IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.144 OF 2026

Rare Townships Pvt. Ltd.,
CTS No.134B, PWD Ground,
Off Eastern Express Highway,
Ghatkopar Mankuhurd Link Road,
Ghatkopar (East), Mumbai – 400 089 ... Appellant

versus

1. Saji Mathews
2. Mrs. Simmy Saji,
Both residing at F-1/104,
Near Mulund Colony, Mulund (W),
Mumbai – 400 080. … Respondents

WITH

INTERIM APPLICATION NO.2337 OF 2026

Mr. Rubin Vakil with Ms. Sana Khan, Ms. Bijal Parikh i/by SNG and Partners, for Appellant.
Mr. Bishwajeet Mukherjee, for Respondents.

CORAM: N.J.JAMADAR, J.

RESERVED ON : 25 MARCH 2026
PRONOUNCED ON : 15 APRIL 2026

JUDGMENT :

1. This appeal is directed against a judgment and order dated 19 January 2026 passed by the Maharashtra Real Estate Appellate Tribunal (the Appellate Tribunal) in Appeal No.196938 of 2022, whereby the appeal preferred by the Appellant – original opponent – Promoter, came to be dismissed and the order dated 17 December 2021 passed by the

Maharashtra Real Estate Regulatory Authority (the Authority) in Complaint No.196938, came to be modified to the extent of grant of benefit of moratorium period in regard to the payment of interest under Section 18 of the Real Estate (Regulation and Development) Act, 2016 (RERA, 2016).

2. The Appellant is a promoter. The Appellant is developing a project under the name and style 'Rising City – North Sea Heights' at Ghatopkar, Mumbai.

3. The Respondents – allottees agreed to purchase a flat, bearing No.405, on the fourth floor of the said project, admeasuring 1103.01 sq.ft. carpet area, for a consideration of Rs.2,04,61,903/- under an Agreement for Sale dated 19 December 2014. The Respondents parted with the consideration of Rs.1,03,06,187/-. Under the terms of the agreement, possession of the subject flat was to be delivered to the allottees by 31 December 2018.

4. Asserting that the Promoter committed default in the discharge of its statutory and contractual obligations, in as much as the Promoter failed to complete the project and obtain occupation certificate, the allottees filed the abovenumbered Complaint before the Authority seeking, inter alia, delivery of possession of the subject flat along with the fixtures, fittings and amenities, as promised under the terms of the agreement, interest on the amount of consideration already paid by the allottees from the agreed date of possession i.e. 31 December 2018 till the actual delivery of possession, and

compensation, under Section 18 of the RERA 2016.

5. Myriad defences were raised by the Promoter. One of the principal defence was that the construction of the project got delayed on account of the pendency of the proceedings before this Court in relation to restrictions on the height of the building imposed by the Airport Authority of India. Delay in the completion of project was also attributed to the enforcement of the Mumbai Development Control Regulations, 2034 and the Covid – 19 Pandemic. It was contended that, all the allottees, including the Respondents were duly apprised of the force majeure events and the consequent delay on account of the circumstances beyond the control of the promoter.

6. By an order dated 17 December 2021, the Authority was persuaded to allow the Complaint and declare that the allottees were entitled to claim interest on the amount of consideration paid by the allottees with effect from 1 January 2019, till the delivery of possession of the subject flat along with the occupation certificate at the rate prescribed under the Rule 18 of the Maharashtra Real Estate (Regulation and Development) (Registration of Real Estate Projects, Registration of Real Estate Agents, Rates of Interest and Disclosures on Websites) Rules, 2017. The Authority, however, granted the benefit of the moratorium period on account of Covid 19 Pandemic in terms of the Notification/Orders 13/14 and 21, issued by MAHARERA. It was further provided that the Promoter would be entitled to adjust the interest due to the

Promoter from the allottees towards the delay in payment at the rate prescribed under the aforesaid Rules, 2017.

