RESERVED JUDGMENT

BENCH-1

THE UTTAR PRADESH REAL ESTATE APPELLATE TRIBUNAL, AT LUCKNOW.

APPEAL NO. 179/2019

Smt. Sneh Lata Verma and another. ……………Appellants.

Versus

Lucknow Development Authority. ………Respondent.

With

APPEAL NO.117/2022

(Earlier Misc. Case No. 102/2019)

Lucknow Development Authority ……………..Appellant.

Versus

Sneh Lata Verma and another. …………….Respondents.

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

1. These cross appeals have been filed against the same order dated 25.05.2018 passed by the Uttar Pradesh Real Estate Regulatory Authority, Lucknow (hereinafter referred to as 'the Regulatory Authority') in Complaint No. 420189587, therefore, they were heard together and are being disposed of by a composite judgment.

2. By the impugned order dated 25.05.2018 the Regulatory Authority has directed the Lucknow Development Authority (LDA) to deliver legal possession of the allotted apartment to the allottees, Smt. Sneh Lata Verma and Sri Gyan Prakash Singh by 30.09.2018 with interest on the deposited amount of Rs.27,40,168/- at the rate of MCLR fixed on home loan by State Bank of India.

3. The facts of the case, in brief, as culled out from the memo of Appeal No. 179/2019, are that the Smt. Sneh Lata Verma and Sri Gyan Prakash Singh (allottees) were initially allotted 3 BHK Flat No. 1103-F Block, in Srishti Apartment, Sector-J, Sitapur Road Scheme, Jankipuram, Lucknow vide allotment letter dated 09.12.2010. Thereafter, at the request of the allottees the said flat was changed and 3 BHK Flat No. 102-F Block, in the same scheme, was allotted by the LDA after taking 1% conversion fee on 01.07.2011.

3.1 In pursuance to the subsequent allotment letter dated 01.07.2011 the allottees deposited the entire cost of Rs.24,85,000/- and also deposited the amount of compound interest amounting to Rs.2,27,166/- imposed by the LDA from time to time. Thus the allottees paid a sum of Rs.27,40,168/- to LDA till 18.07.2012. The allottees also deposited Rs.65,844/- on 19.12.2018 towards maintenance charges etc. As such the allottees have paid total amount of Rs.28,06,012/- to LDA.

3.2 Proper possession of the flat in question has not been delivered to the allottees nor the sale deed has been executed in favour of the allottees. As per clause 2.4 of the Brochure of the scheme, the possession of the flat was to be delivered within 24 months from the date of allotment. Further as per clause 2.1 of the Brochure of the scheme in case of failure to deposit the installments timely the allottee will be liable to pay interest at the rate of 15% per annum.

3.3 The allottees are living in a rented house and are paying monthly rent to the landlord. The allottees sent a letter to LDA whereupon the LDA informed that the process was going on and it would be completed soon, but till date the allottees have not received any communication from the LDA for proper possession with completion and occupation certificates for execution of sale deed.

3.4 Thereafter the allottees filed Complaint No. 420189587 on 20.04.2018 which was decided by the Regulatory Authority vide impugned order dated 25.05.2018, in the manner stated in para 2 above.

3.5 Thereafter an amended order was passed by the Regulatory Authority on 02.07.2018 directing the LDA to hand over proper possession of the flat till 30.09.2018 with interest of SBI MCLR+1% on the amount of Rs.27,40,168/- deposited by the allottees.

3.6 The allottees moved an application dated 03.08.2018 before the Secretary of the Regulatory Authority for amendment/correction of the impugned order by granting the relief of interest at the rate of 15% per annum.

3.7 On 01.04.2019 again the allottees moved an application before the Regulatory Authority under Section 39 of the Real Estate (Regulation and Development) Act 2016 (hereinafter referred to as 'the Act 2016') for amendment/correction of the order and sought the relief of interest at the rate of 15% per annum in the light of judgment passed by the U.P. Real Estate Appellate Tribunal in Appeal No. 87/2018 (Smt. Upasana Duggal Vs. LDA) decided on 26.02.2019. Thereafter a reminder was also sent by the allottees to the Regulatory Authority for early disposal of the said application.

