

RESERVED JUDGMENT**BENCH-1****THE UTTAR PRADESH REAL ESTATE APPELLATE TRIBUNAL,
AT
LUCKNOW.****APPEAL NO. 833/2020**

Aakash Bhartiya. Appellant.

Versus

Shreesri Buildtech Pvt. Ltd. Respondent.

With

APPEAL NO.834/2020

Ashok Kumar Bhartiya. Appellant.

Versus

Shreesri Buildtech Pvt. Ltd. Respondent.

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

1. These appeals involve similar questions of fact and law, therefore, they were heard together and are being disposed of by a composite judgment. For the sake of convenience we take Appeal No. 833/2020 as lead case.
2. Both these appeals have been preferred by the complainants Aakash Bhartiya and Ashok Kumar Bhartiya (hereinafter referred to as 'the appellants') under Section 44(1) of the Real Estate (Regulation and Development) Act 2016 (hereinafter referred to as 'the Act 2016') against two separate orders dated 14.10.2020 passed by the Adjudicating Officer of the Uttar Pradesh Real Estate Regulatory Authority, Lucknow (hereinafter referred to as 'the Adjudicating Officer') in Complaint Nos. ADJ/LKO157/11/1150/2019 and ADJ/LKO157/12/0977/2019 whereby the complaints of the appellants have been rejected.

3. The facts of the lead case, in brief, as culled out from the memo of Appeal No. 833/2020, are that the appellant booked a 4 BHK Flat No. 1503 in the project of the respondent, namely NRI Heights & Diamond Tower, situated at Mainawati Marg, Azad Nagar, Kanpur with total super built up area of approximately 2530 sq.ft. The cost of the flat was Rs.55,06,719/-. An allotment letter dated 17.10.2015 was issued by the respondent to the appellant. The appellant has deposited total Rs.55,10,041/- towards the cost of the said flat. As per demand of the allotment/agreement letter the entire amount was paid to the respondent/builder.
- 3.1 At the time of entering into agreement the structure of 12 floors out of 14 floors was complete and it was promised by the respondent that by all means it would take maximum one year to complete the project and handover the possession to the appellant.
- 3.2 The appellant handed over the blue print of interior to the respondent/builder for construction of his flat in a particular way. The builder allowed the appellant to make extra interior construction i.e. false ceiling etc. with the team of the builder/respondent and assured to handover the finished flat only after the completion certificate and occupancy certificate are obtained from the competent authority.
- 3.4 After completion of structure and semi finished interior by the builder, when the appellant started to get the false ceiling done, then the poor quality of construction came to the knowledge of the appellant. The entire false ceiling fell down causing huge loss of money, which was because of seepage of water from the rooftop. On the first rain itself the poor quality of structure i.e. roof, walls, beams etc. were exposed. At that stage the respondent/builders' workers left the interior work and never returned back. A huge visible crack also appeared in the building.
- 3.5 For rectifying the structural defects, the appellant approached the respondent/builder who gave assurance to get it repaired. The respondent/builder somehow got the roof repaired. Again on complaining for getting the faults rectified in a proper way, the respondent/builder's staff assured the appellant several times but failed

to get the same rectified in proper manner. Because of all such hindrances the flat is in unfinished state and the respondent is neither completing the appellant's flat nor handing it over to the appellant on account of which the appellant is unable to use his flat and is residing in another small accommodation in the same campus.

- 3.6 The appellant contacted the respondent even after expiry of promised date of possession on numerous occasions, but only fake promises were given by the respondent to the appellant that possession of the flat would be given soon. The project is incomplete and no confirm date of completing and handing over of the flat is being given by the respondent.
- 3.7 The appellant is suffering loss of considerable rent which he could get in case of timely handing over of possession of his flat. Secondly the appellant is suffering loss of interest on the amount paid to the respondent/builder. The appellant is also facing mental trauma because of the whole scenario even after spending such a huge amount.
- 3.8 Failing to receive and response from the respondent/builder, the appellant preferred a complaint before the Adjudicating Officer of the Regulatory Authority, which was rejected by the Adjudicating Officer vide impugned order dated 14.10.2020.
4. The appellant has challenged the impugned order dated 14.10.2020 passed by the Adjudicating Officer on the following grounds:--
 - (a) Because the impugned order dated 14.10.2020 passed by Adjudicating Officer, UPRERA at Lucknow is perverse, suffers from patent illegality, irrational and contrary to the material available on record and legal position. The Adjudicating officer without appreciating the fact that the Applicant is being subjected to constant humiliation and loss by the builder one-sidedly and arbitrarily has passed the aforesaid order without applying its proper mind and had failed to appreciate any/all the prayers or any of the pleadings of the appellant.
 - (b) Because the Adjudicating Officer has failed to appreciate that suspicion cannot be replaced as truth. The Respondent has only made the allegation and not given any proof or evidence, then it cannot be treated

to be proved, but the appellate authority has treated it to be proved, though it is absolutely illegal. None of my submissions/pleadings have been recorded, their submissions have been recorded. My submissions have been supported and proved by evidence and the respondent's submission is not supported by any evidence even then the learned Adjudicating Officer has proceeded to consider their submission and undue favor has been given to the Respondent.

- (c) Because the Adjudicating Officer without applying his judicious mind had passed such an order and discussed such pleadings which the Applicant had never submitted in its online complaint, pleadings in form of written arguments and at oral arguments online at the time of hearing.
- (d) Because the Adjudicating Officer had failed to seek a survey report of the completed and uncompleted work in the flat of the Applicant in order to get the exact factual situation and to corroborate all facts and proofs given on record by the Applicant to establish the fact of faulty structure and poor construction quality.
- (e) Because the Adjudicating Officer in its order had failed to appreciate the prayer of the Applicant, to appoint an independent surveyor from a Highly Reputed Institution of civil engineering, to call for Investigation of the Construction Quality of the Project, (which necessarily should include the test of the Strength and quality of Structure), Quality of Building material used etc. in terms of the Standard Construction of Building Norms settled by the designated Statutory Authorities and suggestions too as to how the existing faults should be rectified.
- (f) Because the Adjudicating Officer failed to apply its mind and appreciate the fact that the Builder had not procured any OC/CC from the prescribed Authority and given the flats to other buyers for their living. The Respondent has stated that for acquiring CC an application has been given way back 2017, and a reminder has been sent again in the year 2019 but the same has not been given to the respondent. The learned Adjudicating Officer, without applying its judicious mind, indirectly to give illegal favoritism, had simply ignored the very fact that with the aforesaid submission of the Respondent it can clearly be

made out that since the Respondent is not completing the flats and the CC has been held by the competent authority and the Respondent has been let free on this simple averment and the Respondent is taking undue privilege of this situation.

