RESERVED JUDGMENT
BENCH-1

THE UTTAR PRADESH REAL ESTATE APPELLATE TRIBUNAL, AT LUCKNOW.

APPEAL NO. 338/2019

M/S Gaursons Promoters Pvt. Ltd. ……………Appellant.

Versus

Omlata. ……………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 M/S Gaursons Promoters Pvt. Ltd. (hereinafter referred to as the 'appellant') against the order dated 21.09.2019 passed by the Real Estate Regulatory Authority, Regional Office Gautam Budh Nagar (hereinafter referred to as the 'Regulatory Authority') in Complaint No. NCR144030428/2019 whereby the appellant was directed to ensure payment of interest to the complainant within 45 days at the rate of MCLR+1% after the period of possession as per the agreement till the date of delivery of possession.

2. The facts of the case, in brief, as culled out from the memo of appeal, are that the complainant/respondent booked a flat/unit no. 1005 in 14th Avenue at Gaur City-2, situated at Gaur City-2, Greater Noida. Total cost of the unit was Rs.34,86,000/- excluding taxes. The allotment letter was issued by the appellant on 27.02.2014. The possession of the unit was supposed to be given to the complainant/allottee/respondent on or before 27.02.2018. The complainant has paid Rs.41,40,046/- towards the cost of the said flat/unit.

2.1 Even though the payments did not come on time, the appellant completed the construction of the project and got the completion certificate from the authority concerned on 23.05.2019.

2.2. The complainant/respondent did not pay her dues timely.

2.3 The complainant/respondent is not entitled to any possession delay penalty as per term and condition no. 23 of the allotment letter.

2.4 The project of the appellant is registered under the provisions of the Real Estate (Regulation and Development) Act 2016 (hereinafter referred to as 'the Act 2016').

3. The appellant/promoter has challenged the impugned order dated 21.09.2019 passed by the Regulatory Authority, on the following grounds:--

(i) The Regulatory Authority has admitted in its finding that the complainant/respondent has been executed the transfer deed/Benama/Sublease deed on 17.12.2018. After this finding the Regulatory Authority has no jurisdiction to entertain the complaint of the respondent. It should be governed under the provisions of Transfer of Property Act as held by Hon'ble Delhi High Court in the case of Vandana Agarwal Vs. Mahagun Builders, 2011CPJ 373/

(ii) Legally the complainant is not entitled to any possession delay penalty as per terms and condition no. 23 of the allotment letter which has been duly admitted and signed by the complainant/respondent.

(iii) The proposed date of possession was fixed between the parties as 26.08.2017 which has been mentioned by the respondent in the online complaint to the Regulatory Authority.

(iv) On account of delay in handing over possession beyond six months from the promised date of possession penalty was payable @ Rs.5/- per sq.ft. Thus the respondent was eligible for penalty/delay interest from the appellant for the period from 27.02.2018 till the receipt of OC/CC.

(v) The period from 27.02.2018 to 23.05.2018 was covered under the stay/ban orders over the construction of the project due to air pollution in Delhi and NCR by the National Green Tribunal from time to time during the period from 11.10.2013 to 2018.

(vi) The ban orders were passed by NGT due to natural calamity and were beyond the control of the appellant and this type of situation is covered under the force majeure.

(vii) The Regulatory Authority has committed serious error in passing the impugned order dated 21.09.2019, which is liable to be set aside.

(viii) Every thing was delivered by the appellant as per agreement.

(ix) The above grounds were pressed before the Regulatory Authority but the Regulatory Authority passed the impugned order directing the appellant to pay the possession delay penalty/interest from 26.08.2017 to 15.02.2019 which is illegal and is liable to be set aside.