3.8 The Regulatory Authority informed the allottees that 23.04.2019 was fixed for hearing of the applications and the allottees were required to be present on the said date along with relevant documents, before Court No. 2 of the Regulatory Authority. On 23.04.2019 the allottees submitted their documents and argued the matter at length. The Regulatory Authority reserved the judgment.

3.9 On 01.05.2019 the allottees received an email from the Regulatory Authority informing that order has been passed and the applications have been rejected.

3.10 The allottees are challenging the orders dated 25.05.2018, 02.07.2018 and 23.04.2019 passed by the Regulatory Authority in so far as they relate to not granting of interest as provided under Section 2(za) of the Act 2016.

3.11 As per Section 2(za) of the Act 2016 the allottees are entitled for the same interest which the promoter has charged in case of default. In the present case 15% per annum interest has been charged by the LDA from the allottees in case of default in payment of installments.

3.12 Section 18(1) of the Act provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till handing over of the possession, at such rate as may be prescribed.

3.13 The time granted by the Regulatory Authority to the LDA vide order dated 25.05.2018 and amended order dated 02.07.2018, has lapsed on 30.09.2018 and till date neither the penalty payment was made nor the possession of the flat in question was delivered with completion and occupation certificates.

4. Being aggrieved the allottees preferred Appeal No. 179 of 2019 on the following grounds:--

(A) The Regulatory Authority failed to consider the statutory provisions as provided in the Act 2016 while granting interest to the appellants.

(B) The Regulatory Authority completely failed to appreciate that as per the Act 2016 the appellants are entitled for the rate of interest chargeable from the allottee by the promoter/LDA which is to be equal rate of interest which the promoter shall be liable to pay to the allottee in case of default.

(C) The appellants have deposited the penal interest and default interest. @ 15% per annum to the respondent, which fact has not been considered by the Regulatory Authority.

(D) The Regulatory Authority has not taken into consideration the hardship of the appellants as they are living in the rented house and paying rent.

(E) The Regulatory Authority has not taken into consideration and has not complied the judgment dated 26.02.2019 passed by this Tribunal in Appeal No. 87 of 2018 (Smt. Upasana Duggal Vs. LDA) as appellants' case has similar facts and circumstances, and also has not taken into consideration the judgment passed by Hon'ble Apex Court in Civil Appeal No. 12238 of 2018 (Pioneer Urban Land & Infrastructure Ltd. Vs. Govind Raghavan).

5. The appellants of Appeal No. 179 of 2019 (allottees) have prayed for quashing of the orders dated 25.05.2018, 02.07.2018 and 23.04.2019 in so far as they relate not to grant interest as provided under the Act, and to direct the respondent to make payment of interest from 19.11.2012 @ 15% per annum to the appellants, within time frame, till delivery of actual and physical possession of the flat with completion certificate and occupation certificate, to the appellants.

6. The appellant (LDA) of Appeal No.117/2022 (earlier Misc. Case No. 102/2019) has submitted that LDA is a development authority constituted under the provisions of U.P. Urban Planning and Development Act, 1973 and is an instrumentality of the State which works on no profit no loss basis.

6.1 A scheme of multi storied residential apartments was floated by LDA at Sector-J, Extension, Jankipuram, Kursi Road, Lucknow in the year 2009-10 known as 'Srishti Apartments'.

6.2 As per clause 2.4 of the Brochure of the scheme the possession of the flat was proposed to be provided to the allottees within 24 months. Further, in clause 11.1 it was provided that in case there is a delay in handing over of the possession beyond 21 months, then in that case allottee shall have an option for refund of deposited amount along with simple interest of 4%. It was specifically provided that no claim other than the aforesaid shall be accepted.