- (g) Because the Adjudicating Officer had failed to appreciate the prayer of the Applicant to issue necessary orders and instruct the Builder/Promoter thereafter to complete the Applicant's Flat in all respects as per the terms and conditions of the Allotment/Agreement Letter as stated above and handover the possession properly and make the Registry to the Applicant in a reasonable timeframe.
- (h) Because the Adjudicating Officer had failed to testify the Builder on the points of poor construction quality and faulty structure. The Adjudicating Officer has ignored the proofs furnished by the Applicant i.e. photographs and e-mail correspondences between the Builder representatives.
- (i) Because the Adjudicating Officer in its order has even went ahead to the extent to put words in the Applicant's mouth of accepting the fact that the Applicant has broken walls and other dismantling in its flat, which is highly objectionable which is denied vehemently being a false allegation. The learned court has proceeded on the basis of presumptions, surmises & conjectures. At no point of time the Applicant ever had accepted of doing such activity in the flat, which has disturbed the structure of the apartment/flat rather was denied during arguments at the time of online hearing. The respondent has not proved his arguments and the learned court has presumed it to be true. Even the builder, apart from vague & wild allegation of doing so to protect its stand orally had not brought anything in evidence or proof on record to substantiate its allegations.
- (j) Because the Adjudicating Officer had failed to appreciate the fact that, if the builder would have taken the plea that, the building is not made on RCC Column-Beam Structure, then the stand taken by the Builder would have been correct but the building in question has been built on RCC Column- Beam Structure, in which any wall can be replaced

anywhere and this does not cause any effect, positive or negative to the strength of the building, above or beneath.

- (k) Because the Adjudicating Officer in its order had failed to apply its judicious mind & the fact that the Applicant had specifically alleged that the Builder had not handed over the flat till date and had also not procured any OC/CC from the prescribed authority, but then too it has been stated in the order that the possession of the flat has been given before 2018 to the Applicant which is false and vehemently denied. On the contrary, the Builder had failed to provide any evidence apart from oral submissions as allegations that the possession of the flat has been handed to the Applicant. Moreover the learned Adjudicating Officer has acted so biased that one had not even tried to put question to the Respondent as to how he can hand over the possessions to the Flat owners, without procuring the OC/CC from the competent authority which is mandatory as per the Law.
- (l) Because the Adjudicating Officer in its aforesaid order had gone to such biased extent, reasons better known to him, that without any ground investigating by any surveyor or appropriate authorized agency, without any evidence or proof submitted by the builder, only on the basis of oral submissions made, had proved the Applicant a "liar" who has mislead & spoken untruth before the Court, had also gone to the extent of condemning the act of the Applicant, which the Applicant vehemently denies, as it is highly objectionable and defaming in nature.
- (m) Because the Adjudicating Officer, without applying its judicious and technical mind, had gone beyond its jurisdiction and acted as advisor to the builder and had failed to appreciate that the Applicant had tried through all means to bring on record through documentary and other means i.e. photographs etc. and also humbly prayed before his good-self for appointing of a surveyor for inspection of the flat, only on the basis of oral submissions made by the Builder had accepted one-sidedly that the Applicant had broken walls and dismantled other structures in the flat, which can affect other flats too as they are interconnected, which is illegality on the Applicant's part and the RWA according to its rules can impose penalty and recovery for the damage accordingly. It is

pertinent to mention that the Builder had at no point of arguments or course of hearing of the case had produced any evidence in any form to prove such allegations upon the Applicant.

- (n) Because the Adjudicating Officer had even failed to appreciate the very reasonable and genuine fact of delay on the part of the Builder to hand over the flat in time as per the time schedule, as mentioned in the allotment letter and as such the lawful and reasonable compensation as payable to the Applicant for such in-ordinate delay had been denied to the Applicant.
- (o) Because the Adjudicating Officer had failed to appreciate that the Applicant had suffered a huge monetary loss on account of different acts of the builder on account of non-fulfillment of the terms and conditions as stated in the Allotment/Agreement Letter. Therefore, a lawful compensation is the right of the Applicant as such.
- (p) Because the Adjudicating Officer had very prominently failed to appreciate the fact in its order, rather ignored purposely, to bring favor to the Builder, the very fact that the Builder had not Countered any allegations made upon him, by the Appellant, in writing and supported by documentary evidences, which was equally pressed in the arguments during the time of online hearing. The Builder had sent a counter to the applicant, which does not contain any point to counter the allegations in respect to the construction of the flat. The Appellant had even made a categorical point to the adjudicating Officer during the course of hearing that nothing from the Builder's side had been brought in writing on record in the case to counter the allegations made upon him. The above points in itself, are self-sufficient to prove the fact that, it is now a settled law, that where a finding is based on no evidence, or any tribunal takes into account something irrelevant to the decision which it arrives at its decision, or ignores vital evidence in arriving at its decision, such decisions made is necessarily a perverse decision. It is also settled law that if a finding of fact is arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant material or if the finding is so outrageously defies logic as to suffer

from the vice of irrationality incurring the theme of being perverse, then the finding is rendered infirm in law.

- (q) Because the Adjudicating Officer in its order had failed to acknowledge the very basic fact of established law that a broad distinction has, therefore, to be maintained between the decisions which are perverse and which are not. If a decision is arrived at on no evidence or evidence, which is thoroughly unreliable, and no reasonable person would act upon it, the order so made is perverse. But if there is some evidence on record which is acceptable and which could be relied upon, howsoever compendious it may be, the conclusions would not be treated as perverse and the findings would not be interfered with.
 - (r) Because the impugned order dated 01.07.2020 passed by the UPRERA (Authority) failed to exercise its own discretion and authority to decide the prayers made in the complaint, filed through e-filing (form-M) on 26.11.2019, along with the subsequent & consequential prayers made through filing of written complaint/ evidence on 29.06.2020.
 - (s) Because the UPRERA (Authority) did see both the prayers made in (online filing and written copy) but without exercising its own discretion and authority to decide the prayers made in the complainant, forwarded the same to the Adjudication Officer at UPRERA at Lucknow for further hearing and disposal.
 - (t) Because the Adjudicating Officer while deciding the same, was pleased to pass an order dated 14.10.2020, which was perverse, suffers from patent illegality, was irrational and contrary to the material available on record and also against the provisions of the Real Estate (Regulation and Development) Act 2016.
5. The appellant has prayed for the following reliefs:--
- (a) To quash and set aside the relevant portion of the order dated 14.10.2020 related to the applicant.
 - (a)(a) To quash/set aside the order dated 01.07.2020 passed by the UPRERA (Authority) contained in Annexure No.A1 to the amendment application.

