RESERVED JUDGMENT
BENCH-1

THE UTTAR PRADESH REAL ESTATE APPELLATE TRIBUNAL, AT LUCKNOW.

APPEAL NO. 140/2019

B.P.T.P. Limited. …………………Appellant.

Versus

Mr. Ish Mohan Juneja ..……..………Respondent.

Hon'ble Mr. Justice (Dr.) D. K. Arora, Chairman.
Hon'ble Mr. Rajiv Misra, Administrative Member.

1. The present appeal has been preferred by the B.P.T.P. Limited (hereinafter referred to as 'the appellant/Promoter') under Section 44(1) of the Real Estate (Regulation and Development Act, 2016 (hereinafter referred to as 'the Act, 2016') against the order dated 19.07.2018 passed by the U. P. Real Estate Regulatory Authority/Vice President Hapur-Pilkhua Development Authority, Hapur (hereinafter referred to as 'the Regulatory Authority') in Complaint No. 320188417 whereby the appellant/Promoter has been directed to refund the amount deposited by the complainant against unit no. 809 in Capital City Project with interest at the rate of 18% per annum from the date of deposit till the date of payment, within 45 days from the date of the order.

2. The facts of the case, in brief, as culled out from the memo of appeal, are that the appellant/Promoter is a company duly incorporated under the Companies Act, 1956 and having its registered office at M-11, Middle Circle, Connaught Circus, New Delhi. The appellant is developing a commercial project named 'Capital City' consisting of corporate suites over land measuring 21.17 acres in Sector 94, Noida. The New Okhla Industrial Development Authority vide letter dated 13.03.2012 approved the building plans for the project for a period of five years. The appellant also got its project registered under the provisions of the Act 2016 which

was valid till 30.06.2020. In terms of RERA Registration Certificate the appellant was allowed to complete the development and construction of the said registered project on or before 30.06.2020.

2.1 The respondent was interested in the Project of the appellant and requested the appellant for allotting a unit to the respondent. The appellant, on the request of the respondent, allotted a corporate suite to the respondent bearing no. 809, admeasuring 925 sq.ft. of super area, on 8^{th} floor, with right to use one car parking space. The appellant and the respondent entered into Agreement to Sub-Lease dated 11.05.2011.

2.2 Clause 20 of the said Agreement provides that subject to force majeure circumstances or any other circumstances not anticipated or beyond control of the Company, and due compliance of the terms and conditions hereof by the Sub-Lessee, the Company proposes to make offer of possession of the space for fit-outs within a period of 36 months from the date of execution of Agreement to Sub-Lease or upon payment of 30% of Basic Price/Premium, whichever is later. The period of 36 months has been arrived on the assumption that all the relevant permissions/sanctions/approvals are in place within 2 months from the date of application thereof. In case of any delay in grant of permission/sanctions/approvals beyond the mentioned period of 2 months, the period of 36 months shall stand extended accordingly. The Sub-Lessee further agrees that the Company shall be entitled to a grace period of 6 months for making offer of possession after the expiry of the aforesaid period.

2.3 Clause 22 of the Agreement provides that if the Company fails to offer possession of the Unit within the stipulated time as hereinabove then subject to timely payment of instalments and adherence to terms and conditions by the sub-lessee, the Company shall be liable to pay compensation calculated @ Rs.40/- per sq.ft. per month for the period of delay in making offer of possession. The Sub-Lessee agrees that the said compensation is reasonable for any delay and the Sub-Lessee hereby relinquishes any other rights or claims whatsoever, which it might have in this regard.

2.4 The respondent has paid a total sum of Rs.90,58,122/- as on 09.10.2018. Timely payment of the installments by the allottees of the entire project was essential term for completion of the aforesaid Project, however, the said Project could not be completed within the tentative time given under the Agreement, as various allottees including the respondent defaulted in payment of their installments. The delay has been caused due to various force majeure circumstances and the same is governed by the Agreement.

