

THE U.P. REAL ESTATE APPELLATE TRIBUNAL
AT
LUCKNOW

Bench 1

Reserved Judgment

1. APPEAL NO. 513/2022

(Complaint No. ADJ/LKO162/11/85202/2021)

U.P. Awas Evam Vikas Parishad.Appellant.

Vs.

Mamta SinghRespondent.

With

2. APPEAL NO. 677/2022

(Complaint No. ADJ/LKO162/02/50886/2020)

U.P. Awas Evam Vikas Parishad.Appellant.

Vs.

Yogesh Chandra Gupta.Respondent.

With

3. APPEAL NO. 733/2022

(Complaint No. ADJ/LKO162/04/93130/ 2022)

U.P. Awas Evam Vikas Parishad.Appellant.

Vs.

Akhilesh Singh.Respondent.

With

4. APPEAL NO. 98/2023

(Complaint No. ADJ/LKO162/05/94459/2022)

U.P. Awas Evam Vikas Parishad.Appellant.

Vs.

Shailee Sinha.Respondent.

With

5. APPEAL NO. 320/2023

(Complaint No. ADJ/LKO162/09/99179/2022)

U.P. Awas Evam Vikas Parishad.Appellant.

Vs.

Lalmani.Respondent.

With

6. APPEAL NO. 321/2023

(Complaint No. ADJ/LKO162/09/79157/2022)

U.P. Awas Evam Vikas Parishad.Appellant.

Vs.

Gorang Paul.Respondent.

With

7. APPEAL NO. 429/2023

(Complaint No. ADJ/LKO162/12/1246/2019)

U.P. Awas Evam Vikas Parishad.Appellant.
 Vs.
 Saurabh Patel.Respondent.

With

8. APPEAL NO. 759/2022

(Complaint No. ADJ/LKO162/08/79219/2021)

Lucknow Development Authority.Appellant.
 Vs.
 Shriram Tiwari & Jyoti Tiwari.Respondents.

Hon'ble Mr. Justice (Dr.) D. K. Arora, Chairman.
Hon'ble Mr. Sanjai Khare, Judicial Member.

1. Before we proceed to examine the instant matter/issue, we deem it proper to place on record that on demitting office by Technical Member from 26.09.2023 the judicial functioning of the Tribunal had come to a stand still with effect from 27.09.2023. On receipt of the notification dated 28.11.2023 with respect to appointment of Judicial Member, in the larger interest as well as to resume the judicial functioning of the Tribunal and to achieve the mandate of Section 44(5) of the Real Estate (Regulation & Development) Act 2016 read with Regulation 22 and 25 a Bench consisting of Chairman and Judicial Member was constituted vide order dated 01.12.2023. The Registry was directed to issue cause list of fresh appeals and re-schedule the cause list of pending appeals from 27.09.2023 on joining of the Judicial Member. Accordingly an office order dated 02.12.2023 was issued by the Registrar, which reads as under:--

OFFICE ORDER

It is hereby informed to all the concerned that the Tribunal was working with single Bench consisting of Hon'ble Chairman and Hon'ble Technical Member after demitting office by the Hon'ble Judicial Member on 31.12.2022. Hon'ble Technical Member also demitted office on 26.09.2023 and Hon'ble Administrative Member being on unauthorized leave from 30.09.2022 (who finally resigned on 29.10.2023) resulting the judicial functioning of the Tribunal to tune to standstill with effect from 27.09.2023.

The State Government vide Notification dated 28.11.2023 has appointed Hon'ble Judicial Member and as such presently, Hon'ble Chairman and Hon'ble Judicial Member having judicial back ground are available.

As per Section 43(3) of the Act 2016 every Bench of the Appellate Tribunal is to consist of at least one Judicial Member and one Administrative or Technical Member. The Appellate Tribunal is required to scrutinize judicially the appeals against the order of Regulatory Authority or Adjudicating Officer. Rule 30 of the Rules 2016 empowers the Appellate Tribunal to call upon such experts or consultants from the fields of economics, commerce, accountancy, real estate, competition, construction, architecture or engineering or from any other discipline as it deems necessary, to assist the Appellate Tribunal in the conduct of any enquiry or proceedings before it.

Section 55 of the Act 2016 protects the acts and proceedings of the Appellate Tribunal from being invalid merely for the reason of any vacancy in, or any defect in the constitution of the Appellate Tribunal or any defect in the appointment of a person acting as a Member of the Appellate Tribunal or any irregularity in the procedure of the Appellate Tribunal not affecting the merits of the case.

Accordingly in the larger interest and expeditious disposal of appeals as per mandate of Section 44(5) of the Act 2016 the Bench for hearing of appeals is constituted with Hon'ble Chairman & Hon'ble Judicial Member for judicial scrutiny of the appeals and in case any expert opinion/assistance is required the same will be taken as per provisions of Rule 30 of the Rules 2016 in appropriate cases or such cases will be deferred till availability of Administrative/Technical Member.

On joining of Hon'ble Judicial Member, the Registry is directed to issue cause list of fresh appeals and re-schedule the cause list of pending appeals from 27.09.2023 and upload the same on the website of the Tribunal and also inform all the parties/legal representatives about the same.

This order is issued with the approval of Hon'ble Chairman.

The judicial functioning of the Tribunal resumed with effect from 18.12.2023 after joining of the Judicial Member and the said Bench is still continuing on account of non-appointment of Technical and Administrative Members.