4. The appellant has prayed for setting aside of the impugned order dated 21.09.2019 passed by the Regulatory Authority.

5. The respondent did not appear in the present case. The orders of the Tribunal dated 14.11.2019, 02.12.2019 and 16.12.2019 were sent to the respondent by the Registry of the Tribunal through email on the email address of the respondent. Notice was also sent to the respondent through registered post in pursuance to the order dated 02.12.2019 and as per the track record of the postal department the same has been delivered to the respondent on 07.12.2019. Despite service of notice and information through email of aforesaid all the three orders, no one appeared on behalf of the respondent. Accordingly vide order dated 09.01.2020 the matter was directed to proceed exparte against the respondent. The application for recall of order dated 09.01.2020 moved by the respondent was rejected by the Tribunal vide order dated 21.10.2021. Therefore, the matter was heard ex-parte.

6. Heard Sri Samrat Vaish, learned counsel for the appellant.

6.1 On examination of pleadings, documents placed by the appellant on record and the submission of learned counsel for the appellant, the factual position is as follows:

6.2 The project of the appellant is registered under the provisions of Act 2016. The respondent booked a Flat/Unit No. 1005 in 14th Avenue at Gaur City-2, situated at Gaur City-2, Greater Noida. Total cost of the unit was Rs.34,86,000/- excluding taxes. The allotment letter was issued to the respondent by the appellant on 27.02.2014. The possession of the unit was supposed to be given to the complainant/allottee/respondent on or before 27.02.2018. The complainant/allottee/respondent paid Rs.41,40,046/- towards the cost of the said flat/unit. The appellant received completion certificate from the concerned authority on 23.05.2019. The sale-deed was executed of the flat in question in favour of the respondent on 17.12.2018. The respondent approached the Regulatory Authority by means of Complaint No. NCR144030428/2019 on 12.03.2019, seeking relief for delay penalty on the same rate of interest which is being charged by the promoter.

6.3 The perusal of impugned order reveals that the Regulatory Authority while issuing notice to the respondent/Appellant, directed him to appear on 29.03.2019 and submit written statement along with necessary evidences. The promoter/appellant appeared on 29.03.2019 and the Regulatory Authority, while fixing date for 12.06.2019, granted time to the promoter for filing objections. Thereafter, on 10.07.2019 last opportunity was given to the promoter/appellant for filing written statement, but despite repeated opportunities, neither written statement nor written arguments were filed on behalf of the promoter/appellant. Therefore, the Regulatory Authority proceeded ex parte against the promoter/Appellant. The Regulatory Authority on the basis of complaint and the records provided by the complainant/respondent framed issue as to whether the complainant is entitled for interest for delay period. The Regulatory Authority, after examining the provisions of Act 2016, Judgment of Hon’ble Bombay High Court in the case of Neelkamal Realtors Suborbun Pvt. Ltd. Vs. Union of India, the provisions of Rule 9(ii) of Real Estate (Regulation and Development)(Agreement for Sale/Lease), Rules 2018 as well as judgment of National Consumer

Disputes Redressal Commission in C.C. 739/2017 (Vikas Garg Vs. M.R.M.G.F. Land Lt. and Ors.), while disposing of the complaint vide order dated 21.09.2019 directed the promoter/respondent to give interest to the complainant at the rate of MCLR+1% after the period of agreement till the date of delivery of possession.

6.4 The appellant feeling aggrieved against the impugned order dated 21.09.2019, filed the instant appeal without any grounds. Subsequently on being pointed out, the appellant filed an application for amendment in the memo of appeal for incorporation of grounds. The said application was allowed vide order dated 22.09.2021 and the learned counsel for the appellant was directed to incorporate grounds mentioned in paras, 9, 10 and 11 of the application within a week and to file amended copy of the memo of appeal within 10 days.

6.5. On examination we found that appellant though filed amended copy of memo of appeal, but has not incorporated the same in the memo of appeal, which he was required to incorporate with red ink. Be that as it may, vide order dated 09.01.2020 we decided to proceed ex parte against the respondent after giving sufficient opportunities. The application for recall of the order dated 09.01.2020 was rejected vide order dated 21.10.2021.

6.6. The learned counsel for the appellant was heard. The learned counsel for the appellant was asked to make submissions as to how the judgments relied by the Regulatory Authority are not applicable, but he failed to give any response and submitted that he has relied on the judgments mentioned in para-6 and ground-VII of memo of appeal.