- (a)(b) To appoint an independent surveyor from a highly reputed institution of Civil Engineering to call for investigation of the Construction Quality of the Flat/Project, (which necessarily should include the test of the strength and quality of structure), Quality of building material used etc. in terms of the Standard Construction of Building Norms settled by the designated statutory authorities and suggestions too as to how the existing faults should be rectified.
- (a)(c) To direct the opposite party to provide delay penalty, till handover of the lawful possession to the appellant/applicant of the flat no. Diamond-1503, NRI Heights & Diamond Tower as per the provisions of the UPRERA Act.
- (b) To instruct the builder/promoter thereafter to complete the applicant's flat in all respects as per the terms and conditions of the allotment/agreement letter as stated above and handover the possession properly and make the Registry to the applicant in a reasonable timeframe.
- (c) To conduct a post completion survey to ensure that the work done by builder is as per norms w.r.t. structural issues and other safety issues, and a certificate of guarantee to be issued by the builder.
- (d) To provide suitable compensation to the applicant for which a detailed computation shall be provided of the huge financial losses occurred to the applicant, because of the non-fulfillment of terms and conditions as stated in the allotment/agreement letter.
- (e) It is also prayed that an appropriate compensation of Rs.5,00,000/- (Five Lakh Only) may also be provided to the applicant for the harassment of which the applicant has been subjected overtime.
- (f) Any more relief which the Hon'ble Authority feels appropriate in favour of the applicant.

6. The respondent/builder filed its reply to the memo of appeal and submitted that all the allegations levied by the appellant are false.

Detailed replies and explanations have already been submitted before the Adjudicating Officer.

- 6.1 The respondent has already given the possession of the flat almost three years back for fit out to the appellant for carrying out interior work in the flat. This fact has already been admitted by the appellant during proceedings before the Adjudicating Officer.
- 6.2 The execution of sale deed is pending and will be done in near future on receipt of complete due payment from the appellant.
- 6.3 Water proofing and requisite repair of terrace has already been done thrice to the best satisfaction of the appellant. No sign of fresh seepage appeared till date. This fact was admitted by the appellant before the Adjudicating Officer.
- 6.4 The appellant is not paying any maintenance charges which have accumulated to Rs.77,146/-.
- 6.5 The appellant has encroached the common area/passage for which JLL (Property Management Agency) has issued notice to the appellant, but the appellant is not ready to demolish the structure which has been built on common area/passage. Due to the above illegal encroachment made by the appellant, some of the finishing work at the common area (floor polishing and cleaning) is hampering.
7. The appellant filed rejoinder to the reply of the respondent denying the averments made by the respondent in its reply and reiterating the averments made by the appellant in the memo of appeal.
 - 7.1 The appellant further submitted that the respondent has spoken a blatant lie by saying that the possession of the flat has been handed over to the appellant almost 3 years back.
 - 7.2 The appellant had requested the respondent for construction of personalized interiors in the flat for which the respondent had agreed and was handed over the blueprints of the same at the time of signing of agreement, well within the purview and scope of the building laws. The respondent allowed the appellant's team of workers to get the extra work i.e. false ceiling etc. done along with their team of workers and

assured to handover the finished and complete flat as per the terms and conditions laid down in schedule-1. The flat stands in raw state and the structure is poorly built.

- 7.3 The respondent also failed to establish the fact that it had obtained the required OC/CC from the competent authority for handing over the possession to the appellant.
- 7.4 No admission on the part of the appellant has ever been made in the complaint before the Adjudicating Officer regarding disposal of complaint of leakage. The leakage is evident only at the time rains and the structural deformity is physically evident on bare perusal and it still stands un-rectified in proper and satisfactory way.
- 7.5 Since the respondent has not handed the lawful possession of the flat to the appellant, the flat still stands in raw state without any interior work and fittings etc. as per the agreement.
- 7.6 The question of levying maintenance charges is only possible once the flat is finished as per the terms and conditions of the agreement and possession is handed over lawfully to the appellant.
- 7.7 A temporary gate has been fitted by the respondent itself to keep the construction and fitment items meant to be used in the interiors of the appellant's flat. At present the material purchased by the appellant for the interior finishing of his flat is also placed therein.
8. Heard Sri Madhukar Ojha, learned counsel for the appellants and Sri Anurag Singh, on behalf of the respondent.
9. During the course of arguments on 06.05.2022, Sri Sushil Kumar Gupta, Legal Representative of the respondent, submitted that it would be appropriate that inspection of the building be done through Advocate Commissioner along with some Structural Engineer. Appreciating the submission of Legal Representative of the respondent and in order to ascertain the defects in the building Sri Siddharth Nandwani Advocate, Sri Abhishek Khare Advocate and Sri Sanjay Singh, Additional Project Manager, U.P. Rajkiya Nirman Nigam were nominated to inspect the building in question and submit a report regarding the status of the building and the quality of all works including structural work as per

schedule-1 of the BBA. Accordingly the inspection of the building in question was done and the inspection report was filed on 02.08.2022.

