IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 116 OF 2025

WITH

INTERIM APPLICATION NO. 7688 OF 2025

JP Builders and Developers through

its Proprietor Jayant Shashikant Parikh ***..... Appellant***

: Versus :

Santosh Amarsingh Sandhu ***.... Respondent***

Alongwith

SECOND APPEAL NO. 603 OF 2025

Santosh Amarsingh Sandhu ***..... Appellant***

: Versus :

JP Builders and Developers through

its Proprietor Jayant Shashikant Parikh ***....Respondent***

Mr. Vishal Kanade with Mr. Rajesh Vanzara i/b. S.K. Legal Associates LLP, for the Appellant in Second Appeal No. 116 of 2025 and for Respondent in Second Appeal No.603 of 2025.

Mr. Kunal R. Maskar, for the Appellant in Second Appeal No.603 of 2025 and for Respondent in Second Appeal No.116 of 2025.

CORAM : SANDEEP V. MARNE, J.

JUDGMENT RESD. ON : 16 September 2026.

JUDGMENT PRON. ON : 23 September 2026.

JUDGMENT:

1) These are cross Appeals filed by the developer and by the allottee challenging the judgment and order dated 22 October 2024 passed by the Maharashtra Real Estate Appellate Tribunal, Mumbai (**Appellate Tribunal**) thereby dismissing the Appeal of the promoter and partly allowing the Appeal preferred by the allottee. While upholding the Order dated 8 October 2020 passed by the Maharashtra Real Estate Regulatory Authority, Mumbai, **(Maha RERA).** The Appellate Tribunal has also directed the promoter to pay interest to the allottee on amount of Rs.12,30,000/- w.e.f. 12 July 2016 till the date of possession and to adjust the amount of interest against the balance payment payable in respect of the flat in question.

2) A brief reference to the facts of the case would be necessary. By Agreement of Lease dated 14 May 2004, the City and Industrial Development Corporation **(CIDCO)** agreed to grant lease of land bearing Plot No.1 admeasuring 8200 sq.mts, Sector No.19, Airoli, Navi Mumbai for a tenure of 60 years for residential use to Airoli Cooperative Housing Society Ltd. The said Society was later divided into two distinct societies, namely, Airoli Co-operative Housing Society Ltd. and Nilambari Cooperative Housing Society Ltd., by dividing the plots into two parts, each admeasuring 4,100 sq. m. Plot 1 remained with Airoli CHSL, which executed Development Agreement dated 27 April 2004 with M/s. JP Builders and Developers **(promoter)**. The promoter accordingly constructed building on Plot No.1 having 2 wings, Wing-C and Wing-D and obtained Occupancy Certificate from Navi Mumbai Municipal

Corporation on 17 January 2007. Despite construction of Wings C and D, there was balance FSI of 824.00 sq.mts on Plot No. 1.

3) Airoli Cooperative Housing Society Ltd. decided to avail the benefit of developing and maintaining a garden on Plot No. 11B, which was affected by High Tension Electricity Transmission Line and received FSI in resepct of Plot No.11B to be utilized on its Plot No.1. Accordingly CIDCO allotted additional FSI admeasuring 4313.94 sq.mts to Airoli Cooperative Housing Society Ltd. under a scheme of transfer of FSI of land beneath High Tension Line (Plot No.11B) for consumption on Plot No.1 subject to condition of maintenance of a garden by the society on Plot No.11B. It appears that the society got aggrieved by allotment of FSI of only 4313.94 sq.mts and claimed entitlement in respect of FSI of 10,450 sq.mts and filed a Writ Petition in this Court in the year 2009. During pendency of the Writ Petition, the promoter decided to exploit the balance FSI of 824.00 sq.mts available on Plot No.1 and accordingly secured Commencement Certificate dated 14 July 2011 for carrying out construction to the tune of 745.472 sq.mts. The promoter also prepared a tentative plan by taking into consideration additional FSI made available to the Society for construction of a building comprising of ground plus 30 floors with 2 wings, A and B during pendency of the writ petition. The promoter commenced bookings in the year 2009-10 giving idea to the prospective purchasers about pendency of the Writ Petition.

4) Mrs. Vandana Nagendra Kharatmol and Mr. Nagendra Piraji Kharatmol **(Kharatmols)** showed interest in purchasing Flat No.502 on the 5th floor of the proposed A-wing building at consideration of

Rs.48,75,000/-. They paid token amount of Rs.3,00,000/- for reserving the flat. Accordingly, Letter of Allotment was issued to Kharatmols by the Promoter on 28 May 2011. Kharatmols thereafter paid further sum of Rs.9,30,000/- and by 2 March 2012 the total consideration paid by Kharatmols was to the tune of Rs.12,30,000/-.

5) Kharatmols however lost interest in purchasing Flat No. A-502 as construction of Building A could not commence due to pendency of the writ petition filed by the society. It appears that some private arrangement was made by Kharatmols with Mr. Santosh Sandhu **(allottee)** for transfer of booking of Flat No. A-502. The promoter was accordingly requested by Kharatmols to transfer the booking of Flat No. A-502 in the name of the allottee. According to the promoter, Kharatmols made a request for refund of amount of Rs.12,30,000/-, which was supposed to be paid by the allottee. Accordingly, fresh allotment letter dated 11 July 2013 was issued in favour of the allottee for Flat No. A-502 and the allottee paid an amount of Rs.12,30,000/- to the promoter.