2. An order of the Tribunal dated 17.01.2024 passed in I.A. No. 1009/2023 in Appeal No. 134/2019 was set aside by the Single Judge Bench of Hon'ble Allahabad High Court, Lucknow Bench, vide order dated 10.05.2024 passed in RERA Appeal Defective No. 9 of 2024 with a direction to the Tribunal to decide afresh keeping in view the mandate contained in Section 43(3) of the Real Estate (Regulation and Development) Act 2016 and Regulation 6(5) falling in Chapter V of the U.P. Real Estate Appellate Tribunal Regulations, 2019.
3. As per the observation/order of Hon'ble High Court dated 10.05.2024 the Bench of the Tribunal could not be constituted on account of non-availability of Technical or Administrative Member. Hence, in reverence to the order of the Hon'ble High Court and inability to constitute the Bench, the Tribunal was left with no option but to suspend the judicial functioning of the Tribunal till the appointment of the Technical/Administrative Member by the State Government. Accordingly the Tribunal issued an order dated 15.05.2024 to the same effect.
4. A Division Bench of the Hon'ble High Court took suo motu cognizance of the matter and after examining the order of Hon'ble Single Judge dated 10.05.2024 and the order of the Tribunal dated 15.05.2024 suspending the judicial functioning of the Tribunal as well as the provisions of Section 55 of the Act 2016, which provides that no act or proceeding of the Appellate Tribunal shall be invalid merely by reasons of any vacancy in, or any defect in the constitution of the Appellate Tribunal not affecting the merits of the case, vide order dated 16.05.2024 directed that the functioning of the Tribunal,

as it was taking place prior to 15.05.2024 shall stand resumed forthwith.

5. In compliance of the aforesaid direction of Division Bench of Hon'ble High Court dated 16.05.2024 the judicial functioning of the Tribunal has been resumed w.e.f. 21.05.2024.
6. Now we proceed to deal with the instant matter.
7. The instant 8 appeals have been filed by the U.P. Awas Evam Vikas Parishad and Lucknow Development Authority ("the appellant/promoter") under Section 44 of the Real Estate (Regulation and Development) Act, 2016 ("the Act") challenging various orders passed by the Adjudicating Officer of the Real Estate Regulatory Authority ("the Adjudicating Officer"), the details of the same are tabulated below:--

Sl. No.	Appeal No. & Complaint No.	Date of impugned order.	Brief order of Adjudicating Officer.
1.	Appeal No. 513/2022 Complaint No. ADJ/LKO162/11/85202/2021	24.02.2022	The promoter is directed to pay compensation to the complainant at the rate of MCLR+1% on the original price of the flat i.e. Rs.26,00,000/- for the delay period from 28.05.2017 to 01.10.2020, within 45 days from the date of judgment. In case compensation is not paid within the stipulated time then after 45 days from the date of judgment till actual payment of the compensation the complainant will be entitled interest at the same rate.
2.	Appeal No. 677/2022 Complaint No. ADJ/LKO162/02/50886/2020	09.04.2021	The promoter is directed to pay compensation to the complainant at the rate of MCLR+1% on the original price of the flat i.e. Rs.43,15,000/- for the delay period from 27.12.2016 to 24.05.2017, within 45 days from the date of judgment. In case compensation is not paid within the stipulated time then after 45 days from the date of judgment till actual payment of the compensation the complainant will be entitled interest at the same rate.
3.	Appeal No.733/2022 Complaint No. ADJ/LKO162/04/93130/2022	17.06.2022	The promoter is directed to pay compensation to the complainant at the rate of MCLR+1% on the original price of the flat i.e. Rs.30,00,000/- for the delay period from 15.05.2017 to 14.01.2020, within 45 days from the date of judgment. In case compensation is not paid within the stipulated time then after 45 days from the date of judgment till actual payment of the compensation the complainant will be entitled interest at the same rate.
4.	Appeal No.98/2023 Complaint No. ADJ/LKO162/05/94459/2022	17.08.2022	The promoter is directed to pay compensation to the complainant at the rate of MCLR+1% on the original price of the flat i.e. Rs.30,00,000/- for the delay period from 15.05.2017 to 01.10.2020, within 45 days from the date of judgment. In case compensation is not paid within the stipulated time then after 45 days from the date of judgment till actual payment of the compensation the complainant will be entitled interest at the same rate.
5.	Appeal No. 320/2023	13.01.2023	The promoter is directed to pay compensation to the complainant at the rate of MCLR+1% on the

	Complaint No. ADJ/LKO162/09/99179/2022		original price of the flat i.e. Rs.30,00,000/- for the delay period from 28.05.2017 to 14.08.2020 (leaving 6 months' Covid-19 period), within 45 days from the date of judgment. In case compensation is not paid within the stipulated time then after 45 days from the date of judgment till actual payment of the compensation the complainant will be entitled interest at the same rate.
6.	Appeal No.321/2023 Complaint No. ADJ/LKO162/09/79157/2022	30.11.2022	The promoter is directed to pay compensation to the complainant at the rate of MCLR+1% on the original price of the flat i.e. Rs.30,00,000/- for the delay period from 15.05.2017 to 23.09.2020, within 45 days from the date of judgment. In case compensation is not paid within the stipulated time then after 45 days from the date of judgment till actual payment of the compensation the complainant will be entitled interest at the same rate.
7.	Appeal No. 429/2023 Complaint No. ADJ/LKO162/12/1246/2019	12.03.2021	The promoter is directed to pay compensation to the complainant at the rate of MCLR+1% on the original price of the flat i.e. Rs.57,38,000/- for the delay period from 26.06.2017 to 25.09.2019, within 45 days from the date of judgment. In case compensation is not paid within the stipulated time then after 45 days from the date of judgment till actual payment of the compensation the complainant will be entitled interest at the same rate.
8.	Appeal No. 759/2022 Complaint No. ADJ/LKO162/08/79219/2021	08.06.2022	The promoter is directed to pay compensation to the complainant at the rate of SBI's MCLR+1% on the original price of the flat i.e. Rs.49,50,000/- for the delay period from 14.08.2014 to 19.05.2019 (leaving the period of 02 years), within 45 days from the date of judgment. In case compensation is not paid within the stipulated time then after 45 days from the date of judgment till actual payment of the compensation the complainant will be entitled interest at the same rate.