10. In order to examine the grounds taken by the appellants and the issue involved in the instant appeal, we deem it proper to frame the following issues:--
 - (i) Whether under the scheme of Act 2016 and Rules 2016 any mechanism has been provided for determination of the interest for delay in handing over possession of the apartment/plot to the allottee and/or refund with interest and compensation, if allottee does not want to continue/wish to withdraw from the project as well as determination of compensation for violation of the provisions of Sections 12, 14, 18 and 19?
 - (ii) Whether it is necessary and mandatory for the Promoter to have first Completion Certificate (C.C.) and Occupancy Certificate (O.C.) under the provisions of the Act of 2016 and Rules of 2016, read with the U.P. Apartments (Promotion of Construction, Ownership and Maintenance) Act 2010 before offering possession as well as asking the allottee to settle the account and satisfy the final demand?
 - (iii) Whether transfer of the complaint by the Regulatory Authority to the Adjudicating Officer of the Regulatory Authority was just and proper?
 - (iv) Whether the impugned order of the Adjudicating Officer dated 14.10.2020 passed in Complaint No. ADJ/LKO157/11/1150/2019 and Complaint No. ADJ/LKO157/12/0977/2019 is illegal and perverse in the eyes of law?
11. **The issued no. (i)** requires us to examine as to whether under the scheme of Act 2016 and Rules 2016 any mechanism has been provided for determination of the interest for delay in handing over possession of the apartment/plot to the allottee and/or refund with interest and compensation, if allottee does not want to continue/wish to withdraw from the project as well as determination of compensation for violation of the provisions of Sections 12, 14, 18 and 19?

- 11.1 The Act envisages adjudication by the Regulatory Authority in terms of the powers under Chapter V of the Act and in particular Sections 31, 32, 34, 35 and 40 of the Act, and for adjudging compensation by the Adjudicating Officer in terms of the power under Chapter VIII of the Act and in particular Sections 71 and 72 thereof.
- 11.2 The Act spells out the obligations of the promoter of a real estate project and the consequence of the promoter failing to fulfill those obligations. Some of those obligations are enumerated in Section 11, 12 to 18 of the Act.
- 11.3 Section 18 of the Act talks of the consequence of the failure by the promoter to complete or to be unable to give possession of an apartment, plot or building either in terms of the agreement for sale or failure to complete the project by the date specified therein or on account of discontinuance of his business either on account of suspension or revocation of the registration under the Act or for any other reason. In the event of either of the above contingencies under Section 18 (1) (a) of the Act, the promoter is made liable on the demand of the allottee:
- (i) In the event that the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by the promoter in respect of that apartment, plot, building, as the case may be, together with “interest at such rate as may be prescribed”, “including compensation in the manner as provided under this Act”;
 - (ii) Where an allottee does not intend to withdraw from the project, the promoter shall pay him for every month’s delay in the handing over of the possession “interest at such rate as may be prescribed”. Section 18 (2) of the Act mandates that in case loss is caused to allottee due to the defective title of the land, on which the project is being developed or has been developed, the promoter shall compensate the allottee and that such claim for compensation under Section 18 (2) shall not be barred by limitation provided under any law for the time being in force.

- 11.4 Section 18 (3) of the Act states that where the promoter fails to discharge any other obligations under the Act or the Rules or Regulations made there under or in accordance with the terms and conditions of the agreement for sale, the promoter shall be liable to pay “such compensation” to the allottees, in the manner as provided under the Act.
- 11.5 It is apparent on a reading of Section 18 of the Act as a whole that upon the contingencies spelt out therein, (i) the allottee can either seek refund of the amount by withdrawing from the project; (ii) such refund could be together with interest as may be prescribed; (iii) the above amounts would be independent of the compensation payable to an allottee either in terms of Sections 18 (2) or 18 (3) of the Act read with other provisions; (iv) the allottee who does not intend to withdraw from the project will be required to be paid by the promoter interest for every month’s delay of handing over possession.
- 11.6 If we closely examine the above two provisions, it comes out that in a case where the Allottee exits the projects, the Act expressly provides INTEREST AND COMPENSATION both, but in cases where the Allottee tends to stay in the project the Allottee is only entitled for interest of every month till the handing over of the possession. Thus the intention of the legislature was to provide Compensation only to those Allottees who exit the project and not to those who tends to stay in the project.
- 11.7 Now if we study the section 18 as a whole, the following are the express provisions for providing compensation to an Allottee under section 18:-
- A. Where the Allottee wishes to withdraw from the project, without prejudice to any other remedy available, on demand he shall be liable to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act.*
- B. The promoter shall compensate the allottees in case of any loss*

caused to him due to defective title of the land, on which the project is being developed or has been developed, in the manner as provided under the Act.

C. If the promoter fails to discharge any other obligations imposed on him under this Act or the rules or regulations made there under or in accordance with the terms and conditions of the agreement for sale, he shall be liable to pay such compensation to the allottees, in the manner as provided under this Act.

- 11.8 As per the provisions of Section 18, compensation can be sought by an Allottee in case of defective title of the land, and also if the promoter fails to discharge any other obligations imposed on him under this Act or the rules or regulations made there under or in accordance with the terms and conditions of the agreement for sale.
- 11.9 The word “Any Other” signifies beside these, meaning thereby that apart from the delay in possession, any other breach of the terms & conditions of the Agreement to sell or breach of the obligations imposed on him by the provisions of the Act or Rules shall also be liable to compensate the Allottee.
- 11.10 If we critically analyze the section, we will find that the word ‘compensation’ has been used in every sub-section covering almost all the scenario except the word compensation has not been used in the case where Allottee decides to stay in the project even due to delay in handing over of the possession and he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed only.
- 11.11 When one turns to the powers of the Authority, it is seen that under Section 31, the complaints can be filed either with the Authority or with the Adjudicating Officer (AO) for violation or contravention of the provisions of the Act or the Rules and Regulations. Such complaint can be filed against “any promoter, allottee or real estate agent”, as the case may be. Such complaint can be filed by “any aggrieved person”. The Explanation to Section 31 (1) of the Act states that for the

purposes of said sub-section “person” shall include an association of allottees or any voluntary consumer association registered under any law for the time being in force. Section 31 (2) states that the form, manner and fees for filing a complaint under sub-section (1) shall be such as may be prescribed.

11.12 Having gone through the relevant Sections of the Act, we find that as per Sections 12, 18 and 19 of the Act, the allottee, in case of default by the promoter, is entitled to refund of his/her entire investment along with "interest at such rate as may be prescribed" and "compensation in the manner provided under the Act". Whereas in Section 12, the part dealing with interest and the part dealing with compensation are joined with the word "and" while in Section "18" they are joined with the word "including". Also, "at such rate as may be prescribed" is suffixed to the word "interest" in the context of refund of investment, but the expression "at such rate as may be prescribed" is neither prefixed nor suffixed to the word "compensation" in any of the Sections of the Act. The term compensation is suffixed by the expression "in the manner as provided under this Act" in Sections 12, 14, 18 & 19 of the Act. However, compensation and interest are qualified by the term "as he thinks fit in accordance with the provisions of any of those sections" in Section 71 of the Act. The Act only lays down for "holding an enquiry in the prescribed manner, after giving any person concerned a reasonable opportunity of being heard" under Section 71. The Act very clearly provides that the quantum of compensation or “interest as he thinks fit” under Section 71 will be decided taking into consideration the factors listed under Section 72 of the Act.