6.3 Clause 13.1 of the aforesaid Brochure further specifically provides that after allotment other conditions/Rules applicable in LDA and any amendment/change/supersession in such Rules, by the LDA or the State Government shall be binding upon the allottee.

6.4 LDA being a development authority is governed by the Rules and Regulations formulated by the State Government or the Board of LDA.

6.5 The procedure for allotment of residential buildings of LDA was formulated by the LDA in the year 1993 which is binding upon the allottees as per clause 13.1 of the Brochure.

6.6 Condition no. 38.1 of the 1993 procedure provides that in case, for reasons beyond control, construction of the building is delayed then in that case the LDA shall not be responsible for the delay, however, the allottee may opt for refund of amount. In case the amount deposited by the allottee remains in the account of LDA for a period of one year or more then simple interest @ 6% per annum shall be applicable on the deposited amount.

6.7 The aforesaid procedure of 1993 was superseded in the year 2016 by means of LDA Procedure for Registration and Allotment of Residential Properties, 2016 whereby new set of procedure and conditions has been prescribed by the Board of LDA.

6.8 As per condition 14.2 of the Procedure 2016, it is provided that in case the LDA fails to deliver the possession of the property within time limit prescribed then the allottee may demand refund of the deposited amount with interest at the rate of 9% per annum. However, in case the allottee accepts the possession despite of delay, no interest/compensation shall be payable to such allottee. In view of the terms and conditions applicable on the date of allotment the allottee was entitled for refund of deposited amount with 6% per annum interest or the allottee could take possession of the flat without any claim towards the compensation/interest. Even after coming into force of 2016 Procedure, the allottee is merely entitled for refund of deposited amount at the rate of 9% simple interest.

6.9 From joint perusal of clauses 2.4, 11.1 and 13.1 of the Brochure and condition no. 38.1 of 1993 Procedure and condition no. 14.2 of 2016 Procedure it transpires that as per the agreed terms and conditions between the LDA and the allottees the flat in question was proposed to be handed over to the allottees within 24 months. In case of delay in handing over possession by the LDA beyond 21 months the allottees were at liberty to have claimed refund of amount along with interest at the rate of 4% per annum. Further in case of delay in handing over possession by the LDA beyond 24 months, the allottees were at liberty to have claimed refund of amount along with interest at the rate of 6% per annum prior to 2016 and after 2016 the allottees were at liberty to have claimed refund of amount along with interest at the rate of 9% per annum. In none of the conditions as per the agreed terms the allottees were entitled for any compensation/interest in case the allottees decide to receive the possession of the flat despite of delay in handing over of possession.

6.10 The allottees agreed to each and every terms and conditions of the allotment and are bound by the same.

6.11 It is not disputed that the allottees have already deposited an amount of Rs.27,40,168/-. However, possession of the flat allotted to the allottees could not be handed over to the allottees till December, 2018 due to the reasons beyond control of the LDA.

6.12 The development work of the aforesaid scheme was held up on account of continuous agitation of farmers, resulting into civil disturbance on the spot. As such construction of the scheme was disrupted which resulted into delay of the project.

6.13 After the agitation of the farmers was over, the constructing agency i.e. M/S Marg Ltd. was directed several times to complete the construction work expeditiously.

6.14 When despite several persuasion the construction work was not paced up, the contract with M/S Marg Ltd. was cancelled by the LDA vide letter dated 27.12.2017 and M/S Asia Construction was awarded the contract to complete the remaining construction work of the project vide letter dated 23.01.2018. The project was completed in the month of December, 2018. The allottees themselves did not get the possession of the flat in question.

6.15 After coming into force the Act 2016 the allottees filed Complaint No. 420189587 before the Regulatory Authority. The said complaint was heard and allowed by the Secretary of the Regulatory Authority vide judgment and order dated 25.05.2018 whereby the LDA was directed to handover the possession of the flat to the allottees before 30.09.2018 and pay interest to the allottees upon the deposited amount of Rs.27,40,168/- at the prevailing rate of interest applicable on the home loan by State Bank of India.

