RESERVED JUDGMENT

BENCH-1

THE UTTAR PRADESH REAL ESTATE APPELLATE TRIBUNAL, AT LUCKNOW.

APPEAL NO. 31/2018

Aman Garg. ……………Appellant.

Versus

M/S Intellect Projects Pvt. Ltd. ……………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 Aman Garg (hereinafter referred to as the 'appellant') against the order dated 09.04.2018 passed by the Real Estate Regulatory Authority, Lucknow (hereinafter referred to as the 'Regulatory Authority') in Complaint No.1120172948 whereby the complaint of the appellant was decided with the following directions :--

(1) The project be completed by 31.12.2018 in accordance with the permission of plan and lay out plan and legal possession of the allotted flat be given to the allottee by 31.01.2019 after obtaining completion certificate from the competent authority.

(2) The allottee be given penalty for delayed possession at the rate of Rs.7/- per sq.ft. on super area from 01.05.2016 to 31.07.2016 and at the rate of Rs.10/- per sq.ft. from 01.08.2016 till delivery of actual possession.

(3) The demand letter given to the allottee at the time of offer of possession be recalled and a revised demand letter be issued as per terms and conditions of the agreement and the Act till receipt of completion certificate from the competent authority.

Additional demand be not raised towards charges like fire fighting, power backup and external electrification.

(4) Additional demand of compensation be sent to the complainant by giving the details of additional compensation given by the competent authority to the farmers.

2. The facts of the case, in brief, are that the appellant booked Flat No. D-202 in the respondent's project 'Victory-1 Central' situated at Plot No. GH-02 E, Sector-12, Greater Noida (West). The sale price of the flat was Rs.39,62,891/-. The appellant paid Rs. 37,45,624/-. As per Builder Buyer Agreement the date of delivery of possession was 14.04.2016. Delivery of possession has been delayed and the respondent raised illegal demand on 21.09.2017 without obtaining completion certificate. The respondent has also increased the super area without taking consent of 2/3rd buyers.

2.1 The respondent is doing all illegal, unlawful and false attempts to handover possession of the said unit/flat to the appellants since 29th December, 2016 without completing construction.

2.2 The respondent is doing all attempts to run away/escape from its responsibility of paying interest of delayed possession from 15th April, 2016 till the date of actual possession.

2.3 The respondent has taken 95% payment against the said property and is earning profit/interest on hard earned money of the appellant.

2.4 The respondent is trying to fetch/grab maximum money from the appellant along with final demand by adding illegal, unlawful charges; total amounting to Rs.5,20,000/-.

2.5 The respondent is claiming super area increase of 3.5% without giving any justification.

2.6 The respondent has bought additional Floor Area Ratio (from 2.75 to 3.50) from GNIDA and has constructed additional towers and flats which were not part of original plan. The respondent has already sold whole common area to the original booking holders/allottees but by constructing and selling additional towers and flats the respondent has illegally re-sold the same common area, which was already sold to original buyers.

2.8 The respondent has made the life of the appellant a hell by giving mental stress, pain and harassing them continuously since 29th December, 2016 by sending illegal demands, e-mails, fake commitments and threatening to add interest on the illegal demand at the rate of 24% per annum, that too compounded quarterly.

2.9 Being aggrieved the appellants filed a Complaint No. 1120172948 before the Regulatory Authority which was decided by the Regulatory Authority with the directions mentioned in para 1 above.

3. The appellant has challenged the impugned order of the Regulatory Authority dated 09.04.2018 on the following grounds:--

(a) The Regulatory Authority has failed to grant suo moto general stay on the illegal offer of possession by respondent until getting completion certificate/occupancy certificate, completing basic amenities and construction.

(b) The appellant sought a general stay from the Regulatory Authority against the builder not to offer possession before getting completion and occupancy certificates from the respective authority but the Regulatory Authority directed the builder simply to withdraw the final demand and requiring it to complete the construction by 31st December, 2018.

(c) The Regulatory Authority has failed to grant proper and appropriate interest for the delayed possession from 15th April, 2016 (36 months after the date of allotment including 6 months' grace period) until physical possession of the flat with all due certificates/permissions from the respective authorities.

(d) The Regulatory Authority has erred in directing the builder to pay delay penalty according to builder buyer agreement until physical possession while the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as 'the Act 2016') clearly mentions that interest should be paid on the deposited amount on monthly basis for whole delay period.