7. Being aggrieved, the Promoter preferred an appeal before the Appellate Tribunal.

8. By the impugned order, the Appellate Tribunal was persuaded to dismiss the appeal holding, inter alia, that the force majeure events sought to be pressed into service on behalf of the Promoter did not fall within the ambit of ‘force majeure’, in terms of the Explanation to Section 6 of RERA, 2016. Upon analysis of facts and material, the Appellate Tribunal also came to the conclusion that the contention of the Appellant that the project could not be completed on account of the orders passed by the High Court, and the delay in clearance of the height of the buildings by the Airport Authority of India, did not merit countenance. Holding the Promoter responsible for the delay, the Appellate Tribunal concurred with the findings of the Authority that the allottees were entitled to claim interest under Section 18 of the RERA 2016.

9. The Appellate Tribuanal also found that the Authority had unjustifiably granted the benefit of the moratorium on account of Covid 19 Pandemic situation to the Promoter as the date of delivery of possession was much before the onset of the Pandemic. Drawing support from the provisions contained in Order XLI Rule 33 of the Code of Civil Procedure, 1908, the Appellate Tribunal ventured to modify the order in regard to the payment of

interest by declaring that the Promoter was not entitled to the benefit of the moratorium period under the Notification/orders 13/14 and 21 issued by the MAHARERA.

10. Being further aggrieved, the Promoter has preferred this appeal.

11. I have heard Mr. Rubin Vakil, learned Counsel for the Appellant, and Mr. Bishwajeet Mukherjee, learned Counsel for the Respondents, at some length.

12. Mr. Vakil canvassed a three pronged submission. First, the Appellate Tribunal committed a grave error in law in modifying the order passed by the Authority to the detriment of the Appellant in the absence of any appeal against the order passed by the Authority or the cross-objection in the appeal preferred by the Appellant. Mr. Vakil would submit that, in the absence of such cross-appeal or cross-objection, the Appellate Tribunal had no power to grant the relief to the allottees, which was expressly negatived by the Authority. Mr. Vakil submitted that the provisions contained in Order XLI Rule 22 of the Code, govern a case where the relief was not granted to the Respondents by the Authority in the first instance, and, therefore, cross objections were a must to empower the Tribunal to modify the order passed by the Authority. A very strong reliance was placed by Mr. Vakil on the judgment of the Supreme Court in the case of **Banarsi and Ors. V/s. Ram Phal**[1].

13. Second, Mr. Vakil would urge, the Appellate Tribunal erred in holding

1 (2003) 9 SCC 606

that the Promoter was liable to pay interest even when the Promoter was unable to give possession of the apartment due to the restrictions on development imposed by the statutory authorities. It was submitted that, in a situation governed by Section 18(1)(b) of the RERA, 2016, the Promoter cannot be fastened with the liability to pay interest.

14. Thirdly, the Appellate Tribunal was in error in holding that the force majeure clause contained in the contract between the parties did not govern the rights and obligations of the parties. It was submitted that the definition of force majeure contained in Explanation to Section 6 of the RERA 2016, is not the only repository of the force majeure events. Thus, the question as to whether the force majeure events, as delineated under the terms of the contract between the parties, would govern the rights and liabilities of the parties and the Appellate Tribunal committed an error in ignoring the terms of the contract between the parties, arises for consideration.

15. In opposition to this, Mr. Mukherjee, learned Counsel for the Respondents – allottees, would submit that the Promoter has reneged from the promise to deliver the possession of the subject flat not only in accordance with the terms of the contract between the parties, but even the subsequent assurance under the letter dated 23 May 2018, whereby the allottees were assured that the project would be completed upto 11th floor and the possession would be delivered to the allottees along with the occupation

certificate.

16. What accentuates the situation, according to Mr. Mukherjee, was that, the occupation certificate could not be obtained even till the filing of the instant appeal. Laying emphasis on the date of the execution of the agreement for sale, parting of substantial consideration and lapse of a period of over seven years from the agreed date of delivery of possession, Mr. Mukherjee would urge that the appeal does not deserve to be entertained.

