IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL (STAMP) NO.8825 OF 2025

1. Sanklecha Constructions Pvt. Ltd.
2. Vijay Kachardas Sanklecha
3. Dilip Kachardas Sanklecha
4. Puneet Ajit Sanklecha ....Appellants

V/S

1. Nitin Madhukar Shewale
2. Shital Nitin Shewale
3. Bhimashankar Laxman Janmali
4. Shrikrishna Laxman Janmali
5. Sitabai Laxman Janmali
6. Pushpa Jaggannath Janmali
7. Devemdra Jaggannath Janmali
8. Anil Laxman Janmali
9. Dinkar Laxman Janmali ....Respondents

WITH
INTERIM APPLICATION NO.7869 OF 2025
IN
SECOND APPEAL (STAMP) NO.8825 OF 2025
(FOR STAY)

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2. Vijay Kachardas Sanklecha
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4. Puneet Ajit Sanklecha ....Applicants

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Mr. Abhishek Pungaliya *for the Appellants/Applicants.*
Mr. Akshay R. Kapadia *for Respondent Nos.1 and 2.*

CORAM : SANDEEP V. MARNE, J.
RESERVED ON : 17 SEPTEMBER 2026.
PRONOUNCED ON : 28 SEPTEMBER 2026.

JUDGMENT

THE CHALLENGE

1. This Appeal is filed under provisions of Section 58 of the Real Estate (Regulation and Development) Act, 2016 **(RERA)** by the Appellants—Promoters, challenging the judgment and order dated 7 November 2023 and Review Order dated 28 November 2024 passed by the Maharashtra Real Estate Appellate Tribunal, Mumbai, **(Appellate Tribunal)** partly allowing the Appeal preferred by the allottees and modifying the order dated 24 August 2021 passed by the Maharashtra Real Estate Regulatory Authority **(MahaRERA)**. By the impugned Order, the Appellate Tribunal has withdrawn the option granted to them by MahaRERA to return the paid consideration to the allottees alongwith interest after obtaining occupation certificate **(OC)** for the project.

2. The Appeal involves the Appellants-Promoters being aggrieved by the ultimate direction for refund of the entire amount to the allottees

along with interest thereon with effect from 1 January 2018. Since the ultimate direction contemplates immediate return of amounts with interest to the allottees and since option of returning the amount at the time of securing OC is deleted, the Appellants have filed the present Appeal.

3. It must be observed at the very outset that the Appellate Tribunal has rather passed confusing orders posing challenge to comprehend the same. Initially, MahaRERA had granted option to the promoter to refund the paid consideration to the allottee along with interest after securing OC for the project. By the main judgment and order dated 7 November 2023, the Appellate Tribunal withdrew that option by directing deletion of portion of direction from MahaRERA's Order and directed that the promoter must refund the paid consideration with interest from the dates of receipt of payments within 23 days of the Order. The main Order is later reviewed by the Appellate Tribunal deleting the direction for payment of interest from the date of receipt of payments. Thus, the net effect of the Order passed by MahaRERA as modified twice by the Appellate Tribunal is that the promoter needs to 'forthwith' refund the paid consideration with interest w.e.f. 1 January 2018.

4. Appellants are not aggrieved *per se* by the direction for return of amount and interest to the allottees. They are willing to return the amount with interest, however, after obtaining the OC for the project. The Appeal is filed contending that there are mitigating circumstances beyond the control of the Promoters which have resulted in delay in

completion of the project and they desire that option of returning the amount with interest after obtaining OC for the project must be made available to them. Thus, the limited scope of inquiry in the Appeal is whether the Appellate Tribunal was justified in withdrawing the option made available to the Appellants to return the amount with interest to the allottees after obtaining the OC for the project.

FACTS

5. The case of the Complainants/Allottees, as set out in their Complaint, is that they booked Flat No.702 in Building No.C-1 in the project named “Waterways” situate at Anusaya Nagar, Tapovan Road, Dwarka, Nashik. Petitioner No.1-Sanklecha Constructions Private Limited is the developer/promoter, who undertook construction of the **‘Project’**. Appellant Nos. 2 to 4 are the directors of Appellant No. 1. Flat No.702 in Building No. C-1 of the Project was booked by the Allottees for total consideration of Rs.43,13,200/- and they paid part consideration of Rs.22,58,178/- to the Promoter. Agreement for Sale dated 16 May 2016 was executed between the Promoter and Allottees, in which it was agreed that the Promoter shall deliver possession of the flat on or before 31 December 2017, subject to reasonable extension of time based on certain *force majeure* events. It appears that the Promoter was unable to deliver possession of the flat within the agreed timeline. Therefore, Allottees approached MahaRERA by filing a Complaint under Section 31 of RERA, which was registered as Complaint No.CC001000000000102. It appears that the Appellants did not file any reply opposing the

Complaint. It appears that another Complaint was filed by other allottees in respect of the same project.