7. On the basis of pleadings, documents place on record by the learned counsel for the appellant and his submissions, we frame following questions/issues:

(i) Whether there was a delay in providing possession of the booked unit to the respondent by the appellant?

(ii) Whether home buyer who obtained possession and executed conveyance deed, has lost right to claim interest/compensation for the delay in handing over the possession of the Unit/Apartment/Flat?

(iii) Whether promoter/appellant is entitled for relaxation from 27.02.2018 to 23.05.2018 on the delay interest due to stay/ban orders over constructions of the Project due to air pollution in Delhi and NCR by the National Green Tribunal from time to time?

8. The issue no. (i) requires us to examine as to whether there was a delay in providing possession of the booked unit to the respondent by the appellant?

8.1 The perusal of the facts mentioned in the memo of appeal itself indicates that the allotment letter was issued by the promoter on 27.02.2014 with respect of flat/unit no. 1005 in 14th Avenue at Gaur City-2, situated at Gaur City-2, Greater Noida. The total consideration amount of the unit was Rs.34,86,000/- excluding taxes and the appellant was supposed to give possession of the same on or before 27.02.2018.

8.2 After receipt of the completion certificate from the competent authority on 23.05.2019, the possession was given after execution of the conveyance deed on 17.12.2018. Therefore, it is admitted case of the promoter/appellant that there was a delay in handing over possession of the booked unit to the respondent. The **question no. (1) is answered** accordingly.

9. Vide **issue no. 2**, we have to examine as to whether home buyer who obtained possession and executed conveyance deed, has lost right to claim interest/compensation for the delay in handing over the possession of the Unit/Apartment/Flat?

9.1 The issue regarding claim for compensation of an allottee for delay in handing over possession of the Unit/Apartment/Flat against promoter/builder after taking possession is no more res integra. The Hon'ble Supreme Court in the case of ***Wg. Cdr. Arifur Rahman Khan and Aleya Sultan and others Versus DLF Southern Homes Pvt. Ltd. (now known as BEGUR OMR Homes Pvt. Ltd. and others*, **(reported **in SCC online SC 667)** while examining the issue whether a flat buyer who seeks to espouse a claim against the developer for delayed possession can as a consequence of doing so be compelled to defer the right to obtain a conveyance to perfect their title, was pleased to observe that it would be manifestly unreasonable to expect that in order to pursue a claim for compensation for delayed handing over of possession, the purchaser must indefinitely defer obtaining a conveyance of the premises purchased or, if they seek to obtain a Deed of Conveyance to forsake the right to claim compensation. Paras 34, 35 and 36 of the aforesaid judgment read as under:-

> *"34. The developer has not disputed these communications. Though these are four communications issued by the developer, the appellants submitted that they are not isolated aberrations but fit into a pattern. The developer does not state that it was willing to offer the flat purchasers possession of their flats and the right to execute conveyance of the flats while reserving their claim for compensation for delay. On the contrary, the tenor of the communications indicates that while executing the Deeds of Conveyance, the flat buyers were informed that no form of protest or reservation would be acceptable. The flat buyers were essentially presented with an unfair choice of either retaining their right to pursue their claims (in which event they would not get possession or title in the meantime) or to forsake the claims in order to perfect their title to the flats for which they had paid valuable consideration. In this backdrop, the simple question which we need to address is whether a flat buyer who seeks to espouse a claim against the developer for delayed possession can as a consequence of doing so be compelled to defer the right to obtain a conveyance to perfect their title. It would, in our view, be manifestly unreasonable to expect that in order to pursue a claim for compensation for delayed handing over of possession, the purchaser must indefinitely defer obtaining a conveyance of the premises purchased or, if they seek to obtain a Deed of Conveyance to forsake the right to claim compensation. This basically is a position which the NCDRC has espoused. We cannot countenance that view.*
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> *35 The flat purchasers invested hard earned money. It is only reasonable to presume that the next logical step is for the purchaser to perfect the title to the premises which have been allotted under the terms of the ABA. But the submission of the developer is that the purchaser forsakes the remedy before the consumer forum by seeking a Deed of Conveyance. To accept such a construction would lead to an absurd consequence of requiring the purchaser either to abandon a just claim as a condition for obtaining the conveyance or to indefinitely delay the execution of the Deed of Conveyance pending protracted consumer litigation.*