17. To start with, it is necessary to note that the fulcrum of the submission of Mr. Vakil was that, clause 37 of the Agreement for Sale defined the force majeure events. The circumstances which prevented the Promoter from completing the project, highlighted above, squarely fall within the force majeure events, agreed by and between the parties, urged Mr. Vakil. Clause 37 of the Agreement for Sale reads as under :

> "37. Force Majeure shall be event or combination of events or circumstances beyond the control of the Promoter which cannot (a) by the exercise of reasonable due diligence or (b) despite the adoption of reasonable prevention and/or alternative measures, be prevented or caused to be prevented and which adversely affects the Promoter its ability to perform its obligations under this Agreement, which shall include but not be limited to :
>
> 37.1.1 Act of god e.g. Fire, drought, flood, earthquake, epidemics, natural disasters,

37.1.2 Explosions or accidents, air crashes, act of terrorism:

37.1.3 Strikes or lock outs, industrial disputes;

37.1.4 Non-availability of cement, steel or other construction material due to strikes of manufactures, suppliers, transporters, or other intermediaries or due to any reason whatsoever;

37.1.5 War and hostilities or war, riots, bandh or civil commotion;

37.1.6 The promulgator of or amendment in any law, rule or regulation made or issued by the Government or any other authority which would affect the development or;

37.1.7 If any competent authority(ies) refuses, delays (including administrative delays), withholds, denies the grant of necessary approvals for the said Buildings, or;

37.1.8 If any matters, issued in relation to such approvals, permissions, notices, notifications by the competent authorities become subject matter of any suit/writ before a competent Court or;

37.1.9 In case of the construction work or development under the scheme is delayed due to more than 25% of the purchasers (other than the purchasers) not paying their instalments or does on their respective due dates, then the Purchasers herein will not hold the Promoter responsible for delay in delivery of possession of the said flat by the Possession Date;

37.1.10 Economic slowdown in general;

37.1.11 Delay in issue of Commencement Certificate and/or Occupation Certificate and/or Building Completion Certificate by the concern competent Authority

37.1.12 Any event or circumstances analogous to the

> foregoing
>
> 37.1.13 If the said building or any part thereof gets demolished and/or gets damaged due to any reason whatsoever;"

18. Laying emphasis on the aforesaid elaboration of the force majeure events, Mr. Vakil would urge that, the enforcement mechanism under RERA 2016 does not dilute contractual rights and obligations. If the parties had agreed that the aforesaid events would constitute force majeure events, it was not open for the Authority/Tribunal to construe a new contract for the parties. The Explanation to Section 6 of the RERA 2016 defines what constitute force majeure events only for the purpose of the said Section, which envisages the extension of registration by the Authority.

19. The Explanation to Section 6 of RERA 2016, reads as under :

> "Explanation – for the purpose of this section, the expression "force majeure" shall mean a case of war, flood, drought, fire, cyclone, earthquake or any other calamity caused by nature affecting the regular development of the real estate project."

20. If the force majeure events enlisted in clause 37 (supra), are compared and contrasted with the expression "force majeure" as explained under Section 6, it becomes abundantly clear that the force majeure events have been defined too expansively under clause 37. For instance, denial or withholding of necessary approvals by the Competent Authority; matters in

respect of those permissions, approvals and notices getting entangled in litigation, delay in issue of commencement certificate and/or occupation certificate and/or building completion certificate by the Competent Authority, are all included in the force majeure events. Even the “economic slowdown in general”, is designated as the force majeure event. Delay on the part of more than 25% of the allottees in payment of their respective installments would also insulate the Promoter from the consequences of delay in delivery of possession of the subject flat by the agreed date of possession. The aforesaid contingencies, under no circumstances, qualify as the force majeure events. Neither can these events be termed as unforeseen or inconceivable by the Promoter. Nor beyond the control of human agency. In fact, those events are driven by human action or inaction. Those contingencies lack the essential element of absolute inability of a human being to prevent their occurrence.

