

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

Misc. Application No.935 of 2026 (Stay)

IN

Appeal No. AT006/00894 of 2026

Mrs. Abhilasha D. Giri & Ors.] ... Appellants

Versus

M/s. Super Construction Company] ... Respondent

Mr. Dhavan Kalpnath Giri, Appellant in person.

Adv. Mr. Subhash Dhalwal for Respondent.

CORAM : SHRI S. S. SHINDE J., CHAIRPERSON &

SHRI SHRIKANT M. DESHPANDE, MEMBER (A)

RESERVED ON : 16th October, 2026

PRONOUNCED ON : 27th October, 2026.

(THROUGH VIDEO CONFERENCING)

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

1. The captioned appeal is filed by the appellants/allottees challenging the order dated 25.05.2026 passed by the learned Member-I, Maharashtra Real Estate Regulatory Authority (for short "the Authority") in the complaint No.CC12502723, filed by the appellants herein/allottees. By the said order, the complaint is partly allowed.
2. The operative part of the order is reproduced below:

"a. The present complaint is partly allowed.

b. The claim of compensation sought by the said

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complainant stands rejected in view of the observations made in the aforesaid para no. 22.

c. The respondent promoter is directed to pay interest for the delayed possession to the complainant from 15-06-2019, for every month till the date of offer of possession with OC on the actual amount paid by the complainant towards the consideration of the said flat at the rate of Marginal Cost Lending Rate (MCLR) of SBI plus 2% as prescribed under the provisions of section 18 of the RERA and the Rules made thereunder.

d. Needless to state here that the actual amount as provided under section 18 of the RERA means the amount paid by the complainant towards the consideration of the said flat only, excluding the stamp duty, registration charges and taxes etc. paid to the government.

e. However, in view of the mitigating circumstances beyond the control of the respondent promoter and also to ensure that the said project is not jeopardized due to the outflow of finances and is completed keeping in mind the interest of the other buyers of the said project at large, it is directed that the amounts of interest shall be paid by the respondent promoter to the complainant after obtaining the occupancy certificate. Also, the respondent promoter at the time of possession of the flats to the complainant, may set off the outstanding dues with the interest amount payable by it to the

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complainant and the balance amount if any, by either party be paid at the time of possession.

f. With regard to the payment of interest to the complainant, the MahaRERA further directs that the respondent promoter is entitled to claim the benefit of "moratorium period" as mentioned in the Notifications / Orders nos. 13 and 14 dated 2nd April, 2020, 18th May, 2020 and 6th August, 2021 issued by the MahaRERA and the Notification/Order which may be issued in this regard from time to time.

g. However, in the interest of equity, the MahaRERA further directs that if the approximate amount of interest payable by the respondent promoter to the said complainant (as per the directions issued in para (c) above) exceeds the outstanding dues payable by the complainant (as on date of this order), then the respondent shall not raise any further demand towards such outstanding dues from the complainant. The respondent shall set off the said interest amount against the outstanding dues forthwith, in order to avoid any further proceedings."

3. Aggrieved by the impugned order the appellants in the captioned appeal have sought the following relief:

"a. Allow the present Appeal,

b. Quash and set aside the impugned order to the extent challenged herein;

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- c. Declare that exclusion of the COVID period after an already accrued default is illegal, arbitrary and contrary to Section 18 of the RERA Act.*
- d. Hold and declare that the Respondent is not entitled to benefit of COVID-19 moratorium and/or force majeure for the period subsequent to 15/12/2018;*
- e. Hold and declare that the delay commenced from 15/12/2018;*
- f. Direct the Respondent to pay interest under Section 18 from 15/12/2018 till actual handing over of lawful possession with Occupation Certificate along with arrears accrued till date;*
- g. Direct immediate and continuing monthly payment of interest without deferring the same till Occupation Certificate;*
- h. Award compensation claimed by the Appellants towards rent, hardship, mental agony and prolonged delay;*
- i. Hold that automatic extension under MOFA cannot override or dilute the statutory protection granted to allottees under Section 18 of the RERA Act."*
- j. Direct payment of all consequential and incidental amount payable under law;*
- k. Award costs of the present proceedings;*
- l. Grant such other and further reliefs as this Hon'ble Tribunal deems fit in the facts and circumstances of the present case.*

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4. The appellants have filed the Misc. Application No.935 of 2026 for the interim reliefs seeking, *inter-alia*, the following reliefs:

"a. Direct the Respondent, pending hearing and final disposal of the Appeal, to pay and continue to pay interest under Section 18 of the RERA Act from 15.12.2018 onwards on the amounts paid by the Applicants, without prejudice to the rights and contentions of the parties;

b. Direct the Respondent to deposit before this Hon'ble Tribunal the accrued amount of interest from 15.12.2018 till date, or such amount as this Hon'ble Tribunal deems fit and proper;

c. Grant such other and further interim reliefs as this Hon'ble Tribunal may deem fit in the interest of justice."