8. Since the issues involved in these appeals are identical, therefore, they are being disposed of by a composite order. For the sake of convenience, we take Appeal No.513/2022 as the lead case.
9. The facts of the lead case (Appeal No. 513/2022), as culled out from the memo of appeal, are that in the self financing housing scheme of U.P. Avas Evam Vikas Parishad, Vrindavan Yojna, Kailash Enclave, Lucknow 2014, the registration for allotment of flat had been opened and the Registration Booklet had been issued. Clause 1 of the Registration Booklet provides that the cost mentioned in the brochure is the estimated cost and the proposed period of completion of construction is 27 months. On the completion of the construction of the flat and after final costing of the flat the final cost would be payable. Clause 3 of Registration Booklet provides that the location charges would be payable to the allottees of 1st to 3rd floor. Further clause 4 provides that the car parking charges would be payable. Further clause 5 provides that the free hold charges would

be payable. Clause 4.4 of Registration Booklet provides the refund of registration amount on the submission of refund voucher before the eligibility draw. Clause 4.5 of Registration Booklet provides the refund without interest after deduction of 20% of registration amount upto 3 months and 50% deduction after 3 months of issue of demand letter. Clause 4.6 of the Registration Booklet provides that due to delay if the appellant could not allot the flat upto or after six months of payment of last installment, on the demand of allottee the amount would be refunded along with interest at the rate payable on the saving account by the Nationalized Bank or at the rate prescribed by the Parishad. The such provisions are applicable only when the refund is claimed due to non allotment of flat upto or after six months of payment of last installment. Clause 9.1 of the Registration Booklet provides 27 months proposed period of completion of the flat. Further clause 9.2 of Registration Booklet provides that the delivery of possession would be made after full payment of the cost of the flat payable after final costing and after execution of sale deed in favour of allottee.

- 9.1 After accepting the terms and conditions of the Registration Booklet the respondent had applied for allotment of 2 BHK type flat by depositing the registration amount of Rs. 1,30,000/-. Thereafter in the eligibility draw the complainant had been declared successful for allotment of 2BHK type flat. Thereafter on the basis of estimated cost of Rs. 26,00,000/- the demand letter dated 28-02-2015 had been issued to the complainant subject to final determination of price of the flat. In accordance with the demand letter dated 28-02-2015 the amount of Rs. 4,00,000/- of the estimated cost was to be paid within a period of 30 days from the date of issue of the demand letter and the remaining amount of Rs. 20,70,000/- was to be paid in 9 quarterly installments of Rs 2,30,000/- each. In accordance with the demand letter the installment of estimated cost was to be paid within the period from 30-06-2015 to 31-06-2017. In the demand letter dated 28-02-2015, it had been specifically mentioned that if the amount is not paid within the stipulated period, 13.5% additional interest would be payable for the delayed period.

- 9.2 After final costing of the project the final allotment letter dated 01-10-2020 had been issued to the complainant. In the said allotment letter dated 01-10-2020 the flat no. C-117/2BHK/1 Floor had been allotted. In the allotment letter dated 01-10-2020 the construction cost of the flat shown Rs. 22,64,484/-, land cost Rs. 7,50,000/-, free hold charges Rs. 90,000/- and location charges Rs. 93,135/-, total cost of flat shown Rs. 31,97,619/-. After adjusting the amount of Rs. 26,00,000/- of estimated cost deposited by the complainant in the installments, the balance amount of Rs. 5,97,619/- has been found due for which the complainant was directed to deposit the balance cost of the flat and deposit the Misc. Charges mentioned in the allotment letter dated 01-10-2020 and complete the formalities for execution of sale deed and get the sale deed executed in her favour and take the possession upto 31-11-2020 failing which the additional interest @ 13.5% would be payable on the balance cost of the flat and Rs.75/- per day would be payable in making delay in taking possession. Thereafter the complainant had deposited the balance cost of the flat and completed the formalities for execution of sale deed and got the sale deed executed in her favour on 04-12-2020 and taken the physical possession on 09-12-2020.
- 9.3 In the meantime, after enforcement of Real Estate (Regulation and Development Act), 2016, the project of appellant had been registered by the Real Estate Regulatory Authority in which the period of completion of project had been mentioned upto 30-06-2019. Later on the said period had been extended upto 31-12-2019.
- 9.4 During the period provided by the RERA Authority for completion of the project, the project had been completed and Completion Certificate dated 27-12-2019 had been issued by the competent Authority.
- 9.5 After taking the possession of the flat the complainant had filed her complaint case no. ADJ/LK0162/11/85202/2021 before the Adjudicating Officer seeking the relief of compensation on the ground of delay in delivery of possession. The complainant had not submitted any documentary evidence regarding losses caused to her.

Further the complainant had not submitted any documentary evidence regarding actual loss caused to her due to alleged delay in delivery of possession and as such the said complaint case was not maintainable.

- 9.6 The complainant had wrongly stated in her complaint that the possession of the flat was to be given within a period of 27 months whereas the clause 1 of Registration Booklet provides that the cost of the flat mentioned in the brochure is estimated and the proposed period of completion of construction is 27 months and on the completion of project after final costing of the flat the final cost would be payable. The clauses 1 and 9.1 of Registration Booklet do not provide the period of 27 month for delivery of possession of flat.
- 9.7 In the said complaint case the appellant had filed written statement before the RERA Authority stating therein the correct facts that the clause 1 of Registration Booklet provides that the cost of the flat mentioned in the brochure is estimated and the proposed period of completion of construction is 27 months and on the completion of project after final costing of the flat the final cost would be payable. The clauses 1 and 9.1 of Registration Booklet do not provide the period of 27 months for delivery of possession.
- 9.8 The learned Adjudicating Officer had not considered the fact that clause 4.6 of Registration Booklet provides that due to delay if the appellant could not allot the flat upto or after six months of the last installment, on the demand of complainant, the amount would be refunded along with interest at the rate payable on the saving account by the Nationalized Bank or at the rate prescribed by the Parishad.
- 9.9 That the above order under challenge is illegal, arbitrary, unjust and without Jurisdiction in as much as the Adjudicating Officer does not have the powers to pass the order of interest on the deposited amount.
- 9.10 The appellant has no other alternative and in any case equally efficacious remedy except to invoke the Jurisdiction of this Hon'ble Appellate Tribunal under section 44(1) of the RERA Act.