21. What constitutes a force majeure event, is well-recognized in law. The term ‘act of god’ has a definite legal connotation. By simply including the ordinary events, referred to above, in the force majeure clause, those events cannot partake the character of force majeure events. In P. Ramanatha Aiyar’s Advanced Law Lexicon, the Act of God is described, as under :

> “Act of God (Vis Major) : an overwhelming, unpreventable event caused exclusively by forces of nature, such as an earthquake, flood, or torando. The definition has been

> statutorily broadened to include all natural phenomena that are exceptional, inevitable, and irresistible, the effects of which could not be prevented or avoided by the exercise of due care or foresight. 42 USCA & 9601(1). - Also termed act of nature: act of Providence (Black, 7th Edn., 1999).
>
> The expression 'act of God' signifies the operation of natural force free from human intervention, such as lightning. It may be thought to include such unexpected occurrences of nature as severe gale, snowstorms, hurricanes, cyclones and tidal-bures and the like. But every unexpected wind and storm does not operate as an excuse from liability, if there is a reasonable possibility of anticipating their happening. An act of God provides no excuse, unless it is so unexpected that no reasonable human foresight could be presumed to anticipate the occurrence, having regard to the conditions of time and place known to be prevailing at."

22. In the case of **The Divisional Controller, KSRTC V/s. Mahadeva Shetty**[2], the Supreme Court enunciated that The expression "Act of God" signifies the operation of natural forces free from human intervention, such as lightening, storm etc. It may include such unexpected occurrences of nature as severe gale, snowstorms, hurricanes, cyclones, tidal waves and the like.

23. In the case of **Vohra Sadikbhai Rajakbhai and Ors. V/s. State of Gujarat and Ors.**[3], the Supreme Court after referring to the rule of strict liability recognized in **Rylands V/s. Fletcher**[4], expounded the juridical

2 (2003) 7 SCC 197
3 (2016) 12 SCC 1
4 (1868) LR 3 HL 330

connotation of ‘act of God’ as under :

> “22. There are two exceptions to the aforesaid rule of strict liability, which were recognized in Rylands v. Fletcher itself, viz.:
> (a) where it can be shown that the escape was owing to the plaintiff's default, or
> (b) the escape was the consequence of vis major or the act of God.
> An act of God is that which is a direct, violent, sudden and irresistible act of nature as could not, by any amount of ability, have been foreseen, or if foreseen, could not by any amount of human care and skill have been resisted. Generally, those acts which are occasioned by the elementary forces of nature, unconnected with the agency of man or other cause will come under the category of acts of God. Examples are: storm, tempest, lightning, extraordinary fall of rain, extraordinary high tide, extraordinary severe frost, or a tidal bore which sweeps a ship in mid-water. What is important here is that it is not necessary that it should be unique or that it should happen for the first time. It is enough that it is extraordinary and such as could not reasonably be anticipated. We would like to discuss a few cases having bearing on this issue with which we are confronted in the instant appeal. (emphasis supplied)

24. If the promoters are permitted to expand the scope of force majeure by including the ordinary incidents associated with the development of the project, then the very object of RERA 2016 would be completely defeated. As a matter of principle, force majeure events cannot be given an expansive meaning so as to act as a buffer against the contractual obligation of the promoter. Lest the very scheme of RERA 2016 and the transformative change sought to be enshrined thereby, would be completely frustrated. The

Appellate Tribunal, thus, committed no error in declining to accept the contention of the Promoter that the obligation of the Promoter was subject to the force majeure events enlisted in the Agreement for Sale.

25. A reference to a Division Bench Judgment of this Court in the case of **Neelkamal Realtors Suburban Pvt. Ltd. and Anr. V/s. Union of India and Ors.**[5], constitutes a complete answer to the submissions premised on the delay in obtaining regulatory approvals and statutory clearances, sought to be canvassed on behalf of the Promoter :

> "119. Under the provisions of Section 18, the delay in handing over the possession would be counted from the date mentioned in the agreement for sale entered into by the promoter and the allottee prior to its registration under RERA. Under the provisions of RERA, the promoter is given a facility to revise the date of completion of project and declare the same under Section 4. The RERA does not contemplate rewriting of contract between the flat purchaser and the promoter. The promoter would tender an application for registration with the necessary preparations and requirements in law. <u>While the proposal is submitted, the promoter is supposed to be conscious of the consequences of getting the project registered under RERA. Having sufficient experience in the open market, the promoter is expected to have a fair assessment of the time required for completing the project. After completing all the formalities, the promoter submits an application for registration and prescribes a date of completion of project. It was submitted</u>

5 (2017) SCC Online Bom 9302

> that interest be made payable from the date of registration of the project under RERA and not from the time-line consequent to execution of private agreement for sale entered between a promoter and a allottee. It was submitted that retrospective effect of law, having adverse effect on the contractual rights of the parties, is unwarranted, illegal and highly arbitrary in nature."