36. It has been urged by the learned counsel of the developer that a consequence of the execution of the Deed of Conveyance in the present case is that the same ceases to be a transaction in the nature of "supply of services" covered under the CP Act 1986 and becomes a mere sale of immovable property which is not amenable to the jurisdiction of Consumer Fora. In Narne Construction (P) Ltd. v. Union of India21, this Court distinguished between a simple transfer of a piece of immovable property and housing construction or building activity carried out by a private or statutory body falling in the category of "service" within the meaning of Section 2 (1) (o) of the CP Act 1986. This Court held that:

"8. Having regard to the nature of transaction between the appellant Company and its customers involved much more than a simple transfer of a piece of immovable property it is clear the same constitutes "service" within the meaning of the Act. It was not the case that the appellant Company was selling the given property with all its advantages and/or disadvantages on "as is where is" basis, as was the position in UT Chandigarh Admn v. Amarjeet Singh. It is a case where a clear-cut assurance was made to the purchasers as to the nature and extent of development that would be carried out by the appellant Company as a part of package under which a sale of fully developed plots with assured facilities was made in favour of the purchasers for valuable consideration. To the extent the transfer of site with developments in the manner and to the extent indicated earlier was a part of the transaction, the appellant Company has indeed undertaken to provide a service. Any deficiency or defect in such service would make it accountable before the competent Consumer Forum at the instance of consumers like the respondents."

The developer in the present case has undertaken to provide a service in the nature of developing residential flats with certain amenities and remains amenable to the jurisdiction of the Consumer Fora. Consequently, we are unable to subscribe to the view of the NCDRC that flat purchasers who obtained possession or executed Deeds of Conveyance have lost their right to make a claim for compensation for the delayed handing over of the flats."

9.2 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, reported in MANU/SC/0235/2019, while examining the award of interest by the National Consumer Disputes Redressal Commission (NCDRC) for delay in giving possession by the Builder/Promoter to the allottee/home buyer, pleased to observe that the jurisdiction of the NCDRC to award just compensation under the provisions of the Consumer Protection Act, 1986 could not in the circumstances be constrained by the terms of the agreement, if the agreement is one sided and does not provide sufficient recompense to the flat purchasers. The relevant paras 8 and 9 of the said judgment are reproduced below:-

> *"8. We will at the outset deal with the submission of the developer that the NCDRC was not justified in awarding interest at the rate of 6 per cent per annum and that the terms of the flat purchase agreements must prevail.*
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> *9. We are in agreement with the view of the NCDRC that the rate which has been stipulated by the developer, of compensation at the rate of 3 per sq. ft. per month does not provide just or reasonable recompense to a flat buyer who has invested money and has not been handed over possession as on the stipulated date of 31 January 2014. To take a simple illustration, a flat buyer with an agreement of a flat admeasuring a 1000 sq.ft. would receive, under the agreement, not more than Rs.3000/- per month. This in a city such as Bangalore does not provide just or adequate compensation. The jurisdiction of the NCDRC to award just compensation under the provisions of the Consumer Protection Act, 1986 cannot in the circumstances be constrained by the terms of the agreement. The agreement in its view is one sided and does not provide sufficient recompense to the flat purchasers."*

9.3 In view of the aforesaid judgment it can safely be said that a home buyer does not lose his right to claim compensation or interest for the delay in possession even after execution of the conveyance deed and taking possession of the Unit/Apartment/Flat booked by him. The **question no. (2) is answered** accordingly.