10. The appellant/Promoter has challenged the impugned order dated 24.02.2022 passed by the Adjudicating Officer, on the following grounds:-

- (A). Because the Learned Adjudicating Officer, RERA Authority had not considered the facts that the appellant being a public institution constituted under the provision of U.P. Avas Evam Vikas Parishad Adhiniyam 1965, acquired the land in accordance with the provision of U.P. Avas Evam Vikas Parishad 1965 and the Land Acquisition Officer, after passing the award and making the payment of compensation to the farmers delivered the possession of the land to the appellant. Further after taking the compensation the farmers demanded more compensation and started agitations on the site and make the hindrance in the construction of the project. Further after taking the necessary No Objection Certificate from the various department, the construction work had been started and as such there is no deliberate delay in completing the construction work.
- (B) Because the Learned Adjudicating Officer, RERA Authority had not decided the actual controversy that whether the appellant deliberately delayed the project and utilize the money deposited by the allottee and gain the interest on the amount deposited by the allottee and whether the allottee has suffered loss due to alleged delay of project and whether the allottee will not compensated by increase in the value of property which he is getting. In the case of Ghaziabad Development Authority Versus Balbir Singh (2004) 5 SCC page 65 the Hon'ble Apex Court has held "That the compensation cannot be uniform and can be best be illustrated by considering the cases where possession is being directed to be delivered and the cases where only monies are directed to be returned. In cases where possession is being directed to be delivered the compensation for harassment will necessarily have to be less

because in a way that part is being compensated by Increase in the value of the property he is getting".

- (C) Because the learned Adjudicating Officer, RERA Authority had not considered the fact that where the grievance is one of the delay in delivery of possession and the authority offer the delivery of possession at agreed price and such offer of delivery of possession is accepted by the allottee, the question of awarding any interest on the deposited amount of allottee from the date of deposit till the date of delivery of possession does not arise as the allottee benefitted of appreciation of price of the flat/ house, is not entitled to interest on the deposited amount.
- (D) Because the learned Adjudicating Officer, RERA Authority had not considered the fact that where the allotment is at a tentative rate subject to calculation of final cost which is higher than the tentative cost, it will not be considered as charging a revised higher rate and in the present matter the allotment was made on the tentative price subject to final determination of price after completion of project and after final costing the price mentioned in the allotment letter is higher than the tentative price cannot be treated as revised higher rate.
- (E) Because the learned Adjudicating Officer, RERA Authority had not considered the law laid down by the Hon'ble Apex Court in case of Bangalore Development Authority... versus Syndicate Bank that where no time is stipulated for performance of the contract (i.e. for delivery) or where time is not essence of the contract and if the allottee, instead of rescinding the contract on the ground of non performance, accepts the belated performance in terms of contract, there is no question of any breach and in the present matter the allottee not rescinded the contract and not claimed the refund on the ground of non performance as provided in clause 4.6 of Registration Booklet and accepted the belated performance in terms of contract and agreed to take the possession of the flat

by depositing the final cost of the flat, the complainant is not entitled to get the interest on the deposited amount.

- (F) Because the para 9 (ii) of the Real Estate (Regulation and Development) (Sale / Lease Agreement) Regulation 2018 provides that in which case the promoter shall be liable to refund the entire money paid by the allottee. the interest at the rate equal to MCLR +1 would be payable but the said regulation does not provide to pay the interest at the rate of MCLR1 where the allottee agreed to take the physical possession of the flat and as such the direction to pay the interest at the rate of MCLR+1 to the complainant on the deposited amount is not sustainable.

- (G) Because in the said complaint case the appellant had filed written statement before the Adjudicating Officer, RERA Authority stating therein the correct facts that the clause 1 of Registration Booklet provides that the cost of the flat mentioned in the brochure is estimated and the proposed period of completion of construction is 27 months and on the completion of project after final costing of the flat the final cost would be payable. The clauses 1 and 9.1 of Registration Booklet do not provide the period of 27 month for delivery of possession of flat. The learned Adjudicating Officer had not considered the facts of written statement properly and had wrongly allowed the relief in favour of complainant.

- (H) Because the learned Adjudicating Officer had not considered the fact the clause 4.6 of Registration Booklet provides that due to delay if the appellant could not allotted the flat upto or after six months of the last installment, on the demand of complainant, the amount would be refunded along with interest at the rate payable on the saving account by the Nationalized Bank or at the rate prescribed by the Parishad.

- (I) Because Section 71 of the Act read with Section 34(1) of the Rules provides that any aggrieved person may file a complaint in Form N before the Adjudicating Officer for compensation under Sections 12, 14, 18 and 19 and the Adjudicating Officer may examine the actual losses suffered by the allottee as a result of delay in handing over the possession of the flat on the factors mentioned in Section 72 of the Act taking in to consideration the evidences produced by the allottee and as such the Adjudicating Officer had no jurisdiction to award the interest on the deposited amount of complainant only on the basis of alleged delay in delivery of possession and the judgment passed by the Adjudicating Officer is without jurisdiction and not sustainable.
- (J) Because the learned Adjudicating Officer had not mentioned in its judgment that what was the material / documentary evidences for determining the interest / compensation and as such the judgment and order dated 24-02-2022 is illegal, non speaking and not sustainable in the eye of law.
- (K) Because the order dated 24-02-2022 under challenge in this appeal is illegal, arbitrary, Unjust as much as the authority does not have the power to pass the order of interest @ MCLR+ on the deposited amount of respondent.
- (L) Because the learned Adjudicating Officer had not considered the facts that the complainant had filed her complaint case seeking the relief of compensation only on the ground of alleged delay in delivery of possession and the complainant had not filed any documentary evidences regarding losses caused to him due to alleged delay in delivery of possession and the relief of interest cannot be granted to the respondent.
- (M) Because in the case of M/S FORTUNE INFRASTRUCTURE - --VERSUS---TREVOR D'LIMA and others the Hon'ble Supreme Court had held that when there was no delivery

period stipulated in the agreement, a time period of 3 years would be reasonable for completion of the contract and in the present matter there is no time period stipulated for delivery of possession and as such the delay should have been counted after expiry of 36 months period from the date of issue of demand letter dated 28-02-2015 and the order awarding the interest by computing the 27 months proposed period of construction is against the law laid down by the Hon'ble Supreme Court of India.

(N) Because in the case Civil Appeal No. 6649-50/2018 Supertech Limited Versus Rajni Goel the Hon'ble Supreme Court had held that the period of interest should close on April 2016 when the full occupancy certificate was obtained and in the present matter the completion certificate dated 27-12-2019 had been issued by the Competent Authority and as such the order dated 24-02-2022 awarding the interest after 27-12-2019 is against the law laid down by the Hon'ble Supreme Court of India.

