RESERVED JUDGMENT
BENCH-1

THE UTTAR PRADESH REAL ESTATE APPELLATE TRIBUNAL, AT LUCKNOW.

APPEAL NO. 222/2021

Syamchand De ……..………Appellant.

Versus

Anil Jain, Shourya Shubham Infrastructure Pvt. Ltd.

(Erstwhile Aura Infrastructure Pvt. Ltd.). ……………Respondent.

Hon'ble Mr. Justice (Dr.) D. K. Arora, Chairman.
Hon'ble Mr. Kamal Kant Jain, Technical Member.

1. The present appeal has been preferred by Sri Syamchand De (hereinafter referred to as the 'appellant') under Section 44(1) of the Real Estate (Regulation and Development) Act 2016 (hereinafter referred to as 'the Act 2016') against the order dated 16.08.2019 passed by the Real Estate Regulatory Authority, Regional Office, Gautam Budh Nagar (hereinafter referred to as the 'Regulatory Authority') in Complaint No. 1120173226 whereby the complaint was decided on the basis of settlement between the parties and the respondent was directed to ensure delivery of physical possession of the unit to the complainant/appellant within 45 days from the date of uploading of the order on the portal.

2. The facts of the case, in brief, as culled out from the memo of appeal, are that the appellant booked Flat No. B/105, at Aura, Chimera, Rajnagar Extension, Ghaziabad, Uttar Pradesh through a deed of agreement with M/s Aura Infrastructure (P) Ltd., on 5th May 2008 vide Agreement No. ALCHM/00622/2006-2007/B/105 and paid booking amount of Rs.25,000/-.

2.1 Total super area of the aforesaid flat was approximately 1755 sq.ft. and the cost of the said flat was Rs.27,25,000/-. The appellant has paid total amount of Rs. 26,06,175/-.

2.2 The date of completion of the aforesaid unit, as per Builder Buyer Agreement, was 31.07.2009, but the builder failed to provide the aforesaid booked flat. Therefore, the appellant filed Complaint No. 1120173226 before the Regulatory Authority praying for the following reliefs:--

(a) Either to return all paid amount (Rs.26,06,175/-) with market rate interest w.e.f. June 2008 till date (9 years plus) i.e. Rs.57 lacs approx.

(b) To hand over one available 3 B.R. Flat (1425 sq. ft.) in the same complex along with balance amount and market rate interest of whole paid amount w.e.f. Aug. 2009 till date i.e. 3 B.R. Flat (1425 sq.ft.) + Rs. 20 lacs.

2.3 The said complaint of the appellant was dismissed by the Regulatory Authority vide order dated 13.02.2019.

2.4 The appellant moved a Rectification/Review Application before the Regulatory Authority on 13.02.2019 in the aforesaid complaint whereupon the Regulatory Authority reopened the hearing in the above complaint of the appellant.

2.5 During pendency of the aforesaid complaint the respondent entered into a compromise/settlement with the appellant on 22.11.2017 before S.S.P. Noida and agreed to allot a different flat of 1425 sq.ft. area, amounting to Rs.17,44,625/- including other charges. An amicable understanding was made in the aforesaid compromise/settlement that the respondent would return the difference amount of the flats. It was also concluded in the aforesaid compromise/settlement that the appellant would make no litigation/claim with respect to bigger flat booked by him.

2.6 The Regulatory Authority, on the basis of the aforesaid compromise/settlement, vide order dated 16.08.2019, decided the complaint of the appellant with a direction to the respondent to ensure delivery of physical possession of the unit to the complainant/appellant within 45 days from the date of uploading of the order on the portal.

3. The appellant has challenged the impugned order dated 16.08.2019 passed by the Regulatory Authority on the following grounds:--

(i) The Regulatory Authority appreciated the agreement/compromise signed between the appellant and the Director of Shourya Shubham Infrastructure Pvt. Ltd. before S.P. Noida on 22.11.2017 without applying its mind to the fact that lesser area has been provided by the respondent.

(ii) The Regulatory Authority failed to appreciate the fact that the appellant was put under compelling situation to accept the flat unwillingly, which was lesser in size.

(iii) The Regulatory Authority failed to appreciate the fact that there was an exorbitant delay of approximately 9 years and the respondent enjoyed the hard earned money of the appellant of which a major part was taken as home loan.

(iv) The Regulatory Authority failed to appreciate the fact that when a flat of lesser area is being given by the respondent to the appellant, the difference amount was mandatorily supposed to be returned to the appellant.

(v) The Regulatory Authority failed to appreciate the fact that the appellant has paid total amount of Rs.26,06,175/- and the cost of the existing flat of super area 1425 sq.ft. was Rs.17,44,625/-, the excess amount of Rs.8,61,550/- was to be returned to the appellant along with market rate interest.

(vi) The Regulatory Authority failed to appreciate that the appellant is a Government Servant and a salaried person, and has suffered an unbearable financial loss in the form of interest paid to the bank while re-paying the home loan, along with mental agony and stress.

(vii) The Regulatory Authority did not apply its mind the adjudicating the aforesaid case and passed one sided and biased order which gives undue benefit to the respondent.

(viii) The Regulatory Authority failed to appreciate that the appellant has not been provided parking space as promised and even the quality of internal construction of the flat is very poor.

4. The appellant has prayed for the following reliefs:--

(a) Either to return the difference of capital amount Rs.26,06,175 – 1744625 = Rs.8,61,550/- excessively paid to the respondent, while being given a flat of lesser area along with prevailing market interest rate from June 2008 till date and interest on amount of Rs.17,44,625/- which the respondent enjoyed w.e.f. Aug.2009 to Nov.2017.

(a)(a) To quash/set aside the order dated 16.08.2019 passed by UPRERA (Authority) at Noida, contained in Annexure No.1 to the memo of appeal.

(b) Or to pay the applicant a sum of Rs.59.00 Lakhs in addition as compensation/financial loss along with registration of the occupied 3 Bed Room Flat lesser in size (1425 sq.ft.) along with parking as promised initially.

(c) Or pay the applicant a sum of Rs.99.00 Lakhs with cancellation of possession of presently allotted 3 Bedroom Flat of area of 1425 sq.ft.

(d) Or to allot the appellant the flat as per the initial agreement of 1755 sq.ft. along with market rate interest till the disposal of the appeal.

5. The respondent filed its objection/reply to the memo of appeal and submitted that:

5.1 As per the settlement/compromise dated 22.11.2017, the appellant agreed to take possession of the substituted property by 01.12.2017, Unit No. F-805 and clearly stated in his writing that no dispute whatsoever shall remain active after transfer of the said flat. The sole criteria of the agreement was the transfer of the said unit and the agreement did not mention any dispute regarding the payment or the cost of the unit whatsoever and the appellant was satisfied, as per the settlement, with the possession of the alternate unit and declared to withdraw all his complaints made for the same cause of action.

