What Order?	As per final Order

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## **REASONS**

### **Point No. 1**

15. On ensembling the facts as submitted above by the parties, it is not in dispute that Allottees purchased the subject flats as per the details given in Table 1 in Para 4. The Allottees have made payment of entire consideration amounts of the respective flats. The date of possession as stipulated in the agreements for sale is as per the Table 1 in Para 4. The Promoter completed construction of the project and obtained Occupation Certificate on 04.11.2019. It is thus clear that there is delay in handing over possession of the subject flats in terms of the agreements for sale. In a meeting held by the Promoter with Allottees on 20.06.2011 whereby it was agreed that the Promoter will compensate Allottees at the rate of Rs.15,000/- per month in lieu of interest on account of delay in completion of the project. Pursuant to the said meeting, the Promoter paid compensation to the Allottees as per the details mentioned in Table 3 of Para 7. After obtaining Occupation Certificate, the Promoter offered possession of the subject flats to Allottees and also raised the demand of additional payments on account of escalation of cost of construction, increased flat area, increased cost of lifts as per the details given in Table 2 of Para 4

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above. The Promoter refused to hand over possession of the flats on the grounds that the Allottees failed to pay amounts as per the demand for additional payments.

16. The fact that the Promoter obtained Occupation Certificate on 4.11.2019 reveals that the Promoter failed to give possession of the subject flats by the dates stipulated in the agreements for sale despite Allottees have made payment of full consideration amounts and there was inordinate delay in completing the project.

17. The Promoter submitted that the project got delayed due to delays in approvals from the concerned competent authorities. The Promoter further submitted that there was an incident of pipe burst in the year 2013, which significantly delayed the project as the issue was rectified only in the year 2017. The Promoter has further submitted that after the said incident of pipe burst, the SRA Authority had issued a stop-work notice, which was finally sorted out and the Promoter's Director was cleared of all criminal charges. The construction commenced only after the stop-work notice was withdrawn by the SRA Authority and it issued full Commencement Certificate on 09.05.2017. The Promoter contended that the project being SRA re-development project, there are bound to be some hurdles due to which the project was

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delayed. Further, Promoter updated about status of the construction of the building particularly causes of delay in periodic meetings with Allottees. The Promoter contended that the delay in construction of the project is due to above mentioned factors, which were beyond the control of the Promoter.

18. The Clause 15 of the agreements for sale stipulates that the Promoter shall handover possession by the dates specified in the said agreements for sale provided that the Promoter shall be entitled to reasonable extension of time for giving delivery of the flats if completion of the building is delayed on account of non-availability of steel, cement, other building material, water or electricity supply; war, civil commotion or act of god; any notice, order, rules, notifications of the government and/ or other public or competent authority, etc.
19. It is pertinent to note that the above factors outlined in Clause 15 of the agreements for sale are generic and cannot be considered relating specifically to this project. It further cannot be construed that by signing the agreements for sale, the Allottees have consented to wait infinitely for completion and possession concerning all these factors that could delay the completion of the project. The Hon'ble Bombay High Court, in the case of

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**Neelkamal Realtors Suburban Pvt. & Anr. Vs. Union of India & Ors.** [(2017) SCC Online Bom 9302] in para 119 has held that "*while the proposal is submitted, the promoter is supposed to be conscious of the consequences of getting the project registered under RERA. Having sufficient experience in the open market, the Promoter is expected to have a fair assessment of the time required for completing the project...*". As an experienced Promoter in the market, it is the Promoter who is well aware of the factors that may endanger the prospects of timely completion of the project. So being domain expert and considering likely time to be consumed by various activities and approvals, Promoter is the best judge to estimate the likely timeline for completion of the project. On the contrary, the purchasers have no domain knowledge, neither aware nor expected to be aware of the nature of mitigating factors which may delay the project. The Allottees executed the agreement for sale based on the commitment given by the Promoter to hand over possession by a certain date as specified in the agreement for sale.

20. 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, flood,

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drought, fire, cyclone, earthquake or any other calamity caused by nature, affecting the regular development of real estate project. None of the grounds as demonstrated by the Promoter fall within the scope of explanation to Section 6 of RERA, which could have justified the delay. Further, the incident of pipe burst that the Promoter has claimed to have delayed the project had occurred in the year 2013, whereas the due date of possession of the subject flats as per the agreements for sale are in the year 2011, which is prior to the incident of pipe burst. Therefore, we are of the considered view that delay in granting permissions/ sanctions by various competent authorities, incident of pipe burst, etc. as contended by the Promoter cannot be construed as "*force majeure*". The Promoter can neither expect Allottees to be aware of the likely delay nor can make Allottees bear the brunt of the failure on the part of Promoter to act professionally by assessing the requisite date for possession.

