

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

**Appeal No. AT00600000053479/21  
In  
Complaint No. CC006000000196357**

**1. Mr. Atul G. Sharma**

Flat No.2301, 23<sup>rd</sup> Floor, C Wing  
Western Heights C.H.S.L., JP Road,  
Andheri (West), Mumbai 400058

**2. Mrs. Garima A. Sharma**

Flat No.2301, 23<sup>rd</sup> Floor, C Wing  
Western Heights C.H.S.L., JP Road,  
Andheri (West), Mumbai 400058

**3. Mr. Girdhari Sharma**

Flat No.2301, 23<sup>rd</sup> Floor, C Wing  
Western Heights C.H.S.L., JP Road,  
Andheri (West), Mumbai 400058

**... Appellants**

**Versus**

**Adani Estates Pvt. Ltd.**

Office Address:  
601, Hallmark, Business Plaza,  
Opp. Gurunanak Hospital,  
Bandra East, Mumbai 400051

**... Respondent**

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*Adv. Mr. Manan Sharma for Allottee*

*Adv. Mr. Abir Patel for Promoter*

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

**DATE : 25th July, 2024**

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**(THROUGH VIDEO CONFERENCING)**

**JUDGEMENT**

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

1] The captioned Appeal emanates from Order dated 20.09.2021 passed by the learned Member I, MahaRERA (for short the Authority) in Complaint No.CC006000000196357 whereby the learned Authority dismissed the said Complaint.

2] For the sake of convenience, parties to the Appeal hereinafter will be referred to as "Allottees" and "Promoter" respectively.

3] The brief facts, which are necessary for disposal of the Appeal, are that the Allottees jointly purchased flat no.2301 in Wing-C along with car parking spaces in the project of the Promoter named "**Western Heights- Phase-1 Residential**" for a total consideration of Rs.4,40,51,400/-. Subsequently upon advent of RERA Act, 2016 (RERA), the building which included the said flat was registered with MahaRERA, as an ongoing project under the project name "**Western Heights- Phase-1 Residential**" developed by the Promoter with registration number P51800001290. Agreement for sale dated 28.06.2017 was entered into between the Allottees and the Promoter, which is duly registered (the said Agreement). Under the said agreement,

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Promoter committed to hand over the possession of the said flat to the Allottees after getting Occupation Certificate on or before June, 2018. The Promoter obtained Occupation Certificate from Competent Authority on 15.12.2018 and possession of the said flat was handed over to the Allottees on 30.01.2019. The Promoter failed to deliver possession of the said flat to Allottees in accordance with the terms and conditions of the agreement for sale. As a result, the Allottees filed Complaint bearing no. CC006000000196357 before the Authority and sought relief as follows:

- (i) Interest under Section 18 of the Act for delayed possession from 01.07.2018 till handing over of the possession to Allottees i.e. 30.01.2019.
- (ii) Compensation along with interest on account of lesser carpet area than as mentioned under the said Agreement.
- (iii) Compensation on account of installation of substandard equipment for car parking causing thereby deficiency in service.
- (iv) Reimbursement of property tax amount collected by the Promoter from 01.04.2020 to 31.12.2020.



4] Promoter appeared in the Complaint and remonstrated the Complaint by filing reply. The Promoter submitted that since Occupation Certificate has been received and possession is handed over to the Allottees, provisions of Section 18 of RERA Act cease to operate. The Promoter further submitted that the Allottees did not raise any issue with regard to delay caused in handing over of the possession nor claimed any interest for such delay till handing over of the possession. Further, the Allottees took possession without any complaints. The Promoter submitted that in terms of specific clauses in the Agreement for sale executed between the parties, there was no delay on the part of the Promoter in handing over possession of the said flat to the Allottees. The Allottees have already taken possession of the said flat in January, 2019 and also have signed on the possession letter to the effect that they have accepted the terms stated therein. As per Clause 12.1 of the Agreement, possession date was agreed as June, 2018 subject to further extension on account of occurrence of any events as stated in Clause 12.3 of the Agreement. Therefore, the possession was handed over in accordance with the terms of the Agreement. The Promoter further contended that there was

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no delay on his part and the Allottees are not entitled for relief of interest under Section 18 of the Act.

