IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL (STAMP) NO.27241 OF 2023

Era Realtors Private Limited
at Omkar House, Off. Easter Express
Highway, Opp. Sion Chunabhatti signal,
Sion (East), Mumbai - 400 022. **....Appellant**

V/S

1 Prakash Shah

2 Niket Shah
having address at 6/23-24,
Chandra Milan, MG Road,
Vile Parle East, Mumbai - 400 057. **....Respondents**

Mr. Shakeeb Shaikh with Mr. Noorain Patel i/b M/s. Diamondwala & Co., *for the Appellant.*

Mr. Aseem Naphade with Mr. Rajendra Mishra, Mr. Mukesh Gupta & Ms. Asmita Yadav i/b. M/s. Solicis Lex, *for Respondents.*

CORAM	**:**	**SANDEEP V. MARNE, J.**
RESERVED ON	**:**	**7 MARCH 2024.**
PRONOUNCED ON	**:**	**14 MARCH 2024.**

JUDGMENT:

1 Appellant has filed this Appeal challenging the judgment and order dated 17 March 2023 passed by the Maharashtra Real Estate Appellant Tribunal, Mumbai (**Appellate Tribunal**), by which the Appellate Tribunal has partly allowed the Appeal filed by Respondents and has modified the order dated 25 November 2020 passed by Maharashtra Real Estate Regulatory Authority **(Regulatory Authority)**. Appellant has been directed to pay interest to the allottees on the amount paid by them at the rate of SBI's Highest Marginal Costs of Lending Rate (**MCLR**) plus 2% with effect from 1 January 2018 till the date of handing over possession of subject apartments to the Respondents. Petitioner is also directed to pay costs of Rs.10,000/- to the Respondents.

2 Briefly stated, facts of the case are that Appellant has undertaken the residential housing project consisting two buildings named 'Alta Monte' and 'Signet' under the Slum Rehabilitation Scheme on property bearing CTS Nos.812, 813, 821 (part), 811A/7 (P), 814 and 844 of village Malad, Taluka Borivali, Mumbai Suburban District. Since the Project is towards implementation of Slum Rehabilitation Scheme, the same consist of rehab and sale component buildings. Respondent took

two flats D-4904 and D-4905 in 'D' Wing of the project for total consideration of Rs.3,91,04,400/- for each of the flats. Petitioner issued two letters of allotment both dated 11 September 2013 to Respondents, under which he agreed to handover possession of both the flats to Respondents by 1 June 2017 with grace period of six months. Respondents have paid part consideration of Rs.3,29,20,062/- for each of the flats. Since the Appellant did not execute agreement with Respondents nor delivered possession of the flats to them, Respondents filed complaints before MahaRERA under the provisions of section 18 of the Real Estate (Regulation and Development) Act, 2016 (**RERA**) praying for issuance of direction to the Appellants to execute a registered agreement for sale in respect of each of the flats, to pay interest for delayed possession and to pass GST credit on to the Respondents.

3 Appellant appeared in the Complaint and opposed the same by filing Reply. The Appellant expressed that it was always ready and willing to execute agreement with Respondents and that construction of the building got delayed on account of various force majeure events. That the Appellant registered the project with MahaRERA by declaring the date of completion of project as 31 December 2020.

4 The Regulatory Authority passed order dated 25 November 2020 directing Appellant to execute and register agreements for sale with Respondents as per Section 13 of RERA within 30 days. Appellant was further directed to handover possession of the flats on or before July

2021. It was further directed that Appellant shall pay to Respondents interest at the rate of MCLR plus 2% on the amounts collected after May 2017 with a further direction to adjust the said interest on it against payments due from the Respondents. The direction for payment of interest post May 2017 is issued by the Regulatory Authority by recording a finding that amount the Respondents post May 2017 could only have been collected have been after executing the registered agreements for sale in accordance with Section 13 of the Act.

5 Aggrieved by the Regulatory Authority's Order to the extent of denial of interest on amounts paid before May 2017, Respondents filed Appeal before the Appellate Tribunal under the provisions of Section 44 of the Act. Respondents prayed for interest on the entire amount of Rs. 6,58,40,126/-. Respondents also prayed for direction for passing of GST credit. They also sought compensation of Rs.50,00,000/- towards mental harassment.