(e) The Regulatory Authority has erred in considering and interpreting the provisions of Section 18(1) of the Act 2016.

(f) The Regulatory Authority has erred in not removing all the illegal and unlawful charges of more than Rs.5,20,000/- which are either already paid by the appellants or far from reality and not responsibility of the appellants.

(g) The Regulatory Authority has failed to reflect its concern on illegal charges, the same are partially addressed and even no stand has been taken by it on many illegal charges.

(h) The Regulatory Authority has failed to pass an order for refund of the amount of re-sold common area in proportion to the additionally constructed towers/flats.

(i) The Regulatory Authority has failed to award compensation to the appellant for the legal expenses, mental harassment and trauma to the appellant since 29th December, 2016.

(j) The Regulatory Authority has failed to show its concern to the provisions of Rule 34(2)(o)(iii) of the Uttar Pradesh Real Estate (Regulation and Development) Rules, 2016.

(k) The order under appeal has been passed by the Regulatory Authority after ignoring the material on record.

(l) The Regulatory Authority has passed the said judgment/order on the basis of conjectures and surmises.

(m) The Regulatory Authority has failed to apply the procedure contemplated under the provisions of the Act 2016 and its Rules.

(n) The Regulatory Authority has failed to follow the mandatory provisions of law and hence the order passed by the Regulatory Authority is bad in the eyes of law.

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

(1) Grant of suo moto and general stay on the illegal offer of possession by respondent until getting completion

certificate/occupancy certificate, completing basic amenities and construction.

(2) Grant of proper and appropriate interest against the respondent-Builder, for the delayed possession from 15th April 2016 (36 months after date of allotment i.e.14th April, 2013 + 36 months which includes 6 months' grace period) until physical possession of the flat with all due certifications/permissions from the respective authorities in conformity with the provisions of Section 18(1) of the Act, 2016.

(3) Direction for removal of all the illegal and unlawful charges of more than Rs.5,20,000/- by the respondent-Builder which are either already paid by the appellants or far from reality and not responsibility of the appellants.

(4) Direction to the respondent-Builder for refund of the amount of resold common area in proportion to the additionally constructed towers/flats.

(5) Direction to the respondent-Builder to remove increased super area charges.

(6) Direction to the respondent-Builder to compensate the appellant for the legal expenses and mental harassment.

5. The respondent did not file its objections to the grounds of appeal inspite of giving 8 opportunities.

6. Heard Mr. Rajnish Kumar Srivastava, learned counsel for the appellant and Mr. Rajesh Chaddha, learned counsel for the respondent.

6.1 On examination of pleadings, records of memo of appeal and the submission of learned counsel for the parties, the factual position is as follows:

6.2 The appellant approached the respondent for allotment of Unit in the project of respondent 'Victory-1 Central' situated at Plot No. GH-02 E, Sector-12, Greater Noida (West), Gautam Budh Nagar. and the respondent issued allotment letter dated 14.04.2013. The total consideration amount of the Unit in question was Rs. 38,20,320.00/-

under Plan-A (Construction Linked Plan). As per Allotment Letter the Owner/Developer was to complete the development/construction of the Flat by 30 months and with an extended period of 6 months thereof subject to force majeure conditions and/or subject to any other reasons beyond the control of the Owner/Developer.

6.3. The submission of learned counsel for the appellant is that as per Allotment Letter the date of delivery of possession was 14.04.2016 and despite the delay, illegal demand was raised on 21.09.2017 without even obtaining the completion certificate from the competent authority and also increased the super area without taking consent of 2/3rd buyers. The appellant paid 95% payment against the property, apart from raising illegal unlawful charges of about Rs. 5,20,000/-. The super area was also increased by 3.5% without giving any justification. The appellant feeling aggrieved, approached the Regulatory Authority by means of Complaint No. 1120172948 seeking following reliefs:-

"*1. Builder should produce satisfactory reasons with proofs what was the need to increase the super area otherwise final demand should be revised and increased area shouldn't be considered.*

*II. Builder should re-calculate the interest on delayed payment which is charged illegally (as lve proofs) and should be bound to pay the penalty on delayed possession at same ROI if not more i.e. Rs. 24/Sq ft., Penalty amount (Area *ROI* Months Delayed) = 493680. We had some items as Free of Cost (FOC) while signing Application Form which he has charged us in final demand like; Fire Fighting Charges, Powerback required (1) KVA with installation charges, Lifetime membership charges for Club Mimosa, External Electrification Charges (Which he renamed as Electricity Load), this all sums up to 119657.*