6) On 13 January 2016, Writ Petition No. 4325 of 2009 was finally decided by this Court. It appears that the Society was unsuccessful in securing higher FSI, and accordingly, CIDCO executed a Supplementary Agreement dated 7 April 2017, permitting consumption of FSI of Plot No. 11B on Plot No. 1 and the construction of a garden by the Society on Plot No. 11B. Accordingly, the Municipal Corporation issued revised Commencement Certificate dated 26 April 2019 for construction of building of ground plus 19 floors consisting of 93 residential units. According to the promoter, originally planned A-502 could not be constructed due to change in the plans.

7) After coming into effect of the Real Estate (Regulation and Development) Act, 2016, **(RERA)** the promoter registered the Project on 31 July 2017. After securing revised Commencement Certificate, the promoter issued letter dated 3 May 2019 to the allottee calling him upon to pay stamp duty and registration charges for execution of Agreement for Sale. The allottee was also called upon to choose any other flat in the building. The allottee chose Flat No.1208 on 12th floor of the building which the promoter agreed to allot subject to payment of floor rise charges of Rs.1,75,000/-. The promoter issued one more letter dated 28 May 2019 to the allottee for payment of stamp duty and registration charges for execution of the Agreement for Sale. It appears that the allottee was facing financial crunch and was not in a position to pay the stamp duty. He requested the promoter to bear the stamp duty with a promise to return the same upon disbursal of loan. The promoter however did not accept the request. The promoter finally terminated the transaction by notice dated 30 July 2019.

8) The allottee filed complaint before the Maharashtra Real Estate Regulatory Authority in November 2019. By order dated 6 March 2020, Maha RERA granted interim relief in favour of the allottee directing promoter to execute registered Agreement for Sale with the allottee. By final order dated 8 October 2020, Maha RERA disposed of the Complaint directing implementation of the interim order.

9) Both the promoter, as well as the allottee got aggrieved by final order dated 8 October 2020 passed by the Maha RERA and preferred their respective Appeals before the Appellate Tribunal. By common judgment and order dated 22 October 2024, the Appellate Tribunal has dismissed the Appeal preferred by the promoter and has partly allowed the Appeal preferred by the allottee. While upholding the order of the Maha RERA, the Appellate Tribunal has directed the promoter to pay interest to the allottee on amount of Rs.12,30,000/- at the rate of SBI Marginal Cost Lending Rate **(MCLR)** plus 2% w.e.f. 12 July 2016 till the date of possession. The Appellate Tribunal has directed adjustment of the interest amount against the balance consideration payable by the allottee at the time of handing over possession of the flat. The promoter is directed to hand over possession of the flat chosen by the allottee upon completion of the Project. The promoter is restrained from creating any third party rights and interest in the subject flat. The promoter is also restrained from charging any amount on account of floor rise.

10) Though the allottee has, by and large, succeeded before the Appellate Tribunal, he is also aggrieved by the order of the Appellate Tribunal and has accordingly filed Second Appeal No.603 of 2025. The promoter has filed Second Appeal No.116 of 2025 challenging the order of the Appellate Authority.

11) By order dated 16 September 2026, this Court has admitted the Appeals by formulating the following questions of law :

> (i) Whether the allottee proved before Maha RERA and the Appellate Tribunal that he had paid the requisite stamp duty for execution and registration of the agreement?
>
> (ii) Whether the developer was justified in terminating the allotment of flat by notice dated 30 July 2019?
>
> (iii) Whether the Maha RERA and the Appellate Tribunal are justified in directing execution of agreement by the developer in favour of the allottee in respect of the flat of choice of allottees?

(iv) Whether the Appellate Tribunal is justified in directing payment of interest on amount of Rs. 12,30,000/- and adjustment of interest amount against balance amount payable by the allottee?

(v) Whether the Maha RERA and Appellate Tribunal are justified in rejecting allottee's in contention that the consideration paid by the earlier allotees – Vandana Nagendra Kharotmal and Nagendra Kharotmal ought to be adjusted in the transaction entered into by the allottee with the developer?

12) Mr. Kanade, the learned counsel appearing for the promoter submits that both Maha RERA, as well as the Appellate Tribunal have grossly erred in directing the promoter to execute Agreement for Sale and to allot a flat of choice to the allottee. He submits that the Agreement for Sale could not be executed on account of failure to pay stamp duty and registration charges by the allottee. He takes me through various correspondence before issuance of termination notice dated 30 July 2019. He submits that by email dated 30 June 2019, the allottee had emphatically expressed inability to pay the stamp duty due to financial difficulties. That the promoter was always ready and willing to execute the Agreement for Sale. That on account of non-cooperation by the allottee, the transaction was required to be terminated vide notice dated 30 July 2019. That the promoter refunded the amount of Rs.11,07,000/- after deducting amount of Rs.1,23,000/- towards earnest money deposit. That the allottee failed to encash the cheques towards refund of booking amount. That in such circumstances, the promoter cannot be held responsible for non-execution of the agreement. That therefore both interim as well as final orders passed by the Maha RERA are clearly perverse since both the orders do not even take into consideration the factual situation indicating absence of interest on the part of the allottee to complete the transaction. That the Maha RERA and Appellate Tribunal erroneously exercised jurisdiction in the present case. That in absence of Agreement for Sale, direction for payment of interest could not have been issued by the Appellate Tribunal. That having refused to avail allotment of alternate flat, the allottee could not have been granted relief by Maha RERA and by the Appellate Tribunal. That both the orders are passed in gross ignorance of the material available on record and are accordingly perverse. He prays for setting aside the orders passed by the Maha RERA and by the Appellate Tribunal.