6 The Appellate Tribunal has partly allowed the Appeal filed by Respondents by judgment and order dated 17 March 2023 and has modified the Regulatory Authority's order dated 25 November 2020 by directing Appellants to pay interest to the Respondents on the entire amount paid by them from 1 January 2018 till the date of handing over possession of the flats to Respondents. Appellant is also directed to pay the costs of Rs.10,000/- to the Respondents. Aggrieved by the order passed by the Appellate Tribunal, the Appellant has filed the present Appeal.

7 When the Appeal came up before this Court, the same came to be admitted by order dated 10 January 2024 on following substantial questions of law:

> (i) Whether a litigant who obtains orders by making concession before the RERA Authority is permitted to seek relief over and above the concession so made in appeal filed before the RERA Appellate Authority ?
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> (ii) In absence of a specific ground being raised in the Appeal Memo about not having made a concession before the RERA Appellate Authority, whether the RERA Appellate Tribunal is justified in holding that the Respondents did not make such concession ?

8 Mr. Shakeel Shaikh, the learned counsel appearing for the Appellant would submit that Appellate Tribunal has erred in entertaining the Appeal filed by the Respondents by ignoring the fact that the order dated 25 November 2020 was obtained by Respondents by concession. That Respondents specifically agreed before the Regulatory Authority that interest can be paid only in respect of the amount collected after implementation of the RERA. That Appellant expressed the financial difficulties faced by it in execution of the project. The Regulatory Authority took into account the fact that the project is facing liquidity crises and that penalizing Appellant would further delay completion of the project. That after considering this position, Respondents specifically prayed for interest to be awarded only in respect of the amounts collected after implementation of RERA. This is how the Regulatory Authority allowed the prayer made before it during the course of hearing of the Complaint, by directing payment of interest only on amount collected after implementation of RERA.

9 Mr. Shaikh would further submit that if no concession was made by the Respondents and if recording of such concession by the Regulatory Authority was erroneous, proper course of action to be adopted by Respondents was to file an application seeking review of the Regulatory Authority's order. That Respondents did not do so. Since the concession made by them was noted and recorded by the Regulatory Authority, without inviting attention of Regulatory Authority to the alleged error in recording concession of Respondents behalf, they were estopped from directly challenging order of the Regulatory Authority before Appellate Authority. Mr. Shaikh would submit that even perusal of the Appeal Memo filed by the Respondents would indicate that they did not plead therein that such concession was never made by them. That therefore there was no question of Appellate Authority going into the issue as to whether the concession recorded by the Regulatory Authority was or was not made. That the erroneous recording of plea of concession by Regulatory Authority was raised for the first time by the Respondents directly before the Appellate Authority during the course of hearing of the Appeal. Since such plea was not supported by the grounds raised in the Appeal, the Appellate Authority was clearly barred from considering such a plea directly sought to be raised during the course of the hearing of the Appeal. He would rely on the judgment of the Apex Court in ***State of Maharashtra vs. Ramdas Shrinivas Nayak and others*** AIR 1982 SC 1249.

10 Mr. Shaikh would submit that it is not open for a party to plead before Appellate Court that what is recorded by subordinate court was

erroneous. That the correct way is to first draw the attention of the Court which recorded concession of the Appellant, for correction of the order by filing an application. Mr. Shaikh therefore would submit that the Appellate Tribunal has committed a patent error in entertaining the Appeal filed by the Respondents. He would pray for setting aside the order of the Appellate Tribunal.

11 *Per contra* Mr. Naphade, the learned Counsel appearing for the Respondents would oppose the Appeal and support the order passed by the Appellate Tribunal. He would submit that the Appellant has grossly delayed completion of the project and is sitting over huge amounts paid by Respondents. That the allotment letters were issued on 11 September 2013 in which the agreed period for handing over possession of flats was 1 June 2017, with grace period upto 1 January 2018. That by now period of about six long years has elapsed, but the Appellant is yet to handover possession of the flats to Respondents. To ameliorate sufferings of the Respondents, the Appellate Tribunal has rightly stepped in and directed Appellant to pay interest on the entire amount received from Respondents. He would submit that the interest is not directed to be paid from the date of receipt of amounts, but the same is directed to be paid only from 1 January 2018.