6.16 The aforesaid judgment and order dated 25.05.2018 was modified suo moto by the Regulatory Authority vide its order dated 02.07.2018 to the extent that the LDA was directed to pay interest for the delay @ MCLR+1% per cent on the deposited amount.

7. The LDA has challenged the impugned order dated 25.05.2018 on the following grounds:--

(A) While passing the impugned judgment and order dated 25.05.2018 the Regulatory Authority failed to consider that the prayer sought in the complaint preferred by the respondents was for compensation under Section 18 of the Act 2016 and thus the same could only be adjudicated by a Judicial Officer duly appointed by the Regulatory Authority in consultation with the appropriate government.

(B) The impugned judgment and order dated 25.05.2018 has been passed in violation of provisions contained under Section 71 of the Act 2016 without jurisdiction by the Secretary of the Regulatory Authority, who is not an adjudicating authority.

(C) It is settled law that a decree passed by a court without jurisdiction on the subject matter or on the grounds on which the decree made which goes to the root of its jurisdiction or lacks inherent jurisdiction is a coram non judice.

(D) A decree passed by such a court is a nullity and is non-est and its invalidity can be set up whenever it is sought to be enforced or is acted upon as foundation for a right, even at the stage of execution or in collateral proceedings.

(E) The defect of jurisdiction strikes at the very authority of the court to pass decree which cannot be cured by consent or waiver of the party.

(F) The Secretary of the Authority could not have rewritten the terms and conditions, already agreed between the parties having civil consequences in the garb of prospective statutory amendments.

(G) Impugned judgment and order dated 25.05.2018 having been passed by the Secretary of the Regulatory Authority, who is not a judicial officer, suffers from inherent lack of jurisdiction and thus is non-est in the eyes of law being passed by the incompetent authority.

(H) The Regulatory Authority wrongly mentioned the date of delivery of possession to be 19.11.2012. As such the findings of the Regulatory Authority while passing the impugned judgment and order dated 25.05.2018 are incorrect and perverse.

(I) While passing the impugned judgment and order dated 25.05.2018 the Regulatory Authority failed to consider the terms and conditions mentioned in the Brochure of the scheme in its entirety, rather certain conditions have been taken into account in isolation and rest of the provisions have been ignored, which is impermissible.

(J) While passing the impugned judgment and order dated 25.05.2018, the Regulatory Authority failed to consider that in Clause 11.1 it was provided that in case there is a delay in handing over of the possession beyond 21 months then in that case allottee shall have an option for refund of deposited amount along with simple interest of 4%. It was specifically provided that no claim other than the aforesaid shall be accepted.

(K) While passing the impugned judgment and order dated 25.05.2018 the Regulatory Authority failed to consider that even as per Section 18 of the Act 2016, the condition precedent is that the delay in handing over of possession must be in violation of terms and conditions of the agreement to sell. However, in the instant matter no agreement to sell was executed.

(L) While passing the impugned judgment and order dated 25.05.2018 the Regulatory Authority failed to consider that as per applicable procedure 1993 as well as amended procedure 2016 in case of delay in handing over possession the allottee shall have only the right to take refund of the amount deposited along with applicable interest.

(M) On account of being a prospective Act, the provisions/penalty/ compensation introduced for the first time by means of Act 2016, cannot be imposed in respect of any cause of action which has arisen prior to coming into force of the Act 2016.

(N) On account of agitation of farmers' and law and order situation created by farmers' union the project could not be completed within the proposed time limit, thus there was no deliberate delay on the part of the LDA.

(O) The impugned judgment and order dated 25.05.2018 is a coram non-judice and thus is non-est in the eyes of law. The recovery certificate dated 12.12.2018 was issued by the Secretary of the Regulatory Authority.

(P) The impugned judgment and order dated 25.05.2018 suffers from material irregularity and has been passed without application of judicial mind.