26. The second submission sought to be canvassed by Mr. Vakil, that the liability of the Promoter as envisaged under Section 18 of the RERA 2016, does not arise when the Promoter is unable to give possession of an apartment due to his inability on account of actions of statutory authorities, is required to be stated to be repelled. The relevant part of Section 18 reads as under :

> 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 discontinuation 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."

27. The proviso to sub-section (1) of Section 18 which fastens liability on the Promoter to pay interest to the allottees, who do not wish to withdraw from the project till the handing over of the possession governs both clauses (a) and (b) of the main part of sub-section (1) of Section 18. Any other interpretation would render the provisions of Section 18(1) a dead letter. The right of the allottee to receive interest under Section 18 and Section 19(4) of the RERA 2016, has been construed to be an absolute right.

28. A useful reference can be made to the decision of the Supreme Court in the case of **Newtech Promoters and Developers Pvt. Ltd. V/s. State of Uttar Pradesh and Ors.**[6], which illuminates the path. The relevant part reads 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

6 (2021) 18 SCC 1

> 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." (emphasis supplied)

29. The third submission assiduously canvassed by Mr. Vakil that, in any event, the Appellate Tribunal could not have granted interest for the moratorium period, which was justifiably excluded by the Authority in the absence of a cross-appeal or cross-objection under Order XLI Rule 22 of the Code, 1908, now deserves consideration. The Appellate Tribunal was of the view that, to ensure the complete justice, it had requisite power to modify the order passed by the Authority, notwithstanding the allottee not having preferred an appeal against the order excluding interest for the 'moratorium period'.

30. The aforesaid challenge deserves to be appreciated in the light of the legislative change brought about by the Civil Procedure Code Amendment (Act 104 of 1976). Under the said Amendment Act, Rule 22 of Order 41 of the Code, suffered a significant amendment. The expression, "may not only

support the decree *but may also state that the finding against him in the Court below in respect of any issue ought to have been in his favour; and may* also take any cross-objection to the decree" came to be substituted for the expression, "may not only support the decree on any of the grounds decided against him in the Court below, but take any cross-objection to the decree".

31. The portion which is emphasised above (in italics) marks a significant departure from the unamended provision, in two ways. Firstly, the scope of filing of a cross-objection stood enlarged to include objections against, "finding of the lower Court". Secondly, it permitted the Respondent to assail the findings of the lower Court without filing a cross-objection, by employing the phrase, "but may also state that the finding against him in the Court below in respect of any issue ought to have been in his favour". The two parts of the expression introduced by the amendment are required to be construed disjunctively as they are separated by a semi colon.

32. In the case of **Banarsi and Ors. (supra)**, on which reliance was placed by Mr. Vakil, the Supreme Court considered the import of the 1976 Amendment and postulated the three situations which may arise where the Respondent professes to assail the finding and decree of the Court of the first instance. The observations of the Supreme Court in paragraphs 10 and 11 are instructive and hence extracted below.

"10. CPC Amendment of 1976 has not materially or

substantially altered the law except for a marginal difference. Even under the amended Order 41 Rule 22 sub-rule (1) a party in whose favour the decree stands in its entirety is neither entitled nor obliged to prefer any cross objection. However, the insertion made in the text of sub-rule (1) makes it permissible to file a cross objection against a finding. The difference which has resulted we will shortly state. A respondent may defend himself without filing any cross objection to the extent to which decree is in his favour; however, if he proposes to attack any part of the decree he must take cross objection. The amendment inserted by 1976 amendment is clarificatory and also enabling and this may be made precise by analysing the provision. There may be three situations:

(i) The impugned decree is partly in favour of the appellant and partly in favour of the respondent;

(ii) The decree is entirely in favour of the respondent though an issue has been decided against the respondent;

(iii) The decree is entirely in favour of the respondent and all the issues have also been answered in favour of the respondent but there is a finding in the judgment which goes against the respondent.