21. Considering the liability of promoter to assess the likely date of completion of the project, allottees have very limited liability of discharging their own obligations as per the terms of the agreements for sale *inter alia* relating to primarily to make payments from time to time so that the project is not starved of

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funds to cause delay in completion. It is not in dispute that the Allottees have made full payment of the total consideration to the Promoter. Allottees can be held responsible only if failure to discharge their obligation as per the agreements for sale has caused delay in completion of the project. If the Allottees are not responsible for the reasons for the delay, they are entitled to relief under Section 18 of RERA and cannot be saddled with consequences for delay in completing the project. The language employed in Section 18(1)(a) of RERA makes it clear that the Promoter is obligated to handover possession of flat as per the agreement for sale by the 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)."*

22. 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 reasons that the same are not attributable to the Allottees nor is the case of the Promoter that the Allottees in any way have caused delay in completion of the project and possession. Therefore, the submission of the Promoter that he is entitled to the extension on account of delays due to factors beyond its control as per the Clause 15 of the agreements for sale is not tenable. 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 project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed.*

23. It is therefore clear that Allottees are not responsible for the delay in construction of the said project. Further, the Allottees have made payment of full consideration amounts. Therefore, there are no shackles or limitations on exercise of rights by Allottees to seek interest once there is delay in possession. The Promoter was supposed to deliver possession of the subject flats to Allottees on the specified dates in terms of the agreements for sale, which are in the year 2011. It is not in dispute that the Promoter obtained Occupation Certificate on 04.11.2019. It is, therefore, sufficient to hold that the subject flats were not ready in all respects for handing over possession of the same to Allottees on the dates stipulated in the agreements for sale. We therefore, come to the conclusion that the Allottees are entitled to relief of interest from the date of default in handing over of possession as per the agreements for sale.

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24. It is pertinent to note that the Promoter has compensated the Allottees at the rate of Rs.15,000/- per month for the duration as specified in Table 3 in para 7. The said compensation is in lieu of interest on account of delay in handing over of possession. The Allottees cannot claim benefit of both- the said compensation which was in lieu of the interest on account of delay in possession as agreed by the Promoter in his meeting with the Allottees on 20.06.2011 as well as the interest under Section 18 of RERA. The said compensation was also agreed by Allottees and in pursuance to the said agreement in the said meeting Allottees have accepted the amount for the period mentioned in the said Table 3 in para 7. Therefore, for the purpose of calculation of the interest on account of delay in handing over possession under Section 18 of RERA, the said period for which Allottees have received the compensation is required to be deleted.
25. The Promoter offered possession of the subject flats to Allottees after obtaining Occupation Certificate subject to payment of additional demand on account of escalation in cost of construction, increased flat area, escalation in the cost of lifts, etc. as given in Table 2 in para 5. With regard to the escalation in cost of

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construction, which have been provided in the agreements for sale, Clause 10 of the said agreements for sale provides as under;

*"10. A purchaser hereby grants his irrevocable power and consent to the developer and agrees:*

*-(f) to bear and pay any increment in the prices of building material due to unavoidable circumstances as may be decided by the Promoter."*

26. A plain reading of the said Clause reveals that it provides escalation costs on account of increase in the cost of **building material**. The building material means sand, steel, cement, etc. required for construction of the building. The scope of the **construction cost** goes much beyond the cost of building material which may include various other costs such as labour cost, overheads, consultation and legal fees, architect's fees, etc. The contention of the Promoter that the interpretation of the cost of building material should be taken with liberal view to mean same as that of the cost of construction is not tenable as the scope of construction costs go much beyond the cost of the building material. The Promoter has, however, failed to give the details of the working of the escalation costs with cogent documentary evidence. It is our considered view that the escalation cost can be allowed up to the period from execution of agreements for sale till due date of possession as stipulated in the agreements for sale.



Admittedly, the full purchase price was paid by the Allottees to the Promoter. There was no any default on the part of the Allottees in making payments to the Promoter. Admittedly, the project has been inordinately delayed for no fault of Allottees. It is therefore fair, just, and reasonable that the escalation cost can be allowed from the date of execution of the agreements for sale till the due date of deliver of possession, provided that the Promoter substantiates the claims with cogent documentary evidence. No escalation cost can be allowed after the due date of possession as stipulated in the agreements for sale, as the Allottees are not responsible for the delay in completing the project. The Promoter has also not provided any justifiable reasons or explanation for such inordinate delay in completing the construction and offering possession to Allottees. Further, the Promoter has also not substantiated the claims by submitting cogent documentary evidence with regard to the escalation of the cost of the building material for the period between execution of the agreements for sale and the due dates of possession as stipulated in the agreements for sale. In view of above observations, we come to the conclusion that the claim of the Promoter of his entitlement to recover the escalation cost of construction of the building is not in

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accordance with the terms of the agreements for sale as well as not in accordance with law.