6. MahaRERA proceeded to jointly hear both the Complaints and decided them by passing common order dated 24 August 2021. MahaRERA permitted the Allottees to withdraw from the project and held them entitled to refund of the entire amount paid by them with interest with effect from 1 January 2018 along with interest at the rate as prescribed in Rule 18 of the Maharashtra Real Estate (Regulation and Development) (Registration of Real Estate Projects, Registration of Real Estate Agents, Rate of Interest and Disclosures on Website) Rules, 2017 (**Rules of 2017**). However, MahaRERA took into consideration the mitigating circumstances beyond the control of the Promoter and ensured that the project is not jeopardized due to outflow of finances and is completed keeping in mind the interest of other buyers in the project. Accordingly, MahaRERA directed that the amount of refund and interest can be paid by the Promoter to the Allottees upon the Promoter obtaining OC for the project. However, an option was left open to the Promoter to pay the amount of refund and interest before obtaining OC.

7. The Allottees/Respondent Nos.1 and 2 got aggrieved by order dated 24 August 2021 passed by MahaRERA and filed Appeal No. AT006000000053455 of 2021 before the Appellate Tribunal. This time, the Promoter appeared before the Appellate Tribunal and opposed the Appeal. By judgment and order dated 7 November 2023, the Appellate Tribunal partly allowed the Appeal filed by Complainants / Respondent

Nos.1 and 2 and modified order dated 24 August 2021 passed by MahaRERA. The Appellate Tribunal directed deletion of portion of operative part of MahaRERA's order which gave option to the Promoter to refund the amount with interest upon obtaining OC for the project. Instead, the Appellate Tribunal directed the Promoter to refund the entire amount to the allottees within 23 days along with interest from the date of receipt of the payments at Marginal Cost of Lending Rate (**MCLR**) of State Bank of India plus 2%, failing which the Promoter is directed to pay interest at the directed rate on the total amount due and outstanding as on 30 November 2023 till its complete refund.

8. Appellant No.1-Promoter preferred Review Application No.14 of 2023 before the Appellate Tribunal seeking review of judgment and order dated 7 November 2023. By order dated 28 November 2024, the Appellate Tribunal has partly allowed the Review Application. It has set aside direction No.15(b)(ii) of the judgment and order dated 7 November 2023. Thus, the final effective direction against the Appellants/Promoter is for refund of entire payment received by them to Respondent Nos.1 and 2 with interest from 1 January 2018 as per the Rules of 2017.

9. Appellants/Promoters are aggrieved by the main judgment and order dated 7 November 2023 as well as by the review order dated 28 November 2024 and have accordingly filed the present Second Appeal.

10. The Second Appeal has been admitted by order dated 17 September 2026, by framing the following substantial questions of law:

1) Whether the obligation for the Promoter to return to the allottee the amount received by him with interest on demand made by the allottee under Section 18(1) of the Real Estate (Regulation and Development) Act, 2016 (RERA Act) is absolute and unqualified or whether the Real Estate Regulatory Authority and/or the Appellate Tribunal has discretion to take into consideration any mitigating circumstances or genuine efforts made by the Promoter in completing the project in time for the purpose of claiming any relaxation either in respect of period of interest or rate of interest or the date on which the refund is to be made?

2) Whether the observations made by the Hon'ble Apex Court in paragraph 25 of the judgment in ***Newtech Promoters and Developers Private Limited vs. State of U.P. & Ors. Etc.***[1] are *obiter dicta* and whether the findings recorded by Division Bench of this Court in paragraph 137 of the judgment in ***Neelkamal Realtors Suburban Pvt. Ltd. and Anr. vs. Union of India and Ors.***[2] shall continue to operate even after observations made by the Hon'ble Apex Court in paragraph 25 of the judgment in ***Newtech Promoters and Developers Pvt. Ltd.***?

3) Whether it is permissible for the Real Estate Regulatory Authority and/or the Appellate Tribunal to direct that return of

1 IV (2021) CPJ 21 (SC) : 2021 SCC OnLine SC 1044
2 2017 SCC OnLine Bom 9302

the amount with interest shall be only after securing occupation certificate of the project and not upon demand by the allottee under provisions of Section 18(1) of the RERA Act?

11. After framing of substantial questions of law, the learned counsel appearing for the respective parties have been heard on those questions. It would be apt to record the gist of submissions canvassed by the learned counsel appearing for the rival parties.