III. Builder should remove all illegal/iloogical demands like Pratikar Shuld, Sinking Fund, Interest on Delayed Payment (or should revise it). Labour Cess which sums up to 218172. Actual Demand should be (Final Demand Amount-Above Calculated Charges)=Rs.-32473/-. We have also sent one legal notice to Builder on 3rd Nov. 2017 which costed us 11000/- and should be borne by the builder. I stay in Bangalore away from my parents (in hometown) and since the day we *received the final demand n 21st Sept. 2017 this entire episode has shocked us which resulted in so much of psychological trauma and I request RERA authority to help us getting appropriate compensation towards it.*

6.4 The said Complaint No. 1120172948 of the appellant was disposed of by means of order dated 09.04.2018, whereby the Regulatory Authority directed the respondent to complete the project by 31.12.2018 in accordance with plan and layout and provide legal possession to the allottees by 31.01.2019 after obtaining the completion certificate from the competent authority and pay interest for delay in possession from 01.05.2016 to 31.07.2016 @ Rs. 7/- per sq. ft. per month on super area and penalty from 01.08.2016 till actual possession @ Rs. 10/- per month. The Regulatory Authority directed to issue revised demand letter after receipt of the completion certificate as per the provisions of the agreement and the Act 2016 and the same should not include fire fighting charges, power backup charged and external electrifications charges. The details of additional compensation to the farmers be provided.

6.5 The appellant feeling aggrieved against the order date 09.04.2018 filed the install appeal raising various grounds and praying for almost same reliefs as sought before the Regulatory Authority along with compensation for legal expenses and mental harassment. The respondent did not file objections to the grounds of appeal despite several opportunities. The record reveals that the respondent has not filed any response/objection to the averments of the complaint before the Regulatory Authority. The order was reserved on 06.03.2018 after hearing counsel for the complainant/appellant giving opportunity to the respondent to file their written statement within two weeks, if so desired.

7. Before proceeding in the matter, we deem it proper to examine the provisions of Allotment Letter dated 14.04.2013 issued by the respondent. The relevant provisions of the same are extracted as follows:

ALLOTMENT LETTER

PROPOSED FLAT AT VICTORYONE CENTRAL BUILT AT PLOT NO. 02/E, SECTOR-12, GREATER NOIDA DISTRICT GAUTAM BUDH NAGAR, U.P.

Dated : 14th April 2013

To,

Mr. Aman Garg
Punjabi Colony,
Nagina District-Bijnor,
(U.P.)
PIN:-246762

Subject: Allotment of Flat No. D/202

In reference to you application with M/s Intellect Projects Pvt. Ltd., we are glad to allot you a Unit in our project Victoryone Central, situated at Plot No. 02/E, Sector-12, Greater Noida District Gautam Budh Nagar, U.P., on land measuring 18000 Sq. Mtr. as per detail below vide this letter of Allotment No. VC109.

Plan-A (Construction Linked Plan)

On Booking	*Rs. 3,74,167.00 (10% of Total Cost)*
Within 30 days of Booking	*Rs. 3,74,167.00 (10% of Total Cost)*
On start of Excavation	*Rs. 3,74,167.00 (10% of Total Cost)*
On Start of Foundation raft casting	*Rs. 3,74,167.00 (10% of Total Cost)*
On Start of Basement Slab	*Rs. 2,89,141.00 (7% Total Cost+50% of other charge)*
On Start of Ground Floor Slab	*Rs. 2,61,916.00 (7% of Total Cost)*
On start of 3rd floor slab	*Rs. 2,89,141.00 (7% cost+50% of other charge.)*
On start of 7th floor slab	*Rs. 2,61,916.00 (7% of Total Cost)*
On Start of 10th Floor Slab	*Rs. 2,61,916.00 (7% of Total Cost)*
On Start of 10th Floor Slab	*Rs. 2,61,916.00(7% of Total Cost)*
On Start of Top Floor Slab	*Rs. 2,61,916.00 (7% of Total Cost)*
On Star of External Plaster	*Rs. 2,24,500.00 (6% of Total Cost)*
Offer of Possession	*Rs. 2,11,290.00 (5% of Total Cost + IFMS + Other charges if applicable.*
TOTAL	***RS. 38,20,320.00***

Total Cost= BSP + PLC + Car Parking

Other Charges= Lease Rent + Power Backup + IFMS, etc.