12 Mr. Naphade would further submit that the order of the Regulatory Authority is not passed on concession, but the same is passed on merits. He would submit that the findings recorded by the

Regulatory Authority in paragraphs 7, 8 and 10 read together, would leave no manner of doubt that the order passed is on merits and not on concession made by the Respondents. He would submit that the Respondents appeared in person before Regulatory Authority and therefore it cannot be construed that they made any concession giving up their right to claim interest on amounts actually paid by them to the Appellant. He would submit that the scheme of Section 18 of the Act is such that the promoter is automatically made liable to pay interest on the amounts received by him from the allottees. That the order passed by the Appellate Tribunal is in tune with the statutory scheme of Section 18 of the Act. Lastly, Mr. Naphade would submit that the order of the Appellate Tribunal being challenged in a Second Appeal, the scope of interference under section 100 of the Code of Civil Procedure, 1908 is extremely limited and in absence of any palpable error being committed by the Appellate Tribunal, this Court would be loathe in interfering in its order. He would pray for dismissal of the Appeal.

13 Rival contentions of the parties now fall for my consideration.

14 The short issue that arises in this Appeal is whether Respondents could have filed an Appeal challenging the order of the Regulatory Authority, which according to the Appellant, is obtained on concession. The second issue is about permissibility for the Appellate Tribunal to grant relief over and above the alleged concession made by Respondents before the Regulatory Authority. As observed above, the Regulatory Authority has recorded in its order that Respondents insisted for

payment of interest on amounts collected from them after implementation of RERA. According to Respondents, no such concession was made and that they must be paid interest on entire amounts collected from them even prior to implementation of the RERA.

15 Perusal of the order passed by the Regulatory Authority on 25 November 2020 would indicate that following findings are recorded in the order in paragraphs 7, 8, 9, 10 and 11:

> "7. The Complainants prayed that the Respondent be penalised for collecting amounts beyond 10% from the Complainants post the implementation of the Real Estate (Regulation and Development) Act 2016, without executing and registering the agreements for sale."
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> 8. It was explained to the Complainants that penalising a project that has been facing liquidity crisis, will further affect the project completion.
>
> 9. The Complainant then insisted that the Respondent be directed to pay them interest on the amounts collected from them post the implementation of the Real Estate (Regulation and Development) Act 2016, without executing and registering the agreements for sale.
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> 10. During the course of the hearing, the learned counsel for the Respondent was not audible due to a technical difficulty at her end and therefore she has made submissions via email dated November 24, 2020 which was sent post hearing. She has submitted that the Complainants will have to make the full payment towards the consideration of the apartments without which the project lender will not grant NOC, without which neither

the apartment will be released by the project lender nor will the project lender issue the release letter for the said apartments. Further, she has submitted that the said project is already facing liquidity crisis and a direction to pay interest to the Complainants will become a precedent inviting further litigation and delaying project completion. Therefore, she prayed that the direction to pay interest may not be passed in the larger interest of the said project.

11. In view of the above the parties are directed to execute and register the agreement for sale as per the provisions of section 13 of the Real Estate (Regulation and Development) Act 2016 and the rules and regulations made thereunder within 30 days from the date of this Order. The Respondent shall handover possession of the said apartment on or before July, 2021. Further, the parties shall adhere to the payment terms as agreed between the parties and also provide the amenities as assured in the letter of allotment. The amounts collected by the Respondent from the Complainants, post May 2017 should have been done only after executing and registering the agreement for sale in accordance with section 13 of the said Act. Therefore, interest, at the rate of MCLR plus 2%, on the said amounts collected after May 2017 shall be deemed credited into the account of the Complainants and the said interest shall be adjusted against future payments that are due from the Complainants.