11. The appellant has prayed for quashing the order dated 24.02.2022 passed by the Adjudicating Officer in Complaint Case No. ADJ/LKO162/11/85202/2021.
12. The respondent/allottee in his objections to the grounds of appeal has submitted that:
 - 12.1 The respondent applied for a flat in Vindravan Yojna and was allotted a flat by the appellant on 28.02.2015 in Vindravan Yojna Kailas enclave Sector-18. The flat should have been completed in 27 month according to the booklet/ brochure but that is not completed within the stipulated time while the respondent has deposited the entire amount according to the installment. The appellant has given the possession to the respondent after a long time about 3 years unexplained delay by which the respondent has suffered bitterly that is why respondent claimed before the RERA for compensation in light of the judgment passed by the Hon'ble Supreme Court's Full

Bench in the case of Chief Administrative Hudda Vs. Shakuntla Devi.

- 12.2 After considering the aforesaid legal position, the Learned Adjudicating Officer has awarded interest at the original value of 26 lacs at the rate of MLRC + 1%, but the appellant despite this order is not giving the aforesaid interest amount and has challenged the order passed by RERA to harass the respondent.
- 12.3 The appellant is fully responsible for the delay in giving possession of the flat to the respondent. The respondent deposited the installments as per guidelines given in the booklet and also complied the instructions given by the appellant, but the appellant failed to fulfill the terms and conditions according to the booklet and has given the possession to the respondent with three years' delay.
- 12.4 The learned Adjudicating Officer passed the impugned order after application of mind and passed a reasoned and speaking order in accordance with law, therefore, there is no illegality in the impugned order and the appeal filed by the appellant is liable to be dismissed.
13. The appellant/promoter has filed reply to the objections filed by the respondent/allottee, denying the averments made by the respondent and reiterating the averments made by the appellant in the memo of appeal. The appellant further submitted that:
 - 13.1 The Adjudication Officer has not considered the fact that the respondent had filed his complaint case seeking the relief of compensation only on the ground of alleged delay in delivery of possession and the respondent had not filed any documentary evidence regarding actual losses suffered to her due to alleged delay in delivery of possession. Further, the Adjudicating Officer has not considered the fact that the provision of Section 71 of the Act read with Section 34(1) of the Rules 2016 provides that under Section 12,14,18 and 19 the Adjudicating Officer may examine the actual losses suffered by the allottee as a result of delay in handing over the possession of the flat on the factors mentioned in Section 72 of the Act, taking into consideration the evidences produced by the allottee

and the Adjudicating Officer had no jurisdiction to award the interest on the deposited amount of the respondent.

13.2 The Adjudicating Officer had not considered the facts that in the case of M/S FORTUNE INFRASTRUCTURE - versus TREVOR DLIMA AND OTHERS the Hon'ble Apex Court had held that when there was no delivery period stipulated in the agreement, a time period of 3 years would be reasonable for completion of the contract and in the present matter there is no time period stipulated for delivery of possession and as such the delay should have been counted after expiry of 36 months period from the date of issue of demand letter dated 28-02-2015 and the order for awarding the interest by computing the 27 months proposed period of construction is against the law laid down by the Hon'ble Apex Court. Further the Adjudicating Officer had not considered the facts that in the case of Civil Appeal No. 6649-50/2018 SUPERTECH LIMITED-versus-RAJNI GOEL THE Hon'ble Apex Court had held that the period of interest should close on April 2016 when the full occupancy certificate was obtained and in the present matter the completion certificate dated 27-12-2019 had been issued by the Competent Authority and as such awarding the interest after 27-12-2019 is against the law laid down by the Hon'ble Apex Court.

13.3 The respondent had not submitted any documentary evidence regarding actual losses suffered by her due to alleged delay in delivery of possession and as such the complaint case of respondent was not maintainable and was liable to be rejected. It is further submitted that the respondent filed her complaint case only on the basis of that the possession was to be given within 27 months whereas the clause 1 and 9.1 provides the proposed period of construction is 27 months and the said clause does not provide the period of 27 months for delivery of possession. Further in the clause 1 of the Registration Booklet it was specifically mentioned that the cost mentioned in the brochure is the estimated cost and proposed period of construction is 27 months.

- 13.4 The Adjudicating Officer had not decided the actual controversy that whether the appellant deliberately delayed the project and utilized the money deposited by the allottee and gained the interest on the deposited amount of allottees and whether the allottee had suffered loss due to alleged delay in delivery of possession and whether the allottee will not be compensated by increase in the value of property which he is getting.
- 13.5 The learned Adjudicating Officer had not considered the facts where the grievance is one of the delay in delivery of possession and the authority offer the possession at agreed price and such offer is accepted by the allottee, the question of awarding any interest on the deposited amount of allottee from the date of deposit till the date of delivery of possession does not arise as the allottee was benefitted of appreciation of price of the flat/house and is not entitled to get the interest on the deposited amount. Further the Adjudicating Officer had not considered the facts that it is settled law that where no time is stipulated for performance of contract (i.e. for delivery) where time is not essence of the contract and if the allottee instead of rescinding the contract on the ground of non performance, accepts, there is no question of any breach and as such the respondent is not entitled to get any interest on her deposited amount.
- 13.6 On the basis of above said facts the appeal is liable to be allowed and the appellant is fully entitled to get all the reliefs claimed in the appeal.
14. Heard Sri N.N. Pandey, learned counsel for the appellant in Appeal Nos. 513/2022, 677/2022, 733/2022, 98/2023, 320/2023, 321/2023, 429/2023, Sri Abhishek Khare, learned counsel for the appellant in Appeal No.759/2022, Sri Ram Nath Pandey, learned counsel for the respondent in Appeal No. 513/2022, Sri Siddharth Singh, learned counsel for the respondent in Appeal No.677/2022, Sri Amit Yadav along with Sri Pramod Kumar Sinha, learned counsel for the respondent in Appeal Nos. 733/2022, 98/2023 & 321/2023, Sri Lalmani, the respondent-in-person in Appeal No.320/2023 and Sri Harish Pandey, learned counsel for the respondent in Appeal No.