5. The learned Advocate for the appellants/allottees submitted that the booking of the flat was done on 08.10.2014 and the agreement for sale was executed on 17.02.2016. As per the agreement for sale, the due date of possession of the flat is 15.12.2018. The said flat was purchased by the appellants/allottees for total consideration of Rs.2,59,00,000/-, out of which substantial amount of Rs.1,87,07,570/- has been paid towards the consideration amount. The appellants have availed loan facilities and have been paying EMI's on the loan amount. The appellants admittedly have not put in possession and the promoter has not obtained occupation certificate till date. The appellants therefore at one hand paying the EMI's and also rental accommodation causing severe financial hardship to the appellants. Having paid substantial consideration amount for the subject flat and have continuously

borne housing loan EMI's and rental expenses and other financial burdens on account of the promoter's prolonged delay in handing over of possession, the learned Advocate submitted that the Authority in the impugned order has deferred the payment of interest till obtaining the occupation certificate thereby causing continuing prejudice and hardship to the allottees.

6. The learned Advocate further submitted that Section 18 of the Real Estate (Regulation and Development) Act, 2016 (for short the 'RERA Act, 2016') contemplates payment of interest for every month of delay till actual handing over of lawful possession and that denial of current payment during the pendency of the appeal would cause irreparable financial loss to the applicants. Therefore, the balance of convenience lies in favour of the appellants/applicants. No prejudice would be caused to the promoter, if the promoter is directed to pay and continue to pay interest during the pendency of the appeal, whereas the applicants are recurring financial loss every month.
7. The learned Advocate further submitted that the Authority has also wrongfully granted benefit of Covid-19 pandemic moratorium period, even though the due date of possession was much prior to Covid-19 pandemic.
8. With these submissions, the learned Advocate for the applicant prayed to allow the application.
9. The promoter/respondent opposed the application by filing reply. The learned Advocate for promoter submitted that the said agreement for sale dated 17.02.2016 executed between the parties is governed as per the provisions of Section 8 of the

Maharashtra Ownership Flats Act, 1963 (for short 'the MOFA') as mentioned in paragraph 14(b) of the agreement for sale. As per Section 8 of the MOFA, the appellants are entitled for the refund of the amount paid with interest for failure to give possession within specified time or further time. Accordingly, the promoter offered the appellants to take refund of the amount with interest as per the said provision. The learned Advocate submitted that Clause-14 of the said agreement for sale by mutual consent it was agreed that if any dispute arises will be referred to the competent authority, who is the present Arbitrator. Further, till the amount of interest is refunded by the promoter to the appellants, the appellants will have a charge on the said flat.

10. The learned Advocate submitted that the possession of the flat could not be delivered to the appellants/allottees due to the reasons which are beyond the control of the promoter on account of various reasons as elaborated in the reply.
11. We have heard the learned Advocate for the parties. We have given due consideration to the averments made in the application and reply filed by the promoter and available record before us.
12. It is pertinent that the appeal is filed by the allottees. Admittedly, the respondent/promoter has not challenged the impugned order, meaning thereby the promoter accepted the said impugned order. Therefore, the arguments advanced by the promoter that the project was delayed on account of the factors beyond the control of the promoter, there exists arbitration clause in the agreement for sale, etc. are not relevant

since these issues have not considered by the Authority while passing the order. As the promoter has not challenged the said order, the said contentions are irrelevant for the purpose of adjudication of the interim reliefs.

13. It is also pertinent that though the agreement for sale is registered in MOFA regime, the said agreement for sale is enforceable under the provisions of RERA Act, 2016, the project being registered under the provisions of RERA as an ongoing project. Further, mere inclusion of clause of arbitration in the agreement for sale does not oust the jurisdiction of RERA. This position is held by the Hon'ble Bombay High Court in the case of *M/S Rashmi Realty Builders Pvt. Ltd. v/s. Mr. Rahul Rajendrakumar Pagariya & Ors [Second Appeal No.434 of 2023 with Interim Application (st) No. 16005 of 2023 decided on 25th October, 2024 by the Hon'ble Bombay High Court]*. The Hon'ble Bombay High Court in *M/s. Rashmi Realty* (supra) in paragraph 3, framed substantial question of law which reads as under:

"Whether the jurisdiction of Real Estate Regulatory Authority established under Section 20 of the Real Estate Regulation and Development Act, 2016 is ousted, if the agreement between the promoter and the allottee contains arbitration clause?"