5.2 Even after the said settlement and agreement for possession of the alternate unit F-805, the complaint was made regarding the booking of the initial unit, B/105. It is a clear principle of law that if the parties to an agreement agree to substitute a new agreement/settlement for them or to rescind or to alter it then the original agreement need not be performed. As per the said settlement, the respondent has already offered possession and the appellant, in lieu of such possession, has rented the alternate unit F-805 and is charging the rent from the mortgagee.

5.3 The impugned order is reasoned and passed in complete adherence to the provisions of Act 2016 and in accordance with the principles of law. The said order has been passed in the fitness of things, as the terms of settlement among the parties have already been complied by the respondent, and the possession of the alternate unit has already been delivered in terms of such settlement.

5.4 The original builder buyer agreement has been superseded or cancelled by the new agreement dated 22.11.2017 and as per the terms of the said agreement, the alternate unit was handed over on 01.12.2017.

5.5 The Act 2016 has been enacted to balance the right of promoters and the allottees; not to ensure the economic interest of the allottees.

5.6 The order impugned is totally in consonance with law as it only seeks to balance the tilt in between the parties and in no way can be said to be harming any of them.

5.7 The cost of alternate unit is based on imaginary calculations and speculations.

6. The appellant filed his reply to the objection of the respondent 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:

6.1 Agreement before S.P. Noida was made in compelling situation as the appellant was in dire need of flat, after running from pillar to post, paying major amount towards flat no. B-105 and waiting for more than 8 years. The respondent failed to start the construction of the aforesaid booked flat even after 8 years of allotment and after signing the BBA. Only after complaint to higher administrative authorities, the developer somehow came to agreement to provide another flat i.e. F-805 which was lesser in dimension and price, located at much unpreferred/undesired location (8^{th} floor instead of ground floor) and inferior in quality.

6.2 It was promised at the time of entering into the undertaking dated 22.11.2017, that the respondent shall return the difference amount of Rs.26,06,175 – 17,44,625 = Rs.8,61,550/- as well as the agreed/assured interest for the delay in providing possession of subsequent flat, which was accepted by the appellant.

6.3 In fact the respondent only accepts the receipt of Rs.19,19,000/- as mentioned in Provisional Allotment Letter dated 30.11.2017 against Rs.26,06,175/- which has initially been deposited by the appellant way back (in May 2008) with respect to first allotted flat. This in fact is arbitrary, fraudulent and malafide on part of the Respondent. The Amicable settlement through the aforesaid undertaking was understood only to be applicable when the respondent fulfills the above terms as per the assurance. In the present case as the aforesaid agreement was made in compelling situation and since thereafter the respondent only handed over the Flat No. F-805 with area of 1425 Sq.ft, and no parking has been allotted till date as was mandatory as per BBA, therefore, in such adverse situation the Appellant has every right to protect his interest and seek justice in the light of the Act 2016.

6.4 The Hon'ble Supreme Court has held that one sided and unreasonable clauses in agreement constitutes to 'Unfair Trade Practice" and it is very relevant here that the Respondent was supposed to handover the possession of Flat No. F-805 to the appellant in the light of following terms and conditions as mentioned in the joint undertaking executed between the appellant and the respondent:--

(i) The flat will be handed over in proper and right condition as per norms.
(ii) Necessary formalities will be done by both the parties.
(iii) Both the parties will be available on 01.12.2017 for possession formalities.
(iv) After this no litigation pertaining to flat will remain.

In compliance of undertaking no. (i) the flat's physical possession was handed over to the appellant, in very poor condition, which the Appellant accepted under protest as no parking has been allotted to the appellant till date, which is contrary to the BBA and undertaking relied upon. In respect of undertaking no. (ii) it was made understood and believed to the appellant that the 'necessary formality' word was purposely inserted by the respondent, in the undertaking, which was meant as assurance by the Respondent to return back the difference of flat amount along with the interest for delay possession, as agreed/assured to be paid by the Respondent, but it was not done. Further, parking space has not been allotted and as such the registration of the allotted flat has not been done. In respect of understanding no. (iii) it is stated that both the parties did met but only physical possession of the flat was provided by the respondent which was accepted/taken under protest in writing. In respect of undertaking no. (v) it is stated that it was understood that when all the above shall be fulfilled there shall remain no litigation. In the present case, the terms of undertaking as relied were only partially complied. The Appellant was felt cornered and cheated and to overcome the colossal financial loss, the appellant is in dire need to secure and claim his right as assured as a "Buyer & Consumer" under the Act-2016 and Consumer Protection Act as applicable.

6.5 The order passed by the Regulatory Authority is contrary to the principles of natural justice and in utter defiance of the existing and applicable provisions of relevant Acts & Laws and the Judgments of the Apex Court in identical matters.

6.6 The BBA is the bible of the commandments between the Builder/Developer and the Buyer/consumer. It cannot in any ways be terminated one-sided at ones ease and whims. It can be only substituted/edited by way of consent of parties to it. A mutual understanding by way of undertaking before the S.P. Noida cannot be termed as a new BBA, and absolutely cannot supersede or cancel the original BBA. However it can be substituted or edited or some additional may be made through mutual consent of parties. This statement that the original BBA dated 5th May, 2008 stands superseded or cancelled is in itself an illegal act, arbitrary and one-sided act and statement which needs to be dealt very strongly by the Tribunal.

6.7 The Respondent has in a way almost agreed and accepted that the appellant is entitled to seek compensation for the delay in handing over the possession of the flat. This appeal is liable to be allowed and decided on this sole ground only, that the Appellant has a right to get compensation for delay occurred in handing over the possession of alternate inferior/smaller flat after more than 8 years of proposed hand over date as per the BBA, which shall be in consonance with the law as laid down in the Act-2016, along with the excess amount already paid by May 2008 towards initially booked flat No.B-105.

6.8 On one hand the respondent agrees that the appellant can approach the appropriate authority for delay compensation and on the other hand states that all the calculated amounts claimed by the appellant before the Regulatory Authority are false, misconceived and imaginary. This issue was discussed by the respondent at the time of meeting before the S.P. Noida. The provisional allotment letter dated 30/11/2017 only mentions about receiving of Rs. 19,19,000/-. No right accrued to the respondent, through the undertaking before the SP Noida to overcharge the appellant and not to provide the delay compensation as provided under provisions of Act-2016. In the facts and circumstances mentioned in the memo of appeal and the rejoinder, the appeal deserves to be allowed.

7. Heard Sri Madhukar Ojha, learned counsel for the appellant and Sri Swetank Sharma, learned counsel for the respondent.