5] With regard to deficiency of service in allotment of car parking spaces, the Promoter submitted that the possession of the car parking spaces was taken by Allottees and the possession letter dated 30.01.2019 is signed by the Allottees which does not mention any deficiency. The Allottees accepted the said allotment of car parking spaces confirming that the same has been inspected by them and further submitted that the Allottees have been using the said car parking spaces for a period of 18 months without any grievance or complaint.

6] Regarding the maintenance charges, the Promoter submitted that maintenance charges do not include property tax. As per the terms of the agreement, Allottees are responsible to pay the property tax till 31.12.2020. Allottees are supposed to pay property tax and the same have not been collected by the Promoter. The Promoter also submitted that as per Clause 15 of the possession letter, the Allottees have confirmed that they will bear and pay the property tax for the said flat on and from 01.02.2019.

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7] With regard to the carpet area the Promoter reiterated that there was no actual discrepancy in the carpet area as claimed by Allottees.

8] After hearing the parties, learned Authority passed the impugned Order. The Authority noted that the Allottees took possession of the said flat unconditionally and signed the possession letter. The Authority further observed that while Section 18 of the Act does not spell out the limitation period, it constrained to rule that any grievance of delayed possession must be raised either before or on date of possession and not on any future date chosen by the Allottees. The Authority further observed that the Occupation Certificate was obtained by the Promoter within a grace period of 6 months and therefore there is no ground for granting relief of interest. Accordingly, the Authority did not give any relief of interest for the delayed possession.

9] Regarding the carpet area, the Authority observed from the Architect's Certificate dated 21.12.2018 produced by Promoter that the carpet area of the said flat is 1290.69 sq. ft., which is more than the carpet area stated in the agreement for sale and therefore the Authority came to conclusion that there is no deficit in carpet area and did not grant any relief to Allottees.

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10] Regarding the car parking spaces, the Authority observed that Allottees have unconditionally signed the parking allotment letter confirming allotment without any objection. Further, as per the possession/ parking letter dated 30.01.2019, the Allottees have confirmed of having inspected the car parking spaces and confirmed their allotment to them. The Authority has also observed that amenities have also been transferred to the co-operative housing society of Allottees of the project which also includes parking areas and therefore the Promoter has now no control over the parking areas of the building and the society is solely in charge. On this ground, the Authority did not grant any relief to the Allottees.

11] With regard to the property tax, the Authority has held that the property tax and maintenance charges are two separate items and the Promoter has only collected the maintenance charges. The Authority has also observed that as per Clause 9 of the agreement for sale, Allottees have agreed to pay the property tax levied by the concerned authorities. With this, Authority did not grant said relief to the Allottees and the Complaint was accordingly dismissed.

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12] Feeling aggrieved by the impugned Order, the Allottees have challenged the said Order in this Appeal on the grounds such as:

(i) That the impugned Order is contrary to the provisions of RERA including Section 14 and Section 18 of the Act.

(ii) Learned Authority erred in holding that Clause 5 of the possession letter dated 30.01.2019 is binding on the Allottees as even after signing of the possession letter, the Promoter still paid property tax and maintenance thereby expressly waiving the covenants as mentioned in the possession letter. Further, learned Authority committed an error by overlooking the fact that the possession letter dated 30.01.2019 was signed in protest by Allottees as without signing of the possession letter, the Promoter would not give possession of the said flat to the Allottees.

(iii) The impugned Order overlooked the fact that Allottees were pressurised by Promoter to sign the possession letter dated 30.01.2019 and parking letter dated 30.01.2019 without which the Appellants would be deprived of receiving the keys of the said flat without signing such consent letters.

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(iv) The Authority erred in holding that Section 18 of RERA ceases to operate the moment the possession is taken. Further, the Authority erred in ruling that the grievance of delayed possession must be raised either before or on the date of possession and not on any future date chosen by the Allottees.

(v) The Learned Authority erred in opining that the grievance has been raised after nearly 15 months of possession and therefore complaint may not be entertained.

(vi) The Learned Authority erred in passing the impugned Order as it took a perverse view that the liabilities and obligations of Promoter come to an end once the possession is received by Allottees. Learned Authority failed to appreciate that mere taking possession by the Allottees of the said flat does not amount to waiver of the rights of the Allottees.

(vii) The Learned Authority erred in holding that the Occupation Certificate appeared to have been obtained by the Promoter within the grace period as provided in the Agreement whereas nowhere is there any mention of grace period in the said Agreement.