759/2022. No one was present on behalf of respondent in Appeal No.429/2023 and the matter has proceeded exparte against the respondent vide order dated 15.02.2024.

- 14.1 Sri N. N. Pandey, learned counsel for the appellant, submitted that the respondent filed a complaint before the Adjudicating Officer seeking compensation on the ground of delay in possession and wrong information that the complainant/allottee detained Government accommodation and paid penalty rent. The submission of learned counsel for the appellant is that as per proviso to Section 18(1) of the Act 2016 if an allottee chooses to remain with the project and seek possession or take possession, then he is entitled for interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed. Admittedly, the respondent after taking possession on 19.10.2020 filed complaint on 17.05.2022 seeking compensation.
- 14.2 Sri N. N. Pandey, learned counsel for the appellant, further submitted that an allottee can file claim for compensation on violation of the provisions of Sections 12,14,18 and 19 of the Act 2016 and in case the allottee chooses to take possession then his/her claim is covered under the proviso to Section 18(3) of the Act 2016, which provides that if the promoter fails to discharge any other obligations imposed on him under this Act or the Rules or Regulations made thereunder or in accordance with the terms and conditions of the agreement for sale, he shall be liable to pay such compensation to the allottees in the manner as provided under the Act 2016.
- 14.3 Learned counsel for the appellant also submitted that no violation of any rules and regulations has been made, as mentioned by the respondent, except delay in possession and the issue of penalty rent is neither covered under the Act nor as per the terms and conditions of the Agreement. Hence, the impugned order is not sustainable in the eyes of law. The learned counsel for the appellant placed reliance at para 86 of the judgment rendered by Hon'ble Supreme Court in M/s Newtech Promoters and Developers Pvt. Ltd. Vs. State of U.P. & Ors. [Civil Appeal No(s). 6745-6749 of 2021].

- 14.4 Sri Amit Yadav, learned counsel for the respondent in Appeal Nos. 733/2022, 98/2023 & 321/2023 submitted that the instant case is squarely covered by the judgment of this Tribunal and submitted that it will be in the interest of justice that while setting aside the impugned order, liberty may be given to the respondent to approach the Regulatory Authority for seeking interest for delay.
- 14.5 Sri Siddharth Singh, learned counsel for the respondent in Appeal No.677/2022, agreed with the submission of Sri Amit Yadav that the instant case is squarely covered by the judgment of this Tribunal and submitted that it will be in the interest of justice that while setting aside the impugned order, liberty may be given to the respondent to approach the Regulatory Authority for seeking interest for delay.
15. In order to examine the grounds taken by the appellant and the averments made by both the parties, we deem it fit to frame the following question based on the grounds pressed by the learned counsel for the appellants:-

Whether under the scheme of Act 2016 and Rules 2016 any mechanism has been provided for determination of the interest for delay in handing over possession of the apartment/plot to the allottee, if the allottee does not intend to withdraw from the project and/or refund with interest and compensation, if the allottee withdraws on account of not providing possession within the period prescribed in the agreement?

16. The question is as to whether under the scheme of Act 2016 and Rules 2016 any mechanism has been provided for determination of the interest for delay in handing over possession of the apartment/plot to the allottee, if the allottee does not intend to withdraw from the project and/or refund with interest and compensation, if the allottee withdraws on account of not providing possession within the period prescribed in the agreement.
- 16.1 The Act envisages adjudication by the Regulatory Authority in terms of the powers under Chapter V of the Act and in particular Sections

31, 32, 34, 35 and 40 of the Act, and for adjudging compensation by the Adjudicating Officer in terms of the power under Chapter VIII of the Act and in particular Sections 71 and 72 thereof.

16.2 The Act spells out the obligations of the promoter of a real estate project and the consequence of the promoter failing to fulfill those obligations. Some of those obligations are enumerated in Section 11, 12 to 18 of the Act.

16.3 Section 18 of the Act talks of the consequence of the failure by the promoter to complete or to be unable to give possession of an apartment, plot or building either in terms of the agreement for sale or failure to complete the project by the date specified therein or on account of discontinuance of his business either on account of suspension or revocation of the registration under the Act or for any other reason. In the event of either of the above contingencies under Section 18 (1) (a) of the Act, the promoter is made liable on the demand of the allottee:-

(i) In the event that the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by the promoter in respect of that apartment, plot, building, as the case may be, together with “interest at such rate as may be prescribed” “including compensation in the manner as provided under this Act”;

(ii) Where an allottee does not intend to withdraw from the project the promoter shall pay him for every month’s delay in handing over of the possession, “interest at such rate as may be prescribed”. Section 18 (2) of the Act mandates that in case loss is caused to allottee due to the defective title of the land, on which the project is being developed or has been developed, the promoter shall compensate the allottee and that such claim for compensation under Section 18 (2) shall not be barred by limitation provided under any law for the time being in

force.

- (iii) Section 18 (3) of the Act states that where the promoter fails to discharge any other obligations under the Act or the Rules or Regulations made there under or in accordance with the terms and conditions of the agreement for sale, the promoter shall be liable to pay “such compensation” to the allottees, in the manner as provided under the Act.

16.4 It is apparent on a reading of Section 18 of the Act as a whole that upon the contingencies spelt out therein, (i) the allottee can either seek refund of the amount by withdrawing from the project; (ii) such refund could be together with interest as may be prescribed; (iii) the above amounts would be independent of the compensation payable to an allottee either in terms of Sections 18 (2) or 18 (3) of the Act read with other provisions; (iv) the allottee who does not intend to withdraw from the project will be required to be paid by the promoter interest for every month’s delay of handing over possession.

16.5 The provisions of Section 18(1) acclaimed two rights of the Allottee in cases where there is a delay in handing over of the possession by the promoter of the allotted unit in accordance with the terms of agreement for sale:—

A. When an Allottee wishes to withdraw from the project due to delay in handing over of the possession, on demand the Allottee shall be refunded the entire deposited amount along with the *interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act*. Hence when an Allottee withdrew from the project he has the right to receive his deposited amount with interest at such rate as may be prescribed in the rules including compensation in the manner prescribed in the Act. Thus an Allottee can Receive “interest” and “COMPENSATION” both from the promoter along with the deposited amount.