SUBMISSIONS

12. Mr. Pungaliya, the learned counsel appearing for Appellants submits that the Appellate Tribunal has erroneously withdrawn the option made available to the Appellants to refund amount with interest to the allottees upon securing Occupation Certificate for the project. That the impugned orders direct the Promoters to refund the received amount with interest immediately. That Promoter is willing to refund the received amount with interest upon receipt of OC for the project. He submits that prior to the judgment of the Apex Court in ***Newtech Promoters and Developers Private Limited*** (supra), the Regulatory Authority as well as the Appellate Tribunal used to exercise the discretion of molding the relief. That the observations made by the Apex Court in paragraph 25 of the judgment in ***Newtech Promoters*** are being misread by the Appellate Tribunal to mean as if the same constitutes declaration of law. That the observations made in paragraph 25 of the judgment in ***Newtech Promoters*** are mere *obiter dicta* having no relevance for deciding the five questions framed in paragraph 31 of the

judgment. Mr. Pungaliya further submits that even if the entire observations in paragraph 25 of the judgment in ***Newtech Promoters*** are removed, the same would have no consequence on conclusions/answers rendered by the Apex Court on the issues involved in the case. That therefore the observations in paragraph 25 of the judgment in ***Newtech Promoters*** will have to be necessarily treated as a mere *obiter*. He relies on the judgment of the Apex Court in ***Career Institute Educational Society v. Om Shree Thakurjee Educational Society***[3]. That in the present case, the Appellate Tribunal has committed the same mistake by treating that observation in paragraph 25 of the judgment in ***Newtech Promoters*** is a *ratio decidendi* or constitutes binding precedent. By misreading the observations in paragraph 25 of the judgment in ***Newtech Promoters***, the Appellate Tribunal has refused to take into consideration the mitigating circumstances put forth by the Appellants resulting in delay in project completion and accordingly, the Appellate Tribunal has erroneously withdrawn the molded relief granted by MahaRERA in the order dated 24 August 2021.

13. Mr. Pungaliya further submits that MahaRERA had correctly permitted Appellants to refund the amount and interest after obtaining the occupation certificate by taking into consideration the mitigating circumstances beyond the control of the Appellants. He relies on the judgment of the Division Bench of this Court in ***Neelkamal Realtors*** (supra) in support of his contention that it is permissible for courts to take into consideration mitigating circumstances, where the developer

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3 SLP (C) Nos.7455–7456 of 2023

makes genuine efforts to complete the project. He submits that it is necessary to protect a promoter making genuine efforts to complete the project within agreed timelines. That a balanced approach needs to be adopted in the facts of the present case. That in the present case, two of the five buildings of the Waterways project are 95% complete, and one building is 85% complete. That even Building C-1, in which the flat was booked by Respondent Nos.1 and 2, is also 70% complete. That in such circumstances, forcing the developer to refund the entire received amount with interest at this stage would seriously prejudice the fund flow and harm the interests of more than hundred other flat buyers.

14. Mr. Pungaliya further submits that Section 18 of RERA came into force in May 2017, whereas the Waterways project was registered on 19 August 2017 under MahaRERA. However, the registered Agreement for Sale was executed on 16 May 2016. That since the Agreement for Sale was executed before coming into effect of Section 18 of RERA and prior to the registration of the project, the contractual obligation to hand over possession had occurred prior to coming into force of Section 18 of RERA. That therefore observations made in paragraph 137 of the judgment in ***Neelkamal Realtors*** (supra) would apply to the present case. That the possession date of 31 December 2017 was always understood to be a tentative date. That mitigating circumstances were totally ignored by the Appellate Tribunal. Mr. Pungaliya accordingly prays for setting aside the impugned orders passed by the Appellate Tribunal.

15. The Appeal is opposed by Mr. Kapadia, the learned counsel appearing for Respondent Nos.1 and 2. He submits that MahaRERA had grossly erred in giving option to the Promoter to refund the amount after securing OC for the project. That once allottees are permitted to withdraw from the project, they must receive their payments alongwith interest without having to wait for securing the OC. He submits that provisions of Section 18 of RERA are clear and unambiguous, which do not permit withholding of amount by the promoter and makes the allottee entitled to receive the entire amount along with interest on making a demand. He submits that the findings recorded by the Apex Court in ***Newtech Promoters*** in paragraph 25 of the judgment are not *obiter dicta*, as erroneously sought to be suggested by the Appellants. That the same constitute declaration of law. He also relies on several other findings recorded by the Apex Court in ***Newtech Promoters*** in support of his contention that the Apex Court has laid down a law that the allottee has an unqualified right to secure a refund of the entire amount alongwith interest by mere making of a demand. Mr. Kapadia accordingly prays for dismissal of the Appeal.