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

Extract of Section 31 of the Act

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

Explanation

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

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

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

Extract of Rule 33(1) of Rules-

- (1) *Any aggrieved person may file a complaint with the regulatory authority for any violation under the Act or the rules and regulations, made there under, save as those provided to be adjudicated by the adjudicating officer, in Form M which shall be accompanied by a fee of rupees one thousand in the form of a demand draft drawn on a nationalized bank, in favour of regulatory authority and payable at the main branch of that bank at the station, where the seat of the said regulatory authority is situated.*

It is evident from Rule 33(1) of the Rules that the complaints filed with the Regulatory Authority should be in Form M, except those complaints which require to be adjudicated by the Adjudicating Officer. On top of Form M, it is clearly written that it is as per provisions of Rule 33(1) and is meant for filing complaint under Section 31 of the Act. Further Column 5 of the Form M specifically requires a complainant to indicate the relief(s) sought.

11.14 We have examined Rule 34(1) of the Rules which relate to filing of a complaint with the Adjudicating Officer for compensation. Rule 34(1) reads as follows :-

Extract of Rule 34(1)

- (1) *Any aggrieved person may file a complaint with the adjudicating officer for compensation under Section 12, 14, 18 and 19 in Form N, which shall be accompanied by*

a fee of rupees one thousand in the form of a demand draft drawn on a nationalized bank in favour of regulatory authority and payable at the main branch of that bank at the station, where the seat of the said regulatory authority is situated.

- 11.15 It is clear from Rule 34 (1) of the Rules that a complaint for "compensation" under Sections 12, 14, 18 and 19 of the Act is to be filed before the Adjudicating Officer in Form N. It is mentioned on top of Form N itself that it is an application to Adjudicating Officer for claim of compensation under Rule 34(1) of the Rules and under Section 31 of the Act read with Section 71 of the Act. A complainant is required to indicate in Column 5 of Form N, the compensation sought.
- 11.16 Thus, it is our considered view that Form N is to be filed before an "Adjudicating Officer" for only claiming "compensation" under Rule 34(1); whereas Form M is to be filed before the Regulatory Authority under Rule 33(1) of the Rules for all types of reliefs, barring "compensation", for any violation under the Act, Rules or Regulations.
- 11.17 We have also examined the provisions of Sections 71 and 72 of the Act. The opening words of Section 71 (1) of the Act make it clear that the scope and functions of the Adjudicating Officer (AO) are only for 'adjudging compensation under Sections 12, 14, 18 and 19 of the Act'. If the legislative intent was to expand the scope of the powers of the AO, then the wording of Section 71 (1) ought to have been different. On the contrary, even the opening words of Section 71 (2) of the Act make it clear that an application before the AO is only for 'adjudging compensation'. Even in Section 71 (3) of the Act, it is reiterated that the AO may direct 'to pay such compensation or interest as the case may be, as he thinks fit' in accordance with provisions of Sections 12, 14, 18 and 19 of the Act. This has to be seen together with the opening words of Section 72 of the Act, which read "*while adjudging the quantum of compensation or interest, as the case may be, under Section 71, the adjudicating officer shall have due regard to the following factors, namely,.....*"

On a collective reading of Sections 71 and 72 of the Act, the legislative intent becomes explicit. This is to limit the scope of the adjudicatory

powers of the AO for determining “compensation or interest as he thinks fit” in the event of violation of Sections 12, 14, 18 and 19 of the Act.

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

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

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

“ 86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like ‘refund’, ‘interest’, ‘penalty’ and ‘compensation’, a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, **or directing payment of interest for delayed delivery of possession**, or penalty and interest thereon, it is the regulatory authority which has the power to examine and determine the outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act. If the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and functions of

the adjudicating officer under Section 71 and that would be against the mandate of the Act 2016”.

- 11.19 On examination of the above finding of the Hon’ble Apex Court with the provision of the section 18 of the Act 2016, it is clear that when the Allottee decides to stay in the project even due to delay in handing over of the possession, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed, meaning thereby in this situation the Allottee is entitled for interest for every month of delay till the handing over of the possession, at such rate as may be prescribed, and not “compensation” as the Suffix “including compensation” in case of seeking refund due to delay beyond the period prescribed in the agreement .
- 11.20 The scheme of the provisions of Section 18 of the Act 2016 clearly provides that in cases where the Allottee intends to stay in the project, the Allottee is entitled only for interest as per the rate prescribed and its jurisdiction of determination lies in the regulatory authority and not with Adjudicating Officer, and hence the Adjudicating Officer cannot grant interest as compensation, because the Statute does not provide any scope of compensation in such situation.
- 11.21 It is to be noted that **discretionary powers also vest with the Adjudicating officer** as he can direct to grant compensation as “HE THINKS FIT” after the enquiry, in conformity with the provisions of Section 72 meaning thereby that he has the power to “ACCEPT OR REJECT” the claim of the Allottee after an enquiry, but no such powers lie with the Authority in granting interest for delayed period.
- 11.22 From the aforementioned discussion, it is clear that the Act of 2016 provides a mechanism for determination of interest for the delay in handing over possession of the unit to the allottee, if the allottee wishes to stay with the project and/or refund with interest and compensation, if allottee wants to withdraw from the Project as well as determination of compensation for violation of the provisions of Sections 12, 14, 18 and 19. **The issue no. (i) is answered** accordingly.

12. **Issue No. (ii)** requires us to examine as to whether it is necessary and mandatory for the Promoter to have first Completion Certificate (C.C.) and Occupancy Certificate (O.C.) under the provisions of the Act of 2016 and Rules of 2016, read with the U.P. Apartments (Promotion of Construction, Ownership and Maintenance) Act 2010 before offering possession as well as asking the allottee to settle the account and satisfy the final demand?

- 12.1 In order to appreciate the issue, we examine Section 2(q) and Section 2(zf) of the Act of 2016, which defines Completion & Occupancy Certificate, the same are extracted as follows:-

“Section 2:- Definitions - In this Act, unless the context otherwise requires,-

.....