2.5 Owing to issues pertaining to declaration of Eco Sensitive Zone around Okhla Bird Sanctuary vide order dated 03.04.2014, Ground Water abstraction case by Vikrant Tongad and other related issues, no work could be carried out from 14.08.2013 to 19.08.2015 during which consent to establish (NOC) got expired and could not be renewed by UPPCB on account of non-clarity on the given issues.

2.6 UPPCB then stipulated a condition to seek the Environment Clearance before granting revised consent to establish (NOC) to plot no. 2B admeasuring 14.17 acres.

2.7 Subsequently an application was filed by the appellant for obtaining revised Environment Clearance from SEIAA & SEAC, UP on 31.05.2016 wherein after consideration in the 281st SEAC, UP meeting dated 19.07.2016, the appellant was instructed by the Committee to submit fresh proposal for Environment Clearance. Pointwise clarifications were submitted by the appellant on 29.08.2016 along with fresh Form-I & Form-IA and conceptual plan with necessary annexures. Subsequently, the appellant's case was considered for the second time in the 294th SEAC, UP meeting dated 05.10.2016 wherein additional Terms of Reference (ToR) was granted for preparation of Environmental Impact Assessment (EIA) report.

2.8 Simultaneously, the appellant had carried out baseline environment monitoring as per the standard ToR issued by Ministry of Environment, Forest & Climate Change (MoEFCC) for the pre-monsoon period of March to May 2016 and prepared EIA/EMP report accordingly which was duly submitted on 05.10.2016.

2.9 Due to dissolution of SEIAA & SEAC owing to completion of tenure of 3 years on 24.02.2017, the appellant's case was transferred to MoEFCC.

2.10 Revision in the area has enabled the appellant to reduce generation of waste water, domestic water demand and electricity requirement and the project now has pre-certified Gold Rating under IGBC green building for future.

2.11 The appellant's case was placed in the 19th EAC meeting dated 29.06.2017 wherein few queries were raised with regard to certified compliance report issued by Regional Office of MoEFCC, Lucknow, etc. Subsequently a complete reply was uploaded on MoEFCC website on 22.09.2017 and hard copy of the same was submitted on 25.09.2017.

2.12 The case of the appellant was again placed for presentation of reply in the 23rd EAC meeting dated 13.10.2017 and MOM was uploaded on 18.10.2017, wherein the project was recommended by EAC for grant of Environmental Clearance and finally on 26.03.2018 Environmental Clearance was accorded to the appellant by MoEFCC.

2.13 In the year 2013, the construction and development of the project had been stayed due to order passed by the National Green Tribunal. As the Project is in close proximity of Okhla Bird Sanctuary, the NGT directed that the construction within the radius of 10 Kms of the Sanctuary be stopped.

2.14 The construction was as per schedule prior to the stoppage of work by NGT. The appellant had to get fresh environment clearance after obtaining NOC from the Wild Life Department despite having NOC from Environment Department and consent to establish from Pollution Control Board.

2.15 The respondent had been duly informed about the orders passed by the NGT.

2.16 After obtaining all clearances from various Government agencies the appellant had to negotiate the contracts with the contractors by giving them higher rates owing to inflation and remobilization of men and material by the contractor.

3. The appellant has challenged the impugned order dated 19.07.2018 passed by the Regulatory Authority on the following grounds:--

A. The Regulatory Authority failed to consider the fact that the Agreement was executed on 11.05.2011, much before coming into force the Act 2016 and the Rules framed thereunder. The Act 2016 and the Rules framed thereunder are prospective in nature, but while passing the impugned order the Regulatory Authority gave retrospective effect to Act 2016 and the Rules framed thereunder.

B. The impugned order dated 19.07.2018 passed by the Regulatory Authority is bad in law, erroneous, non-speaking, arbitrary and has been passed in a mechanical manner. The impugned order does not even record the submissions made by the appellant and without considering the submissions of the appellant the impugned order has been passed.