16 Perusal of the above findings recorded by the Regulatory Authority would indicate that Respondents first pleaded before the Regulatory Authority that they must be paid interest on the entire amount collected beyond 10% without executing and registering agreements for sale w.e.f. the date of implementation of the RERA.

Para 8 of the order records that the Regulatory Authority explained to the Respondents that penalizing a project, that had been facing liquidity crises, would further affect the project completion. Whether the act on the part of the Regulatory Authority to give such explanation to the Respondents, who were appearing as parties-in-person, is altogether different matter. Since the Authority has recorded that such an explanation was given by it to Respondents, this Court will proceed on an assumption that such explanation was indeed given. After considering the explanation given by the Regulatory Authority, the order records in paragraph 9 that Respondents thereafter insisted that the Appellants be directed to pay interest on the amounts collected from them post the implementation of the RERA. Paragraph 9 uses the words '*then*' between the words '*the Complainant*' and '*insisted*'. That use of the word '*then*' by the Regulatory Authority in paragraph 9 would indicate that Respondents first insisted for payment of interest on the entire amount and after considering the explanation given to them by the Regulatory Authority, they, thereafter modified their demand and scaled it down for payment of interest on amounts collected by Appellant after implementation of the RERA. It appears that the Appellant was not ready to pay interest even on that amount and his opposition is considered by the Authority in paragraph 10 of the order. The Regulatory Authority thereafter passed final order in paragraph 11 by directing the Appellant to pay interest on amounts collected after May 2017 on account of failure to execute and register agreement for sale in accordance with Section 13 of the Act. This would be the correct reading of the order passed by the Regulatory Authority.

17 I am therefore of the view that Respondents clearly made a concession before the Regulatory Authority that they were willing to accept interest only on amounts paid after implementation of the RERA. However, before the Appellate Authority, Respondents insisted that no such concession was applied by them before the Regulatory Authority. If this was the position, proper course of action for the Respondents was to invite the attention of the Regulatory Authority by filing an application that their concession was erroneously recorded. However, admittedly no such application was filed by the Respondents. Instead, they were advised to challenge the order of the Regulatory Authority by filing the Appeal under section 44 of the Act before the Appellate Tribunal. The Appeal was apparently filed on 27 January 2021 before the Appellate Tribunal. During gap between 25 November 2020 and 27 January 2021, the Respondents did not complain before the Regulatory Authority that their concession was erroneously recorded in paragraph 9 of the order.

18 The Appeal Memo filed by the Respondents makes an interesting reading. In the entire Appeal Memo, Respondents did not plead that they did not make a concession as recorded in paragraph 9 of the Regulatory Authority's order. I have gone minutely through the entire Appeal Memo, which does not contain any statement that the concession, as recorded in paragraph 9 of the Regulatory Authority, was never made by the Respondents. The only sketchy pleading is to be found in ground clause 6 (iii) of the Appeal which reads thus:

"(iii) That the learned Chairperson, MahaRERA, has ignored the material on record and has passed a biased judgement without considering the information provided by the Complainants and documents put forward by them. During the hearings, he had stated that he would not grant interest on the entire amount as it would financially affect the developer and the project. As chairperson of MahaRERA, and as per the Preamble of the MahaRERA Act, 2016, wherein the reason for MahaRERA coming into effect is clearly stated as "*An Act to establish the Real Estate Regulatory ..... to protect the interest of consumers in the real estate sector*", his intention should have been to protect the interest of the Consumer who has been affected by the delay caused by the Developer rather than being worried about the Developer. It is the Respondent's responsibility to arrange the finances for the said project. The Respondent has already collected more than 80% payment from the Complainants & more than 90% from most other flat buyers in the said project, yet the Respondent states that they have liquidity crisis as mentioned in the impugned order, which is difficult to believe. The Complainants should not be made to suffer due to the Respondent's inability to correctly allocate and utilize the funds for the said project."