13) So far as the Appeal preferred by the allottee is concerned, Mr. Kanade submits that Kharatmols had requested for refund of the booking amount paid and that the same has been rightly refunded by the promoters to Kharatmols. That so far as promoter is concerned, there was no agreement for adjustment of amount paid by Kharatmols while transferring booking of flat in the name of the allottee. That a fresh and new allotment vide letter dated 11 July 2013 was made in the name of the allottee having no connection with the transaction of Kharatmols. That therefore the Appeal preferred by the allottee deserves to be dismissed by taking into consideration the concurrent findings of facts recorded by Maha RERA and by the Appellate Tribunal.

14) Per-contra, Mr. Maskar the learned counsel appearing for the allottee opposes the appeal preferred by the promoter. He submits that the Appellate Tribunal has rightly appreciated the position that the promoter failed to execute the Agreement for Sale with the allottee thereby violating the provisions of Section 13 of the RERA. That the demand for payment of further consideration by the promoter without executing Agreement for Sale was clearly illegal. That the allotment is ultimately cancelled for non-payment of further amount of consideration. Mr. Maskar further submits that the allottee paid the stamp duty of Rs.4,35,000/- and registration charges of Rs.30,000/- and intimated the same to the promoter by email dated 9 July 2019. That the promoter has erroneously terminated the transaction by falsely recording that the payment was not made available to it. He submits that by email dated 9 July 2019, the payment receipts were forwarded to the promoter. That termination of transaction by the promoter is therefore rightly held to be erroneous by Maha RERA and the Appellate Tribunal. He therefore submits that there is no warrant for interference in the order passed by the Appellate Tribunal in the appeal preferred by the Promoter. He prays for dismissal of the promoter's appeal.

15) So far as the appeal preferred by the allottee is concerned, Mr. Maskar submits that there was clear understanding between the allottee and Kharatmols for adjustment of consideration paid by Kharatmols to the promoter against purchase transaction executed by the allottee. He submits that under the MOU, the allottee paid various amounts from time to time to Kharatmols totally aggregating to Rs. 34,55,000/-. That therefore the allottee is entitled to adjustment of entire amount of Rs.12,30,000/- paid by Kharatmols to the Promoter. That the allottee has stepped into the shoes of Kharatmols and is entitled to all rights of Kharatmols. In support, he relies on judgment of the Apex Court in ***Laureate Buildwell Private Limited Versus. Charanjeet Singh***[1]**.** That therefore the total amount paid by the allottee to the promoter in respect

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of the transaction is Rs.28,75,281/-. He submits that to this extent, the order passed by the Arbitral Tribunal is clearly erroneous and deserves to be set aside.

16) Rival contentions urged on behalf of the parties now fall for my consideration.

17) The case involves a failed transaction of purchase of flat by the allottee from the promoter. From the history narrated above, it is clear that the promoter was expecting allotment of additional FSI admeasuring 10,450 sq.mts to Airoli CHSL from CIDCO and accordingly had made plans for construction of 30 storey building. Based on those plans, the promoter entered into transaction with Kharatmols for sale of Flat No.502 on 5th floor in A-Wing for consideration of Rs. 48,75,000/-. Kharatmols paid amount of Rs. 12,30,000/- to the promoter, who issued Letter of Allotment dated 28 May 2011. Since Kharatmols lost interest in purchasing the flat on account of non-progress of construction of the building due to pendency of Writ Petition No.4325 of 2009, it appears that the allottee stepped in and showed interest in purchasing Flat No.A-502.

18) The allottee relies on MOU dated 27 June 2013 executed with Kharatmols under which he claims that he had agreed to pay amount of Rs.29,00,000/- to Kharatmols for transfer of rights under allotment letter dated 28 May 2011 in respect of Flat No.A-502. An MOU dated 27 June 2013 is claimed to have been executed between the allottee and Kharatmols under which an amount of Rs.6,80,000/- was to be paid in cheque and amount of Rs.22,20,000/- was to be paid in cash to

Kharatmols. The allottee claims to have paid various amounts to Kharatmols totaling to Rs.34,55,000/-.

19) After the allottee approached the promoter for transfer of the booking, the Promoter issued a fresh allotment letter dated 11 July 2013 in favour of the allottee agreeing to allot Flat No. A-502 for consideration of Rs.48,75,000/-. The allotment letter records payment of amount of Rs.12,30,000/- by the allottee to the promoter.

20) As observed above, the originally planned building of ground plus 30 storey could not be constructed on account of society not securing rights in respect of higher FSI and accordingly the building was required to be scaled down to ground plus 19 floors. Thus, Flat No. A-502 which was earlier allotted to Kharatmols and later allotted to the allottee has actually not been constructed. The promoter called upon the allottee to select some other flat and called upon the allottee to pay stamp duty and registration charges. There is dispute amongst the parties as to whether the allottee paid the stamp duty and registration charges or not. Alleging non-payment of stamp duty and registration charges, the promoter has cancelled the transaction by notice dated 30 July 2019.