27. In one of the Appeals, the Promoter has also raised demand on account of increased flat area. However, there is no provision in the said agreements for sale about liability of Allottees in case there is increase or decrease of flat area at the time of possession. The Promoter has also not substantiated this claim by comparing the approved plans and layout at the time of executing agreements for sale and as per the revised plan and layout when he obtained the Occupation Certificate. There is no evidence on record to suggest that the Promoter has taken consent of 2/3 of Allottees including the Complainants in these Appeals of having consented to the revised plans and layout. In the absence of the evidence, the Promoter is not entitled to recover additional consideration for alleged increased flat area. Therefore, the demand raised by the Promoter to pay additional amounts on account of increased flat area is not in accordance with the terms of the agreements for sale.
28. With regard to the cost of escalation of installation of lifts, the Promoter has failed to submit cogent documentary evidence to substantiate his claim. Further, the agreements for sale do not

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specifically provide for any escalation of the cost to be borne by the Allottees for increased cost of lifts in particular. Therefore, we are of the view that the demands for additional payment on account of cost escalation of construction, increased flat area, escalation in cost of lift are unlawful and are not liable to pay the same.

29. No doubt, after obtaining the Occupation Certificate, the Promoter offered possession of the subject flats to Allottees. However, payment of the additional demands on account of escalation in cost of construction, increase in flat area, and cost escalation of installation of the lifts was made condition precedent to handing over of the possession. In spite of payment of full consideration, the Allottees could not take possession because of unlawful demand raised by the Promoter and making payments of these unlawful demand as condition precedent for handing over the possession.
30. Therefore, for the foregoing reasons we have come to the conclusion that the Promoter has failed to handover possession of the subject flats to Allottees under the garb of additional amount on account of increase in flat area and escalation of the cost of building material. It is not in dispute that the Allottees have paid

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the entire consideration to the developer. It is not the case of developer that because of the fault of the Allottees he could not complete the construction of the project within stipulated period. Thus it is crystal clear that it is not because of the fault of the Allottees that they did not take possession but it was solely due to unlawful demand raised by the Promoter. Considering the peculiar circumstances of the case, we are of the view that the Allottees are entitled to relief of interest under Section 18 of RERA Act, 2016. Accordingly, we answer point no.1 in the affirmative.

**Point No. 2**

31. While passing the impugned Orders, the Authority denied the reliefs sought by the Allottees with respect to the demand letters dated 27.12.2017 and 13.11.2019 issued by the Promoter. It is significant to note that the Allottees have challenged the impugned Orders only to the extent of denial of relief with respect to demand letters dated 27.12.2017 and 13.11.2019 by the Authority. Allottees have accepted the verdict of the Authority to the extent of awarding interest for the delayed possession. The moot question therefore falls for our consideration is whether the Allottees are entitled to reliefs sought in the Appeal i.e. the demand letters dated 27.12.2017 and 13.11.2019 are not binding

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on them and the same be declared as null and void. We have already observed that the demands raised by the Promoter for additional payments by letters dated 27.12.2017 and 13.11.2019 are not lawful and also not in accordance with the terms of the agreement for sale. In view of this, the impugned Orders warrant interference in these Appeals. Accordingly, we answer point no.2 in the affirmative. Consequently, we proceed to pass the following Order.

**ORDER**

- i. Appeal Nos.AT006000000053734/22, AT006000000093909/22, AT006000000133986/22 are allowed.
- ii. The impugned Orders dated 27.01.2022, 08.04.2022 and 28.02.2022 passed by the Authority in Complaint Nos.CC006000000192353, CC006000000198500, CC006000000192696 are set aside to the extent of denial of reliefs sought by Complainants/ Allottees with respect to demand letters dated 27.12.2017 and 13.11.2019 issued by the Respondent/ Promoter.
- iii. It is hereby declared that the additional demands raised by the Promoter on account of escalation in cost of construction, increase in flat area and escalation in cost of installation of lift

by letters dated 27.12.2017 and 13.11.2019 are not binding on the Allottees.

- iv. Parties to bear their own costs.
- v. 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)**

**(SHRIRAM R. JAGTAP)**

Talekar/