“Section 2 (q) "completion certificate" means the completion certificate, or such other certificate, by whatever name called, issued by the competent authority certifying that the real estate project has been developed according to the sanctioned plan, layout plan and specifications, as approved by the competent authority under the local laws;”

“Section 2 (zf) "occupancy certificate" means the occupancy certificate, or such other certificate by whatever name called, issued by the competent authority permitting occupation of any building, as provided under local laws, which has provision for civic infrastructure such as water, sanitation and electricity;”

- 12.2 On examination of the provisions of Section 2 (q) and Section 2(zf), we find that completion certificate is basically a certificate issued by the competent authority certifying that the Real Estate Project has been developed according to the sanctioned plan, lay out plan and specifications, as approved by the competent authority under the local laws. On the other hand, the occupancy certificate is issued by the competent authority permitting occupation of any building, as provided under local laws, which has provision for civic infrastructure such as water, sanitation and electricity etc.

- 12.3 Similarly, Section 4(5) of the U.P. Apartments Act, 2010 prescribes for Completion Certificate, which reads as follows:-

“Section 4(5) of the U.P. Apartments Act, 2010:-An apartment may be transferred by the promoter to any person only after obtaining the completion certificate from the prescribed sanctioning authority concerned as per building bye-laws. The completion certificate shall be obtained by promoter from prescribed authority [within the period specified for completion of the project in the development permit or the building permit as the case may be] Provided that if the construction work is not completed within the stipulated period, with the permission of the prescribed authority;

Provided further that if the completion certificate is not issued by the prescribed sanctioning authority within three months of submission of the application by the promoter complete with all certificates and other documents required, the same shall be deemed to have been issued after the expiry of three months.

Explanation: For the purposes of this sub-section "completion" means the completion of the construction works of a building as a whole or the completion of an independent block of such building, as the case may be.”

- 12.4 Section 4(5) of the U.P. Apartments Act 2010 clearly lays down that an apartment may be transferred by the Promoter to any person (allottee) only after obtaining the C.C. from the prescribed sanctioning authority concerned as per building bye-laws. The C.C. is required to be obtained by the Promoter, meaning thereby that Allottee has no role to play in obtaining C.C. from the prescribed authority. A Promoter is required to first obtain C.C./O.C. from the prescribed authority, only thereafter register conveyance deed of the real estate in favour of the Allottee(s) and a legal & habitable possession can be offered to the Allottees.
- 12.5 The issue of offering handing over possession prior to obtaining occupancy certificate was also examined by the Hon’ble Supreme Court in **Civil Appeal Nos. 1232 and 1443-1444 of 2019 R.V. Prasannakumaar and ors. Vs. Mantri Castles Pvt. Ltd. and ors. decided on 11.02.2019** wherein it has been observed that possession cannot be handed over prior to obtaining occupancy certificate.
- 12.6 In view of the aforesaid analysis, we are of the considered view that as per the provisions of the U.P. Apartments Act, 2010 read with the provisions of Act, 2016 a Promoter is required to offer legal and

habitable possession to the allottees only after obtaining C.C./O.C. and ask for clearing dues by raising final demand.

- 12.7 Shri Anurag Singh, learned counsel for the respondent on being asked regarding receipt of OC/CC by the respondent from the competent authority, informed that though OC/CC has been applied in the year 2017, but the same has not been received. Learned counsel for the respondent further informed that the offer of possession was given to the appellant sometimes in the year 2018, but the same has not been taken by the appellant.
- 12.8 In our considered views, the respondent in the absence of OC/CC cannot give offer of legal possession to the appellant. **Issue no. (ii)** is answered accordingly.
13. **The issue no. (iii)** requires us to examine as to whether transfer of the complaint by the Regulatory Authority to the Adjudicating Officer of the Regulatory Authority was just and proper?
 - 13.1 The appellant of booked a 4 BHK flat bearing number 1503 in the project of respondent, NRI Heights and Diamond Tower with total super area of approximately 2500 square ft. at the consideration of ₹ 55,06,719. The respondent issued allotment letter on 17 October 2015 and appellant deposited total ₹ 5,510,041 towards the cost of the flat i.e. the entire cost.
 - 13.2 The appellant looking into the defects and deficiencies and despite repeated request non-removable of the same as well as compelling the appellant to take fit out possession without completing the project and without receipt of the completion certificate from the competent authority, the appellant was constrained to approach the Regulatory Authority with a Complaint No. LKO157/11/1150/2019 on 26th November 2019, alleging that builder offered possession without OC/CC, and structural defect, seeking possession without OC/CC, correction of structural defect duly certified by competent authority with delay penalty to lawful possession.
 - 13.3 The Regulatory Authority vide order dated 01.07.2020 transferred the complaint of the appellant and vide order dated 15.07.2020 transferred the complaint of appellant of Appeal no. 834/2020 to the Adjudicating

Officer of the Regulatory Authority, at Lucknow, ignoring the prayer of the appellant made in the complaint on the ground that the complaint is relating to defects in construction and possession which as per section 14 (3) falls in the jurisdiction of Adjudicating Officer. The order of the regulatory authority dated 1 July 2020 has also been challenged through an amendment in the instant appeal.

- 13.4 We are of the considered view that the transfer of the complaint of the appellant by the Regulatory Authority to the Adjudicating Officer was not just and proper as complaint before the Regulatory Authority and Adjudicating Officer are required to be filed in pursuance of Rule 33 and 34 on Form-M and Form-N separately and it is the choice of the complainant either to file the complaint simultaneously or on different dates. Thus, the order dated 01.07.2020 & 15.07.2020 of the Regulatory Authority are not sustainable in the eyes of law. **The issue no. (iii)** is answered accordingly.
14. **Issue No. (iv)** requires us to examine as to whether the impugned order of the Adjudicating Officer dated 14.10.2020 passed in Complaint No. ADJ/LKO157/11/1150/2019 and Complaint No. ADJ/LKO157/12/0977/ 2019 is illegal and perverse in the eyes of law?
 - 14.1 On examination of the scheme of the Act it is evident that jurisdiction of the Adjudicating Officer is to adjudge compensation under Sections 12,14,18 and 19 in accordance with the procedure laid down in Sections 71 and 72 of the Act. The powers, roles, domain and jurisdiction of the Adjudicating Officer has been clearly defined under the scheme of the Act. On thorough examination we found that ‘compensation’ has not been defined under the Act, 2016. However, ‘compensation’ has been defined in some other statutes like Workman Compensation Act and Land Acquisition Act. To settle the claim under the Motor Vehicle Act, the term ‘compensation’ is being used invariably and compensation is awarded accordingly. Compensation can be granted under the heads pecuniary and non-pecuniary losses. In the case of ***Mr. R.D. Hattangadi Vs. M/S Pest Control (India) Pvt. Ltd., AIR 1995 Supreme Court, page 755***, the Hon’ble Supreme Court was pleased to observe as under:-