21) In the light of the above factual position, Maha RERA initially passed interim order dated 6 March 2020 directing the promoter to execute Agreement for Sale with the allotteee. The interim order is thereafter made absolute on 8 October 2020 while disposing of the Complaint, which envisages allottee to choose the flat and the Promoter to execute the Agreement for Sale in respect thereof. The Appellate Tribunal has bettered the relief granted by Maha RERA in favour of the allottee by directing payment of interest on the amount of Rs.12,30,000/- and adjustment thereof against balance consideration.

22) I now proceed to decide the five questions framed at the time of admission of the appeals.

Question No.1

23) The promoter claims that the allottee did not pay stamp duty and registration charges and that therefore the promoter was justified in terminating the transaction vide notice dated 30 July 2019. It is contended on behalf of the promoter that both Maha RERA, as well as Appellate Tribunal have grossly erred in holding that the transaction is cancelled on account of failure to pay further consideration by the allottee. Mr. Kanade submits that the real reason for termination is refusal by the allottee to pay stamp duty and registration charges. On the other hand, Mr. Maskar has contended that stamp duty of Rs.4,35,000/- and registration fees of Rs.30,000/- was infact paid by the allottee. My attention is invited to the email dated 9 July 2019 by which the allottee apparently forwarded the payment receipts in respect of payments made towards stamp duty of Rs.4,35,000/- and registration fees of Rs.30,000/- and called upon the promoter to complete the registration process within 3 days. He also requested to add his mother's name in the agreement. The email dated 9 July 2019 contains four attachments, including two documents relating to payment of stamp duty.

24) On the other hand, Mr. Kanade has invited my attention to termination notice dated 30 July 2019 in which it was contended as under:

> Your Client was given 15 days' time to pay the balance consideration of Rs. 12,95,000/- as per the schedule of MahaRERA and also to execute the Agreement for Sale by paying the stamp duty and registration charges. It appears that your Client has not made the payment to my Client, although in your Reply you have mentioned that your Client has made the payment of Rs.4,65,000/- towards stamp duty. However, no payment advice has been made available to my Client so far.

25) It is therefore sought to be suggested on behalf of the promoter that though email dated 9 July 2019 claimed payment of stamp duty and registration charges, proof thereof was never submitted to the promoter. However, Mr. Maskar has placed on record an additional compilation containing four documents. The first document is an extract of account of the allottee with Punjab National Bank (**PNB**), from which it appears that the amount towards stamp duty or registration charges was transferred to the concerned account of the PNB from where the challans were to be generated. The second document is again account statement of the allottee which indicates transfer of amount of Rs.4,65,000/- to the concerned account of PNB. Based on these two documents, the allottee claims that the said entry is for payment of stamp duty and registration charges of Rs.4,65,000/-.

26) The third document however makes it clear that the amount was never credited in the account of Stamp Authority and Registration Authority and the amount remained with the bank itself. On 18 January 2020, the allottee submitted following letter to his bank :

> I SANTOSH AMARSINGH SANDHU, HAS DONE NEFT TRANSACTION OF RS. 4,65,000.00/- (FOUR LAKHS SIXTY FIVE THOUSAND) ON 09/07/2019 TO YOUR ACCOUNT NUMBER 413800MG00000011, BANK NAME : PUNJAB NATIONAL BANK, BRANCH CBD, BELAPUR (4138) FOR PAYMENT OF STAMP DUTY AND REGISTRATION CHARGES. BUT I WAS UNAWARE ABOUT GENERATING CHALLAN BASED ON WHICH E-

> SBTR WILL BE GENERATED. SO WHEN I VISITED YOUR BRANCH TODAY, I WAS INFORMED THAT YOUR BRANCH HAS STOPPED ISSUING E-SBTR. SO I REQUEST YOU TO REFUND THE ABOVE AMOUNT TO MY ACCOUNT NO. 5894000100026669 (AIROLI BRANCH). I SHALL DO NEFT FROM THE AIROLI BRANCH TO THE MAHA GOVT STATUTORY E-PAYMENT ACCOUNT.

27) Thus, letter dated 18 January 2020 itself contains a clear admission that the challan itself was not generated nor e-payment receipt was generated. The allottee requested for transferring the amount back to his account. The bank accordingly re-transferred the amount of Rs.4,65,000/- to the allottee by reversing the challan amount, which is clear from the fourth document in the compilation.

28) Thus, from the documents placed on record, it becomes difficult to hold that the allottee actually ever paid stamp duty or registration charges to the concerned authorities as claimed in the email dated 9 July 2019. If stamp duty and registration charges were paid, specific challans to that effect would have been generated which are required to be attached with the Agreement for Sale at the time of execution and registration thereof.

29) On 9 July 2019 itself, the promoter's advocate had issued notice to the allottee alleging non-payment of stamp duty. The advocate of the allottee gave response on 19 July 2019 vaguely stating that the allottee had already paid stamp duty. In the termination notice dated 30 July 2019, the promoter emphatically stated that no proof of payment was made available to it evidencing payment of Rs. 4,65,000/- towards stamp duty and registration charges. After receipt of termination notice, as well as after receipt of cheques towards refund of amount of Rs.11,07,000/- the allottee responded vide letter dated 30 October 2019 in which he failed to produce any evidence of actual payment of stamp duty and registration charges.

