

THE U.P. REAL ESTATE APPELLATE TRIBUNAL, LUCKNOW

Division Bench Court No. 1

APPEAL-468/2023

MR. RIZWAN AHMAD AND ANR.

.....Appellant

Versus

M/S SHALIMAR CORP LTD.

.....Respondent

Counsel for Appellant

SAURABH MISRA

GAUTAM JOHRI

Counsel for Respondent

ANURAG SINGH

Hon'ble Mr. Justice Suneet Kumar, Chairman

Hon'ble Mr. Rameshwar Singh, Administrative Member

1. Heard Sri Anurag Singh, learned counsel for the appellant and Sri Rizwan Ahmad, respondent in person and Sri Gautam Johri, learned counsel for the respondent and perused the record.
2. The cross appeals are being heard together on consent of the parties. For the sake of convenience facts of Appeal No. 76/2023, M/s Shalimar Corp Ltd. Vs. Mr. Rizwan Ahmad and Ms. Khusboo Begum Ahmad, is being taken as leading case.
3. The appellant-promoter by the instant appeal seeks quashing of the impugned order and presses for charging interest on delayed payment of instalments for default of the respondent allottee.
4. The respondent allottee is raising challenge to the impugned order dated 09.01.2023, passed by the Real Estate Regulatory Authority, Lucknow, (for short, 'Regulatory Authority') in complaint no. LKO129/04/92442/2022, wherein, a direction came to be issued to the appellant-promoter to hand over possession of the unit along with the delay interest.
5. The allottee claims interest for the delay period in terms of Section 18 (1) of Real Estate (Regulation & Development) Act, 2016 (for short 'Act

2016') till the date of handing over possession. He further, prays for refund/adjustment of the amount charged towards car parking, which is not permissible. Further, relief has been sought challenging the delay interest imposed by the promoter, not being as per the builder buyer agreement (BBA).

6. The respondent-allottee at the outset submits that he would not press for the quantum of interest imposed by the promoter for default of the respondent allottee in timely payment of instalment. In other words, respondent allottee is not aggrieved by the interest being charged by the appellant promoter, but by the charges imposed on other counts.
7. The short questions, on rival submission that fall for consideration are:
 - (i). whether the offer of possession of the unit dated 17.03.2021 issued by the promoter was in terms of the provisions of Act, 2016, if not, its consequences.
 - (ii). whether respondent allottee is entitled to delay interest till the date of physical possession of the unit, and/or, till the date of obtaining the Occupancy/Completion certificate (OC/CC) of the project/unit.

Question No. 1 and 2 are being decided together.

8. The facts *inter se parties*, are not in dispute.
9. On application of the respondent allottee, flat (unit) no. B-4-602 came to be allotted on 26.06.2016, in the residential project floated by the appellant, namely, "Mannat," on Lucknow-Ayodhya, Road, District-Barabanki. The builder buyer agreement (BBA) dated 23.08.2016 was executed. The total sale consideration of the unit was at Rs.42,17,000/- to be paid as per construction linked plan.

10. As per terms and condition (para 11) of BBA the unit was to be handed over within 36 months, plus six months grace period, from the date of start of construction. It is not in dispute that the construction of the project commenced on 05.10.2016, the unit as per terms of the BBA was to be handed over on or before 05.04.2020.
11. The basic sale price of the unit came to be duly satisfied by the respondent allottee. The OC/CC of the project came to be received on 14.08.2020, pursuant thereof, the offer of possession of the unit came to be made to the respondent allottee on 17.03.2021. The construction, having regard to loss of six months of Covid-19 Pandemic, was completed within stipulated agreed time period. However, the offer of possession was withheld by the promoter for over six months for no fault of the allottee. The offer of possession dated 17.03.2021, called upon the respondent allottee to take possession subject to deposit of Rs.1,21,921/- towards delay interest for the default of the respondent allottee.
12. Further, pursuant to order dated 05.02.2025 passed by this Tribunal calling upon the promoter to hand over possession along with the computation of interest admissible and payable to the parties. Pursuant thereof, promoter communicated the amount chargeable from the allottee as on 20.05.2025, which includes, holding charges and maintenance charges. In the communication it has been categorically noted that the offer of possession sent on 17.03.2021, the physical possession could not be handed over/taken by the allottee due to the non-settlement of accounts by the allottee. The allottee is aggrieved by the charges imposed other than delay interest, charged from the allottee for his default.
13. Learned counsel for the promoter has placed reliance on the decisions rendered by the Hon'ble Supreme Court in '**Supertech Ltd. Vs. Rajni Goyal,**' (AIR 2018SC5351 = (2019)17SCC681), arising from the

Consumer Protection Act, 1986. It is urged by learned counsel for the promoter that the allottee would not be entitled to interest beyond the date of the completion certificate i.e. 14.08.2020, as was noted and observed in Rajni Goyal (supra).