C. While determining tentative time for delivery of possession of the Unit as per the Agreement, the Regulatory Authority failed to appreciate the fact of delay in construction which was beyond the control of the appellant. It was due to the delay in decisions taken by government agencies that the appellant was incapacitated. The construction of the Project is in full swing and the appellant is confident to complete the construction of the Project by July, 2020.

D. The Regulatory Authority has erred in not taking into consideration that the respondent's complaint was unreasonable, premature and a blatant misuse of the provisions of the Act 2016. Clause 19 of the Agreement clearly stipulates that the Company shall not be held liable for any delay if the same is caused due to force majeure or any other cause not within the reasonable control of the Company.

E. The Regulatory Authority has wrongly interpreted and applied the law as laid down under Section 18 of the Act 2016.

F. The impugned order dated 19.07.2018 does not give any reason for coming to the conclusion that the appellant is liable to pay interest to the respondent. The impugned order fails to record the submissions that the appellant is only bound by the terms and conditions of the Agreement to Sub-lease.

G. The Regulatory Authority failed to consider that RERA Registration Certificate is valid for a period till 30.06.2020 and as per Section 5(3) of the Act the registration granted under this section shall be valid for a period given by the promoter under sub-section (c) of clause *l* of sub-section (2) of Section 4 of the Act for completion of the project or phase thereof, as the case may be. Therefore, the appellant has been allowed to complete the project by 30.06.2020. Therefore, the complaint was premature.

H. The Regulatory Authority erred in not taking into consideration that the Act 2016 and the Rules nowhere declare the terms and conditions of the existing FBA/Agreement of Sale (executed prior to th effective date of the Act or Rules) null or void, therefore, the terms of FBA should not be selectively enforced.

I. The Regulatory Authority erred in law and failed to take note of Office Order No. 1151/Power Representation/2018-219 dated 19.06.2018.

J. The impugned order was passed by the Regulatory Authority without taking into consideration the additional submissions filed by the appellant which were received at the office of the Secretary of the Regulatory Authority on 04.08.2018.

K. The Regulatory Authority erred in not taking into consideration that real estate market is going through a bad phase, most of the real estate projects in the country are facing financial crisis.

L. If the impugned order survives, the appellant would be paying huge amount to the respondent and other allottees and this will again create financial crises to the appellant due to which the appellant would not be able to complete the project forever.

M. The Regulatory Authority has failed to take into consideration that the respondent is in breach of agreement for non-invocation of arbitration clause. The parties had agreed under the Agreement to Sub-Lease dated 11.05.2011 to attempt at amicably settling the matter and if the matter is not settled amicably, to refer the matter for arbitration.

4. The appellant has prayed for setting aside the impugned order dated 19.07.2018 passed by the Regulatory Authority.

5. The respondent filed his objection to the memo of appeal and submitted that booking was accepted on 29.04.2010 for Unit no. 809, admeasuring 918 sq.ft. which was later on changed to 925 sq.ft. The respondent had made payment of Rs.90,58,123/- as on 20.10.2014.

5.1 Under a letter dated 27.04.2015 the appellant unilaterally changed allotment to Unit no. 507 of an area of 835 sq.ft. After repeated complaints by the respondent objecting to the change in the allocation of the unit and reduction in the area, the respondent was allotted Unit no. 1404 admeasuring 924 sq.ft. on 05.10.2016.

5.2 Against purchase of corporate unit no. 1404 and parking slot for a total consideration of Rs.98,58,123/- the respondent has made payment of Rs.90,58,122/- upon demand by the appellant from time to time. Thus over 95% of the sale consideration has been received by the appellant.

5.3 The Agreement was entered into on 11.05.2011 while the first payment towards the booking amount was made on 23.05.2010 and the respondent is waiting for more than 9 years for possession of the premises.