10. The issue no. (3) requires us to examine as to whether promoter/appellant is entitled for relaxation from 27.02.2018 to 23.05.2018 on the delay interest due to stay/ban orders over construction of the Projects due to air pollution in Delhi and NCR by the National Green Tribunal from time to time?

10.1 On examination of record, ground (VII) of memo of appeal, in which it has been mentioned that period from 27.02.2018 to 23.05.2018 was covered under the stay/ban/ orders over the project constructions due to bad weather/air pollution in Delhi and NCR by the Hon'ble National Green Tribunal and taking into consideration the averments made in para 5(C)(1) of the memo of appeal, wherein the appellant/promoter itself stated that the possession of the Flat No. 1005/14th Avenue at Gaur City was supposed to be given to the allottee on or before 27.02.2018 (26.08.2017 + 6 months grace period as per terms and conditions of the agreement), the concession claimed by the promoter is after the period of the proposed date of possession, even after including the grace period, therefore, no benefit can be given for the period claimed by the promoter/appellant. Even otherwise, this issue was for the first time raised in the appeal, as no objection to the complaint was filed by the respondent even after repeated opportunities. The **issue no. (3) is decided** accordingly.

11. 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.

12. 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. On the basis of aforesaid analysis and examining the pleadings, records of memo of appeal as well as submissions of learned counsel for the parties, we do not find any illegality or perversity in the order dated 29.01.2019 passed by the Regulatory Authority. Accordingly, the **appeal is dismissed.**

13. Now the issue to be decided is as to what should be done of the pre-deposit made by the appellant/promoter in compliance of the provisions of Section 43(5) of the Act in case of dismissed appeal.

13.1 The aims and objects of the Act provide for regulation and promotion of the real estate sector in an efficient and transparent manner and to protect the interests of the consumers in real estate sector. Proviso to Section 43(5) of the Act specifically provides that where a promoter files an appeal with the Appellate Tribunal, it shall not be entertained without the promoter first having deposited with the Appellate Tribunal at least 30% of the penalty, or such higher percentage as determined by the Appellate Tribunal, or the total amount to be paid to the allottee including interest and compensation imposed on him before the said appeal is heard. The intent of the legislature is quite clear from the wording of proviso to Section 43(5) of the Act that the interest of the consumers i.e. allottees/buyers be protected.

The intent of the legislature in laying down the provision of pre-deposit of the amount of penalty or any other amount payable to the allottee by the promoter before the appeal can be heard in the Appellate Tribunal, has been elucidated by the **Hon'ble Apex Court in paragraph 127** of its judgment in the **Civil Appeal Numbers 6745-6749 of 2021 M/s Newtech Promoters and Developers Pvt. Ltd. Vs. State of UP** and others, the same reads as under:-

"127. It may further be noticed that under the present real estate sector which is now being regulated under the provisions of the Act 2016, the complaint for refund of the amount of payment which the allottee/consumer has deposited with the promoter and at a later stage, when the promoter is unable to hand over possession in breach of the conditions of the agreement between the parties, are being instituted at the instance of the consumer/allottee demanding for refund of the amount deposited by them and after the scrutiny of facts being made based on the contemporaneous documentary evidence on record made available by the

respective parties, the legislature in its wisdom has intended to ensure that the money which has been computed by the authority at least must be safeguarded if the promoter intends to prefer an appeal before the tribunal and in case, the appeal fails at a later stage, it becomes difficult for the consumer/allottee to get the amount recovered which has been determined by the authority and to avoid the consumer/allottee to go from pillar to post for recovery of the amount that has been determined by the authority in fact, belongs to the allottee at a later stage could be saved from all the miseries which come forward against him."

The Hon'ble Apex Court has clearly held that the legislature in its wisdom intended to ensure that the money which has been computed by the Authority at least must be safeguarded if the promoter intends to prefer an appeal before the Tribunal and in case, the appeal fails at a later stage, it should not be difficult for the consumer/allottee to get the amount recovered which has been determined by the Authority. It is in order to avoid the consumer/allottee to go from pillar to post for recovery of the amount that has been determined by the Authority, that the legislature has in its wisdom laid the condition of pre-deposit by the promoter under Section 43(5) of the Act.