NOW, THERFORE, THIS "ALLOTMENT-LETTER" WITNESSETH AND IT IS MUTUALLY, AGREED, UNDERSTOOD AND DECLARED BY AND BETWEEN OWNER/DEVELOPER AND ALLOTTEE(S) AS FOLLOWS:

……….

4. *That both the parties have agreed that the cost of development and construction of the said Flat is escalation-free, save and except increase, which the Allottee hereby agrees to pay due to increase in Flat area, any increase or additional Govt. rates, taxes, cess, etc., that may be levied or imposed by the Govt./Statutory Authorities from time to time. If any provisions of the existing and future laws, guidelines, directions etc., of any Government or the Competent Authorities is made applicable to the said Flat/said Complex subsequent to booking requiring the Owner/Developer to provide pollution control devices, treatment plant, water harvesting system etc. in the said Complex, then, the cost of such additional devices, equipments etc. shall also be borne and paid by the allottee on pro-rata basis, Service tax on sale of the Flat shall be borne and paid by the Allottee as per the prevailing rate.*

5. That it is further understood and agreed by the allottee that the area of the said Flat given in this Agreement is subject to change as per direction of the Sanctioning Authority or Architect or Structural Engineers of the Owner/Developer which may result in change (decrease/increase) in the super area of the said Flat, change in its dimensions, size, number, etc. In case there is any changes in the said flat, the same shall be valid and binding on the allottee. In the case of any increase of decrease in the area of the said flat the cost of the said flat will be adjusted on a pro-rata basis, variation in the super area shall not exceed 10%.

6. That the Owner/Developer is responsible for providing internal development within the said Complex which inter-alia includes (i) laying of roads, (ii) laying of water lines, (iii) laying of sewer lines (iv) laying of electrical lines. However, it is understood that external or peripheral services such as tank water and sewer lines, storm water drains, roads, electricity, horticulture etc., are to be provided by the

Govt. or the concerned authority up to the periphery of the said Complex.

9. That it is agreed by the parties, that the Fire Fighting Equipment and/or preventive measures in the common area of the Complex will be provided as per the existing Fire Fighting Code/Regulations as contained in national Building code, however if required by any law/byelaw, order or directions or due to any subsequent legislation/Government orders, additional fire safety measures are undertaken, the Allottee agrees to pay for the additional expenditure on pro rata basis.

10. That the Allottee hereby agrees that out of the amount paid/payable for the said Flat allotted to him, the owner/Developer shall treat 15% of sale consideration, as earnest money to ensure fulfillment of all the terms and conditions by the allottee, as contained in the Agreement.

10(a). That the Allottee hereby agrees to make all the payments within time as per the terms of Schedule of Payments from time to time without any reminders from the Owner/Developer through A/C Payee Cheque(s)/Demand Draft(s) in favour of "Intellect Projects Pvt. Ltd." payable at New Delhi.

10(c). That in the event of failure of the Allottee to perform his/their obligations or to fulfill all the terms and conditions set out in this Allotment Letter, the Allottee hereby authorizes the Owner/Developer to forfeit the earnest money as aforementioned together with any interest on installments, interest on delayed payment due or payable out of the amounts paid by him and the allotment of the said Flat shall stand cancelled.

In case allottee wishes to cancel the flat, 15% of total sale consideration shall be deducted as a reasonable pre-estimated loss suffered by the company by reason of breach in not complying with your obligation.

10(d). That the timely payment of installments indicated in the payment schedule is the essence of this agreement. If any installments as per the schedule is not paid when it become due the Owner/ Developer shall *charge interest at the rate of 24% p.a. up to next three months. If the allottee defaults in making payment of the outstanding amount for three consecutive months, the allotment shall automatically stand cancelled without any prior notice to the allottee and the allottee thereafter shall have no charge, lien, interest, right or any other claim on the said flat and the owner/Developer shall refund the amount paid over and above the earnest money, if any, without any interest after re-allotment of the said Flat and after compliance of certain formalities by the Allottee. However, in exceptional circumstances the Owner/Developer may, in its absolute discretion, condone the delay by charging interest @ 24% p.a. on all outstanding dues for the delayed period.*

15(a). That the Owner/Developer shall complete the development/construction of the Flat by 30 months and within an extended period of 6 months thereof. The completion date is subject to force majeure conditions and/or subject to any other reasons beyond the control of the Owner/Developer. No claim by way of damages/compensation shall lie against the Owner/Developer in case of delay in handing over the possession on account of any of the aforesaid reasons and the Owner/Developer shall be entitled to a reasonable extension of time for the delivery of possession of the said Flat to the Allottee.