5.4 The appellant is legally and morally bound to refund the consideration collected from the respondent, with interest.

5.5 The respondent denies that the appellants have been allowed to complete the development and construction on or before 30.06.2020 as alleged. This is a unilateral assumption of the appellant and not binding upon the respondent. The clauses of the agreement are only unilateral and high handed. It does not lie in the mouth of the appellant to submit that the delay was unavoidable, after collecting Rs.90,58,122/- from the respondent and such huge sums from several other purchasers. In the companion case of Mrs. Bhagat it will be seen that the respondent enforced the contractual rate of interest @ 18% and recovered the interest @18%. In this analogy the appellant is duty bound to return the amount collected by it with same contractual rate of interest.

5.6 The grounds of delay set out by the appellant under no stretch of imagination can be construed as grounds for delay in completion of the project. The order of NGT did not in any way affect the project or progress of the work. The appellant is now, for its own convenience, using the NGT orders as an excuse to justify delay in handing over possession.

5.7 The issue pertaining to applicability of the Act 2016 and its retrospective/retroactive/prospective applicability has been settled by Hon'ble Bombay High Court in the case of Neelkamal Realtors Suburban Pvt. Ltd. and anr. Vs. Union of India and others, and cannot be a ground to be dealt with by this Tribunal.

5.8 There is no error in the impugned order in directing the appellant to refund the amount along with interest.

5.9 The respondent has paid Rs.90,58,122/- for purchase of Unit no. 1404 against the agreed sale price of Rs.98,58,123/-. The last installment was received by the appellant on or about 11.10.2014 and since then the appellant has been benefitting from the money paid by the respondent. The entire conduct of the appellant is illegal, arbitrary and against the provisions of the Act 2016.

5.10 The respondent cannot be put to agony and trauma for the appellant's incompetence and incapability. The appellant never cared to update the respondent regarding status of the project. The appellant's only communication was in the form of demands raised for payment which the respondent paid. The reason for such prolonged delay and taking so much time to finish and hand over possession remains a mystery.

5.11 On one hand the appellant has submitted that no work could be carried out from 14.08.2013 to 19.08.2015 and on the other hand the appellant itself raised demands as follows:--

(i) On 21.09.2013 for Rs.10,51,937/- for 10th slab.
(ii) On 03.06.2014 for Rs.10,51,937/- for 15th slab.
(iii) On 11.10.2014 for Rs.9,97,119/- for completion of top slab.

The above demands prove that either the appellant continued the construction work and the orders in no way affected this project or the appellant did no work and collected money.

5.12 In the circumstances, it is beyond doubt that the project is delayed due to appellant's fault and poor planning and it would be just and fair in the equity of justice that the Tribunal direct the appellant to refund the respondent's hard earned money with interest at the rate of 18% which the appellant has been collecting from the respondent.

6. The appellant filed its reply to the objection of the respondent to the memo of appeal denying the allegations made by the respondent and reiterating the averments made in the memo of appeal. The appellant further submitted that change in the unit number is neither unilateral nor an event under the control of the appellant. Initially unit no. 809 was allotted to the respondent which was later on shifted to unit no. 507. The Space Buyer's Agreement provided that the area, location, number, size etc. of the unit can be altered during completion of the project.

6.1 The appellant is in process of applying for Occupancy Certificate and has also obtained Fire Safety Certificate, Electrical NOC, Lift NOC, Environmental NOC for water and pollution.

6.2 In terms of registration granted by UP RERA the appellant has been allowed to complete the construction by June, 2020. Considering the progress at the project site the factum that the unit shall be handed over by June, 2020 cannot be denied.

6.3 Onus for the delay caused in the construction is not on the appellant and the said factum has been duly established by the appellant in its appeal. It is denied that any mischief has been played by the appellant. The demand has been made as the project has already achieved the said benchmark. Only reminder notices have been issued during the period of stoppage of work as the demand which were raised prior were not met by the respondent in time.