“ Broadly speaking while fixing an amount of compensation payable to a victim of an accident, the damages have to be assessed separately as pecuniary damages and special damages. Pecuniary damages are those which the victim has actually incurred and which is capable of being calculated in terms of money-, whereas non-pecuniary damages are those which are incapable of being assessed by arithmetical calculations. In order to appreciate two concepts pecuniary damages may, include expenses incurred by the claimant : (i) medical attendance; (ii) loss of earning of profit upto the date of trial; (iii) other material loss. So far non-pecuniary damages are concerned, they may include (i) damages for mental and physical shock, pain suffering, already suffered or likely to be suffered in future; (ii) damages to compensate for the loss of amenities of life which may include a variety of matters i.e. on account of injury the claimant may not be able to walk, run or sit; (iii) damages for the loss of expectation of life, i.e. on account of injury the normal longevity of the person concerned is shortened; (iv) inconvenience, hardship, discomfort, disappointment, frustration and mental stress in life.”

14.2 The Hon’ble Supreme Court while examining the issue of entitlement to compensation in ***H.U.D.A. and another versus Shakuntla Devi, (2017) 2 SCC 301*** made some essential observations which are also rudimentary for awarding compensation and quantum of compensation in consumer protection cases concerning real estate matters. The observations of Hon’ble Supreme Court are summarized as under:--

- (a) that the sine qua non for entitlement of compensation is proof of loss or injury suffered by the consumer due to the negligence of the opposite party. Once the said conditions are satisfied, the consumer forum would have to decide the quantum of compensation to which consumer is entitled.
- (b) that there cannot be any dispute that the computation of compensation has to be fair, reasonable and commensurate to the loss or injury. There is a duty cast on the consumer forum to take into account all the relevant factors for arriving at the compensation to be paid.
- (c) the calculation of damages depends on the facts and circumstances of each case. No hard and fast rule can be laid down for universal application.
- (d) that while awarding of compensation, a consumer forum has to take into account all the relevant factors and assess compensation on the

basis of accepted legal principles, on moderation. It is for the consumer forum to grant compensation to the extent it finds it reasonable, fair and proper in the facts and circumstances of a given case according to the established judicial standards where the claimant is able to establish his charge.

- (e) that compensation cannot be uniform and can best be illustrated by considering cases where possession is being directed to be delivered and cases where only monies are directed to be returned. In cases where possession is being directed to be delivered the compensation for harassment will necessarily have to be less because in a way, that party is being compensated by increase in the value of the property, he is getting.
- (f) that in cases where the consumer forum has directed delivery of possession, the party has to a certain extent already got a benefit. The cost of the land/flat would have come up in the meantime. Of course, even in such cases, where the delivery of possession has been directed there could be compensation for harassment/loss. But such compensation has to be worked out after looking to the facts of each case and after determining the amount of harassment/loss that has been caused to the consumer.

14.3 The Hon'ble Supreme Court in the case of ***Bangalore Development Authority versus Syndicate Bank (2007)6 SCC 711*** in the matter of self financing scheme while laying down principles for delay in the delivery of possession was pleased to observe that if some statute steps in and creates any statutory obligation on the part of development authority in the contractual field, the matter will be governed by the provisions of that statute. The relevant portions of paras 10, 10(a) and 10(b) are being extracted herein below: –

“10. Where a Development Authority forms layouts and allots plots/flats (or houses) by inviting applications, the following general principles regulate the granting of relief to a consumer (applicant for allotment) who complains of delay in delivery or non-delivery and seeks redressal under the Consumer Protection Act, 1986 ('Act' for short) - [vide : Lucknow Development Authority vs. M. K. Gupta - 1994 (1) SCC

243, *Ghaziabad Development Authority vs. Balbir Singh* - 2004 (5) SCC 65, and *Haryana Development Authority vs. Darsh Kumar* - 2005 (9) SCC 449, as also *Ghaziabad Development Authority vs. Union of India* - 2000 (6) SCC 113]:

(a) *Where the development authority having received the full price, does not deliver possession of the allotted plot/flat/house within the time stipulated or within a reasonable time, or where the allotment is cancelled or possession is refused without any justifiable cause, the allottee is entitled for refund of the amount paid, with reasonable interest thereon from the date of payment to date of refund. In addition, the allottee may also be entitled to compensation, as may be decided with reference to the facts of each case.*

(b) *Where no time is stipulated for performance of the contract (that is for delivery), or where time is not the essence of the contract and the buyer does not issue a notice making time the essence by fixing a reasonable time for performance, if the buyer, instead of rescinding the contract on the ground of non-performance, accepts the belated performance in terms of the contract, there is no question of any breach or payment of damages under the general law governing contracts. However, if some statute steps in and creates any statutory obligations on the part of the development authority in the contractual field, the matter will be governed by the provisions of that statute.*

.....”

14.4 Subsequently, the Hon’ble Supreme Court in ***Civil Appeal No. 6051/2002 (Ghaziabad Development Authority Vs. Shakuntala Rohatgi)***, decided on 04.03.2009, placed reliance on the case of ***Bangalore development authority versus syndicate Bank*** (supra).

14.5 After promulgation of the Act of 2016, the issues of interest or compensation for not providing the possession in terms of the provisions of the agreement and/or refund are required to be examined and decided as per the provisions of the Act of 2016. Further, the provisions of the Act have also been upheld by the of **Hon’ble Bombay High Court** in ***Neelkamal Realtors Suburban Pvt. Ltd. Vs. Union of India*** (2018) 1 AIR Bom R 558 and subsequently by the **Hon’ble Supreme Court** in ***Civil Appeal No.(s). 6745-6749 of 2021 (M/s Newtech Promoters & Developers Pvt. Ltd. Vs. State of U.P. & others)*** decided on 11.11.2021.