8. On the basis of pleadings, record available and submissions of learned counsel for the parties, the admitted facts are that:

8.1 The appellant booked a 3 BHK Flat at the housing scheme of the respondent known as ‘Aura Chimera’ situated at Rajnagar Extension, district Ghaziabad on 28.08.2007, by paying an amount of Rs.25,000/-. The respondent issued an Allotment Letter/Builder Buyer Agreement on 05.05.2008 to the appellant for Flat No. B-105 at Aura, Chimera, Rajnagar Extension, Ghaziabad through Aura Infrastructure, having the area of approximately 1755 sq. ft. for a consideration of Rs.27,25,000/- to be paid in installments.

8.2 As per Clause 9 of the Builder Buyer Agreement the possession of the booked flat was to be delivered by the respondent by April 2009 with a grace period of $\pm$ 3 months i.e. by 31st July 2009.

8.3 The appellant approached Senior Superintendent of Police, Ghaziabad, by means of complaint dated 03.09.2016, against the respondent on account of non-delivery of possession of the booked flat even after expiry of 7 years. The appellant preferred a complaint on 14.09.2016 to various authorities. The appellant also preferred a complaint on 18.09.2017 against the respondent to the Hon'ble Chief Minister of Uttar Pradesh.

8.4 Both the parties were summoned by the Senior Superintendent of Police, Ghaziabad on 22.11.2017 and the issue was resolved with the undertaking of the respondent that Flat No. B-105, area 1755 sq. ft., which is still not constructed, will be replaced by a 3 BHK Flat No. F-805, area 1425 sq. ft. situated at Aura Chimera, Rajnagar Extension, Ghaziabad and the possession of the same will be given to the complainant/appellant on 01.12.2017 in proper and right condition as per norms.

8.5 The respondent, thereafter, issued Provisional Allotment Letter to the appellant on 30.11.2017 for Flat No. F-805, super area 1425 sq.ft. situated at Aura Chimera, Rajnagar Extension, Ghaziabad, having the cost of Rs.17,44,625/-, in place of originally booked unit B-105. After adding additional charges towards parking and other miscellaneous charges the total cost of the new unit (Flat No. F-805) was Rs.19,19,000/-. At the bottom of the Provisional Allotment Letter it was mentioned that payment of Rs.19,19,000/- earlier made by the appellant against the erstwhile allotted Flat No.B-105 to C-1105 will now be adjusted against the freshly allotted Flat No. F-805.

8.6 Physical possession of Flat No. F-805, super area 1425 sq.ft. situated at Aura Chimera, Rajnagar Extension, Ghaziabad was given to the appellant on 01.12.2017 without providing parking space and conveyance deed has also been executed by the appellant in favour of the appellant.

8.7 During pendency of the complaint before various authorities, the appellant also approached UP RERA by filing Complaint No. 1120173226 on 15.11.2017 seeking relief for directing the respondent either to return all paid amount (Rs. 26,06,175/-) with market rate interest w.e.f. June 2008 till date (9 years plus) i.e. Rs. 57 lacs approx and for directing the respondent to hand over one available 3 B.R. Flat (1425 sq.ft.) in same complex along with balance amount and market rate interest of whole paid amount w.e.f. August 2009 till date i.e. 3 BR Flat (1425 sq.ft.) + Rs. 20 lacs.

8.8 The complaint of the appellant was disposed of taking into consideration the compromise dated 22.11.2017 before Senior Superintendent of Police, Ghaziabad and also taking into consideration the fact that unit no. B-105 has been replaced by unit no. F-805 vide Provisional Allotment Letter dated 30.11.2017, but the complainant has not taken possession, disposed of the complainant vide order dated 16.08.2019 with a direction to the respondent to provide physical possession of the unit to the complainant/appellant within 45 days from the date of uploading of the order.

8.9 The complainant/allottee approached this Tribunal challenging the impugned order of the Regulatory Authority dated 16.08.2019 seeking refund of excess amount lying with the respondent and interest from the promised date i.e. with effect from August 2009 to November 2017; and a sum of Rs.59 lacs in addition as compensation/financial loss along with registration of the occupied 3 Bed Room Flat lesser in size (1425 sq.ft.) along with parking as promised initially etc.

8.10 From perusal of the order sheet of the present proceedings it appears that in pursuance to the order of the Tribunal dated 21.04.2022 read with order dated 31.05.2022 the conveyance deed of the fresh allotted unit was executed by the respondent in favour of the appellant.

9.1 During the course of arguments on 19.11.2022 the learned counsel for the appellant submitted that the precise prayer of the appellant is that the appellant raised grievance before the Regulatory Authority vide complaint dated 15.11.2017 seeking various reliefs i.e.(a) either to return all paid amount (Rs.26,06,175/) with market rate interest w.e.f. June 2008 till date (9 years plus) i.e. Rs.57 lacs approx. or (b) to hand over one available 3 BR Flat (1425 sq.ft.) in the same complex along with balance amount and market rate interest on whole paid amount w.e.f. August 2009 till date i.e. 3 BR Flat (1425 sq.ft.) + Rs. 20 lacs.

9.2 Learned counsel for the appellant further submitted that prior to the said complaint the appellant had raised grievance before various forums and the issue had been settled between the parties on 22.11.2017 wherein the appellant agreed to take possession of substituted property by 01.12.2017 (Unit No. F-805, 3 BR Flat, area 1425 sq.ft.) and in pursuance to the said settlement a provisional allotment letter was issued by the respondent on 30.11.2017 offering Flat No. F-805 area 1425 sq.ft. for Rs.19,19,000/- mentioning that the amount paid earlier by the appellant against Flat No. B-105 will be adjusted against freshly allotted flat.

9.3 Learned counsel for the appellant further submitted that the complaint of the appellant was rejected by the Regulatory Authority on the ground of having the issue been settled between the parties on the basis of compromise, but the Regulatory Authority ignored the fact that the appellant has paid Rs.26,06,175/- and the value of the re-allotted flat is 19,19,000/- and the rest amount of Rs. 6,87,175/- has not been refunded to the allottee/appellant, whereas the Regulatory Authority ought to have examined this issue and direct the respondent for payment of the remaining amount along with admissible interest and, therefore, the appellant has approached this Tribunal for refund of the amount i.e. Rs.26,06,175 – 19,19,000 = Rs.6,87,175/- along with admissible interest from June 2008.

9.4 Learned counsel for the respondent, while opposing the appeal, submitted that there is no illegality or perversity in the order of the Regulatory Authority as the issue has been settled between the parties on the basis of compromise before S.S.P. Noida and the instant appeal deserves to be dismissed.

9.5 A specific query was made from learned counsel for the respondent regarding return of the balance amount. The learned counsel for the respondent submitted that the issue was settled on the basis of compromise and, therefore, there is no question of return of the excess amount, though the value of the re-allotted unit is only Rs.19,19,000/-.