6.4 The differential amount of the new unit and the old unit, if any, may be adjusted to the final demand letter which will be sent to the allottee upon possession.

6.5 Major structural work of the project was completed back in 2014, but due to NGT stay and thereafter the expiry of the licence for environmental clearance, the project could not be completed.

7. Heard Sri Mandeep Singh, learned counsel for the appellant and Dr. Azhar Ikram, learned counsel for the respondent. Both the parties agreed that there was delay in handing over possession of the Unit, despite timely payments made by the respondent. Learned counsel for the appellant submitted that though the prayer has been made for setting aside entire order of RERA, but he confines his prayer only to rate of interest awarded by nominated officer of RERA. He further submitted that RERA subsequently started giving interest @ MCLR+1% and the appellant is agreeable if the rate of interest is modified from 18% to MCLR+1%. Dr. Azhar Ikram, learned counsel for the respondent, submitted that there is no illegality and perversity in the order of RERA and the present appeal deserves to be dismissed.

8. The appellant took various grounds in the memo of appeal to challenge the impugned order of RERA dated 19.07.2018 but during the course of arguments Sri Mandeep Singh, learned counsel for the appellant, confined his prayer and submissions only with respect to 18% rate of interest awarded by RERA in the impugned order dated 19.07.2018, therefore, we are only analyzing the issue of rate of interest awarded by the RERA against the appellant vide impugned order dated 19.07.2018 and frame the following questions:--

(1) Whether grant of 18% per annum interest by the Regulatory Authority to the respondent relying on the provisions of Section 2 (za) of the Act of 2016 is proper and justified?

(2) Whether the respondent is entitled for interest for the delay in possession of the Unit/Flat under the scheme of the Act, 2016 and if yes, what rate of interest is required to be paid by the Promoter/appellant to the allottee/respondent?

9. **Question No. (1):** We proceed to examine the Regulatory Authority's order dated 13.07.2018 wherein it has been observed that Section 2(za) of the Act, 2016 provides that the rate of interest chargeable from the allottee by the Promoter, in case of default, shall be equal to the rate of interest which the Promoter shall be liable to pay to the allottee in case of default.

9.1 We examined Section 2(za), which reads as follows:-

> ***"2 Definition–*** *In this Act, unless the context otherwise requires,–*
>
> ……………………………………………………………………………………..
>
> ***Section 2(za):-****"interest" means the rate of interest payable by the promoter or the allottee, as the case may be.*
>
> *Explanation.-For the purpose of this clause-*
>
> *(i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;*
>
> *(ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"*

9.2 The definition clause in section 2 begins with the words "unless the context otherwise requires." The words appearing in the beginning of clauses to Section 2 of the Act are prima facie restrictive and not inclusive. When words have been defined in the interpretation clause, prima facie that definition governs whenever it occurs in different sections of the Act but where the context makes the definition given in the interpretation clauses inapplicable, a defined word when used in the body of the statute may have to be given a meaning different from that contained in the interpretation clause.

9.3 All definitions given in interpretation clauses are therefore normally subject to the qualification 'unless there is anything repugnant in the subject or context', or 'unless the context otherwise requires'. This is what has been laid down by the **Hon'ble Supreme Court** in several decisions, some of which may be referred to as ***DhandhaniaKedia& Company Vs. CIT, AIR 1959 SC 219*** and ***Special Officer and Competent Authority Urban Land Ceilings, Hyderabad Vs. P.S. Rao, AIR 2000 SC 843***.

9.4 The function of a definition is not to enact substantive law. It is to provide aid in construing the statute. **The Hon'ble Supreme Court in *Controller of Estate Duty, Gujarat and Ors. Vs. Kantilal Trikamlal and Ors. AIR 1976 SC 1935*** was pleased to observe that a definition is informative and is not a substantive rule of law operative by itself and it must be read along with other relevant provisions.