19 Thus in ground clause 6(iii) it was pleaded that during the course of hearing, the Regulatory Authority pointed out to them that it cannot award interest on the entire amount as the same would financially affect the Appellant as well as the project. This statement made by Respondents in their Appeal appears to be in consonance with what is recorded by the Regulatory Authority in paragraph 8 of the order. However, there is no statement pleaded in the Appeal Memo that the concession recorded in paragraph 9 of the order was not made by them.

20 Thus Respondents neither filed an application before the Regulatory Authority complaining about erroneous recording of the concession in paragraph 9 of the order nor they did raise any specific ground in the Appeal about erroneous recording of such concession. Thus, the Appellate Authority did not have before it any pleading to the effect that the order was not obtained by Respondents by consent. It therefore really became questionable as to how the Appellate Authority could have entertained the Appeal filed by the Respondents. It is only when the Appeal was argued before the Appellate Tribunal, that Respondents sought to retract from the concession made before the Regulatory Authority. The law in this regard is well settled by the judgment of the Apex Court in ***Ramdas Shrinivas Nayak*** (supra) in which the Apex Court has held in paragraphs, 4 to 9 as under:

> 4. When we drew the attention of the learned Attorney General to the concession made before the High Court, Shri A.K. Sen, who appeared for the State of Maharashtra before the High Court and led the arguments for the respondents there and who appeared for Shri Antulay before us intervened and protested that he never made any such concession and invited us to peruse the written submissions made by him in the High Court. We are afraid that we cannot launch into an inquiry as to what transpired in the High Court. It is simply not done. Public Policy bars us. Judicial decorum restrains us. Matters of judicial record are unquestionable. They are not open to doubt. Judges cannot be dragged into the arena. “Judgments cannot be treated as mere counters in the game of litigation". Per Lord Atkinson in Somasundaran v Subramanian MANU/PR/0086/1926: A.I.R. 1926 P.C. 136. We are bound to accept the statement of the Judges recorded in their judgment, as to what transpired in court. We cannot allow the statement of the judges to be contradicted by statements at the Bar or by affidavit and other evidence. If the judges say in their Judgment that something was done, said or admitted before them, that has to be the last word on the subject. The principle is well settled that statements of fact as to what transpired at the hearing, recorded in the judgment of the court, are conclusive of the facts so stated and no one can contradict such statements by affidavit or other evidence. If a party thinks that the happenings in court have been wrongly recorded in a judgment, it is incumbent, upon the party, while the matter is still fresh in the minds of the judges, to call attention of the very judges who have made the record to the fact that the statement made with regard to his conduct was a statement that had been made in

error. Per Lord Buckmaster in Madhusudan v. Chanderwati A.I.R. 1917 P.C. 30. That is the only way to have the record corrected. If no such step is taken, the matter must necessarily end there. Of course a party may resile and an Appellate Court may permit him in rare and appropriate cases to resile from a concession on the ground that the concession was made on a wrong appreciation of the law and had led to gross injustice; but, he may not call in question the very fact of making the concession as recorded in the judgment.

5. In Rev. Mellor 7 Cox. C.C. 454 Martin B was reported to have said "we must consider the statement of the learned judge as absolute verity and we ought to take his statement precisely as a record and act on it in the same manner as on a record of Court which of itself implies an absolute verity".

6. In King Emperor v. Barendra Kumar Ghost 28 C.W.N. 170 said,

> …..these proceedings emphasise the importance of rigidly maintaining the rule that a statement by a learned judge as to what took place during the course of a trial before him is final and decisive; it is not to be criticised or circumvented; much less is it to be exposed to animadversion.

7. In Sarat Chandra v. Bibhabati Debi 34 C.L.J. 302. Sir Asutosh Mookerjee explained what had to be done

> It is plain that in cases of this character where a litigant feels aggrieved by the statement in a judgment that an admission has been made, the most convenient and satisfactory course to follow, wherever practicable, is to apply to the Judge without delay and ask for rectification or review of the judgment.

8. So the judges, record is conclusive. Neither lawyer nor litigant may claim to contradict it, except before the judge himself, but nowhere else.