- 14.6 The word “fail to comply with the provisions of any of the sections as specified in sub section (1)” used in Sub-Section (3) of Section 71, means failure of the promoter to comply with the requirements mentioned in sections 12, 14, 18 and 19. The Adjudicating Officer after holding enquiry while adjudging the quantum of compensation or interest as the case may be, shall have due regard to the factors mentioned in Section 72. The compensation may be adjudged either as a quantitative or as compensatory interest.
- 14.7 The Adjudicating Officer, thus, has been conferred with power to direct for making payment of compensation or interest, as the case may be, “as he thinks fit” in accordance with the provisions of Sections 12,14,18 and 19 of the Act after taking into consideration the factors enumerated in Section 72 of the Act.
- 14.8 Now coming to the instant case, we found that the appellant in his complaint requested (1) to appoint an independent survey from a highly reputed institution of civil engineering to call for an investigation of the construction quality of the project, (which necessarily should include the test of the strength and quality of structure), quality of building material used etc. in terms of the standard construction of building norms settled by the designated statutory authorities and suggestions too as to how existing fault should be rectified. (2) seek a survey report of the completed and uncompleted work in the flat of the appellant, (3) instruct builder/promoter thereafter to complete the applicant’s flat in all respect as per the terms and condition of the allotment/agreement letter and hand over the possession properly and make the registry in a reasonable time frame, (4) conduct post-completion survey to ensure the work done by builder is as per the norms with respect to Structural issues and other safety issues, and a certificate of guarantee to be issued by the builder, (5) provide suitable compensation to the applicant for which a detailed compensation shall be provided of huge financial losses occurred to the applicant, because of non-fulfilment of terms and condition stated in the allotment/agreement letter, (6) compensation of ₹ 5 lakhs may also be provided to the applicant for harassment of which the applicant has been subjected over time and any more relief which the Hon’ble authority feels appropriate in favour of the applicant.

- 14.9 The adjudicating officer by means of impugned order dated 14 August 2020 rejected the complaint of the appellant holding that the compensation sought for deficiency and lack of amenities is not clear and as far as charging high charges towards electricity and generator, the complainant is free to get the electricity connection directly and in the absence of electricity he can use inverter. Further on account of non-billing of maintenance charges, basic amenities may affect for which the complainant is responsible and new office bearer of RWA can be elected in the new election. The adjudicating officer further observed that appellant failed to prove other incomplete work and hence is not entitled to any compensation.
- 14.10 On examining the impugned order in Appeal No. 833 of 2020, we found that adjudicating officer in its order recorded that during the course of hearing it is clarified that the complainant has been given possession and the deed has also been executed.
- 14.11 Shri Anurag Singh, learned counsel for the respondent fairly submitted that except the prayer with respect to quantification of compensation the rest prayers in the complaint filed before the adjudicating officer as well as in this appeal falls within the domain of Regulatory Authority as under provisions of the Act, 2016 there is no provision for awarding compensation for harassment and mental agony and for delay in offering possession, if allottee chose to remain with the project was within the jurisdiction/domain of the Regulatory Authority.
- 14.12 The perusal of inspection report reveals various defects and deficiencies in the unit of the appellant i.e. the flat is completely raw in shape except some fall ceiling and in some room broken flooring, incomplete bathroom, wall tiles in some bathroom. The inspection team further observed that structural drawings of the Tower No. A-7 (Diamond Tower) was found safe in conformity with the latest National Building Codes and I. S. Codes and provisions were made as per the norms and a standard engineering practices. It was also reported that the report is based on the Evaluation of Structural Drawings and issuance of Certificate No. 170/CE/Consultancy dated 24 May 2022 issued by Dr. Sunil Kumar, Prof Harcourt Buter Technical University, Kanpur.

The inspection team also made some observations with respect to workmanship of works:

- (a) there is honeycomb and some wooden pieces left RCC Beam of top floor and there is spots of seepage on the ceiling of roof of top floor.
- (b) there are some hair cracks in the plaster on the outer surface of the structure .

14.13 The powers, roles, domain and jurisdiction of the adjudicating officer defined under the Act of 2016, mandates him to examine a complaint in respect of matters covered under Section 12, 14, 18 and 19 by holding an enquiry in the prescribed manner to the allegations/averments and while holding an enquiry the adjudicating officer possesses powers to summon and enforce the attendance of any person acquainted with the facts and circumstances of the case to give evidence or to produce any document which in his opinion, may be useful for or relevant to the subject matter of the enquiry and if, on such enquiry, he is satisfied that the person has failed to comply with the provisions of any of the sections in sub-section (1) of section 71, he may direct to pay such compensation or interest, as the case may be, as he thinks fit in accordance with the provisions of any of the aforesaid sections. The adjudicating officer while adjudging the quantum of compensation or interest, as the case may be under section 71, shall have due regard to the factors enumerated in Section 72.

14.14 On examining the impugned order, we found that the adjudicating officer failed to examine the grievances/complaint raised before him by the complainant and the issue raised by the complainant in our considered view required inspection of the unit/project before forming any opinion. Our view is further fortified on examining the inspection report submitted by the team nominated on the request of Shri Sushil Kumar Gupta, legal representative of the respondent vide order dated 6 May 2022. **The issue no. (iv) is answered** accordingly.

15. Accordingly, we set aside the impugned order dated 01.07.2020 of the Regulatory Authority passed in Complaint No. LKO157/11/1150/2019 and order dated 15.07.2020 passed in Complaint No. LKO157/12/0977/2019. **While partly allowing Appeal No. 833/2020**

and Appeal No. 834/2020, we remand the matters back to the **Adjudicating Officer** to examine and decide the complaints of the appellants afresh after affording opportunity to the parties concerned in accordance with law.

16. The appellant is at liberty to file complaint before the Regulatory Authority if he has any cause of action, which falls under the jurisdiction of the Regulatory Authority, if so advised.
17. Both the parties are directed to appear before the Regulatory Authority on 26.06.2023. The Registrar of this Tribunal is directed to communicate this order along with record to the Secretary, U.P. RERA for placing the same before the Adjudicating Officer of the Regulatory Authority.

Dated:31.05.2023
Shakir/Tanveer/-

(K. K. Jain)

(D. K. Arora)