30) From the documents on record, it becomes difficult to believe that the allottee actually made payment of stamp duty and registration charges. Mere making provision for stamp duty and registration charges and transfer of the amount to the banker does not mean that stamp duty and registration charges were actually paid by the allottee. He did not pay stamp duty and registration charges to the promoter nor there is any evidence of transfer of amount of Rs.4,65,000/- to the accounts of the concerned authorities. Atleast after receipt of advocates' notice dated 9 July 2019 alleging non-payment of stamp duty and registration charges, the allottee ought to have approached the bank to verify whether the necessary challans were generated and ought to have produced copies of such challans to the Promoter. In the absence of proof of payment of the stamp duty and registration charges to be annexed to the Agreement for Sale, the promoter was left with no alternative but to refrain from proceeding with the registration of the Agreement for Sale.

31) The conduct of the allottee also makes it difficult to believe that he had actually paid the stamp duty and registration charges. After sending email dated 9 July 2019 stating that '*I have done payment to MAHA GOVT STATUTORY EPAYMENT....*' and after receipt of notice dated 9 July 2019, the allottee did not make any efforts to ensure that necessary proof of payment of stamp duty is generated. He never approached the bank to find out whether the challan is issued. He instead approached the advocate for issuing reply to the notice on 19 July 2019.

The ordinary conduct would have been to approach the office of the promoter by producing challans for payment of stamp duty and registration charges and to secure draft of the Agreement for Sale for further processing and registration thereof. None of these actions were undertaken by the allottee, who merely waited for the promoter to take the necessary steps, leaving the promoter with no alternative but to terminate the transaction on 30 July 2019. Even after 30 July 2019, the allottee made no efforts to find out as to whether the challans of stamp duty and registration charges are in fact generated or not. He approached the bank only on 18 January 2020 seeking refund of the amount stating that he would do NEFT from Airoli Branch to Maharashtra Government Statutory e-payment account. However, he failed to act in accordance with the letter dated 18 January 2020, and there is nothing on record to indicate that after 18 January 2020, he made any payment towards stamp duty, despite allegedly having received a refund.

32) Maha RERA as well as Appellate Tribunal failed to conduct enquiry into the aspect as to whether the stamp duty and registration charges were indeed paid by the allottee or not. In the entire orders of Maha RERA and the Appellate Tribunal, there is no discussion on the issue of payment of stamp duty and registration charges by the allottee.

33) Issue No.1 is accordingly answered by holding that the allottee did not make payment of stamp duty and registration charges before 30 July 2019 when the sale transaction was terminated by the Promoter.

Question Nos. 2 and 3

34) Maha RERA and the Appellate Tribunal have directed the promoter to execute in favour of the allottee, an agreement in respect of the flat chosen by the allottee. The initial direction in this regard was through interim order dated 6 March 2020 passed by Maha RERA. In that order, the Maha RERA referred to provisions of Section 13 of RERA and held that since more than 10% of the agreed amount of consideration was paid by the allottee and since Agreement for Sale was not executed, the promoter had the liability under Section 13 to execute a registered Agreement for Sale. Accordingly, Maha RERA directed in paragraph 4 of order dated 6 March 2020 as under:

> 4. The MahaRERA has examined the arguments advanced by both the parties as well as the record. In the present case, the complainant is seeking relief under section-13 of the RERA for execution of agreement for sale and admittedly more than 10% amount has been paid by the complainant for purchase of the said flat and till date, no agreement for sale has been executed. Therefore, the MahaRERA feels that as per the provisions of section-13 of the RERA, the respondent is liable to execute the registered agreement for sale with the complainant under the provision of section-13 of the RERA. Hence, the MahaRERA directs the respondent to execute the registered agreement for sale with the complainant for another flat having equal area as per the choice of the complainant within a period of 30 days.

35) In the final order dated 8 October 2020, Maha RERA did not record detailed reasons. After recording submissions canvassed by the rival parties, Maha RERA referred to interim order dated 6 March 2020 and held that since the interim order was not challenged by the promoter, it directed the promoter to comply with the order within 30 days. Maha RERA held in paragraph 5 of the order as under:

> 5. MahaRERA has examined the arguments advanced by both the parties as well as the records. In the present case, prima facie it appears that there is an interim order passed on 06-03-2020 passed by MahaRERA wherein specific direction was given to the respondent to execute the agreement for sale with the complainant within a period of 30 days with respect of another flat having equal area as per the choice of the complainant. However, the said direction has not yet been complied with by the respondent. The MahaRERA is also observed that the said direction was issued after considering the submissions made by both the parties as well as after perusing the records. Therefore, these averments made by both the parties need not to be reconsidered. Moreover, nothing has been brought on record of MahaRERA by either party to get review of the said interim order. Further after passing of the said order by MahaRERA there was lockdown declared by the Government due to Covid-19 pandemic. Therefore, within 30 days period the direction could not have been complied with by the respondent. Moreover, the respondent has not challenged the said interim order passed on 6-03-2020. Therefore, considering all these facts brought on record of MahaRERA, MahaRERA directs the respondent to comply with the directions issued by MahaRERA vide interim order dated 06 March 2020 within 30 days from this order.

36) The Appellate Tribunal again referred to provisions of Section 13 of RERA and held the promoter was not entitled to recover further payments form the allottee without first executing the Agreement for Sale.

37) The issues of validity of termination of allotment of flat by notice dated 30 July 2019 and the liability of the promoter to execute the agreement in favour of the allottee are interconnected. If termination is held to be valid, there is no question of executing the Agreement for Sale by the promoter with the allottee. I accordingly proceed to examine whether termination of transaction vide notice dated 30 July 2019 by the promoter is valid or otherwise. While answering Issue No.1, this Court has held that the allottee failed to pay stamp duty and registration charges for execution of the Agreement for Sale. One needs to understand the background leading to termination notice dated 30 July 2019.