(Q) On account of non-est impugned judgment and order dated 25.05.2018 the recovery proceeding which is being initiated would result into irreparable loss and injury to the appellant which ultimately results into loss of public exchequer, which will have an adverse effect upon the upcoming public welfare schemes of the LDA.

8. The appellant of Appeal No. 117/2022 (LDA) has prayed for setting aside the judgment and order dated 25.05.2018 as modified by order dated 02.07.2018 and consequently setting aside the recovery certificate dated 12.12.2018 and demand notice for recovery dated 14.01.2019.

9. The Lucknow Development Authority challenged the impugned order dated 25.05.2018 of the Regulatory Authority as well as modified order dated 02.07.2018 by means of Misc. Case No. 102/2019 and while dictating the judgment, it was noticed that the application for condonation of delay has not been disposed of while the case was finally heard on 20.11.2021 and the judgment was reserved as the counsel for the LDA argued the case without pointing out regarding pendency of the application for condonation of delay. In the interest of justice we allowed the application for condonation of delay in filing appeal by the LDA and directed the Registry to convert the Misc. Case

into Regular Appeal and send back the file for dictation of remaining judgment. Accordingly Misc. Case No. 102/2019 was converted into Regular Appeal No. 117/2022.

10. On examination of the pleadings, record and submissions of learned counsel for the parties the admitted facts are that Smt. Sneh Lata Verma and Sri Gyan Prakash Singh (allottees) were initially allotted 3 BHK Flat No. 1103-F Block, in Srishti Apartment, Sector-J, Sitapur Road Scheme, Jankipuram, Lucknow vide allotment letter dated 09.12.2010. Thereafter, at the request of the allottees the said flat was changed and 3 BHK Flat No. 102-F Block, in the same scheme, was allotted by the LDA after taking 1% conversion fee on 01.07.2011.

10.1 In pursuance to the subsequent allotment letter dated 01.07.2011 the allottees deposited the entire cost of Rs.24,85,000/- and also deposited the amount of compound interest amounting to Rs.2,27,166/- imposed by the LDA from time to time. Thus the allottees paid a sum of Rs.27,40,168/- to LDA till 18.07.2012. The allottees also deposited Rs.65,844/- on 19.12.2018 towards maintenance charges etc. As such the allottees have paid total amount of Rs.28,06,012/- to LDA.

10.2 Proper possession of the flat in question has not been delivered to the allottees nor the sale deed has been executed in favour of the allottees. As per clause 2.4 of the Brochure of the scheme, the possession of the flat was to be delivered within 24 months from the date of allotment. Further as per clause 2.1 of the Brochure of the scheme, in case of failure to deposit the installments timely the allottee will be liable to pay interest at the rate of 15% per annum.

10.3 The allottees are living in a rented house and are paying monthly rent to the landlord. The allottees sent a letter to LDA, whereupon the LDA informed that the process was going on and it would be completed soon, but the allottees have not received any communication from the LDA for proper possession with completion and occupation certificates and execution of sale deed.

10.4 Feeling aggrieved by the act of the LDA the allottees approached the Regulatory Authority by means of Complaint No. 420189587 on 20.04.2018, which was decided by the Regulatory Authority vide impugned order dated 25.05.2018, directing the LDA to deliver legal possession of the allotted apartment to the allottees by 30.09.2018 with interest on the deposited amount of Rs.27,40,168/- at the rate of MCLR fixed on home loan by State Bank of India.

10.5 Thereafter an amended order was passed by the Regulatory Authority on 02.07.2018 directing the LDA to hand over proper possession of the flat till 30.09.2018 with interest of SBI MCLR+1% on the amount of Rs.27,40,168/- deposited by the allottees.

10.6 The allottees moved an application dated 03.08.2018 before the Secretary of the Regulatory Authority for amendment/correction of the impugned order by granting the relief of interest at the rate of 15% per annum.