10. In order to examine the issues involved in the instant proceedings, on the basis of pleadings and the documents placed on record by the respective parties as well as their submissions, we deem it proper to frame the following questions:--

(1) Whether the complaint of the appellant dated 15.11.2017 was required to be examined by the Regulatory Authority on the basis of the pleadings and prayer made therein?

(2) Whether the impugned order dated 16.08.2019 passed by the Regulatory Authority relying on the information of the respondent regarding compromise between the appellant and the respondent on 22.11.2017 before Senior Superintendent of Police, Ghaziabad and undertaking regarding replacement of unit B-105 by Unit F-805 on 30.11.2017 was just and proper or the Regulatory Authority was required to examine the delay aspect in providing the booked unit as per Clause 9 of the agreement dated 05.05.2008?

(3) Whether in the name of compromise between the parties regarding change of unit from B-105 to F-805 before the Senior Superintendent of Police, Ghaziabad on 22.11.2017 and agreement of the respondent with respect to providing other accommodation in lieu of the originally booked flat as per agreement dated 05.05.2008, it was open for the respondent to hold the rest of the amount from the amount of Rs.26,05,175/-, deposited by the appellant, in the name of adjustment of Rs.19,19,000/- and not to return the amount of Rs.6,87,175/-?

(4) Whether the project of the promoter in question is delayed?

(5) Whether the appellant is entitled for interest for the delay in completion of the Project under the scheme of Act, 2016 and if yes, what rate of interest is required to be paid by the Promoter to the allottee?

11. Vide question no. (1), we are required to examine as to whether the Regulatory Authority complaint should have examined the complaint dated 15.11.2017 of the appellant on the basis of the pleadings and prayer made therein.

The issues of pleading, prayer & moulding of reliefs have been examined time & again by Hon'ble Supreme Court as well as by the Judicial Forums holding therein that the rights of the parties stand crystallized on the date of institution of the proceeding and no party should be permitted to travel beyond the pleadings & prayer.

11.1 In ***Bhagwati Prasad vs. Shri Chandramaul AIR 1966 SC 735,*** the Hon'ble Supreme Court was pleased to observe that:-

> *"The importance of the pleadings cannot, of course, be ignored, because it is the pleading that lead to the framing of issues and a trial in every civil case has inevitably to be confirmed to the issues framed in the suit. The whole object of framing the issues would be defeated if parties allowed to travel beyond them and claim or oppose reliefs on grounds not made in the pleadings and not covered by the issues."*

11.2 In ***S.S. Sharma and Ors. Vs. Union of India (UOI) and Ors. AIR 1981 SC 588,*** the Hon'ble Supreme Court observed that:-

> *"We are of the opinion that the Courts should ordinarily insist on the parties being confined to their specific written pleadings and should not be permitted to deviate from them by way of modification or supplementation except through the well-known process of formally applying for amendment. We do not mean that justice should be available to only those who approach the Court confined in a strait-jacket. But there is a procedure known to the law, and long established by codified practice and good reason, for seeking amendment of the pleadings. If undue laxity and a too easy informality is permitted to enter the proceedings of a court it will not be long before a contemptuous familiarity assails its institutional dignity and ushers in chaos and confusion undermining its effectiveness. Like every public institution, the Courts function in the security of public confidence, and public confidence resides most where institutional discipline prevails. Besides this, oral submission raising new points for the first time tend to do grave injury to a contesting party by depriving it of the opportunity, to which the principles of natural justice hold it entitled, of adequately preparing its response."*

11.3 In the case of ***Krishna Priya Ganguly and Anr. vs. University of Lucknow and Ors. reported in 1984 SCC 307,*** while dealing with a matter arising out of a writ petition where the writ-petitioners prayed for merely consideration of his case for admission, Hon'ble Supreme Court was pleased to observe that a court cannot go a step further and grant the relief which the petitioner did not ask for, and held:-

"We do not see any proper material for this conclusion to which the High Court has suddenly jumped apart from the fact that admissions were not to be given by the High Court according to its own notions.

Finally, in his own petition in the High Court, the respondent had merely prayed for a writ directing the State or the college to consider his case for admission yet the High Court went a step further and straightaway issued a writ of mandamus directing the college to admit him to the M.S. course and thus granted a relief to the respondent which she herself never prayed for and could not have prayed for."

11.4 The Hon'ble Supreme Court in ***Ram Sarup Gupta (dead) by LRs. v. Bishun Narain Inter College MANU/SC/0043/1987*** : [1987] 2SCR805 was pleased to observe:-

"……It is well settled that in the absence of pleading, evidence, if any, produced by the parties cannot be considered. It is also equally settled that no party should be permitted to travel beyond its pleading and that all necessary and material facts should be pleaded by the party in support of the case set up by it. The object and purpose of pleading is to enable the adversary party to know the case it has to meet. In order to have a fair trial it is imperative that the party should state the essential material facts so that other party may not be taken by surprise……"

11.5 The Hon'ble Supreme Court in ***Orissa Cement Ltd. Vs. State of Orissa, 1991 Supp (1) SCC 430 (at page 498)*** has been pleased to observe that it is well settled proposition that it is open to the court to grant, mould or restrict the relief in a manner most appropriate to the situation before it in such a way as to advance the interests of justice.

11.6 The Hon'ble Supreme Court in the case of ***Bachhaj Nahar vs Nilima Mandal &Ors; reported in (2008) 17 SCC 491***,was pleased to observe thata Court cannot make out a case not pleaded. The Court should confine its decision to the question raised in pleadings. Nor can it grant a relief which is not claimed and which does not flow from the facts and the cause of action alleged in the plaint.

11.7 In ***Om Prakash vs. Ram Kumar (1991) 1 SCC 441,*** the Hon'ble Supreme Court observed**:-**

> *"A party cannot be granted a relief which is not claimed, if the circumstances of the case are such that the granting of such relief would result in serious prejudice to the interested party and deprive him of the valuable rights under the statute."*

11.8 In ***Shiv Kumar Sharma Vs. Santosh Kumari(2007) 8 SCC 600*** the Apex Court observed that the appellate court had no power to grant relief not prayed for in the suit.