38) After revised Commencement Certificate dated 26 April 2019 was issued by Navi Mumbai Municipal Corporation, the promoter issued notice dated 3 May 2019 to the allottee intimating that the plans were sanctioned for construction of the building upto 19^{th} floor. Referring to provisions of RERA, the promoter highlighted the need to execute registered Agreement for Sale. Accordingly, the promoter called upon the allottee to execute Agreement for Sale by completing the process of payment of stamp duty. There was no response from the allottee. Therefore, a reminder letter dated 28 May 2019 was issued by the promoter. Again, there was no response from the allottee. Therefore, a final notice dated 24 June 2019 was issued by the promoter to the allottee granting time of one week to pay the stamp duty and registration charges. This time, the allottee responded by sending email dated 30 June 2019 in which he expressed inability to pay the stamp duty as he did not have the required funds for payment of stamp duty. Instead, he suggested that he was availing loan of Rs.40 lakhs as against balance liability of only Rs.33 odd lakhs and that therefore payment of stamp duty and registration charges could be arranged through the loan amount. The allottee therefore gave two options to the promoter. In option-1, he requested the promoter to wait for 3 months for arranging the funds for payment of stamp duty and registration charges. In the second option, he requested the promoter to bear the stamp duty and registration charges through home loan, which the allottee was going to avail. The relevant portion of email dated 30 June 2019 reads thus:

> Instead I had shown you the sanction letter from SBI Bank Wherein Bank has agreed to grant me loan of Rs. 40 lakhs which shows that I am preparing for processing the required formalities for the home for which I am waiting since years. I am attaching the SBI Sanction letter with this letter.
>
> Also, to inform you I have to pay you only 33 lakhs(approx.) out of the agreement value of 48.75 lakhs but I am availing 40 lakhs loan so as to cover the stamp duty and Registration charges. Now the question arises of paying the stamp duty.
>
> I clearly explained you that currently I am not having the required cash for paying the stamp duty, but I gave you 2 options which are as follows:
>
> 1. If you are ready to wait for 3 months, I shall manage the funds for Stamp duty and registration and complete all the required formalities.
>
> 2. The 2nd option was if you can't wait for 3 months, and you are in very much need of money, then you be kind enough to bear the stamp duty and registration charges from your pocket and claim the same from the Home loan through your demand letter to the bank from which I am availing Loan (the process you might be aware of demand request money from bank).
>
> 3. The Bank will disburse the required money only in your name as per the demand letter. Since all the sanctioned Loan amount will be directly paid to you there is no question that you will have to suffer, or your money will be blocked. As soon as you make demand request you will get your money.
>
> As currently I am short of funds but at the same time Lam ready to get the amount from bank and even Bank has agreed to grant me loan.

39) The promoter responded by email dated 2 July 2019 calling upon to the allotte pay the stamp duty and registration charges in the indicated account.

40) As discussed above, though the allottee attempted to pay the stamp duty, the same remained in the bank account of Punjab National Bank and never really got transferred to the stamp authorities. The promoter accordingly served advocate's notice dated 9 July 2019 granting last opportunity of 15 days to pay stamp duty and registration charges. When the promoter had emphatically stated that the stamp duty was not paid and that the necessary documents to indicate payment of stamp duty were not provided, the natural conduct of the allottee would have been to approach the bank and inquire as to why the challans are not generated. Instead of doing so, the allottee opted to issue advocate's reply dated 19 July 2019. Since the promoter did not receive any evidence of generation of challans for payment of stamp duty and registration charges, it proceeded to issue termination notice dated 30 July 2019. After receipt of termination notice dated 30 July 2019, the allottee maintained silence for the next 3 long months, which is the most unusual conduct of a person who is accused of non-payment of stamp duty. The promoter refunded the booking amount of Rs. 11,07,000/- after deducting earnest money deposit of Rs.1,23,000/-. Only after receiving the refund cheque, the allottee sent response dated 30 October 2019 which is totally silent about payment of stamp duty and registration charges. After sending response dated 30 October 2019, there was again a stoic silence by the allottee, who made no efforts to inquire about non-generation of challans by the Bank. As observed above, the next action initiated by the allottee is directly on 18 January 2020, when he wrote to the bank for return of amount of Rs.4,65,000/-. Importantly, even after receiving the return of the amount from the Bank, the allottee made no attempt to pay stamp duty or registration charges.

41) Considering the above chronology of events, in my view, the promoter was clearly justified in terminating the transaction by notice dated 30 July 2019. Both Maha RERA as well as Appellate Tribunal, turned blind eye to the events that transpired before issuance of termination notice. They mechanically referred to the provisions of Section 13 of RERA for holding the promoter responsible for non-execution of the agreement, ignoring the position that the promoter was always ready and willing to execute Agreement for Sale. In the present case, the transaction of booking the flat took place before the advent of RERA. The project got registered under RERA in 2017. However, there was absence of clarity about construction of the building and the clarity was achieved only on 26 April 2019 when plans were sanctioned by Navi Mumbai Municipal Corporation. Immediately after sanction of plans on 26 April 2019, the promoter wrote to the allottee on 3 May 2019 calling him upon to execute registered Agreement for Sale. At this juncture there was no demand by the promoter for payment of further consideration. The promoter issued three notices dated 3 May 2019, 28 May 2019 and 24 June 2019 requesting the allottee to execute the Agreement for Sale by paying the stamp duty and registration charges. Instead of complying with the requisition, the allottee expressed inability to arrange the funds for payment of stamp duty and registration charges. Thus, opportunity to execute and register Agreement for Sale was not availed by the allottee and both Maha RERA and Appellate Tribunal have egregiously erred in holding the promoter responsible for non-execution of Agreement for Sale. The promoter thereafter issued further notices on 2 July 2019 and 9 July 2019 again calling upon the allottee to pay stamp duty and get the Agreement for Sale executed. Thus, as against 5 notices sent by the promoter for registration of the agreement, there is one response by the allottee expressing inability to pay stamp duty and thereafter a false picture being created about payment of stamp duty vide email dated 9 July 2019.