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(viii) The Authority failed to observe that the area measurement certificate dated 21.12.2018 produced by the Promoter is on the letter head of the Promoter itself and not an independent architect. Further, the Learned Authority failed to appreciate the Licensed Surveyor's Report produced by the Allottees which is an expert's report.

(ix) The Learned Authority failed to take into account that car parking allotted is amenable to defect liability under the provisions of RERA.

13] In view of above grounds, the Allottees challenged the impugned Order and sought relief of:

(i) Setting aside the impugned Order

(ii) Directing the promoter to pay interest on delayed possession from 1.07.2018 to 30.01.2019.

(iii) Directing the Promoter to reimburse to the Allottees by way of compensation the amount, proportionate to reduced carpet area with interest, from the date as and when the installments were paid by the Allottees as well as reimburse stamp duty, government tax computed proportionate to reduced carpet area.



(iv) Directing the Promoter to issue new car parking space or in the alternative carry out the necessary repairs to the parking space bearing no.P2 2 or in case the Promoter is unable to provide another parking space, a compensation of Rs.18,00,000/-.

(v) Direct the Promoter to reimburse Allottees property tax amount from 01.04.2020 to 31.12.2020.

14] We have heard learned Advocate Mr. Manan Sharma for the Allottees and Advocate Mr. Abir Patel for the Promoter.

15] The submissions advanced by Advocate Mr. Manan Sharma and Advocate Mr. Abir Patel are nothing but reiteration of contents of Appeal memo and their written submissions. Advocate Mr. Manan Sharma for Allottees has argued that Allottees having signed the possession letter before giving actual possession and handover of the keys is not a consent and the same cannot extinguish the claims of the Allottees. Learned Advocate has further contended that Section 55 of the Contract Act is contrary to provisions of Section 18 of the RERA, therefore the provisions of Contract Act cannot prevail over Section 18 of RERA. Learned Advocate further contended that the Architect certificate dated 21.12.2018 submitted by the Promoter raises strong doubt about

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the veracity of the said certificate and certificate submitted by the Allottees from a licensed surveyor clearly takes into account the bare shell condition and therefore should be considered. With these submissions Advocate Mr. Manan Sharma has placed reliance on the following citations.

(i) **Madhuvihar Co-operative Housing Society & Ors. Vs. Jayantilal Investments & Ors.** [(2010)(6) Bom. C.R.5 17]

(ii) **Mr. Kaushal Samir & Anr. Vs. Hubtown Ltd.** [Appeal No.AT006000000010918]

(iii) **Siddhitech Homes Pvt. Ltd. & Ors. Vs. Karanveer Singh Sachdev & Ors.** [Appeal No.AT006000000021137]

(iv) **Cipla Ltd. Vs. Competent Authority & Ors.** [(2021 SCC Online Bom 622)]

16] The submissions advanced by Advocate Mr. Abir Patel for Promoter is that the date of possession mentioned in the agreement was June, 2018 subject to further reasonable extension on occurrence of mitigating events and therefore the Allottees are not entitled for the relief of interest on account of delayed possession. Learned Advocate has further submitted that the Allottees are liable to pay the property tax as evident from Clause

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9 of the Agreement and Clause 15 of the possession letter in which they have specifically agreed to bear and pay property tax on and from 01.02.2019. Therefore, learned Advocate contended that Allottees cannot seek reliefs contrary to what they themselves have agreed. Learned Advocate has also contended that the car parking allotment letter has the car parking plan annexed to it wherein the Promoter has made clear and transparent disclosure to the Allottees as regards location of the car parking spaces. Allottees have accepted the car parking spaces without raising any objection and they are agitating this issue after having used the same for over four years now. Learned Advocate also contended that the carpet area mentioned in the said Agreement is that of bare shell flat without any finishing and the one submitted by the Allottees was not bare shell and would have all furnishing and finishing installed. Learned Advocate has further submitted that the Allottees have got their flat measured on 26.11.2020 after 22 months of residing therein and the flat is not the same as was handed over to them. Learned Advocate Mr. Abir Patel placed reliance on the following judgments in support of his submissions.