11.9 The issue was again examined by the Hon'ble Supreme Court in the case of ***Bharat Amratlal Kothari and Anr. Vs. Dosukhan Samadkhan Sindhi and Ors.; (2010) 1 SCC 234*** and the Hon'ble Supreme Court in paras 29 and 30 of the judgment was pleased to examine and observe that "normally the Court will grant only those reliefs specifically prayed for by the petitioner". The relevant paras 29 and 30 are quoted as under:

> *"29. The approach of the High Court in granting relief not prayed for cannot be approved by this court. Every petition under Article 226 of the Constitution must contain a relief clause. Whenever the petitioner is entitled to or is claiming more than one relief, he must pray for all the reliefs. Under the provisions of the Code of Civil Procedure, 1908, if the plaintiff omits, except with the leave of the court, to sue for any particular relief which he is entitled to get, he will not afterwards be allowed to sue in respect of the portion so omitted or relinquished.*
>
> *30. Though the provisions of the Code are not made applicable to the proceedings under Article 226 of the Constitution, the general principles made in the Civil Procedure Code will apply even to writ petitions. It is, therefore, incumbent on the petitioner to claim all reliefs he seeks from the court. Normally, the court will grant only those reliefs specifically prayed for by the petitioner. Though the court has very wide discretion in granting relief, the court, however, cannot, ignoring and keeping aside the norms and principles governing grant of relief, grant a relief not even prayed for by the petitioner."*

11.10 The Hon'ble Supreme Court in ***Civil Appeal No. 973 of 2007 Manohar Lal (D) by Lrs. Vs. Ugrasen (D) by Lrs. &Ors.*** (decided on 03.06.2010) while examining the issue, whether the court can grant **relief** which had not been asked for, was pleased to observe that the court cannot grant relief which has not been specifically prayed by the parties. Relevant para nos. 29 to 33 are extracted as follows:-

*"29. In **Messrs. Trojan & Co. Vs. RM.N.N. NagappaChettiar AIR 1953 SC 235**, this Court considered the issue as to whether relief not asked for by a party could be granted and that too without having proper pleadings. The Court held as under:-*

"It is well settled that the decision of a case cannot be based on grounds outside the pleadings of the parties and it is the case pleaded that has to be found. Without an amendment of the plaint, the Court was not entitled to grant the relief not asked for and no prayer was ever made to amend the plaint so as to incorporate in it an alternative case."

"30. A similar view has been re-iterated by this Court in Krishna Priya Ganguly etc.etc. Vs. University of Lucknow &Ors. etc. AIR 1984 SC 186; and Om Prakash &Ors. Vs. Ram Kumar &Ors., AIR 1991 SC 409, observing that a party cannot be granted a relief which is not claimed."

"31. Dealing with the same issue, this Court in Bharat Amratlal Kothari Vs. DosukhanSamadkhan Sindhi &Ors., AIR 2010 SC 475 held:

"Though the Court has very wide discretion in granting relief, the court, however, cannot, ignoring and keeping aside the norms and principles governing grant of relief, grant a relief not even prayed for by the petitioner."

"32. In Fertilizer Corporation of India Ltd. & Anr. Vs. Sarat Chandra Rath &Ors., AIR 1996 SC 2744, this Court held that "the High Court ought not to have granted reliefs to the respondents which they had not even prayed for."

"33. In view of the above, law on the issue can be summarised that the Court cannot grant a relief which has not been specifically prayed by the parties."

11.11 The Hon'ble Supreme Court in ***Civil Appeal No. 4887 of 2014 (Arising out of SLP (C) No 22742 of 2005) with Civil Appeal No. 4888 of 2014 (Arising out of SLP (C) No 22772 of 2005) Gaiv Dinshaw Irani &Ors. Vs. Tehmtan Irani &Ors.***(decided on 25.04.2014) while examining the issue, whether the High Court taking note of the subsequent events can mould a relief, observed as follows in para nos. 34, 35:-

"34. Considering the aforementioned changed circumstances, the High Court taking note of the subsequent events moulded the relief in the appeal under Section 96 of the Code of Civil Procedure and the same has been challenged by the appellants before us. In ordinary course of litigation, the rights of parties are crystallized on the date the suit is instituted and only the same set of facts must be considered. However, in the interest of justice, a court including a court of appeal under Section 96 of the Code of Civil Procedure is not precluded from taking note of developments subsequent to the commencement of the litigation, when such events have a direct bearing on the relief claimed by a party or one the entire purpose of the suit the Courts taking note of the same should mould the relief accordingly. This rule is one of ancient vintage adopted by the Supreme Court of America in Patterson vs. State of Alabama followed in Lachmeshwar Prasad Shukul vs Keshwar Lal Choudhury. The aforementioned cases were recognized by this Court in Pasupuleti Venkateswarlu vs. The Motor and General Traders wherein he stated that:

"...If a fact, arising after the lis has come to court and has a fundamental impact It is basic to our processual jurisprudence that the right to relief must be judged to exist as on the date a suitor institutes the legal proceeding. Equally clear is the principle that procedure is the handmaid and not the mistress of the judicial process. If a fact, arising after the lis has come to

> *court and has a fundamental impact on the right to relief or the manner of moulding it, is brought diligently to the notice of the tribunal, it cannot blink at it or be blind to events which stultify or render inept the decretal remedy. Equity justifies bending the rules of procedure, where no specific provision or fairplay is violated, with a view to promote substantial justice — subject, of course, to the absence of other disentitling factors or just circumstances. Nor can we contemplate any limitation on this power to take note of updated facts to confine it to the trial court. If the litigation pends, the power exists, absent other special circumstances repelling resort to that course in law or justice. Rulings on this point are legion, even as situations for applications of this equitable rule are myriad. We affirm the proposition that for making the right or remedy claimed by the party just and meaningful as also legally and factually in accord with the current realities, the Court can, and in many cases must, take cautious cognizance of events and developments subsequent to the institution of the proceeding provided the rules of fairness to both sides are scrupulously obeyed."*

"The abovementioned principle has been recognized in a catena of decisions. This Court by placing reliance on the PasupuletiVenkateswarlu Case (supra), held in Ramesh Kumar vs. Kesho Ram that:

> *"6. The normal rule is that in any litigation the rights and obligations of the parties are adjudicated upon as they obtain at the commencement of the lis. But this is subject to an exception. Wherever subsequent events of fact or law which have a material bearing on the entitlement of the parties to relief or on aspects which bear on the moulding of the relief occur, the court is not precluded from taking a 'cautious cognizance' of the subsequent changes of fact and law to mould the relief."*

"This was further followed in Lekh Raj vs. Muni Lal &Ors.. This Court in Sheshambal (dead) through LRs vs. Chelur Corporation

Chelur Building &Ors. while discussing the issue of taking cognizance of subsequent events held that:

> *"19. To the same effect is the decision of this Court in Om Prakash Gupta case where the Court declared that although the ordinary rule of civil law is that the rights of the parties stand crystallised on the date of the institution of the suit yet the court has power to mould the relief in case the following three conditions are satisfied:…*
>
> *(i) that the relief, as claimed originally has, by reason of subsequent events, become inappropriate or cannot be granted;*
>
> *(ii) that taking note of such subsequent event or changed circumstances would shorten litigation and enable complete justice being done to the parties; and*
>
> *(iii) that such subsequent event is brought to the notice of the court promptly and in accordance with the rules of procedural law so that the opposite party is not taken by surprise."*

"This Court in ***Rajesh D. Darbar and Ors. vs. NarasinghroKrishnaji Kulkarni and Ors.*** *, a matter regarding the elections in a registered society, held that the courts can mould relief accordingly taking note of subsequent events. Furthermore, in Beg Raj Singh vs. State of Uttar Pradesh &Ors. while deciding on the issue of renewal of a mining lease held that:*

> *"….A petitioner, though entitled to relief in law, may yet be denied relief in equity because of subsequent or intervening events i.e. the events between the commencement of litigation and the date of decision. The relief to which the petitioner is held entitled may have been rendered redundant by lapse of time or may have been rendered incapable of being granted by change in law. There may be other circumstances which render it inequitable to grant the petitioner any relief over the respondents because of the balance tilting against the petitioner on weighing inequities pitted against equities on the date of judgment."*

"Even this Court while exercising its powers under Article 136 can take note of subsequent events (See: Bihar State Financial Corporation &Ors. vs. Chemicot India (P) Ltd. &Ors., Parents Association of Students vs. M.A. Khan & Anr. , State of Uttar Pradesh &Ors. vs. Mahindra & Mahindra Ltd.)"