15(c). In case of delay in construction of the said Flat for reasons other than force majeure of beyond control of Owner/Developer, the Owner/Developer shall pay a sum at the rate of Rs. 7 per sq. ft. of Super area per month for the period of delay three months, and Rs. 10/- per sq. ft. saleable/leasable area per month to intending allottee for the period of delay beyond three month provided, however that the intending allottee has made the payment of all installment towards the sale consideration amount and other consideration of flat in time without making any delay to owner/developer.

16(a). That the Owner/Developer shall give a notice to the Allottee(s) intimating the date on which the Owner/Developer would give possession or offer of fit out period of the unit to the allottee(s) and the allottee(s) shall himself or through its duly appointed attorney take over *delivery of the unit within such time as specified n possession letter, in case allottee does not take possession of flat within fit out period, he has to pay Rs. 7/- per sq. ft. per month for the first month and Rs. 10/- will be chargeable from second month onward from the date of expiry of fit out period.*

17. That in the event the Owner/Developer is able to get additional FAR or it becomes possible to raise further construction on the ground as well as on the top roof/terrace of the building/complex, the Owner/Developer shall have the sole right to utilize the additional FAR or such right to further construction in the manner it may deem fit including but not limited to by making addition to the said building or making additional building in and around the land of the said complex and the Owner/Developer shall be entitled to get the electric, water, sanitary and drainage, system in the said complex. The allottee acknowledges that he has not made any payment towards the additional FAR and shall no right to object to any of such construction activities carried on the said building/complex.

17(a). That in order to provide necessary maintenance services, the Owner/Developer may, upon the completion of the said Complex, hand over the maintenance of the said Complex to any individual, firm, body corporate, association etc. (hereinafter referred to as "Maintenance Agency") as the Owner /Developer in its sole discretion may deem fit. The maintenance, upkeep, repairs, lighting, security etc. of the Complex including other common areas, landscaping and common lawns, water bodies of the Complex will be organized by the Owner/Developer or its nominated Maintenance Agency from time to time depending upon the maintenance cost. The Allottee shall be liable to make payment of such cost to the Owner/Developer or maintenance agency.

(b) That the Owner/Developer or Maintenance Agency and their employees shall be permitted at all reasonable times to enter into the said Flat for carrying out any repair, alterations, cleaning etc., or for any other purpose in connection with the maintenance of the Complex. However, in case of urgency of exigency, the Allottee Owner/Developer or Maintenance Agency employees may break open the door, windows

etc. of the Flat in order to prevent any further damages to the life/property in the said Flat/Building/Complex and the allottee hereby agrees that such actions of the Owner/Developer/Maintenance Agency is fair and reasonable and he undertakes to not to raise any objection to such action.

8. On examination of the pleadings, record of memo of appeal and submissions of learned counsels for the parties, we frame following issues:-

(i) Whether under the scheme of the Act 2016 and Rules 2016 any mechanism has been provided for determination of the interest or compensation for delay in handing over possession of the apartment/plot to the allottee and/or refund with interest, if allottee does not want to continue/wish to withdraw from the project ?

(ii) Whether the project in question of the respondent is delayed ?

(iii) Whether it is necessary and mandatory for the Promoter to have first Completion Certificate (C.C.) and Occupation 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?

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

(v) Whether the allottee is required to pay charges as per the provisions of Allotment Letter while finally settling the account?

9. The **issue no. (i)** requires us to examine as to whether under the scheme of the Act 2016 and Rules 2016 any mechanism has been provided for determination of the interest or compensation for delay in handing over possession of the apartment/plot to the allottee and/or refund with

interest, if allottee does not want to continue/wish to withdraw from the project?

9.1 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.

9.2 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.

9.3 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.

9.4 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.

9.5 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.

9.6 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.

9.7 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.

9.8 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.

9.9 We have further 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.

9.10 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.

9.11 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.

9.12 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.