13.2 Section 40(1) of the Act of 2016 provides for a mechanism for recovery of interest or penalty or compensation and enforcement of orders etc. of the A.O. or the Regulatory Authority, or the Appellate Tribunal and the same shall be recoverable in such manner as may be prescribed as an arrears of land revenue. The **Hon'ble Apex Court** vide **paragraph 140** in **M/s Newtech Promoters and Developers Pvt. Ltd. Vs. State of UP** (supra) was pleased to observe that:-

"140. It is settled principle of law that if the plain interpretation does not fulfill the mandate and object of the Act, this Court has to interpret the law in consonance with the spirit and purpose of the statute. There is indeed a visible inconsistency in the powers of the authority regarding refund of the amount received by the promoter and the provision of law in Section 18 and the text of the provision by which such refund can be referred under Section 40(1). While harmonizing the construction of the scheme of the Act with the right of recovery as mandated in Section 40(1) of the Act keeping in mind the intention of the legislature to provide for a speedy recovery of the amount invested by the allottee along with the interest incurred thereon is self explanatory. However, if Section 40(1) is strictly construed and it is understood to mean that only penalty and interest on the principal amount are recoverable as arrears of land revenue, it would defeat the basic purpose of the Act."

As can be seen from the above observations, Hon'ble Supreme Court has held that even the principal amount invested by the allottee can be recovered as arrears of land revenue under Section 40(1) of the Act. It is further clarified by Hon'ble Supreme Court that the intention of the legislature is to provide a mechanism for early recovery of the amount invested by the allottee alongwith the interest incurred thereon.

13.3 Rule 23 of the U.P. Real Estate (Regulation and Development) Rules, 2016 provides that subject to the provisions of Section 40(1), the recovery of the amounts due as arrears of land revenue shall be carried out in the manner provided in the local laws. As Rule 23 has been framed under the provisions of Section 40(1) of the Act, the observations of Hon'ble Supreme Court on Section 40(1) shall equally apply to Rule 23 of the Rules 2016.

13.4 Although Section 40(1) of the Act of 2016 gives powers to the Appellate Tribunal to enforce its decisions, but the Tribunal does not have adequate infrastructure and the required sufficient human resource to determine and certify the amount due from the appellant/promoter to be paid to the respondent/allottee.

It is our considered view that as per provisions of the Act and as per the observations made by the Hon’ble Apex Court, it is the duty of the Tribunal to arrange to transfer the pre-deposited money to the concerned allottee/consumer in case the promoter’s appeal is dismissed. However, since the promoter might not have paid the full payable amount or there being a prospect of some amount having already been recovered from the promoter under execution proceedings at the level of the Authority or AO, it is just and lawful that the Tribunal transfers the amount to the Authority for transferring the same to the allottee/consumer after due diligence at its end and to recover any additional amount which could be due to be paid by the promoter; or return to the promoter any amount that could be in excess of the entitlement of the allottee/consumer.

The calculation of the exact amount due to be paid to the respondent/allottee normally is to be determined up to the date of actual payment. As the facts and figures are available with the Regulatory Authority, which is executing its or A.O.’s original order, therefore, due diligence is required while calculating the amount payable, interest thereon, as well as verification of the payments made by the allottee from time to time, etc.

13.5 In the instant case, this Tribunal while upholding the order of the Regulatory Authority dated 21.09.2019, **dismissed the appeal** of the promoter, accordingly, we direct the Registry to transfer the entire amount deposited by the promoter under the provisions of Section 43(5) of the Act to the concerned account of the U.P. Real Estate Regulatory Authority (U.P. RERA). Further, we direct the Regulatory Authority to dispose of this amount during the execution proceedings in accordance with its order dated 21.09.2019 passed in Complaint Case No. NCR144030428/2019.

14. No order as to costs.

Dated:22.03.2022 **(Rajiv Misra)** **(D.K. Arora)**
Shakir/Tanveer/