"35. Thus, when the relief otherwise awardable on the date of commencement of the suit would become inappropriate in view of the changed circumstances, the courts may mould the relief in accordance with the changed circumstances for shortening the litigation or to do complete justice."

11.12 The object and purpose of pleadings and issues is to ensure that the litigants come to trial with all issues clearly defined and to prevent cases being expanded or grounds being shifted during trial. Its object is also to ensure that each side is fully alive to the questions that are likely to be raised or considered so that they may have an opportunity of placing the relevant evidence appropriate to the issues before the Court for its consideration. Pleadings made in a case lead to framing of issues to be examined by the Courts. Further when the facts necessary to make out a particular claim, or to seek a particular relief, are not found in the plaint, the Court cannot focus the attention of the parties, or its own attention on that claim or relief, by framing an appropriate issue. No party should be permitted to travel beyond its pleadings and the Courts are to avoid making out a case not pleaded.

11.13 Similarly, when there is no prayer for a particular relief and no pleadings to support such a relief, and when defendant has no opportunity to resist or oppose such a relief, if the court considers and grants such a relief, it will lead to miscarriage of justice. Thus it is said that no amount of evidence, on a plea that is not put forward in the pleadings, can be looked into to grant any relief.

11.14 Further it is well established principle that in an action where a party has prayed for a larger relief it is always open to the Court to grant him any smaller relief that he may be found to be entitled in law and thereby render substantial justice. The Court can undoubtedly take note of changed circumstances or subsequent events and suitably mould the relief to be granted to the party concerned in order to meet out justice in the case. As far as possible, the anxiety and endeavour of the Court should be to remedy an injustice when it is brought to its notice.

11.15 It is our considered view that the Regulatory Authority had passed the impugned order directing the promoter to give possession of the apartment to the allottee without appreciating the pleading & prayer of the allottee, in other words the impugned directions for giving possession to the allottee is beyond the pleading and relief sought by the Allottee. The Regulatory Authority in the name of moulding relief passed orders against and contrary to the prayer of the allottee/appellant, which is also against the object and spirit of the provisions of Section 18 as well as other provisions of the Act, 2016. Further, while deciding a complaint the administrative functions of the Regulatory Authority provided in Sections 32 and 34 of the Act, 2016 cannot be clubbed and complaint ought to have been decided on its merit after examining the pleading and prayer. **Question no. (1)** is answered accordingly.

12. Vide question no. (2), we are required to examine as to whether the impugned order dated 16.08.2019 passed by the Regulatory Authority relying on the information of the respondent regarding compromise between the appellant and the respondent on 22.11.2017 before Senior Superintendent of Police, Ghaziabad and undertaking regarding replacement of unit B-105 by Unit F-805 on 30.11.2017 was just and proper or the Regulatory Authority was required to examine the delay aspect in providing the booked unit as per Clause 9 of the agreement dated 05.05.2008.

12.1 The appellant filed complaint on 15.11.2017 before the Regulatory Authority seeking possession with interest for the delayed period plus Rs. 20 lacs. The Regulatory Authority disposed off the complaint in absence of the complainant/allottee on 13.02.2019 while holding that it is informed by the learned counsel for the respondent that the complainant has taken possession, and he may approach the respondent for execution of conveyance deed.

12.2 When order dated 13.02.2019 came in the knowledge of the complainant, he approached Regulatory Authority for rectification in order dated 13.02.2019 by way of letter dated 20.03.2019, wherein he submitted that no possession of the unit has been granted by the respondent despite compromise and also annexed the compromise deed dated 27.11.2017 executed between the parties. The complainant has elaborated about the settlement that the respondent entered into a compromise/settlement with the appellant on 22.11.2017 before S.S.P. Noida and agreed to allot a different flat of 1425 sq.ft. area, amounting to Rs.17,44,625/- including other charges. An amicable understanding was made in the aforesaid compromise/settlement that the respondent would return the difference amount of the flats. It was also concluded in the aforesaid compromise/settlement that the appellant would make no litigation/claim with respect to bigger flat booked by him.

12.3 The Regulatory Authority, on the basis of the aforesaid compromise/settlement, vide order dated 16.08.2019, decided the complaint of the appellant with a direction to the respondent to ensure delivery of physical possession of the unit to the complainant/appellant. There is specific Clause 9 provided in the Agreement, which is reproduced as follows:-

> ***"Clause 9.*** *The company based on its present plans and estimates and subject to all just exception, expects to complete construction of the said apartment and the Residential complex and deliver possession of the said apartment to the Allottee(s) by April, 2009 with grace period of 3(three) months subject to delays due to non-availability of construction materials, labors, or delay in payment to installments by the Allottee(s) or allottees of other unit or delays due to force majeure conditions and reasons beyond control of the company, in any case, the time for completion shall be deemed to be reasonably extended."*

12.4 Despite the promise made in compromise dt. 27.11.2017, the respondent did not issue refund of the difference amount paid by the appellant for adjustment of the same against the re-allotted unit. The Regulatory Authority ought to have examined the complaint on the basis of pleadings and record.

12.5 Though the parties have entered into a compromise for the dispute between them, but it doesn't mean that any of the parties has/have left its'/their right to approach appropriate forum in case any party breaches the compromise/ settlement/contract.

12.6 The Regulatory Authority ought to have examined whether any settlement will prevail over the provisions of Act, 2016 or the complaint should have been examined on the terms and conditions mentioned in the Agreement/Brochure keeping in view the provision of the Act & Rules, 2016. If any clause regarding delay in handing over of the possession was provided in the agreement and the project of the respondent was not completed at the stipulated time as per that clause, the Regulatory Authority was required to examine the delay on the basis of that clause i.e. Clause 9 and not on the basis of compromise made between the parties.