CONSIDERATION OF SUBMISSIONS

16. The case involves non-completion of project by the Appellants-Promoter. Respondent Nos.1 and 2 (allottees) booked Flat No.702 in Building C-1 in the project 'Waterways' on 14 January 2015. Thereafter, an Agreement for Sale was executed and registered on 16 May 2016. The agreed consideration for the flat was Rs.43,13,200/-. Out of the agreed

amount of consideration, the allottees have paid an amount of Rs.22,58,178/- to the Appellants from time to time.

17. The Appellants were required to hand over possession of the flat to the allottees by 31 December 2017. However, admittedly, the Project has not been completed by the Appellants even till date. After waiting for a substantial time, Respondent Nos.1 and 2 approached MahaRERA in 2019 and lodged a Complaint. While allowing the Complaint, MahaRERA issued a rather confusing direction. It would be apposite to reproduce the operative part of MahaRERA's order dated 24 August 2021:

> Thus, the present complaints are allowed to withdraw from the said Project and the Complainants are entitled to refund of the entire amount paid by them with interest from 01.07.2021 for complaint No.CC001000000000100 and from 01.01.2018 complaint No.CC001000000000102 at the rate as presribed *under Rule 18 of the Maharashtra Real Estate (Regulation and Development) (Registration of Real Estate Projects, Registration of Real Estate Agents, Rate of Interest and Disclosures on website) Rules 2017*. <u>However, in view of the mitigating circumstances beyond the control of the Respondent and also to ensure that the said Project is not jeopardised 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 refund and the interest thereupon shall be paid by the Respondent to the Complainant upon the Respondent obtaining occupation certificate (OC) for the said Project. However, in case the Respondent so desires to pay the same before obtaining OC the period of interest calculation shall be from 07.07.2021 for complaint No.CC001000000000100 and from 01.01.2018 complaint No.CC001000000000102 up to date of refund of the entire amount together with interest as aforesaid.</u>
>
> *(underlining added)*

18. As observed above, two Complaints have been simultaneously decided by MahaRERA, and Respondent Nos.1 and 2 were Complainants in Complaint No.CC001000000000102. Thus, the final order passed by MahaRERA allowed Respondent Nos.1 and 2 to withdraw from the

Project and also held that they are entitled to a refund of the entire amount paid by them along with interest with effect from 1 January 2018 at the rate as prescribed under the Rules of 2017. However, in the subsequent part of operative directions, the MahaRERA gave two options to the Appellants/Promoters. Under the first option, the refund and interest was payable upon obtaining OC for the project. The second option was to make immediate payment of the amount with interest. Thus, MahaRERA left it to the Promoter to decide when to grant the refund along with interest. Though the Promoter was granted the option to refund the received amount upon obtaining the OC for the project, the Promoter was required to bear the interest burden up to the date of actual payment. The directions were apparently issued with a view to ensure that the flow of funds for the project is not disturbed and the direction to return the amount with interest does not result in the promoter getting incapacitated to complete the remaining project, thereby affecting other flat purchasers.

19. Respondent Nos.1 and 2 / allottees got aggrieved by the option given to the Promoter to refund the amount after obtaining the OC, and accordingly, filed an Appeal before the Appellate Tribunal. As if the confusion created by MahaRERA was not enough, the Appellate Tribunal added its share of confusion while passing two orders. In the original order dated 7 November 2023, the Appellate Tribunal directed deletion of the portion (*underlined below*) which granted two options to the Promoter for making a refund of the amount and interest. Instead, the Appellate Tribunal directed the Promoter to refund the entire paid

amount together with interest 'from the date of receipt of the payments', along with interest, within a period of 23 days. The operative part of the order dated 7 November 2023 passed by the Appellate Tribunal reads thus:

> a) Appeal is partly allowed.
>
> b) Impugned order dated 24th August 2021 passed in Complaint No. CC 006000000000102 is modified as hereunder.
> i. Following directions / observations provided in para 13 [final order] in the operative part of the impugned order dated 24th August 2021 providing options to promoters for refund of the paid amounts to allottees are quashed, set aside and accordingly stands deleted; -
>
> "*in view of the mitigating circumstances beyond the control of the Respondent and also to ensure that the said project is not jeopardised 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 refund and the interest thereupon shall be paid by the Respondent to the Complainant upon the Respondent obtaining occupation certificate (OC) for the said Project. However, in case the Respondent so desires to pay the same before obtaining OC the period of interest calculation shall be from 01.01.2018 up to date of refund of the entire amount together with interest as aforesaid.*"
>
> ii. Respondent Promoter is directed to refund the entire paid amounts within 23 days to Appellants allottees together with interest from the date of receipt of the payments at the rate of highest marginal cost of lending rate of State Bank of India plus 2%, failing which, promoter will pay interest at this rate on the total amount due and outstanding as on 30th November 2023 till its complete refund/ realisation of these outstanding amounts along with interest.
>
> c) No order as to costs.
>
> d) In view of the provisions of Section 44(4) of the Act of 2016, a copy of this order shall be sent to the parties and to MahaRERA.
>
> *(underlining added)*