9.13 On examination of Section 35 of the Act, we find that the powers of the Regularity Authority under Section 35 of the Act are of a wide nature. While discharging those functions, it will be open to the Authority to even require the AO to conduct the inquiry. Section 35 (2) of the Act also makes it plain that the Regulatory Authority will have the same powers as a Civil Court. The legislative intent is, therefore, not to diminish the adjudicatory functions of the Regulatory Authority, but rather to provide it with all the trappings of a quasi-judicial/judicial authority while inquiring into the complaints and issuing directions, by directing the Adjudicating Officer to adjudicate the compensation or interest. The legislation in its own wisdom has used the word "Authority" as well as "Adjudicating Officer" wherever it is required. Furthermore, the legislation has clearly, intentionally and suitably used the word "penalty" or "interest at such rate as may be prescribed" in case of Authority and "compensation" or "interest as he thinks fit" in case of Adjudicating Officer.

9.14 Further, the Hon'ble Bombay High Court in the case of ***Neelkamal Realtors Suburban Pvt. Ltd. And others Vs. Union of India (supra)*** observed as follows:-

> *"Section 18(1)(b) lays down that if the promoter fails to complete or is unable to give possession of an apartment due to discontinuance of his business as a developer on account of suspension or revocation of the registration under the Act or for any other reason, he is liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available to return the amount received with interest at such rate as may be prescribed 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".*

9.15 From the aforementioned discussion, it is clear that the Act of 2016 provides a mechanism for determination of interest and/or compensation 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 if allottee wants to withdraw from the Project. **Issue no. (i) is decided** accordingly.

10. Vide **issue no. (ii),** we are required to examine as to whether the project of the respondent in question is delayed?

10.1 The appellants approached the respondent for allotment of Unit in the project of respondent 'Victory-1 Central' situated at Plot No. GH-02 E, Sector-12, Greater Noida (West), Gautam Budh Nagar on the plot admeasuring 18,000 sq. mtr. and the respondent issued allotment letter 14.04.2013. The total consideration amount of the Unit in question was Rs. 38,20,320.00/- under Plan-A (Construction Linked Plan). As per Allotment Letter the Owner/Developer was to complete the development/construction of the Flat by 30 months and with an extended period of 6 months thereof subject to force majeure conditions and/or subject to any other reasons beyond the control of the Owner/Developer. Therefore, 30 months period from the date of issuance of Allotment Letter expired on 14.10.2015 and by adding six months' period the same comes to 14.04.2016.

10.2 The respondent raised a demand for settlement of accounts vide letter dated 11.10.2017 and as per the pleadings and submission of learned counsel for the respondent the respondent received the Occupancy Certificate on 11.06.2018. But prior to that offer of possession was issued. On query, it was informed by learned counsel for the respondent that second offer of possession was issued by applying the deeming clause of CC/OC, since no objections were received from the concerned competent authority. A query was made as to whether in the said letter of possession, invoking a deeming provision of CC/OC has been mentioned to the allottee along with necessary 'No Objections Certificate' issued from the concerned department. The learned counsel for the respondent fairly submitted that nothing was mentioned in the offer of possession letter dated 13 June 2018. We are of the considered view that offer of possession cannot be given in the absence of CC/OC issued by the competent authority and if any promoter/builder invokes the deeming provision of CC/OC, then the promoter is required to mention in the offer of possession and also provide the copy of the necessary 'No Objection Certificate' issued by the department required for applying CC/OC.

10.3 As per Clause 15(a) of the Allotment Letter, the possession was required to be given on 13.04.2016 and the respondent failed to provide the possession as per provision 15(a) of the Allotment Letter. Thus, we hold that there was a delay in offering the possession. The **issue no. (ii) is decided** accordingly.

11. The **Issue no. (iii)** requires us to examine as to whether it is necessary and mandatory for the Promoter to have first Completion Certificate (C.C.) and Occupation 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?

11.1 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;"*

11.2 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.

11.3 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."*

11.4 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 by-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.

11.5 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.

11.6 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. **Issue no. (iii) is decided** accordingly.

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

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

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

> *"Section 18(1)(b) lays down that if the promoter fails to complete or is unable to give possession of an apartment due to discontinuance of his business as a developer on account of suspension or revocation of the registration under the Act or for any other reason, he is liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received in respect of that apartment with interest at such rate as may be prescribed 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".*

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

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

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

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.