9. On the invitation of Mr. Sen, we have also perused the written submissions made by him before the High Court. We have two comments to make: First, oral submissions do not always conform to written submissions. In the course of argument, counsel, often, wisely and fairly, make concessions which may not find a place in the written submissions. Discussion draws out many a concession. Second, there are some significant sentences in the written submissions which probabilise the concession. They are: "If in the existing case, the entire Council of Ministers becomes interested in the use of the statutory power one way or the other, the doctrine of necessity will fill up the gap by enabling the Governor by dispensing with the advice of His Council of Ministers and take a decision of his own on the merits of the case. Such a discretion of the Governor must be implied as inherent in his constitutional powers....The doctrine of necessity will supply the necessary power to the Governor to act without the advice of the Council of Ministers in such a case where the entire Council of Ministers is biased. In fact, it will be contrary to the Constitution and the principles of democratic Government which it enshrines if the Governor was obliged not to act and to decline to perform

> his statutory duties because his Ministers had become involved personally. For the interest of democratic Government and its functioning, the Governor must act in such a case on his own. Otherwise, he will become an instrument for serving the personal and selfish interest of his Ministers." We wish to say no more. As we said, we cannot and we will not embark upon an enquiry. We will go by the judges' record.

21 Thus, the law is well settled that if a concession is recorded by a Judge, the Appellate Court has to believe that such concession was indeed made. This is because the Judge, in whose presence the concession is recorded, can alone vouch about the factum of making such concession. Therefore, the Court correct course of action for a party is to invite the contention of the Judge who recorded the concession, if he/she feels that recording of concession was erroneous. Therefore, it was incumbent upon Respondents to invite the attention of the Regulatory Authority immediately after receiving of the copy of the order dated 25 November 2020 by pleading that the concession recorded in paragraph 9 of the order was never made by them. It appears that the certified copy of the order of the Regulatory Authority was received by Respondents on 1 December 2020. If such an application was made before Regulatory Authority immediately after 1 December 2020, the Regulatory Authority would have considered the request and if indeed there was any error in recording the concession, it would have corrected the order. On the other hand, if the concession was found to be correctly recorded, it would have rejected such application. It is not open for the Respondents to directly file Appeal before Appellate Tribunal complaining that recording of concession as erroneous. To make their case worse, Respondents di not even plead in the Appeal Memo that recording of concession by the Regulatory

Authority was wrong or that they never made any such concession. Perusal of the order passed by the Appellate Authority would indicate that it entertained the oral plea about not making the concession before the Regulatory Authority, which is impermissible in law. The Appellate Authority has held in paragraph 20 to 22 of the order as under:

> 20] On consideration of broad factual account of events as above, it appears that considering the ground of complaint and reliefs sought therein, the learned Authority had a doddle task at hand to consider the issue of delay in possession and decide the entitlement of allottees in the light of provisions primarily under Section 18 of RERA However, it is seen from the impugned order that on the basis of alleged statement as recorded in para-9 of the impugned order, the learned Authority has awarded interest only on the amount paid by allottees after May 2017. It is worthy to note that the allottees have strongly denied to have made purported statement It is specific contention of the allottees that they have paid substantial amount and they have not committed any default in making the payments to developer as per terms of LOA. Therefore they are entitled to interest on the whole amount paid by them.
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> 21] It is worthy to note that the impugned order clearly indicates that the allottees were insisting for penalising the developer for collecting amount beyond 10% from the allottees without executing and registering agreements for sale. It means the allottees had not only claimed relief of interest, but they were insisting the Authority to penalise the developer for violation of provisions of RERA 2016. It is significant to note that there is no whisper in para-6 of the impugned order that the learned Advocate for the developer has submitted that the project is facing financial crisis. It is pertinent to note that at the time of hearing there was no material on record to show that the project was facing liquidity crisis. Despite this the learned Authority tried to apprise the allottees that penalising the developer will affect the subject project as the project has been facing liquidity crisis. Therefore, it is difficult to digest that allottees had made the purported statement.
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> 22] It is significant to note that para-6 of impugned order records the submissions advanced by the learned counsel for developer. There is no reference in para-6 of the impugned order that the subject project has been facing liquidity crisis. Under the circumstances, the question of making such statement by allottees does not arise. A careful examination of impugned order would show that in para-10 of impugned order the learned Authority has observed that during the course of hearing the learned counsel for developer was not audible to technical glitch therefore she has made submissions vide email dated 24.11.2020 which was sent post hearing. The impugned order further records that the learned counsel for developer submitted that the subject project is already facing liquidity crisis. It means during the course of hearing it was not submitted by the learned counsel for