20. Deletion of only underlined portion from operative direction of MahaRERA's order resulted in conflicting directions in the retained

portion of MahaRERA's order and new direction issued in Para 15(b) (ii) by the Appellate Tribunal. the retained/portion of MahaRERA's order contemplated payment of interest from '1 January 2018', whereas direction in Para 15(b)(ii) of the Appellate Authority's order contemplated payment of interest from 'the date of receipt of payments' i.e. from 2015-2016.

21. The Promoter applied for a review of the order dated 7 November 2023, and the Review Application has been partly allowed by the Appellate Tribunal by passing the following operative directions:

> a) Captioned review application stands partly allowed.
> b) The direction to the applicant promoter in para no. 15(b) (ii) of the judgment dated 7th November 2023, stands deleted.
> c) Parties to bear their own costs.

Thus, the direction in paragraph 15(b)(ii) of the judgment and order dated 7 November 2023 is now deleted.

22. This Court does not appreciate the manner in which the Appellate Tribunal has given operative directions, which are unclear and capable of causing confusion. One has to undertake a complex exercise to comprehend the exact final direction which the Promoter is expected to comply. It took some time for this Court to understand what exactly the final direction is, which the Promoter is expected to comply/implement. This Court was required to repeatedly go back and forth between the orders passed by MahaRERA, the main order passed by the Appellate Tribunal, and the review order passed by the Appellate Tribunal. With some degree of effort, this Court has finally understood the exact

purport and final outcome of the litigation between the parties. Now, the only direction which is capable of being implemented is the direction of MahaRERA allowing Respondent Nos.1 and 2 to withdraw from the Project and direction to the Promoter to refund the entire amount paid by Respondent Nos.1 and 2 alongwith interest from 1 January 2018 as per the rate prescribed in Rule 18 of the Rules of 2017.

23. If clear and unambiguous directions were to be issued by the Appellate Tribunal, the time spent by this Court in comprehending the exact nature of directions would have been saved. Be that as it may. Now I proceed to decide whether there is any interference warranted in the final direction given to the Promoter for refund of entire amount alongwith interest from 1 January 2018.

24. As observed above, Appellants are not averse to refunding the amount received from the allottees. They are also not averse to paying interest at the rate prescribed in Rule 18 of the Rules of 2017. They are only aggrieved by withdrawal of the option given to them by MahaRERA to pay the amount and interest after obtaining OC for the Project. I proceed to examine whether withdrawal of the said option by the Appellate Tribunal is in order or not.

Question Nos. 1, 2 and 3

25. Since all the questions are interconnected, the same are taken up for decision together.

26. The first question formulated is whether the obligation of the Promoter to return to the allottee the amount received by him alongwith interest on demand made by the allottee under Section 18(1) of RERA is absolute and unqualified or whether the Regulatory Authority or the Appellate Tribunal has any discretion to take into consideration the mitigating circumstances or genuine efforts made by the Promoter in completing the project for granting some relaxation either in respect of period of interest or the rate of interest or the date on which the refund is to be made. This question is interconnected with question No.2. Since it is sought to be suggested by and on behalf of the Appellants that observations made by the Hon'ble Apex Court in paragraph 25 of the judgment in ***Newtech Promoters*** (supra) are in the *obiter,* it is also sought to be suggested by the Appellants that the finding recorded by Division Bench of this Court in ***Neelkamal Realtors*** (supra) can be followed and and it is open for the Regulatory Authority and/or the Appellate Tribunal to take into consideration genuine efforts of a promoter and grant relaxation while issuing directions under Section 18(1) of RERA. It is therefore contended on behalf of the Appellants that MahaRERA was right in granting option to the Promoter to refund the amount and interest only after securing OC for the project.

27. To answer the questions, it would be necessary to take into consideration the provisions of Section 18 of RERA, which provides thus:

> **18. Return of amount and compensation.—**
>
> (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.
>
> (2) The promoter shall compensate the allottees in case of any loss caused to him due to defective title of the land, on which the project is being developed or has been developed, in the manner as provided under this Act, and the claim for compensation under this subsection shall not be barred by limitation provided under any law for the time being in force.
>
> (3) If the promoter fails to discharge any other obligations imposed on him under this Act or the rules or regulations made thereunder or in accordance with the terms and conditions of the agreement for sale, he shall be liable to pay such compensation to the allottees, in the manner as provided under this Act.