14. We have carefully perused the report in particular, paragraph 4 with the assistance of the learned counsel for the parties. It is noted that the respondent purchaser therein failed to take possession of the unit on being offered, consequently, the Court observed, 'the Respondent-Purchaser ought not to be allowed to reap the benefits of her own delay in taking possession.'
15. In the facts of the case at hand, the promoter on receiving the completion certificate for no reason whatsoever, failed to offer of the unit until 17.03.2021, it is not the case of the promoter that the allottee was in default or that the allottee resisted taking possession of the unit. Section 18(1) of Act 2018 provides that if promoter fails to complete or is unable to give possession of an apartment, he shall be liable to the allottee to pay interest for the delayed period till handing over possession, in the event, allottee does not intent to withdraw from the project. The promoter admittedly, after receiving completion certificate for the first time offered possession of the unit to the allottee belatedly on 17.03.2021. However, since the computation/demand along with the offer of possession was invalid and defective by not incorporating the interest payable to the allottee for the delayed period, it cannot be said that the allottee was in default, rather, the promoter by raising invalid demand was resisting possession of the unit, hence, would be liable to pay interest till handing over possession of the unit.
16. On query, learned counsel for appellant promoter admits that the interest for the delay period, till the offer of possession in terms of proviso Section

18(1) of the Act, 2016, was not incorporated/adjusted in the demand notice. In other words, offer of possession of the unit was not in terms of proviso to Section 18(1), meaning thereby, possession of the unit was resisted/obstructed by the appellant without any fault of the respondent allottee. In the circumstances, as per Section 18(1) of Act, 2016, respondent allottee would be entitled to delay interest till the handing over possession of the unit in habitable condition.

17. As per the scheme of Act 2016, it is obligated upon the promoter to complete the project and handover possession of the unit to the allottee, on or before the promised date. On failure of the promoter, allottee is entitled to interest at the prescribed rate for the delayed period. The proviso to Section 18(1) of Act 2016, is unconditional and casts a mandatory obligation on the promoter to pay the interest to the allottee. The expression, 'shall pay,' makes it payable compulsorily to the allottee without demand of the allottee. The provision is compensatory and not penal.
18. On completion of the project, promoter is required to settle the accounts of the unit, thereafter, raise final demand of the outstanding dues, if any. The demand would be defective and incomplete, in the event, promoter does not comply its statutory obligation by computing and incorporating/adjusting the delay interest due and admissible to the allottee for the delayed period. The allottee, in such an event, can refuse to accept the offer of possession, until the accounts is settled legally in terms of proviso to Section 18(1). In any case the promoter would not hand over possession of the unit until the invalid/illegal demand is satisfied by the allottee. In other words, promoter resists possession of the unit, unless the invalid demand raised is satisfied by the allottee. It is not in dispute that

allottee had paid the sale consideration before offer of possession of the unit and was not in default.

19. Our attention has been drawn to the computation dated 02.12.2025, issued by the appellant promoter to the respondent, wherein, respondent allottee has been called upon to pay interest at Rs.1,21,921/- for default; holding charges at Rs.1,61,000/- with effect from 01.05.2021 to 30.11.2025; maintenance charges at Rs.1,92,647/- w.e.f., 01.03.2022 to 30.03.2025. The amount charged towards car parking at Rs. 1,50,000/- has been withdrawn as it is not chargeable under Act 2016. The total amount as per appellant promoter payable by the respondent allottee is at Rs.3,25,949/-. The interest for the delayed period payable to the allottee, however, was not incorporated in the computation. The demand is, therefore, defective and not as per Section 18(1). It is further submitted by the learned counsel for the promoter that delay interest component at Rs.6,86,300/- in terms of Section 18(1) has been duly deposited, before this Tribunal in compliance of the mandate of Section 43(5) of Act, 2016, duly computed in terms of the decree.
20. In the aforementioned backdrop, respondent allottee submits that respondent is not entitled to pay holding charges, as the unit was withheld by the appellant illegally by submitting defective and illegal offer of possession dated 17.03.2021. It is further urged that maintenance charges, as per the terms and conditions of the BBA, was duly deposited for one year, in advance. The maintenance charges due and payable by the allottee shall commence after one year from the date of taking over physical possession of the unit. In other words, it is urged by the allottee that he cannot be held liable to pay the money, being demanded by the promoter, as the promoter was in default and not the allottee. The promoter cannot take advantage of

its own wrong by withholding possession of the unit at the expense of the allottee.

21. Having regard to the computation, on admitted facts, respondent allottee would be entitled to receive from the promoter Rs.6,58,300/- deposited before this Tribunal and Rs.1,50,000/- towards refund of car parking charges i.e. Rs.8,36,300/-. The appellant promoter would be entitled to charge delay interest from the respondent allottee at Rs.1,21,921/-. In other words, respondent allottee upon adjustment of claims is entitled to receive Rs.7,14,007/-. (Rs. 8,36,300 – Rs. 1,21,921)
22. Learned counsel for the allottee submits that the amount deposited in compliance of Section 43(5) in terms of the impugned order was computed for the period w.e.f. 13.08.2019 to 17.03.2021. He, however, submits that the delay period in offering possession of the unit would commence w.e.f. 14.08.2020 i.e. the date OC/CC was obtained till the date of physical possession of the unit. The appellant promoter on being confronted, does not dispute the commencement date for computing the delay interest i.e. w.e.f. 14.08.2020.
23. **The questions are accordingly answered-**
24. Having regard to the facts and circumstances of the case, both appeals (76/2026 & D 468/2023) are **disposed of** by passing the following orders.
 - (i). Respondent allottee shall be entitled to interest for the delayed period in terms of Section 18(1) of Act, 2016 w.e.f. 15.08.2020 till the date of handing over physical possession of the unit in habitable condition at MCLR+1 percent.
 - (ii) The conveyance/lease deed of the unit to be executed by the promoter within one month from the date of uploading of this order, thereafter, physical possession of the unit in habitable condition shall be handed over to the allottee within three months thereafter. The expenses towards conveyance deed to be borne by the allottee.

- (iii) The respondent promoter shall allot stilt parking for the allotted unit in terms of builder buyer agreement dated 23.08.2016.
- (iv) The impugned order dated 09.01.2023 shall stand modified to the extent hereinabove.
- (v). No order as to cost.

(Rameshwar Singh)

(Suneet Kumar)

Dated: 03.02.2026

NIKITA