B. When the Allottee decides to stay in the project even due to delay in handing over of the possession, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed. In this case an Allottee is entitled for interest for every month of delay till the handing over of the possession, at such rate as may be prescribed only.

16.6 If we closely examine the above two provisions, it comes out that in a case where the Allottee exits the projects, the Act expressly provides INTEREST AND COMPENSATION both, but in cases where the Allottee tends to stay in the project the Allottee is only entitled for interest of every month till the handing over of the possession. Thus the intention of the legislature was to provide Compensation only to those Allottees who exit the project and not to those who tends to stay in the project.

16.7 Now if we study the section 18 as a whole, the following are the express provisions for providing compensation to an Allottee under section 18:-

A. Where the Allottee wishes to withdraw from the project, without prejudice to any other remedy available, on demand he shall be liable to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act.

B. The promoter shall compensate the allottees in case of any loss caused to him due to defective title of the land, on which the project is being developed or has been developed, in the manner as provided under the Act.

C. If the promoter fails to discharge any other obligations imposed on him under this Act or the rules or regulations made there under or in accordance with the terms and conditions of

the agreement for sale, he shall be liable to pay such compensation to the allottees, in the manner as provided under this Act.

- 16.8 As per the provisions of Section 18, compensation can be sought by an Allottee in case of defective title of the land, and also if the promoter fails to discharge any other obligations imposed on him under this Act or the rules or regulations made there under or in accordance with the terms and conditions of the agreement for sale.
- 16.9 The word “Any Other” signifies beside these, meaning thereby that apart from the delay in possession, any other breach of the terms & conditions of the Agreement to sell or breach of the obligations imposed on him by the provisions of the Act or Rules shall also be liable to compensate the Allottee.
- 16.10 If we critically analyze the section, we will find that the word ‘compensation’ has been used in every sub-section covering almost all the scenario except the word compensation has not been used in the case where Allottee decides to stay in the project even due to delay in handing over of the possession and he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed only.
- 16.11 The intention of the legislature was to provide Compensation only to those Allottees who exit the project and also regarding defective title and breach of agreement to sale and obligations imposed on, by the Act and Rules, but not to those who wish to stay in the project, for them beside the other provision of compensation in term of defective title and breach of agreement to sale as well as obligations imposed on by the Act and Rules is applicable, but in case of delay in handing over of possession, the Allottee is entitled for only INTEREST at a prescribed rate and not “compensation” as the Suffix “including compensation” has not been provided by the Act.

- 16.12 Thus the intention of the legislature was clear in providing the compensation of delay to only those who exit the project and not to those who wishes to stay in the project.

When one turns to the powers of the Authority, it is seen that under Section 31, the complaints can be filed either with the Authority or with the Adjudicating Officer (AO) for violation or contravention of the provisions of the Act or the Rules and Regulations. Such complaint can be filed against “any promoter, allottee or real estate agent”, as the case may be. Such complaint can be filed by “any aggrieved person”. The Explanation to Section 31 (1) of the Act states that for the purposes of said sub-section “person” shall include an association of allottees or any voluntary consumer association registered under any law for the time being in force. Section 31 (2) states that the form, manner and fees for filing a complaint under sub-section (1) shall be such as may be prescribed.

- 16.13 Having gone through the relevant Sections of the Act, we find that as per Sections 12, 18 and 19 of the Act, the allottee, in case of default by the promoter, is entitled to refund of his/her entire investment along with "interest at such rate as may be prescribed" and "compensation in the manner provided under the Act". Whereas in Section 12, the part dealing with interest and the part dealing with compensation are joined with the word "and" while in Section "18" they are joined with the word "including". Also, "at such rate as may be prescribed" is suffixed to the word "interest" in the context of refund of investment, but the expression "at such rate as may be prescribed" is neither prefixed nor suffixed to the word "compensation" in any of the Sections of the Act. The term compensation is suffixed by the expression "in the manner as provided under this Act" in Sections 12, 14, 18 & 19 of the Act. However, compensation and interest are qualified by the term "as he thinks fit in accordance with the provisions of any of those sections" in Section 71 of the Act. The Act only lays down for "holding an enquiry in the prescribed manner, after giving any person concerned a reasonable opportunity of being heard" under

Section 71. The Act very clearly provides that the quantum of compensation or “interest as he thinks fit” under Section 71 will be decided taking into consideration the factors listed under Section 72 of the Act.

- 16.14 We further examined Section 31 of the Act and Rule 33 & Rule 34 of the Rules. The relevant portions of Section 31 of the Act and Rule 33 of the Rules are extracted as follows:-

Extract of Section 31 of the Act

"(1) Any aggrieved person may file a complaint with the Authority or the adjudicating officer, as the case may be, for any violation or contravention of the provisions of this Act or the rules and regulations made thereunder against any promoter, allottee or real estate agent, as the case may be.

Explanation

For the purpose of this sub-section "person" shall include the association of allottees or any voluntary consumer association registered under any law for the time being in force.

(2) The form, manner and fees for filing complaint under sub-section (1) shall be such as may be specified by regulations."

- 16.15 As can be seen from above, Section 31(2) of the Act provides for specifying by regulations, the form, manner and fee for filing complaint under Section 31(1) of the Act. As provided under Section 31(2) of the Act, the U.P. Government has framed Rules, 2016. Rule 33(1) provides for manner of filing a complaint with the Regulatory Authority. Rule 33(1) is extracted as follows:-

Extract of Rule 33(1) of Rules-

(1) Any aggrieved person may file a complaint with the regulatory authority for any violation under the Act or the rules and regulations, made there under, save as those provided to be adjudicated by the adjudicating officer, in Form M which shall be accompanied by a fee of rupees one thousand in the form of a demand draft drawn on a nationalized

bank, in favour of regulatory authority and payable at the main branch of that bank at the station, where the seat of the said regulatory authority is situated.