42) More importantly, after receipt of termination notice dated 30 July 2019, the allottee maintained silence for about 6 long months and thereafter surreptitiously approached the bank and obtained refund of amount meant for stamp duty and appropriated the said amount for his own needs. Though a specific representation was made to the bank that the stamp duty would be paid through the specified means/accounts, no such attempt was made by the allottee. While seeking retun of the amount from the Bank, the allottee stated in his letter that "*I shall do NEFT from the Airoli branch to the Maha Govt statutory e-payment account*.' However there is nothing on record to indicate that the allottee paid the stamp duty after receipt of amount in his bank account. In my view therefore, the allottee himself is responsible for non-execution of the Agreement for Sale. The promoter was always ready and willing to execute the Agreement for Sale. In that view of the mater, termination of the transaction vide notice dated 30 July 2019 appears to be perfectly in order. The promoter is not expected to wait endlessly.

43) In the facts of the present case, it appears that the allottee was not interested in payment of stamp duty. In some cases, the flats are hoarded based on allotment letters and then traded in the market. The allottee himself secured the allotment from other persons. He might be looking forward to similar transaction and was averse to spending monies on payment of stamp duty and registration charges. Otherwise, the allottee may not have the funds for making the payment of stamp duty and registration charges as he specifically stated so in his email dated 30 June 2019. It is therefore not known whether the allottee was merely interested in securing ownership of the flat in his name or was merely hoarding the flat with the intention of transferring the allotment letter. A genuine flat purchaser, who is stuck in a project for 6 long years, would show the necessary alacrity for execution and registration of the Agreement for Sale. However, in the facts of the present case, it appears that the allottee had no interest in getting the agreement registered. He initially showed inability to arrange funds for payment of stamp duty and registration charges. Though he made some arrangements, the moment the transaction was cancelled by the promoter, he happily took away the money from the bank and appropriated the same for his own use. This conduct on the part of the allottee shows absence of will and desire to have the agreement executed and registered.

44) In my view therefore, the Maha RERA and Appellate Tribunal have grossly erred in directing the promoter to execute registered Agreement for Sale in favour of the allottee.

45) Issues Nos.2 and 3 are thus answered by holding that the promoter is justified in terminating the allotment of flat by notice dated 30 July 2019 and that the Maha RERA and Appellate Tribunal have erred in directing execution of the agreement by the Promoter in favour of the allottee.

Question No.4

46) Since Issue Nos.1 to 3 are answered against the allottee and in favour of the promoter, Issue No.4 is rendered academic in the context of adjustment of interest amount against balance consideration. However, though this Court has arrived at the conclusion that termination of sale transaction by the promoter is valid, the allottee would still be entitled to secure refund of the consideration already paid. In the present case, what is proved is payment of consideration of Rs.12,30,000/-. The Appellate Court has directed the promoter to pay interest on the amount of Rs.12,30,000/- at the rate of MCLR + 2% w.e.f. 12 July 2016 till the date of possession.

47) The promoter is not really averse to refund the amount of consideration to the allottee. Mr. Kanade has fairly left the issue of interest to be determined by this Court. However, he has submitted that since the promoter had refunded the amount of Rs.11,07,000/- to the allottee, the promoter be not burdened with liability to pay interest.

48) Though the sale transaction is validly terminated, the promoter is not entitled to retain the booking amount of Rs.12,30,000/-. He is also not entitled to deduct any amount towards EMD. In my view therefore, the booking amount of Rs.12,30,000/- deserves to be returned to the allottee.

49) Coming to the issue of interest, in my view, the allottee is responsible for non-execution of the agreement after 30 July 2019. Therefore, ordinarily interest would be payable from the date of allotment upto 30 July 2019. However considering the unique facts and circumstances of the case, I deem it appropriate to award interest from 12 July 2016 as directed by the Appellate Tribunal. This is done as the allottee was made to wait for a considerable period of time for construction of the flat. May be he was in financial difficulties and was unable to pay the stamp duty and registration charges. His need for funds would have made him utilize the withdrawn amount. The promoter has left it to the court to decide about interest. Awarding interest to the allottee on booking amount of Rs.12,30,000/- would provide some solace to him though he himself is responsible for cancellation of the sale transaction. In my view, therefore the rate of interest awarded by the Appellate Tribunal can be maintained (*SBI's MCLR + 2%*) and the interest can be directed to be paid from 12 July 2016 till the actual return of the booking amount. Issue No.4 is answered accordingly.