11. In the type of case (i) it was necessary for the respondent to file an appeal or take cross objection against that part of the decree which is against him if he seeks to get rid of the same though that part of the decree which is in his favour he is entitled to support without taking any cross objection. The law remains so post amendment too. In the type of cases (ii) and (iii) pre-amendment CPC did not entitle nor permit the

> respondent to take any cross objection as he was not the person aggrieved by the decree. Under the amended CPC, read in the light of the explanation, though it is still not necessary for the respondent to take any cross objection laying challenge to any finding adverse to him as the decree is entirely in his favour and he may support the decree without cross objection; the amendment made in the text of sub-rule (1), read with the explanation newly inserted, gives him a right to take cross objection to & finding recorded against him either while answering an issue or while dealing with an issue."

33. In the case of **S. Nazeer Ahmed Vs State Bank of Mysore & Ors.**[7]**,** the Supreme Court clarified the law in the following words:

> "7. The High Court, in our view, was clearly in error in holding that the appellant not having filed a memorandum of cross-objections in terms of Order XLI Rule 22 of the Code, could not challenge the finding of the trial court that the suit was not barred by Order 2 Rule 2 of the Code. The respondent in an appeal is entitled to support the decree of the trial court even by challenging any of the findings that might have been rendered by the trial court against himself. For supporting the decree passed by the trial court, it is not necessary for a respondent in the appeal, to file a memorandum of cross-objections challenging a particular finding that is rendered by the trial court against him when the ultimate decree itself is in his favour. A memorandum of cross-objections is needed only if the respondent claims any relief which had been negatived

7 AIR 2007 SC 989

> to him by the trial court and in addition to what he has already been given by the decree under challenge. We have therefore no hesitation in accepting the submission of the learned counsel for the appellant that the High Court was in error in proceeding on the basis that the Appellant not having filed a memorandum of cross-objections, was not entitled to canvass the correctness of the finding on the bar of Order 2 Rule 2 rendered by the trial court." (emphasis supplied)

34. Following the aforesaid pronouncements, in the case of **Saurav Jain and Anr. V/s. A.B.P. Design and Anr.**[8], it was enunciated that only when a part of the decree was assailed by the Respondent, should a memorandum of cross-objection be filed. Otherwise, it is sufficient to raise a challenge to an adverse finding of Court of first instance before the Appellate Court without a cross-objection.

35. Rule 33 of Order XLI of the Code from which support and sustenance was drawn by the Appellate Tribunal provides that the appellate Court shall have power to pass any decree and make any order which ought to have been passed or made and to pass or make such further or other decree or order as the case may require, and this power may be exercised by the Court notwithstanding that the appeal is as to part only of the decree and may be exercised in favour of all or any of the respondents or parties, although such respondents or parties may not have filed any appeal or objection. Rule 33 of

8 (2022) 18 SCC 633

Order XLI confers power on the Appellate Court in wide terms. Such powers are vested in the Appellate Court with the object of equipping the Appellate Court to pass such orders as are necessary to do complete justice between the parties. Rule 33 of Order XLI is, in a sense, an enabling provision, which empowers the Appellate Court to pass such orders which ought to have been passed by the trial Court.

36. In the case of **Banarsi V/s. Ram Phal (supra)**, the Supreme Court expounded the import of Rule 33 of Order 41, as under :

> "15……While dismissing an appeal and though confirming the impugned decree, the appellate court may still direct passing of such decree or making of such order which ought to have been passed or made by the court below in accordance with the findings of fact and law arrived at by the court below and which it would have done had it been conscious of the error committed by it and noticed by the Appellate Court. While allowing the appeal or otherwise interfering with the decree or order appealed against, the appellate court may pass or make such further or other, decree or order, as the case would require being done, consistently with the findings arrived at by the appellate court. The object sought to be achieved by conferment of such power on the appellate court is to avoid inconsistency, inequity, inequality in reliefs granted to similarly placed parties and unworkable decree or order coming into existence. The overriding consideration is achieving the ends of justice. Wider the power, higher the need for caution and care while exercising the power. Usually the power under Rule 33 is exercised when the portion of the