28. A plain reading of Section 18(1) of RERA would indicate that promoter has an obligation to return the amount received by him alongwith interest on demand by the allottee. Section 18(1) of RERA does not leave any option or discretion about the timeline at which refund is to be made. Once the promoter fails to complete the project or is unable to give possession of the apartment within the timeline agreed, allottee has a right to demand refund of amount paid by him, and the promoter has an obligation to fulfill that demand by refunding the amount received by him alongwith interest immediately on making such demand. In that sense, there is an unqualified right created in favour of the allottee to seek the refund under Section 18(1) of RERA.

29. Section 18 of RERA talks of two amounts viz. (i) amount received by the promoter from the allottee, and (ii) compensation to be recovered by the allottee from the promoter. A plain reading of Section 18(1) and 18(2) of RERA would indicate that return of amount and interest thereon is the bare minimum which the allottee must receive from the Promoter. If the allottee is in a position to prove cause of loss and entitlement to receive compensation, the same can be pressed before the Adjudicating Authority under Section 18(2) of RERA. Thus, while payment of compensation amount may await adjudication, return of amount received by the Promoter and interest thereon must be paid immediately on raising of a demand. Section 18(1) of RERA thus does not leave any discretion for the Promoter or to the Regulatory Authority or to the Appellate Tribunal to delay return of the paid amount or to direct that the refund can be made only after obtaining OC for the project.

30. Thus, on plain reading of Section 18 of RERA, in my view, the right to seek return of amount with interest is absolute and unqualified. The right cannot be diluted by the Regulatory Authority or by the Appellate Authority or even by the High Court by giving any concession to the promoter to return the amount only after securing OC for the project.

31. The issue of unqualified nature of allottee's right to seek refund is also recognised by the Apex Court in ***Newtech Promoters*** (supra). In that case, the Apex Court essentially took up for consideration the issue as to whether RERA is retrospective or retroactive in operation. The Apex

Court also took up for consideration the issue as to whether the Regulatory Authority had jurisdiction to direct return/refund of the amount or whether such jurisdiction lies exclusively with the Adjudicating Officer. The issue before the Apex Court was also whether a single member of the Authority can hear complaints instituted under Section 31 of RERA. The fourth issue for consideration before the Apex Court was whether condition of pre-deposit under proviso to Section 43(5) of RERA for entertaining substantive right of appeal was sustainable in law. The last issue for consideration was whether Regulatory Authority has power to issue Recovery Certificate for recovery of principal amount under Section 40(1) of RERA. The issues taken up for consideration are listed in paragraph 31 of the judgment of Apex Court in ***Newtech Promoters*** (*para 30 of SCC Report*). Relying on the list of five issues, it is sought to be contended by Mr. Pungaliya that the Apex Court did not take up for consideration the issue as to whether Regulatory Authority and/or the Appellate Tribunal has any discretion to grant relaxation to a promoter making genuine efforts to complete the project or whether they have the power of molding the relief. This argument on behalf of the Appellant is necessitated on account of the fact that in paragraph 25 of the judgment (*Paragraph 24 in SCC Report*), the Apex Court has held that right of the allottee to seek refund under Section 18(1) of RERA is absolute and not dependent on any contingencies or stipulations. For the sake of convenience, paragraph number '24' of judgment in ***Newtech Promoters*** of the SCC report is referred. In paragraph 24 of the judgment the Apex Court held as under:

> 24. 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/homebuyer, 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.

32. Since the findings recorded in paragraph 24 of the judgment do not leave any discretion for the Regulatory Authority and/or the Appellate Tribunal to grant any relaxation to promoters making genuine efforts to complete the project, it is sought to be suggested by Mr. Pungaliya that those observations are mere *obiter dicta* as they have no connection with the five issues taken up for consideration by the Hon'ble Apex Court. I am unable to agree. The Apex Court was equally concerned with the interpretation of provisions of Section 18 of RERA. In paragraph 72 of the judgment, the Apex Court has held that refund and compensation are two distinct rights under the Act and cannot be conflated. The Apex Court, while deciding the issue as to whether the Regulatory Authority has jurisdiction to direct return/refund, has held in paragraphs 71, 72 and 74 of the judgment as under:

> 71. Thus, refund and compensation are two distinct rights under the Act and cannot be conflated. The manner in which the two are to be determined would require a different process and involve different considerations. According to her, the determination of compensation involves a full-fledged adjudicatory process which is more complex than that involved in determining refund. To do so, it would tantamount to regressing into the very malaise that the legislature intended to liberate the allottees-homebuyers from. The result of

conflating the rights and/or relegating the allottees to the adjudicating officer would amount to a compromise of the timeliness of the right to refund on demand. It would also deter and daunt allottees from seeking compensation because in the process the remedies would be clubbed and the availability of refund would get relatively delayed as compensation requires a more elaborate adjudication process (even though the same is required to be completed in 60 days). The Authority to determine a claim for refund on demand while the adjudicating officer to determine the claim for compensation.