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

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

> *"We feel that this imbalance is on account of the fact that the buyer/allottee has much less bargaining power as compared to the seller in the real estate market and therefore the buyers/allottees have no choice but to sign on such "dotted line", "one sided, unfair and unreasonable" terms and conditions/Agreements. We are therefore of the view that the rate of MCLR +1% , as prescribed by the Government and as being ordered by the Regulatory Authority, be payable from the date of deposit of money in case the allottee wishes to withdraw from the project; and from the specified/expected date of possession in case the allottee wishes to stay in the project, would balance the equities and are just and fair and will fall within the term "interest at such rate as may be prescribed" as used in Sections 12, 18 & 19........."*

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

> *"If compensation comprises of two parts, (i) by way of interest on the deposited amount from the assured date (milestone date) of completing construction and handling over possession to the actual date of handling over possession, and, (ii) lumpsum amount, we find nothing wrong in it. We do not agree with the*

builder co.'s contentions that interest on the deposited amount should not be provided since it is not a case of refund but a case of delay in possession. The interest on the deposited amount has to be viewed in the light of the purpose for which it is intended. It is but a way of computing compensation for delay in possession that is commensurate with the amount deposited by the complainant, and here it has been computed after adopting a milestone date as per the builder co.'s own (unfair and deceptive) letter of 05.06.2013. There can be and is no question of not agreeing to an endorsing the award of interest from the said milestone date. Here we may however add that the rate of interest also cannot be arbitrary or whimsical, some reasonable and acceptable rationale has to be evident, subjectivity has to be minimized, a logical correlation has to be established. Albeit detailed arithmetic or algebra is not required. Logical (to the extent feasible) objective parameters should be adopted. Rounding off simplification etc. to make the computation doable could be adopted. We feel it appropriate that, considering that the subject units in question are dwelling units, in a residential housing project, the rate of interest for house building loan for the corresponding period in a scheduled nationalized bank (take, State Bank of India) would be appropriate and logical, and , if 'floating'/ varying/different rates of interest were/ are prescribed, the higher rate of interest should be taken for this instant computation."

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

It is our considered view that drawing light from the Rules of 2018, and the fact that often an allottee/buyer has to supplement his savings by taking loan at the MCLR percent interest (compound), the simple rate of interest at MCLR+1 percent will balance 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.

12.10 On the basis of aforesaid analysis the **issue no. (iv) is decided** in affirmative in favour of appellant.

13. The **issue no. (v)** requires us to examine regarding the liabilities of the allottee/appellant towards payment of various charges.

13.1 The appellant raised objections regarding (i) Increased Super Area Charges (b) Above market standard and illegal charges of Prepaid Dual Electric Meter (c) Fir Fighting Charges (iv) Electricity Load Charges (v) Video Intercom Charges (vi) Sinking Fund (vii) IGL Installation Charges (viii) Pratikar Shulk (ix) Labour Cess (x) Additional Power Backup Charges (xi) Interest on Delayed Payment and (xii) Monthly club maintenance charges. The perusal of the provisions of Allotment Letter dated 14.04.2013 indicates that both the parties had agreed that the cost of development and construction of the said Flat is escalation free, save and except increase, which the allottee agrees to pay due to increase in Flat area, any increase or additional Govt. rates, taxes, cess, etc., that may be levied or imposed by the Govt./Statutory Authorities from time to time, subsequent to booking requiring the Owner/Developer to provide pollution control devices, treatment plant, water harvesting system etc. in the said Complex, then the cost of such additional devices, equipments etc. shall also be borne and paid by the allottee on pro-rate basis, service tax on sale of the Flat shall be borne and paid by the Allottee as per the prevailing rate.

13.2 The clause 5 of the Allotment Letter provides that 'it is further understood and agreed by the allottee that the area of the said Flat given in this Agreement is subject to change as per direction of the Sanctioning Authority or Architect or Structural Engineers of the Owner/Developer which may result in change (decrease/increase) in the super area of the said Flat, change in its dimensions, size, number, etc. In case there is any changes in the said flat, the same shall be valid and binding on the allottee. In the case of any increase or decrease in the area of the said flat the cost of the said flat will be adjusted on a pro-rata basis, variation in the super area shall not exceed 10%."

13.3 The Clause 9 of the Allotment Letter further provides that 'it is agreed by the parties, that the Fire Fighting Equipment and/or preventive measures in the common area of the Complex will be provided as per the existing Fire Fighting Code/Regulations as contained in national Building code, however if required by any law/byelaw, order or directions or due to any subsequent legislation/Government orders, additional fire safety measures are undertaken, the Allottee agrees to pay for the additional expenditure on pro rata basis.'