> decree appealed against or the portion of the decree held liable to be set aside or interfered by the appellate court is so inseparably connected with the portion not appealed against or left untouched that for the reason of the latter portion being left untouched either injustice would result or inconsistent decrees would follow. The power is subject to at least three limitations: firstly, the power cannot be exercised to the prejudice or disadvantage of a person not a party before the Court; secondly, a claim given up or lost cannot be revived; and thirdly, such part of the decree which essentially ought to have been appealed against or objected to by a party and which that party has permitted to achieve a finality cannot be reversed to the advantage of such party. A case where there are two reliefs prayed for and one is refused while the other one is granted and the former is not inseparably connected with or necessarily depending on the other, in an appeal against the latter, the former relief cannot be granted in favour of the respondent by the appellate court exercising power under Rule 33 of Order 41." (emphasis supplied)

37. The Supreme Court has in terms enunciated that the overriding consideration is achieving the ends of justice. Usually the power under Rule 33 is exercised when the portion of the decree appealed against or the portion of the decree held liable to be set aside or interfered by the appellate court is so inseparably connected with the portion not appealed against or left untouched that for the reason of the latter portion being left untouched either injustice would result or inconsistent decrees would follow.

38. The aforesaid nature of the power of the Appellate Court under the Code, especially the inter-play between Rules 22 and 33 of Order XLI of the Code, deserves to be appreciated in the context of the nature of the jurisdiction exercised by the Appellate Tribunal under RERA 2016. The provisions of Section 53 of RERA 2016 spell out the powers of the Appellate Tribunal. The relevant part of Section 53 reads as under :

> 53. Powers of Tribunal
>
> (1) The Appellate Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908 but shall be guided by the principles of natural justice.
>
> (2) Subject to the provisions of this Act, the Appellate Tribunal shall have power to regulate its own procedure.
>
> (3) The Appellate Tribunal shall also not be bound by the rules of evidence contained in the Indian Evidence Act, 1872.
>
> ……..”

39. Sub-section (1) of Section 53 declares that the Appellate Tribunal shall not be bound by the procedure prescribed in the Code, but shall be guided by the principles of natural justice. Nor the Appellate Tribunal is constrained in discharge of its adjudicatory functions by the rules of evidence contained in the Indian Evidence Act, 1872. RERA 2016, thus, professes to unshakle the Appellate Tribunal of the strict rules of procedure and evidence. Conferment of such power on the Appellate Tribunal is to mitigate the rigours of the

technical rules of procedure and evidence for achieving the object of RERA 2016, inter alia, for regulation and promotion of the real estate sector, ensure the transparency and efficiency of the transactions in the real estate and protect the interest of consumers in the real estate sector.

40. It could thus be inferred that, the technical and fashioned notions of absolute necessity of a cross-objection may not apply with the strict rigour. If the matter is open before the Appellate Tribunal and the Appellate Tribunal follows the fundamental principles of judicial process and adheres to the rules of natural justice and hears the parties on the aspect of the legality and correctness of a part of the order passed by the Authority, and the eventual order passed by the Appellate Tribunal otherwise satisfies the dictates of command of justice, such order may not be suspectible to interference by the High Court under the regime of Section 100 of the Code, 1908.

41. In the case at hand, the most significant factor is the failure on the part of the Appellant to deliver possession, even after lapse of seven years of the agreed date of possession. Incontrovertibly, the agreed date of possession was much before the onset of Covid-19 Pandemic. In fact, a period of almost 15 months had elapsed before the Covid – 19 Pandemic struck. In such a situation, the Authority could not have granted the benefit of the moratorium on the payment of interest. In a sense, this dispensation of moratorium ought not to have been extended by the Authority and the interest ought to have

been granted throughout till the delivery of possession of the subject flat.

42. From this standpoint, the order passed by the Appellate Tribunal appears to be in consonance with the overarching objective of achieving ends of justice. Therefore, this Court does not find any fault with the approach adopted by the Appellate Tribunal.

43. The conspectus of aforesaid consideration is that, no substantial question of law arises for consideration. The Appeal, thus, deserves to be dismissed.

44. Hence, the following order :

ORDER

(i) The Appeal stands dismissed.

(ii) Interim Application No.2337 of 2026 also stands disposed.

(ii) No costs.

(N.J.JAMADAR, J.)