72. The expression "on demand" which follows the right to "return of amount" is indicative of the priority, immediacy and expediency which is accorded to the right to refund. Thus, according to her, the expressions "refund" and "return of amount" is an act of restitution, and the obligation to restitute lies on the person or the Authority that has received unjust enrichment or unjust benefit.

74. The legislature in its wisdom has made a specific provision delineating power to be exercised by the Regulatory Authority/adjudicating officer. "Refund of the amount" and "compensation" are two distinct components which the allottee or the person aggrieved is entitled to claim if the promoter has not been able to hand over possession with a nature of enquiry and mechanism provided under the Act. So far as the claim with respect to refund of amount on demand under Sections 18(1) and 19(4) of the Act is concerned, it vests within the jurisdiction of the Regulatory Authority. Section 71 carves out the jurisdiction of the adjudicating officer to adjudge compensation under Sections 12, 14, 18 and 19 after holding enquiry under Section 71(3) of the Act keeping in view the broad contours referred to under Section 72 of the Act.

33. Thus, it cannot be said by any stretch of imagination that what is observed by the Apex Court in paragraph 24 of the judgment in ***Newtech Promoters*** (supra) is a mere *obiter*. The Apex Court in ***Newtech Promoters*** lays down a law that there is a priority, immediacy and expediency accorded to the right of the allottee to seek refund. The Apex Court has interpreted the expression "on demand" appearing in Section 18(1) of RERA. Therefore, observations of the Hon'ble Apex Court in paragraph 24 of the judgment are also required to be read in conjunction with the findings recorded in paragraphs 71, 72 and 74 of the judgment. Merely because the findings in paragraph 24 precede the formulation of

questions/issues in paragraph 30, it would be erroneous to assume that the observations made in paragraph 24 are mere *obiter*. The Apex Court has declared a law in ***Newtech Promoters*** (supra) that an allottee has an unqualified right to seek refund under Section 18(1) of RERA and if the promoter fails to give possession of the apartment within time stipulated under the terms of agreement, regardless of unforeseen events or stay orders of Court/Tribunal (not attributable to the allottee), the promoter is under obligation to refund the amount on demand with interest.

34. Mr. Pungaliya has strenuously relied on the judgment of Division Bench of this Court in ***Neelkamal Realtors*** (supra), in which the constitutional validity of certain provisions of RERA were challenged. While questioning the constitutional validity of provisions of Section 18 of RERA, it was sought to be suggested that Section 18 of RERA did not contemplate taking into consideration genuine efforts made by the Promoter to complete the project. While dealing with the argument, this Court held in paragraph 137 as under:

> 137. The another plea raised is as to why a promoter shall pay interest for the past contractual rights, in case of failure to complete the project after registration under RERA, till the possession is handed over. Under the scheme of the RERA it is clear by now that a promoter has to self assess and declare time period during which he would complete the project. But in case, inspite of making genuine efforts, a promoter fails to complete the project, then the concerned authorities, adjudicators, forums, tribunals would certainly look into genuine cases and mould their reliefs accordingly. We do not find that on that count the provisions of Section 18(1)(a) are to be declared as contrary and violative of Articles 14 and 19(1)(g). Considering the scheme of the RERA and the provisions of Section 18(1)(b), we are of the view that the same are not contrary to Articles 14 and 19(1)(g) of the Constitution. The provisions cannot be struck down on the ground of challenge that its operation is retroactive in

> nature. Neither the provisions of Section 18(1)(a) and (b) violate Article 20 of the Constitution. The payment of interest under Section 18 is compensatory in nature [*Abati Bezbaruah* v. *Director General, Geological Survey of India*-(2003) 3 SCC 148 (para 18) and *Alok Shanker Pandey* v. *UOI*-(2007) 3 SCC 545 (para 9)].

35. By relying on findings recorded by this Court in paragraph 137 of the judgment in ***Neelkamal Realtors*** (supra), it is sought to be suggested by Mr. Pungaliya that the Regulatory Authority as well as the Appellate Tribunal has power to take into consideration genuine cases and mould the reliefs accordingly. In my view, findings recorded by the Division Bench of this Court in ***Neelkamal Realtors*** (supra) in paragraph 137 of the judgment cannot be read to mean as if any relaxation is permissible when it comes to return of the amount received by the promoter from the allottee along with interest. The right would always continue to remain absolute and unqualified. Right to seek refund of what is paid to the promoter is the bare minimum which an allottee must receive under any circumstances. Even if the promoter may not be at fault in not completing the project within the agreed timeline, the minimum that he must do is to return the amount received by him from the allottee together with interest. In a given case, an allottee may suffer other losses. He may have to bear the burden of paying rent or interest to banks and housing loan companies. In a given case, a home buyer may have to bear a double whammy of paying loan installments as well as rent. In such circumstances, an allottee may suffer consequences of sale of his/her assets on account of inability to repay loan installments, and may suffer mental torture as well as financial losses. In such circumstances, the allottee can prove cause of loss and claim damages/compensation from the promoter. If a promoter makes genuine