> developer that the project is already facing liquidity crisis. This fact was brought to the notice of the learned Authority by email dated 24.11.2020 which was sent post hearing. Under the circumstances, it is hard to digest that during the course of hearing the allottees had purportedly insisted that the developer be directed to pay interest on the amounts collected from them post implementation of RERA 2016. Therefore, we are of the view that the observations of learned Authority with regard to statement allegedly made by allottees and consequent directions to developer to pay interest only on the amount paid by allottees after May 2017 are perverse and warrant interference in this appeal.

22 The first reason recorded by the Appellate Tribunal for believing that Respondents did not make any concession is the absence of any whisper in para 6 of the Order about project facing any financial crisis. Since the plea of the Advocate of the Appellant about project facing financial crisis is not noticed by the Appellate Tribunal in paragraph 6 of the Regulatory Authority's order, it has held that the assumption on the part of the Regulatory Authority about liquidity crisis was erroneous. Appellant' plea about project facing liquidity crisis is recorded in paragraph 10 of the order. Therefore it cannot be stated that the Regulatory Authority assumed existence of liquidity crisis in absence of a plea to that effect by Appellant.

23. The second reason recorded by the Appellate Tribunal for believing the plea of Respondents about not making concession is non-audibility of Appellant's advocate during the course of hearing due to technical glitches and she making her submissions subsequently vide email dated 24 November 2020. The Appellate Tribunal has therefore assumed that at the time when the Appeal was actually heard, the advocate of Appellant was not even audible and there was no occasion

for the Authority to know any plea of project facing liquidity crisis. Appellate Tribunal has therefore held that since Regulatory Authority itself was not appraised about any liquidity crisis, there was no occasion for it to give any explanation to Respondents. In my view, this finding recorded by the Appellate Tribunal are based on mere surmises and conjectures. In the first place, juridical propriety requires that the Appellate Court/Forum must believe that the event as recorded by the lower court/authority has actually taken place. Furthermore, the Appellate Tribunal did not have even a pleading in Appeal Memo presented to it that Respondents did not make concession as recorded in paragraph 9 of the order. In absence of any pleadings, there was no occasion for the Appellate Authority to disbelieve what is recorded by the Regulatory Authority. In my view therefore, even the second reason of the recording by the Appellate Authority for believing the plea of the Respondents about not making concession before the Regulatory Authority is totally perverse.

24 I am therefore of the view that the judgment and order passed by the Appellate Authority suffers from palpable error. It has committed a jurisdictional error in entertaining the Appeal filed by the Respondents without they first moving Regulatory Authority to seek a clarification in respect of the concession recorded in paragraph 9 of the order. The second error committed by the Appellate Tribunal is in entertaining oral plea of not making concession before Regulatory Authority in absence of the pleading in the Appeal Memo.

25 The substantial question of law framed in the Appeal are accordingly answered as:

(i) Respondents who made concession before the Regulatory Authority, could not have sought relief over and above the concession so made by filing Appeal before the Appellate Tribunal.

(ii) In absence of specific ground being raised in the Appeal Memo, the Appellate Tribunal could not have entertained the oral plea raised on behalf of the Respondents during the course of hearing of the Appeal about Respondents not making any concession before the Regulatory Authority.

26 In my view therefore the judgment and order passed by the Appellate Tribunal is indefensible and is liable to be set aside. The Appeal accordingly succeeds. Judgment and order dated 17 March 2023 passed by the Appellate Tribunal is set aside and the order dated 25 November 2020 passed by the Regulatory Authority is confirmed. The Second Appeal is allowed. Parties shall bear their own costs.

(SANDEEP V. MARNE, J.)