- 16.16 It is evident from Rule 33(1) of the Rules that the complaints filed with the Regulatory Authority should be in Form M, except those complaints which require to be adjudicated by the Adjudicating Officer. On top of Form M, it is clearly written that it is as per provisions of Rule 33(1) and is meant for filing complaint under Section 31 of the Act. Further Column 5 of the Form M specifically requires a complainant to indicate the relief(s) sought.
- 16.17 On examination of Section 35 of the Act, we find that the powers of the Regularity Authority under Section 35 of the Act are of a wide nature. While discharging those functions, it will be open to the Authority to even require the AO to conduct the inquiry. Section 35 (2) of the Act also makes it plain that the Regulatory Authority will have the same powers as a Civil Court. The legislative intent is, therefore, not to diminish the adjudicatory functions of the Regulatory Authority, but rather to provide it with all the trappings of a quasi-judicial/judicial authority while inquiring into the complaints and issuing directions, by directing the Adjudicating Officer to adjudicate the compensation or interest. The legislation in its own wisdom has used the word “Authority” as well as “Adjudicating Officer” wherever it is required. Furthermore, the legislation has clearly, intentionally and suitably used the word “penalty” or “interest at such rate as may be prescribed” in case of Authority and “compensation” or “interest as he thinks fit” in case of Adjudicating Officer.
- 16.18 Further, the Hon’ble Bombay High Court in the case of ***Neelkamal Realtors Suburban Pvt. Ltd. And others Vs. Union of India (supra)*** observed as follows:-

"Section 18(1)(b) lays down that if the promoter fails to complete or is unable to give possession of an apartment due to discontinuance of his business as a

developer on account of suspension or revocation of the registration under the Act or for any other reason, he is liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice in this behalf including compensation. If the allottee does not intend to withdraw from the project he shall be paid by the promoter interest for every month's delay till handing over of the possession. The requirement to pay interest is not a penalty as the payment of interest is compensatory in nature in the light of the delay suffered by the allottee who has paid for his apartment but has not received possession of it. The obligation imposed on the promoter to pay interest till such time as the apartment is handed over to him is not unreasonable. The interest is merely compensation for use of money".

16.19 The Hon'ble Supreme court in the case of **M/s. NEWTECH PROMOTERS AND DEVELOPERS PVT. LTD Vs STATE OF U.P. and Others [2021(11) ADJ 280], [2022 (1) R.C.R.(Civil) 357]** while dealing with the jurisdiction of the Authority and the Adjudicating Officer under the provision of the Real Estate (Regulation and Development) Act, 2016 has framed a question as follows:-

“1. Whether the authority has jurisdiction to direct return/refund of the amount to the allottee under Sections 12, 14, 18 and 19 of the Act or the jurisdiction exclusively lies with the adjudicating officer under Section 71 of the Act?”

After elaborate discussion, the Hon'ble Apex court at paragraph 86 held that:

“ 86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like ‘refund’, ‘interest’, ‘penalty’ and ‘compensation’, a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and

interest thereon, it is the regulatory authority which has the power to examine and determine the outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act. If the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and functions of the adjudicating officer under Section 71 and that would be against the mandate of the Act 2016”.

- 16.20 On examination of the above finding of the Hon’ble Apex Court with the provision of the section 18 of the Act 2016, it is clear that when the Allottee decides to stay in the project even due to delay in handing over of the possession, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed, meaning thereby in this situation the Allottee is entitled for interest for every month of delay till the handing over of the possession, at such rate as may be prescribed, and not “compensation“ as the suffix “including compensation” in case of seeking refund due to delay beyond the period prescribed in the agreement.
- 16.21 The scheme of the provisions of Section 18 of the Act 2016 clearly provides that in cases where the Allottee intends to stay in the project, the Allottee is entitled only for interest as per the rate prescribed and its jurisdiction of determination lies in the regulatory authority and not with Adjudicating Officer, and hence the Adjudicating Officer cannot grant interest as compensation, because the Statute does not provide any scope of compensation in such situation.
- 16.22 It is to be noted that **discretionary powers also vest with the Adjudicating officer** as he can direct to grant compensation as “HE

THINKS FIT” after the enquiry, in conformity with the provisions of Section 72, meaning thereby that he has the power to “ACCEPT OR REJECT” the claim of the Allottee after an enquiry, but no such powers lie with the Authority in granting interest for delayed period.

- 16.23 From the aforementioned discussion, it is clear that the Act of 2016 provides a mechanism for determination of interest as per the rate prescribed only by the Regulatory Authority for the delay in handing over possession of the unit to the allottee, if the allottee wishes to stay with the project and or refund with interest and compensation, if allottee wished to withdraw from the project. The question is answered accordingly.
17. In view of the aforesaid analysis the Regulatory Authority is vested with the power to determine interest for the delay in handing over possession of the unit to the allottee. The Adjudicating Officer has no jurisdiction to award interest for the delay in handing over possession. Thus, all the 8 orders passed by the Adjudicating Officer impugned in all the 8 appeals, are without jurisdiction and not sustainable in the eyes of law.
18. **Accordingly all the 8 Appeals Nos. 513/2022, 677/2022, 733/2022, 98/2023, 320/2023, 321/2023, 429/2023 and 759/2022 are allowed and the impugned orders detailed in the table mentioned in para 7 above are hereby set aside. The allottees/respondents are given liberty to file fresh complaint before the Regulatory Authority.**
19. The amount deposited by the appellants towards compliance of the provisions of Section 43(5) of the Act 2016 be released in favour of the appellants. The appellants are directed to move an application before the Registrar of this Tribunal giving details of proof of deposited amount as well as bank account number along with IFS Code in which the appellants want the said amount to be remitted through RTGS.
- 19.1 On receipt of the application, the Registrar, after verifying the amount deposited by the appellants from the Accounts Department/Bank, will take necessary steps for release of the amount.

Registry is directed to take steps for redemption of the amount of fixed deposit and remit the amount to the appellants in the bank account through RTGS along with interest accrued on the said fixed deposit.

19.2 It will be the liability of the beneficiary to pay the income tax on the interest earned on the deposited amount, if any.

20. No order as to costs.

Dated: 24th May 2024.
Shakir

(Sanjai Khare)

(D.K. Arora)