efforts to complete the project and is not at all responsible for delay, in such circumstances, the Adjudicating Authority, Tribunal, or the Court may relieve the promoter from liability to compensate the allottee. However, return of amount received by the promoter from the allottee together with interest is the bare minimum which the promoter must perform in every case, including a case where the promoter has made genuine efforts to complete the project within the agreed timeline. In my view therefore, the judgment of the Division Bench of this Court in ***Neelkamal Realtors*** (supra) cannot be read to mean as if any relaxation is permissible for a promoter on a case-to-case basis in respect of liability to return the amount received from the allottee along with interest.

36. Reliance by Mr. Pungaliya on order passed by the Apex Court in ***Career Institute Educational Society*** (supra) in support of his contention that observations in paragraph 24 of the judgment in ***Newtech Promoters*** (supra) are *obiter*, is clearly misplaced. In ***Career Institute Educational Society***, the Apex Court has underscored the distinction between an *obiter dicta* and a *ratio decidendi* in a judgment. Referring to its judgments in ***State of Gujarat and Others v. Utility Users' Welfare Association***[4] and ***Jayant Verma and Others v. Union of India and Others***[5], the Apex Court has discussed "the inversion test", which contemplates removal of the proposition from the text of the judgment and to examine whether the conclusion of the case would still remain the same. In such circumstances, the removed proposition cannot be

4 (2018) 6 SCC 21
5 (2018) 4 SCC 743

treated as *ratio decidendi*. In ***Jayant Verma***, the Apex Court has held that only the statements of principle of law applicable to the legal problems disclosed by the facts would operate as a precedent. It is held that not everything said by a judge when giving the judgment would constitute a precedent. However, in the present case, the findings recorded by the Apex Court in paragraph 24 of the judgment in ***Newtech Promoters*** (supra), when read in conjunction with other findings recorded at paragraphs 71, 72, and 74 make it clear that the Apex Court was concerned with the interpretation of provisions of Section 18 of RERA, and interpretation made by it would constitute a binding precedent to be followed by all Courts in India. Therefore, I am unable to accept the contention of Mr. Pungaliya that the findings recorded in paragraph 24 of the judgment in ***Newtech Promoters*** (supra) is an *obiter* by any stretch of imagination.

ANSWERS TO THE QUESTIONS FORMULATED

37. Thus, in view of the above discussion, the questions of law are answered as under:

i) The obligation of a promoter to return to the allottee the amount received by him with interest on demand made by the allottee under Section 18(1) of RERA is absolute and unqualified. The Regulatory Authority and/or the Appellate Tribunal does not have discretion to take into consideration any mitigating circumstances or genuine efforts made by the promoter in completing the project in time for the purpose of granting any relaxation, either in respect of the period during which interest is payable, or in the rate of interest or the date on which refund is to be made.

ii) The observations made by the Hon'ble Apex Court in paragraph 24 of the judgment in ***Newtech Promoters*** (supra) are not *obiter dicta* and they constitute *ratio decidendi*. Findings recorded by the Division Bench of this Court in paragraph 137 of the judgment in ***Neelkamal Realtors*** (supra) cannot be read to mean as if any discretion exists with the Regulatory Authority or with the Appellate Tribunal in granting any relaxation to the promoter, who makes genuine efforts in completing the project in time in the matter of either period during which interest is payable or in the rate of interest or the date on which refund is to be made.

iii) It is impermissible for the Regulatory Authority and/or the Appellate Tribunal to direct that return of amount with interest shall only be after securing Occupation Certificate of the project and not upon demand made by the allottee under Section 18(1) of RERA.

38. In view of the above answers to the questions formulated, in my view, the ultimate direction given to the Appellants-Promoter to refund the entire amount received by them from the allottees alongwith interest at the rate prescribed under Rule 18 of Rules of 2017 with effect from 1 January 2018 is valid and does not warrant any interference.

<u>ORDER</u>

39. Resultantly, the Second Appeal is **dismissed**. In the facts and circumstances of the case, there shall be no order as to costs.

40. In view of the disposal of the Second Appeal, nothing would survive in the Interim Application for stay and the same is also accordingly **disposed of**.

(SANDEEP V. MARNE, J.)