10.7 On 01.04.2019 again the allottees moved an application before the Regulatory Authority under Section 39 of the Real Estate (Regulation and Development) Act 2016 (hereinafter referred to as 'the Act 2016') for amendment/correction of the order and sought the relief of interest at the rate of 15% per annum in the light of judgment passed by the U.P. Real Estate Appellate Tribunal in Appeal No. 87/2018 (Smt. Upasana Duggal Vs. LDA) decided on 26.02.2019. Thereafter a reminder was also sent by the allottees to the Regulatory Authority for early disposal of the said application.

10.8 The Regulatory Authority informed the allottees that 23.04.2019 was fixed for hearing of the applications and the allottees were required to be present on the said date along with relevant documents, before Court No. 2 of the Regulatory Authority. On 23.04.2019 the allottees submitted their documents and argued the matter at length. The Regulatory Authority reserved the judgment.

10.9 On 01.05.2019 the allottees received an email from the Regulatory Authority informing that order has been passed and the applications have been rejected.

10.10 The allottees are challenging the orders dated 25.05.2018, 02.07.2018 and 23.04.2019 passed by the Regulatory Authority in so far as they relate to not granting of interest as provided under Section 2(za) of the

Act 2016. The Lucknow Development Authority has also challenged the impugned order as well as recovery certificate dated 12.12.2018.

11. In order to examine the grounds taken by the appellants and the averments made by their learned counsels, we deem it proper to frame the following issues based on the grounds pressed by the learned counsel for the appellant, in order to examine the issues involved:--

(1) Whether the Regulatory Authority had no jurisdiction to examine and decide the complaint of the appellant as the matter relates to the period prior to enforcement of the Real Estate (Regulation and Development) Act 2016?

(2) Whether the order of the Regulatory Authority dated 25.05.2018 has been passed in violation of the provisions of Sections 71 and 72 of the Act of 2016 and the complaint ought to have been adjudicated by the Adjudicating Officer?

(3) Whether the Regulatory Authority ought to have examined the complaint of allottees only on the basis of agreed terms and conditions mentioned in the Brochure read with Rules and Regulations of Lucknow Development Authority?

(4) Whether the project in question of the LDA is delayed?

(5) 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 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?

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

(7) Whether the allottee is bound to make payment of the installments without there being any development or achieving milestone of the project by the promoter and if any allottee stops

payment of the installments, he will fall in the category of defaulter?

(8) Whether it is obligatory on the part of the Promoter to provide all the assured facilities, amenities and other features promised vide advertisement/allotment letter/agreement?

12. Vide **Issue No. (1)** we are required to examine as to whether the Regulatory Authority had no jurisdiction to examine and decide the complaint of the appellant as the matter relates to the period prior to the enforcement of the Real Estate (Regulation and Development) Act 2016.

12.1 The respondent in its objections challenged the jurisdiction to the Regulatory Authority for entertaining the complaint of the appellant on the ground that the Act 2016, became fully operational with effect from May 2017 in the State of Uttar Pradesh, but the matter relates prior to enforcement of the Act 2016 and, therefore, the Regulatory Authority had no jurisdiction to entertain the complaint of the appellant. This issue has been raised by the respondent for the first time in its objection to the grounds of appeal and no appeal has been filed by the respondent challenging the impugned order.

12.2 This issue is no more res integra in view of the judgment of **Hon'ble Supreme Court** passed in **Civil Appeal No(s). 6745-6749 of 2021** ***M/s Newtech Promoters and Developers Pvt. Ltd. Vs. State of U.P. and others etc.,*** wherein the Hon'ble Supreme Court framed a question ***"Whether the Act 2016 is retrospective or retroactive in its operation and what will be its legal consequence if tested on the anvil of the Constitution of India?"*** and vide paras 53 and 54 of the judgment the Hon'ble Supreme Court observed that from the scheme of the Act 2016, its application is retroactive in character and it can safely be observed that the projects already completed or to which completion certificate has been granted are not under its fold and therefore, vested or accrued rights, if any, in no manner are affected. At the same time it will apply after getting the on-going projects and future projects registered under Section 3 to prospectively follow the mandate of the Act 2016. Paras 53 and 54 of the said judgment are reproduced as follows:--