The Hon'ble Bombay High Court, while answering the said substantial question of law in paragraph 63 held as under by reaching following conclusions:

- "(i) *The dispute between the individual allottee and the promoter or the dispute between the Association of the Allottees and the Promoter covered under Real Estate Regulation and Development Act, 2016 is non-arbitral in nature.*

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(ii) *The jurisdiction of Real Estate Regulatory Authority established under Section 20 of the Real Estate Regulation and Development Act, 2016 is not ousted, even if the agreement between the promoter and the allottee contains arbitration clause”.*

In the light of authoritative pronouncement by the Hon'ble Bombay High Court in case of *M/s. Rashmi Realty* (supra) the jurisdiction of Real Estate Regulatory Authority established under Section 20 of the Real Estate Regulation and Development Act, 2016 is not ousted even if the agreement between the promoter and the allottee contains arbitration clause.

14. A very limited point in the interim relief application is that the Authority in the impugned order has deferred the payment of interest and promoter is directed to pay interest only after obtaining of the occupation certification. Admittedly, the promoter has not obtained occupation certificate till date. It is pertinent that the said flat was booked in the year 2014. The agreement for sale was executed on 17.02.2016 and the due date of possession was 15.12.2018. In spite of passing of six years of the said possession date the promoter has failed to obtain the occupation certificate. It is also pertinent that the appellants/allottees have made substantial payment of Rs.1,87,07,570/- out of total consideration of Rs.2,59,00,000/-. For purchase of the said flat the allottees have availed loan facilities and they have been paying EMI's for the said loan, apart from bearing the rent for rental accommodation. We are of the considered view that the said situation has created a huge financial hardship to the appellants.

15. It is pertinent that the impugned order has been passed under Section 18 of the RERA Act, 2016. The said provision is reproduced below:

"18. (1) If the promoter fails to complete or is unable to give possession of an apartment, plot or building, (a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or (b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason, he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:

Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."

16. The said provision is very clear that if the promoter fails to hand over possession by the due date, the promoter **shall pay interest for every month of delay** till the handing over of the possession. It therefore, implies that the promoter is obligated to pay interest amount every month and payment of

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such amount cannot be deferred to any future date. The said provision does not permit the same.

17. 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.

18. The Hon'ble Supreme Court in the said judgment has held that Section 18 of the RERA Act, confers an unqualified right upon the allottees to get interest in case of delay in handing over of possession for every month's delay. The Hon'ble Supreme Court has further observed that the said right is not contingent upon any contingencies including the mitigating factors faced by the promoter or obtaining of occupation certificate. Therefore,

entitlement of interest under section 18 of RERA is unconditional and absolute right of the allottees. Therefore, the directions in the impugned order to defer the said payment of interest to a future date, which is uncertain and dependent and contingent upon the promoter on obtaining occupation certificate is not sustainable in law.

19. Further, the Authority has also given the undue benefit of moratorium period on account of Covid-19 pandemic. The due date of possession is in the year 2018, which is much prior to the said Covid-19 pandemic and therefore the promoter is not entitled to the benefit of moratorium period. Therefore, the said direction of the Authority is also not sustainable in law.
20. We are of the view that the balance of convenience is entirely in favour of the appellants/allottees and therefore the application deserves to be allowed.
21. Accordingly, we proceed to pass the following order.

ORDER

1. The Misc. Application No.935 of 2026 (Stay) is partly allowed with following directions:
 - a) The promoter is directed to pay interest on the consideration amount of Rs.1,87,07,570/- (Rupees One Crore Eighty-Seven Lakhs Seven Thousand Five Hundred Seventy Only) paid by the appellants/allottees at the rate of SBI's highest marginal cost lending rate (MCLR) plus 2% with effect from 15.12.2018, as per the impugned order, till the date of this order within 30 days of this order,
 - b) The promoter thereafter shall continue to pay to appellant/allottees interest amount on the consideration



amount paid by the appellants/allottees for every month at the rate of SBI's highest marginal cost lending rate (MCLR) plus 2%.

2. Parties shall bear their own costs.
3. Misc. Application is disposed of in above terms.
4. 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)

(S.S. SHINDE, J.)

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