12.7 The object and purpose of pleadings and issues is to ensure that the litigants come to trial with all issues clearly defined and to prevent cases being expanded or grounds being shifted during trial. Its object is also to ensure that each side is fully alive to the questions that are likely to be raised or considered so that they may have an opportunity of placing the relevant evidence appropriate to the issues before the Court for its consideration. Pleadings made in a case lead to framing of issues to be examined by the Courts. Further when the facts necessary to make out a particular claim, or to seek a particular relief, are not found in the plaint, the Court cannot focus the attention of the parties, or its own attention on that claim or relief, by framing an appropriate issue. No party should be permitted to travel beyond its pleadings and the Courts are to avoid making out a case not pleaded.

12.8 Similarly, when there is no prayer for a particular relief and no pleadings to support such a relief, and when defendant has no opportunity to resist or oppose such a relief, if the court considers and grants such a relief, it will lead to miscarriage of justice. Thus it is said that no amount of evidence, on a plea that is not put forward in the pleadings, can be looked into to grant any relief.

12.9 Further it is well established principle that in an action where a party has prayed for a larger relief it is always open to the Court to grant him any smaller relief that he may be found to be entitled in law and thereby render substantial justice. The Court can undoubtedly take note of changed circumstances or subsequent events and suitably mould the relief to be granted to the party concerned in order to meet out justice in the case. As far as possible, the anxiety and endeavour of the Court should be to remedy an injustice when it is brought to its notice.

12.10 It is our considered view that the Regulatory Authority had passed the impugned order disposing off the complaint on 16.08.2019 without applying its mind. The complaint ought to have been decided on its merit after examining the pleading and prayer. Question no. (2) is answered accordingly.

13. Vide question no. (3), we are required to examine as to whether in the name of compromise between the parties regarding change of unit from B-105 to F-805 before the Senior Superintendent of Police, Ghaziabad on 22.11.2017 and agreement of the respondent with respect to providing other accommodation in lieu of the originally booked flat as per agreement dated 05.05.2008, it was open for the respondent to hold the rest of the amount from the amount of Rs.26,05,175/-, deposited by the appellant, in the name of adjustment of Rs.19,19,000/- and not to return the amount of Rs.6,87,175/-.

13.1 If the appellant entered into a compromise with the respondent/promoter and it was decided between the parties that another flat will be allotted to the appellant then the cost of fresh unit will be charged from the allottee.

13.2 In the instant case the respondent has made another allotment of a flat and the appellant had already deposited an amount of Rs.26,05,175/- for the previous booked unit which could not be handed over to him and fresh unit's cost was Rs.19,19,000/-, due to smaller size of the flat. The respondent herein has in the name of adjustment kept all the money which was deposited by the appellant earlier i.e. Rs. 26,05,175/- which is not permissible in the eyes of law and the respondent should have returned the remaining amount of Rs.6,87,175/- to the appellant/allottee without disputing the same. Question no. (3) is answered accordingly.

14. Vide **Issue No. (4)** we are required to examine as to whether the project in question of the promoter is delayed.

14.1 From the perusal of the pleadings and documents available on record it is evident that the Allotment Letter was issued to the appellant on 05.05.2008. As per Clause 9 of the Agreement the proposed period of possession was April 2009. The appellant had paid all the sale consideration as per the time prescribed by the respondent, yet he could not be handed over possession of the unit by the respondent.

14.2 As per clause 9 of the Brochure, the possession of the flat was proposed to be handed over to the allottee April 2009. The allottee had paid all the sale consideration and other charges to the promoter. The respondent did not offer of the unit.

14.3 Though the proposed period of completion of the project was April 2009 and there will always be some variation in the actual time, but an allottee cannot be made to wait indefinitely for handing over of the possession merely on the ground that the time specified is an estimated period. We are of the view that the possession ought to have been given till April 2009 + a month or so required for final finishing.

14.4 In view of the above, we hold that even after payment made by the allottee there is delay of 14 years in handing over the possession by the promoter to the allottee. **Issue no. (4)** is decided accordingly.

15. **Issue No. (5)** relates to the entitlement of the appellant for the interest on account of delay in completion of the Project under the scheme of Act, 2016 and the rate of interest required to be paid by the Promoter to the allottee for delay.

15.1 Section 18 (1) of the Act clearly provides that if an Allottee wishes to withdraw from the Project on the ground that the Promoter is unable to give possession in accordance with the Agreement for Sale within the date specified therein, then the Promoter shall return the amount received from the Allottee in respect of that property with interest and compensation, on the Allottees' demand. The power of exercising the option of either staying in the Project or for withdrawing from it lies only with the Allottees under the provisions of Section 18 (1) of the Act. Further, Section 19(4) of the Act 2016 gives right to the allottees to claim refund along with interest and/or compensation in case the Promoter fails to give possession of the apartment in accordance with the terms and conditions of Agreement for sale.

15.2 The Hon'ble Bombay High Court in the case of ***Neelkamal Realtors Suburban Pvt. Ltd. And others Vs. Union of India (2018)1 Bom R 558*** observed as under:--

> *"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".*

15.3 Subsequently, in ***Wg. Cdr. Arifur Rahman Khan & Others Vs. DLF Southern Homes Pvt. Ltd., reported in (2020) SCC Online 667*** affirming the view taken in the Judgment in Pioneer's case (Supra) the Hon'ble Supreme Court held that the term of the agreement authored by the Developer does not maintain a level platform between the Developer and the flat purchaser. The stringent terms imposed on the flat purchaser are not in consonance with the obligation of the Developer to meet the timelines for construction and handing over possession, and do not reflect an even bargain. The failure of the Developer to comply with the contractual obligation to provide the flat within the contractually stipulated period, would amount to a deficiency of service. Given the one-sided nature of the Apartment Buyer's Agreement, the consumer fora had the jurisdiction to award just and reasonable compensation as an incident of the power to direct removal of deficiency in service.

15.4 Recently the Hon'ble Supreme Court, while dealing with the provisions of Section 18 of the Act, 2016, in the case of ***M/S Imperia Structures Ltd. Vs. Anil Patni and another***, Civil Appeal Nos. 3581-3590 of 2020, decided on 02.11.2020, vide para 23, was pleased to observe that the right so given to the allottee is unqualified and if availed, the money deposited by thee allottee has to be refunded with interest at such rate as may be prescribed and the proviso to Section 18(1) contemplates a situation where the allottee does not intend to withdraw from the Project. In that case he is entitled to and must be paid interest for every month of delay till the handing over of the possession. It is upto the allottee to proceed either under Section 18(1) or under proviso to Section 18(1).

