IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/RERA APPEAL NO. 3 of 2024

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE ANIRUDDHA P. MAYEE

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Approved for Reporting	Yes	No

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RAMSINGH BALDHARISINGH PAL & ORS.
Versus
M/S. BAGHEL CONSTRUCTION & ORS.

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Appearance:
MR RAKESH R PATEL(3239) for the Appellant(s) No. 1,2,3
MR DM DEVNANI(5880) for the Defendant(s) No. 5
NOTICE SERVED BY DS for the Defendant(s) No. 1,2,3,4

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CORAM:**HONOURABLE MR. JUSTICE ANIRUDDHA P. MAYEE**

Date : 10/10/2025

ORAL JUDGMENT

1. Heard the learned counsel for the appellants.

2. Though the notice has been duly served to all the respondents, none has entered appearance except respondent no.5 Gujarat Real Estate Regulatory Authority (for short, “RERA”), who is represented by learned advocate Mr. D.M. Devnani.

3. The present appeal challenges the order dated 12.04.2024 passed by the Gujarat Real Estate Appellate Tribunal in Appeal No. 39 of 2023, whereby, the rate of interest granted to the appellants herein by the RERA at the rate of 18% per annum has been reduced to 9% per annum on the amount, which was paid by the appellants herein to the respondents- opponents.

4. Learned counsel for the appellants submits that the appellants had paid the total amount of Rs. 15,25,000/- to the respondent nos. 1 to 4 - promoters towards purchase of flat in the Residential Scheme named Shiv Krupa Residency. Since the promoters-respondent nos. 1 to 4 herein failed to hand over the possession of the premises on or before 31.12.2019, as per the agreement, the appellants herein filed a complaint before RERA, seeking cancellation of the purchase contract and refund of the amount. Vide order dated 14.12.2021, the complaint of the appellants came to be allowed by the RERA Authority and the respondent nos. 1 to 4 - promoters were directed to pay Rs. 12,05,941/- within 45 days along with 18% interest from the date on which the payment was made. The learned RERA Authority also imposed a cost of Rs. 30,000/- to be paid to the appellants.

5. Being aggrieved, the respondent nos. 1 to 4- promoters filed a Review Application before the RERA Authority, which came to be dismissed on 25.05.2022. That, thereafter, the respondent nos. 1 to 4-promoters have filed Appeal No. 39 of 2023 before the Gujarat Real Estate Appellate Tribunal challenging the order of the RERA Authority dated 14.12.2021.

6. By the impugned order dated 12.04.2024, the learned Appellate Tribunal was pleased to partly allow the appeal filed by the respondent nos. 1 to 4-promoters. The learned Tribunal has upheld the refund of the amount of Rs. 12,05,941/- as well as the costs of Rs. 30,000/-, but has reduced the rate of interest from 18% to 9%.

7. The learned counsel for the appellants submits that the learned Tribunal has erred in reducing the rate of interest and the same is in

contravention of Rule 16(1) of the Gujarat Real Estate (Regulation and Development), (General), Rules 2017. The learned counsel for the appellants submits that the appellants are entitled to the same rate of interest which is payable by the appellants to the respondents/promoters- builder in case they would have defaulted on such payments. The learned counsel submits that the learned RERA Authority has rightly interpreted Rule 16 of the Gujarat Real Estate (Regulation and Development), (General), Rules 2017, and has correctly awarded interest at the rate of 18%, which was the rate of interest payable by the appellants to the promoters. The learned counsel, therefore, submits that the present RERA Appeal be allowed and the rate of interest as granted by the RERA Authority be restored.

8. Heard the learned counsel for the appellants. Perused the documents and considered the submissions.

9. Rule 16 of the RERA, Gujarat Real Estate (Regulation and Development), (General), Rules 2017, thus reads as under:

> 16. *"Rate of interest payable by the Promoter and the Allottee:-*
>
> *1) for the purpose of payment of interest under Sections 12, 18 and 19 of the Act, the rate of interest shall be the contractual rate of interest as may be mutually agreed to between the promoter and the allottee,*
>
> *Provided that the rate of interest chargeable from the allottee. by the promoter, in case of default by the allottee, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee., in case of default by the promoter.*
>
> *2) Where no contractual rate of interest is mutually agreed upon between the promoter and the allottee. under sub-rule (1), the rate of interest*

payable by the promoter to the allottee, or by the allottee. to the promoter, as the case may be, shall be the rate which is prevalent as per existing directives of Reserve Bank of India, ire. Marginal Cost of Lending Rate (MCLR) the State Bank of India Prime Lending Rate plus two percent.

3) For the purpose of sub-rule (2) and sub-rule (2), the interest payable by the promoter to the allottee, shall be from the date of promoter received the amount or any part thereof till the date of amount or part thereof and interest thereon is refunded, and the interest payable by the allottee. to the promoter shall be from the date the allottee. defaults in payment to the promoter till the date it is paid."

10. The said Rule pertains to the rate of interest payable by the promoter and the allottee and proviso thereof provides that, the rate of interest chargeable from the allottee by the promoter shall be equal to the rate of interest which the promoter shall be liable to pay to the allottee in case of default by the promoter. The said provision is clear and unambiguous.

11. Further, Section 2(za) of Gujarat Real Estate (Regulation and Development), (General), Act 2017 reads thus:

"Interest" means the rates of interest payable by the promoter or the allottee, as the case may be.
Explanation -
For the purpose of this clause-
(I) the rate of interest chargeable from the allottee. by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allotted., in case of default;

(II) the interest payable by the promoter to the allottee. shall be from the date the promoter received the amount or any part thereof till the

date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee. to the promoter shall be from the date the allottee. defaults in payment to the promoter till the date it is paid.

12. Thus, Section 2 (za) of the Act, 2017 and the explanation thereto clearly stipulates that the rate of interest chargeable from the allottee by the promoter in case of default shall be equal to the rate of interest, which the promoter shall be liable to pay the allottee in case of default. Thus, it is seen from the provisions of the Act and the Rules that what is contemplated is that the rate of interest payable by either of the parties i.e. promoter or the allottee/ purchaser shall be equal.

13. In the present case, the learned Tribunal has relied upon the provisions of Rule 16(2) to hold that the appellants herein are entitled to Marginal Cost of Lending Rate (MCLR), rate plus 2 per cent which would be 7%+2%=9%.

In the considered opinion of this Court, the learned RERA Appellate Tribunal has erred in applying Rule 16(2), when Rule 16 (1) and Section 2 (za), clearly stipulate that the rate of interest payable by either of the parties shall be equal. In the present case, as per the agreement executed between the parties, the appellants were liable to pay interest at the rate of 18% in case of default of payment to the promoters. Therefore, the appellants were also entitled to the same rate of interest as per Section 2(za) of the Act 2017 and Rule16 (1) of the Rules, 2017.

14. For the aforesaid reasons and observations, the impugned judgment dated 12.04.2024 passed in Appeal No. 39 of 2023 by the

learned RERA Appellate Tribunal, reducing the rate of interest from the 18% to 9% is quashed and set aside. The order dated 14.12.2021 passed by the RERA Authority awarding interest at the rate of 18% is upheld.

The present RERA Appeal stands disposed of, accordingly.

(ANIRUDDHA P. MAYEE, J.)

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