13.4 The Clause 17 of the Allotment Letter provides that 'in the event the Owner/Developer is able to get additional FAR or it becomes possible to raise further construction on the ground as well as on the top roof/terrace of the building/complex, the Owner/Developer shall have the sole right to utilize the additional FAR or such right to further construction in the manner it may deem fit including but not limited to by making addition to the said building or making additional building in and around the land of the said complex and the Owner/Developer shall be entitled to get the electric, water, sanitary and drainage, system in the said complex. The allottee acknowledges that he has not made any payment towards the additional FAR and shall no right to object to any of such construction activities carried on the said building/complex.'

13.5 The Clause 17(a) of the Allotment Letter provides that 'in order to provide necessary maintenance services, the Owner/Developer may, upon the completion of the said Complex, hand over the maintenance of the said Complex to any individual, firm, body corporate, association etc. (hereinafter referred to as "Maintenance Agency") as the Owner /Developer in its sole discretion may deem fit. The maintenance, upkeep, repairs, lighting, security etc. of the Complex including other common areas, landscaping and common lawns, water bodies of the Complex will be organized by the Owner/Developer or its nominated Maintenance Agency from time to time depending upon the maintenance cost. The Allottee shall be liable to make payment of such cost to the Owner/Developer or maintenance agency.'

13.6 The payment plan of the appellant indicates that other charges= Lease Rent + Power Backup + IFMS, etc. was to be paid by the allottee. This issue has been examined by the Regulatory Authority in detail while passing the impugned order dated 09.04.2018 and we are in agreement with the findings of the Regulatory Authority with respect to charges demanded by the respondent as per the provisions of Allotment Letter and taking into consideration the statement of the respondent to the effect that project is almost complete, the Regulatory Authority directed for issuance of revised final demand and provide possession after taking Completion Certificate from the competent authority as per the sanction lay out plan by 31.12.2018.

13.7 On examination of the various provisions of the Allotment Letter, we are of the view that the allottee/appellant was required to pay additional charges towards the heads mentioned in the respective clauses of the Agreement. The **issue no. (v) is answered** accordingly.

14. On the basis of aforesaid analysis, we do not find any illegality or perversity in the impugned order dated 09.04.2018, except in direction no. 2, whereby the direction was issued for payment of Rs. 7/- per sq. ft. per month from 01.05.2016 to 31.07.2016 and from 01.08.2016 till providing actual possession the penalty of Rs. 10/- per sq. ft. per month.

15. In our considered view, clause 15(c) of the Allotment Letter dated 14.04.2013 regarding giving payment @ Rs. 7/- per sq. ft. of super area per month for the period of delay three months and Rs. 10/- per sq. ft. saleable/leasable area per month to intending allottee for the period of delay beyond three month, and the provision 10(d) regarding charging

24% per annum interest upto three months in default of payment of installment, are one sided, dotted line provisions, as well as are unfair and unreasonable.

16. The Hon'ble Supreme Court in the judgment rendered in **CIVIL APPEAL NO(S). 6745 6749 OF 2021 (M/s Newtech Promoters & Developers Pvt. Ltd. Vs. State of U.P. & Ors.),** has already held that the provisions of Act 2016 is having a retroactive operation and overriding effect to the provisions of Agreement. Under the scheme of Act 2016, an allottee is entitled for interest/compensation in case of delay in possession, if he chooses to remain in the project and/or he wishes to withdraw from the project. Thus as allottee is entitled for interest/compensation on the deposited amount till possession.

17. The issue of interest has already been examined vide issue no. (iv), accordingly, while upholding direction nos. 1, 3 and 4 of the impugned order, we modify the direction no. 2 as follows:-

"The allottee will be entitled for interest @ MCLR+1% for delay in possession of the allotted unit with effect from 15.04.2016 till offer of possession after receipt of CC/OC from the Competent Authority."

18. Accordingly, the appeal is **partly allowed**.

19. The appellant is free to press execution of the order of the Regulatory Authority read with our order, before the Regulatory Authority, in case of non-compliance as per the provisions of the Act/Rules 2016.

20. No order as to the costs.

Dated:23.03.2022

Shakir/Tanveer/ **(Rajiv Misra)** **(D.K. Arora)**