9.5 In ***Ramesh Mehta vs. Sanwal Chand Singhvi & Ors. 2004(5) SCC 409*** **the Hon'ble Supreme Court** held that a definition is not to be read in isolation and it must be read in the context of the phrase which would define it and that it should not be vague or ambiguous, that the definition of words must be given a meaningful application; and that where the context makes the definition given in the interpretation clause inapplicable, the same meaning cannot be assigned.

9.6 We are of the considered view that the rate of interest chargeable from the allottees by the promoter for delay/default in payment cannot be taken as such, while directing the promoter to pay the allottee an interest for delayed possession. The definition of interest as provided in Section 2(za) of the Act needs to be read with the provisions of Section 12, 18 and 19 of the Act, which qualify the word "interest" by suffixing it with the term "at such rate as may be prescribed."

9.7 Therefore placing reliance on the definition of interest as provided in Section 2(za) only, without examining the provisions of Section 12, 18 and 19 of the Act of 2016 is misplaced, as the definition is informative and it only provides aid in construing the statute and has to be read alongwith other relevant provisions of the Act.

9.8 In the light of the above analysis, we are of the view that the rate of interest awarded in the Regulatory Authority's order dated 13.07.2018, at the rate of 18% is without any basis, and accordingly the question no. (1) is decided in favour of the appellant.

10. **Question No. (2):** This question relates to the entitlement of the respondent 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. Section 18 of the Act, 2016 provides for return of amount, interest and compensation. The provisions of Section 18 of the Act, 2016 are being extracted as follows:-

> ***"18. Return of amount and compensation.***--*(1) If the promoter fails to complete or is unable to give possession of an apartment, plot or building,—*
>
> *(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or*
>
> *(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,*
>
> *he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, 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:*
>
> *Provided that where an allottee does not intend to withdraw from the project, 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.*
>
> *(2) 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 this Act, and the claim for compensation under this subsection shall not be barred by limitation provided under any law for the time being in force.*
>
> *(3) 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 this Act."*

10.1 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".*

10.2 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/unit purchaser. The stringent terms imposed on the flat/unit 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/unit 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.

10.3 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, in para 23, observed as under:--

> ***"23.*** *In terms of Section 18 of the RERA Act, if a promoter fails to complete or is unable to give possession of an apartment duly completed by the date specified in the agreement, the Promoter would be liable, on demand, to return the amount received by him in respect of that apartment if the allottee wishes to withdraw from the Project. Such right of an allottee is specifically made "without prejudice to any other remedy available to him". The right so given to the allottee is unqualified and if availed, the money deposited by the allottee has to be refunded with interest at such rate as may be prescribed. 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). The case of Himanshu Giri came under the latter category. The RERA Act thus definitely provides a remedy to an allottee who wishes to withdraw from the Project or claim return on his investment."*

10.4 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 :-

Rule 9.2(ii)

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.

Rule 9.3

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

Rule 9.3(i)

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.

10.5 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.

10.6 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........."*

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.

10.7 On the basis of aforesaid analysis the question no. (2) is answered in affirmative in favour of appellant.

11. We appreciate the fairness of Sri Mandeep Singh, learned counsel for the appellant for accepting the rate of interest generally awarded by the RERA i.e. MCLR+1% per annum, on its part.

12. On the basis of the aforesaid analysis, **we partly allow the appeal** and modify the impugned order dated 19.07.2018 to the extent of rate of interest from 18% per annum to MCLR+1% per annum.

13. In order to protect the interest of the home buyer, the Registry is directed to transfer the amount deposited with the Tribunal in compliance of the provisions of Section 43(5) of the Act, to the concerned account of the U.P. Real Estate Regulatory Authority for further disposal in accordance with law.

14. **No order as to cost.**

(Rajiv Misra) **(D.K.Arora)**

Dated: 27th October , 2021
Shakir