15.5 U.P. Government framed "Uttar Pradesh Real Estate (Regulation and Development) (Agreement for Sale/Lease) Rules, 2018" (hereinafter referred to as Rules, 2018), wherein under Rule 9.2(ii) and 9.3(i), the rate of interest payable by the promoter or by the allottee respectively are defined in case of default by either of the party. These Rules are extracted below :-

<u>Rule 9.2(ii)</u>

The Allottee shall have the option of terminating the Agreement in which case the Promoter shall be liable to refund the entire money paid by the Allottee under any head whatsoever towards the purchase of the apartment, along with interest at the rate equal to MCLR (Marginal Cost of Lending Rate) on home loan of State Bank of India + 1% unless provided otherwise under the Rules, within forty-five days of receiving the termination notice:

Provided that where an Allottee does not intend to withdraw from the Project or terminate the Agreement, he shall be paid, by the Promoter, interest at the rate prescribed in the Rules, for every month of delay till the handing over of the possession of the Apartment/Plot, which shall be paid by the Promoter to the Allottee within forty-five days of it becoming due.

<u>Rule 9.3</u>

The Allottee shall be considered under a condition of Default, on the occurrence of the following events :

<u>Rule 9.3(i)</u>

In case the Allottee fails to make payments for 2(two) consecutive demands made by the Promoter as per the Payment Plan annexed hereto, despite having been issued notice in that regard the Allottee shall be liable to pay interest to the promoter on the unpaid amount at the rate equal to MCLR (Marginal Cost of Lending Rate) on home loan of State Bank of India + 1% unless provided otherwise under the Rules. The Promoter must not be in default to take this benefit.

15.6 On examination, we find that these Rules-2018 notified by U.P. Government are in consonance with the definition of interest as provided in Section 2(za) of the Act, in as much as that the interest chargeable from the allottee by the promoter, in case of default in payment as per demand, is equal to the rate of interest which the promoter is liable to pay to the allottee, in case of default/delayed possession on the part of promoter.

15.7 We have come across various orders of the Regulatory Authority wherein it had granted interest at the rate of MCLR+1% per annum in case of delayed projects and had an occasion to examine the issue of rate of interest at MCLR+1% awarded by the Regulatory Authority in ***Appeal No. 295 of 2019 (U.P. Avas Vikas Parishad Vs. Devesh Kumar Tiwari) decided on 20.02.2020*** and held as under:--

"We feel that this imbalance is on account of the fact that the buyer/allottee has much less bargaining power as compared to the seller in the real estate market and therefore the buyers/allottees have no choice but to sign on such "dotted line", "one sided, unfair and unreasonable" terms and conditions/Agreements. We are therefore of the view that the rate of MCLR +1% , as prescribed by the Government and as being ordered by the Regulatory Authority, be payable from the date of deposit of money in case the allottee wishes to withdraw from the project; and from the specified/expected date of possession in case the allottee wishes to stay in the project, would balance the equities and are just and fair and will fall within the term

> *"interest at such rate as may be prescribed" as used in Sections 12, 18 & 19………"*

15.8 It is important to mention herein that the **Hon'ble Supreme Court** in ***Civil Appeal No. 4910-4941/2019 DLF Homes Panchkula Pvt. Ltd. Versus D. S. Dhanda etc. etc.*** while examining the issue of compensation, was pleased to observe as under:-

> *"If compensation comprises of two parts, (i) by way of interest on the deposited amount from the assured date (milestone date) of completing construction and handling over possession to the actual date of handling over possession, and, (ii) lumpsum amount, we find nothing wrong in it. We do not agree with the builder co.'s contentions that interest on the deposited amount should not be provided since it is not a case of refund but a case of delay in possession. The interest on the deposited amount has to be viewed in the light of the purpose for which it is intended. It is but a way of computing compensation for delay in possession that is commensurate with the amount deposited by the complainant, and here it has been computed after adopting a milestone date as per the builder co.'s own (unfair and deceptive) letter of 05.06.2013. There can be and is no question of not agreeing to an endorsing the award of interest from the said milestone date. Here we may however add that the rate of interest also cannot be arbitrary or whimsical, some reasonable and acceptable rationale has to be evident, subjectivity has to be minimized, a logical correlation has to be established. Albeit detailed arithmetic or algebra is not required. Logical (to the extent feasible) objective parameters should be adopted. Rounding off simplification etc. to make the computation doable could be adopted. We feel it appropriate that, considering that the subject units in question are dwelling units, in a residential housing project, the rate of interest for house building loan for the corresponding period in a scheduled nationalized bank (take, State Bank of India) would be appropriate and logical, and, if 'floating'/ varying/different rates of interest were/ are prescribed, the higher rate of interest should be taken for this instant computation."*

15.9 Further, an allottee deposits amount under the hope and trust that he/she will get the flat within the time schedule advertised at the initial stage. There may be certain cases where allottees might be residing in rented houses and they might have managed their financial position in such a manner that after deposit of amount, they will get flats of their own and thereafter they will be free from payment of rent as then they will shift from rented houses to allotted flats but on account of inordinate delay in delivery of possession of allotted flats, their financial calculations and legitimate expectations stand frustrated causing various types of financial losses to them. On the other hand once the promoter/builder made offers and same are accepted by the allottees with legitimate expectation, the obligation cast upon the promoter/builder is to complete the same within the time schedule mentioned in the offer and if they fail to discharge the same the affected allottees are entitled to the interest and/or compensation for delayed delivery of possession, as the allottees have parted with money which was earning interest. If an allottee chooses to remain in the project and in case the allottee seeks refund then he is entitled for interest on the deposited amount and/or compensation in accordance with the provisions of the Act 2016, which in our considered view will be in accordance with the principles of equity as well.

It is our considered view that drawing light from the Rules of 2018, and the fact that often an allottee/buyer has to supplement his savings by taking loan at the MCLR percent interest (compound), the simple rate of interest at MCLR+1 percent balances the equities and is in line with the word and spirit of the Act and can be taken as "interest at such rate as may be prescribed" as mentioned in Sections 12,18 and 19 of the Act, till the rate of interest for the purpose is notified by the State Government.

15.10 On the basis of aforesaid analysis the question no. (5) is answered in affirmative in favour of appellant.

16. In view of the preceding observations, after examining the pleadings on record and submissions of learned counsels for the parties, we are of the view that the judgment and order dated 16.08.2019 passed by the Regulatory Authority in Complaint No. 1120173226 is not sustainable in the eyes of law in its totality. Accordingly, the impugned order is hereby set aside, and **we partly allow the appeal** with the following directions:-

(i) The respondent is directed to refund the difference amount of Rs.6,87,175/- alongwith an interest at the rate of MCLR+ 1% from the date of deposit till the date actual payment within 45 days from passing of this order.

(ii) The appellant is at liberty to approach the U.P. Real Estate Regulatory Authority for execution of this order in case of non-compliance within the time frame fixed by this Tribunal.

(iii) No order as to costs.

Dated:31.05.2023
Shakir/Guaravsri/- **(K. K. Jain)** **(D. K. Arora)**