Question No.5

50) The allottee claimed that he had made payment of Rs.34,55,000/- to Kharatmols and therefore he was entitled to adjustment of Rs.12,30,000/- paid by Kharatmols to the promoter. He filed Appeal before the Appellate Tribunal for adjustment of total amount of Rs.28,75,281/-. As per the details discussed in para-26 of the order of the Appellate Tribunal, the Appellate Tribunal has rejected the contention of the allottee about payment of Rs.28,75,281/- by him to the promoter by holding in paras-26 and 27 of the order as under:

> 26. The Allottee has disputed the amount paid to the Promoter Allottee has contended that he has made payment of Rs.28,75,281/- whereas the Promoter has admitted the payment to the extent of Rs.12,30,000 only. While referring to the memorandum of understanding dated 27.06.2013

executed between the Allottee with the original allottees, the Allottee has contended that he has made the payments to the Promoter as per details given below.

Sr. No.	Amount	Remark
1.	Rs. 12,30,000/-	Paid by Mr. And Ms. Kharatmol as booking amounts, now stands, thus paid by the Allottee as part consideration.
2.	Rs. 12,30,000/-	Booking amount paid by Allottee
3.	Rs. 1,25,531/-	As service tax
4.	Rs. 48,750/-	VAT
5.	Rs. 1,50,000/-	Miscellaneous charges
6.	Rs.36,000/-	Amenities charges
7.	Rs. 55,000/-	CIDCO transfer charges
8.	Rs. 28,75,281/-	Total amount paid

27. As we have already observed that the original allottees have surrendered the booking of the said flat to the Promoter upon which the Promoter has returned Rs.12,30,000/- to Mr. and Ms. Kharatmol. Therefore, the contention of the Allottee that the said amount paid by Mr. and Ms. Kharatmol stands to have been paid by the Allottee as part consideration cannot be accepted. Except Rs.12,30,000/- which Allottee has paid as booking amount towards the said flat, the rest of the amounts mentioned by the Allottee have not been admitted by the Promoter. In the circumstances, it was incumbent on the part of Allottee to submit cogent documentary evidence in support of the payments made by him. However, there is nothing on record to substantiate any payment made by the Allottee except Rs.12,30,000/- as booking amount paid to the Promoter. In view of this, we conclude that the Allottee had paid the Promoter only to the extent of Rs. 12,30,000/- as booking amount towards part consideration of the subject flat. We therefore, reject the claim of the Allottee that he has paid Rs.28,75,281/- to the Promoter.

51) Perusal of allotment letter dated 11 July 2013 issued to the allottee would indicate that the allottee had agreed to pay total consideration of Rs.48,75,000/- to the promoter and had paid an amount of Rs.12,30,000/- to the promoter. The allotment letter does not mention payment of any additional consideration or adjustment of consideration paid by Kharatmols against allotment made to the allottee. More importantly, the whole claim of payment of Rs.28,75,281/- to the promoter got demolished on account of email of the allottee dated 30 June 2019 in which he emphatically stated that he had to pay an amount of Rs.33 lakhs (approximately) out of agreed consideration of Rs.48.75 lakhs. If payment of Rs. 28,75,281/- had already been made, the allottee would not have contended in the email dated 30 June 2019 that the balance amount of consideration payable was approximately Rs. 33 lakhs (approx).

52) In my view therefore Maha RERA and Appellate Tribunal are justified in rejecting allottee's contention that the consideration paid by Kharatmols was required to be adjusted in the transaction entered into by the allottee with the Promoter.

53) Reliance by Mr. Maskar on judgment of the Apex Court in ***Laureate Buildwell Private Limited*** (supra) is inapposite. The issue before the Apex Court was whether the timelines agreed with the earlier allottee would bind the promoter when allotment is transferred to a new allottee. The ratio of the judgment cannot be overstretched to mean that every payment made by earlier allottee must be adjusted in the fresh allotment made by the new allottee. In the present case, the earlier allottees (Kharatmols) requested for refund of the payments made by them and the promoter has refunded the booking amount to Kharatmols. In the allotment letter issued to the allottee, there is no arrangement for adjustment of any payments made by Kharatmols. If the allottee had paid any amount to Kharatmols and the parties had agreed that the promoter would give credit to the allottee in respect of the amount paid by the allottee, the same ought to have been reflected in the allotment letter. The ratio of the judgment of the Apex Court therefore has no application to the facts of the present case.

54) Issue No.5 is therefore accordingly answered in the negative.

55) In view of my answers to Issues Nos.1 to 5, the orders passed by the Maha RERA and Appellate Tribunal directing execution of Agreement for Sale with the allottee in respect of the flat chosen by him are unsustainable and liable to be set aside. I accordingly proceed to pass the following order:

(i) Order dated 8 October 2020 passed by the Maha RERA in Complaint No. CC006000000100328, as well as judgment and order dated 22 October 2024 passed by the Appellate Tribunal in Appeal No. AT00600000052787/20 and Appeal No. AT00600000052798/20 are set aside.

(ii) The promoter shall return to the allottee amount of Rs.12,30,000/- alongwith interest @ SBI's MCLR + 2% w.e.f. 12 July 2016 till the date of actual payment.

56) With the above directions, the Second Appeal No.116 of 2025 filed by the promoter is partly **allowed** and Second Appeal No. 603 of 2025 filed by the allottee is **dismissed**. Considering the facts and circumstances of the case, there shall be no order as to costs. Pending Interim Application disposed of.

NEETA SHAILESH SAWANT
Digitally signed by NEETA SHAILESH SAWANT
Date: 2026.09.23 19:47:53 +0530

[SANDEEP V. MARNE , J.]