- (i) **Union of India & Ors. Vs. N Murugesan etc.** [Civil Appeal Nos.2491-2492 of 2021] with Civil Appeal Nos. 2493-2494 of 2021.
- (ii) **Rajasthan State Industrial Development and Investment Corporation and Anr. Vs. Diamond Gem Development Corporation Limited and Anr.** [(2013) 5 SCC 470]
- (iii) **Larsen and Toubro Rekha Sinha** [Second Appeal (St) No. 12744 of 2021]
- (iv) **Hindustan Petroleum Corporation Limited Vs. Batliboi Environmental Engineers Ltd. Mumbai & Anr.** [(2007) SCC Online Bom 1016]

With these contentions learned Advocate Mr. Abir Patel has prayed for dismissal of the Appeal filed by the Allottees.

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



Sr. No.	Points	Findings
1.	Whether the Allottees are entitled to relief of interest under Section 18 of the Act?	In the affirmative
2.	Whether the Allottees have established that there is shortfall in carpet area?	In the negative
3.	Whether the Allottees are entitled for relief on account of deficiency in service with regard to car parking spaces?	In the negative
4.	Whether the Allottees are entitled to relief of reimbursement of the property tax from the Promoter?	In the negative
5.	What Order?	As per final order

## **REASONS**

### **Point No.1**

18] On ensembling the facts as submitted above by the parties, it is not in dispute that the date of possession as per the agreement for sale is June, 2018 (30.06.2018). Learned Authority while passing the impugned Order has taken into consideration grace period of 6 months over and above the date of possession as specified in the Agreement. However, we find that there is no

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mention of any grace period in Clause 12 of the agreement for sale, which deals with fit outs and handover of possession. It is also not in dispute that the Promoter obtained the Occupation Certificate from the Competent Authority on 15.12.2018. It is also not in dispute that the possession of the said flat was handed over by the Promoter to the Allottees on 30.01.2019. Therefore, the Promoter has failed to handover the possession of the said flat to Allottees in terms of the date specified in the agreement for sale.

19] The Promoter has contended that the date of possession mentioned in the agreement was June, 2018 subject to further reasonable extension on occurrence of mitigating factors as mentioned in Clause 12.3 of the said agreement. However, the Promoter has failed to substantiate with cogent documentary evidence of such occurrence of mitigating events that has delayed the completion of the project.

20] Therefore, we hold that the Promoter was under obligation to handover the said flat to Allottees by 30.06.2018. Considering the liability of Promoter to assess the likely date of completion of the project, Allottees have limited liability to discharge 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

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the project is not starved of funds to cause delay in completion. Allottees can be held responsible only if they fail to discharge their obligations as per the agreement for sale that has caused delay in completion of the project. The Promoter has no case of any violation on the part of the Allottees as stipulated in the agreement for sale. If the Allottees are not responsible for the reasons for 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) 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)."*

21] From the above judgment, it is clear that the right of an allottee is "without prejudice to any other remedy available to him" and that the rights given to the allottee is unqualified and if availed, the allottee is entitled to and must be paid interest for every month of delay till the handing over of the possession.

22] 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 there are no shackles or limitation on exercise of right by Allottees to seek interest once there is delay in possession. However, as per the agreement for sale the Promoter has committed possession by June, 2018. Further, it is seen from the replies filed by the Promoter that the Promoter has obtained part Occupation Certificate on 15.12.2018. This clearly indicates that the said flat was not ready in all respects for handing over the possession of the same to the Allottees on 30.06.2018. This signifies that the Promoter has failed to adhere to his obligation to handover the possession of the subject flat to Allottees by specified date in the Agreement for sale.

24] The Promoter has contended that the Allottees have signed the possession letter which remained undisputed and unchallenged till date stating clearly that they have no claims under the agreement for sale. There is no explanation as to why the Allottees waited for 27 months after Occupation Certificate and 26

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months after unconditionally taking the possession to allege delay in possession.

25] We note the possession letter dated 30.01.2019 wherein Clause 15(ii) stipulates that the Allottees have no complaints or grievance or claims of any nature whatsoever against the Promoter in respect of the said premises. In the same letter, the Allottees have signed to the effect that they 'confirm and agree to above and confirm having received to their satisfaction the possession the said premises'. As alleged by the Promoter, we do not hold that this is an express waiver of entitlement of any interest under Section 18 of the Act on account of delay in possession, it merely says that they have received the possession to their satisfaction. Therefore, the contention of Promoter that the Allottees are barred by Section 55 of the Contract Act to claim the relief of interest under Section 18 of the Act is not tenable.

26] With discussions and observations recorded hereinabove, Allottees are not found responsible for the delay in completion of the project. Therefore, the Allottees are entitled to relief of interest for delay in possession. The indefeasible right of Allottees to claim interest cannot be defeated by any reason. Therefore, we answer point no.1 in the affirmative and accordingly, Allottees are entitled



for interest on the actual payment received by the Promoter from Allottees from 1.07.2018 to 30.01.2019.

### **Point No.2**

27] The Allottees have relied on the certificate of licensed architect dated 26.11.2020 claiming thereby the carpet area of the said flat is in deficit compared to the area mentioned in the agreement for sale. It is pertinent to note that footnote in the said certificate has mentioned that the above plan is prepared by taking physical measurement on site on 26.11.2020 for interior purpose and the area is certified on the basis of the same. The Promoter has argued that the carpet area mentioned in the agreement for sale is that of a bare shell flat without any finishing and the one measured by the Allottees was of furnished and finishing installed. It is also pertinent to note that the said measurements as per the said certificate are taken after 22 months of taking over the possession by the Allottees. The Allottees have failed to produce any documentary cogent evidence to suggest that the measurements as per the architect's certificate compared with the measurements as per the approved plan, which is also part of the agreement for sale, in a comparative format having uniform basis to compare, indicating any deficit in the carpet area. The

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possession letter dated 30.01.2019 specifically mentions that the Allottees have undertaken inspection of the said premises and have fully accepted that state and condition thereof including the area and layout of the flat. For this, the Allottees have also signed that they 'confirm and agree to above and confirm having received to their satisfaction the possession of the said premises'. Therefore, we find that the Allottees have not proved their case of reduced carpet area. We therefore, answer point no.2 in the negative.

### **Point No.3**

28] The Allottees have contended that there is deficiency of service in terms of design and quality of the parking spaces. The Promoter has contended that the Allottees were issued the car parking allotment letter dated 03.01.2019 which was unconditionally signed by the Allottees. Further, the car parking allotment letter had the car parking plan annexed to it. Close examination of the said parking letter reveals that it has been mentioned in the said letter that two car parking spaces on the terms and conditions as stated out in the agreement for sale have been given to the Allottees and the Allottees have signed the said parking letter in confirmation of the same. It is pertinent to note that the Co-operative Housign Society of Allottees is formed and

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the amenities including car parking spaces have been handed over to the said society by the Promoter. The Promoter therefore does not have any control over the same and the control is vested with the said society. It is up to the said society of allottees to consider for any relief or change in the parking spaces provided to the Allottees. We therefore, do not find any merit on the claim of the Allottees for any relief on the same. Therefore, we answer point no.3 in the negative.

#### **Point No.4**

29] Regarding the claim of the Allottees for reimbursement of the property tax collected by the Promoter from the Allottees, the Promoter has made a case that they have only collected the maintenance charges and not the property tax from the Allottees. The property tax is charged by the Municipal Corporation directly from the Allottees and the same are not collected by the Promoter. As per the provisions in the possession letter that the Allottees are liable to bear and pay all liabilities in respect of the said flat but not limited to property rates and taxes, etc. As per the provisions specified in the agreement for sale, it is also responsibility of Allottees to pay the property tax after they have received the possession of the said flat. Besides, as per provisions of subsection

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6 of Section 19 of RERA Act, 2016 it is the duty of allottee to pay property tax and other charges. Therefore, for the foregoing discussion, we do not find any merit in Allottees seeking relief for reimbursement of property tax from the Promoter. We therefore, answer the point no.4 in the negative.

30] In the light of above discussions and observations, we proceed to pass the following Order:

### **ORDER**

1. Appeal No.AT00600000053479/2021 is partly allowed with following directions.

(i) The Promoter is directed to pay interest to Allottees on the payment received by the Promoter from the Allottees towards consideration of the subject flat at the rate of SBI's highest marginal cost lending rate (MCLR) plus 2% with effect from 1.07.2018 till the date of actual possession i.e. 30.01.2019.

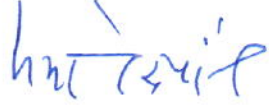
(ii) Appeal stands dismissed for the rest of the prayers.

2. Parties shall bear their own cost.

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3. Copy of this Order be communicated to the Authority and the respective parties as per Section 44(4) of RERA, 2016.



**(SHRIKANT M DESHPANDE)**



**(SHRIRAM R. JAGTAP)**

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