> *"53. That even the terms of the agreement to sale or home buyers agreement invariably indicates the intention of the developer that any subsequent legislation, rules and regulations etc. issued by competent authorities will be binding on the parties. The clauses have imposed the applicability of subsequent legislations to be applicable and binding on the flat buyer/allottee and either of the parties, promoters/home buyers or allottees, cannot shirk from their responsibilities/liabilities under the Act and implies their challenge to the violation of the provisions of the Act and it negates the contention advanced by the appellants regarding contractual terms having an overriding effect to the retrospective applicability of the Authority under the provisions of the Act which is completely misplaced and deserves rejection.*
>
> *54. From the scheme of the Act 2016, its application is retroactive in character and it can safely be observed that the projects already completed or to which the completion certificate has been granted are not under its fold and therefore, vested or accrued rights, if any, in no manner are affected. At the same time, it will apply after getting the on-going projects and future projects registered under Section 3 to prospectively follow the mandate of the Act 2016."*

12.3 The project of the respondent being on-going and registered with the UPRERA, is fully covered under the provisions of the Act 2016 and thus, the Regulatory Authority had jurisdiction to examine and decide the complaint of the complainant/appellant. Issue no. (1) Is decided accordingly.

13. In order to examine **issue no. (2)**, we proceed to examine the scheme and relevant provision of the Act of 2016 & Rules, 2016:

13.1 The Real Estate (Regulation & Development) Act, 2016 has been enacted to establish the Real Estate Regulatory Authority for regulation and promotion of the real estate sector and to ensure sale of plot, apartment or building, as the case may be, or sale of real estate project, in an efficient and transparent manner and to protect the interest of consumers in the real estate sector as well as to establish an adjudicating mechanism for speedy dispute redressal and also to establish the Appellate Tribunal to hear appeals from the decisions, directions or orders of the Real Estate Regulatory Authority and the Adjudicating Officer and for matters connected therewith or incidental thereto. The Real Estate (Regulation & Development) Act, 2016 delineates functions and duties of promoter in chapter 3 and rights and duties of allottees in chapter 4. The Real Estate Regulatory Authority has been assigned functions and have been given powers as detailed out in chapter 5.

13.2 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.

13.3 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.

13.4 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.

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.

13.5 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.

13.6. 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.

13.7 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.

13.8 We further examined Section 31 of the Act and Rules 33 & 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.

13.9. 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.

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.

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.

13.10. 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.

13.11 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 legislature in its own wisdom has used the word "Authority" as well as "Adjudicating Officer" wherever it is required. Furthermore, the legislature 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.

13.12 In the present case the complainants filed their complaint before the Regulatory Authority in Form M seeking relief to issue direction to the LDA to handover vacant and peaceful possession of Flat No. 102, F Block in Srishti Apartment. Thus, we find that Regulatory Authority rightly considered the complaint of the allottees and decided vide impugned order. The issue no. (2) is accordingly decided against Lucknow Development Authority.

14. The **issues nos. (3)** has been formulated on the basis of grounds in the appeal of Lucknow Development Authority, where on the one hand Lucknow development authority took a plea that present case ought to have been governed with the already agreed terms and conditions i.e. terms and conditions mentioned in the Brochure of the Scheme, read with Rules and Regulations of the Lucknow Development Authority, but the Regulatory Authority failed to consider the same and has taken into account certain conditions in isolation and rest of the provisions have been ignored, which is impermissible and on the other hand took a ground that the Regulatory Authority failed to consider that even as per section 18 of Act, 2016, the condition precedent is that the delay in handing over of the possession must be in violation of terms and

condition of the agreement to sell, but in the instant matter no agreement to sell was executed.

14.1 The learned counsel for the Lucknow Development Authority placed reliance at clause 2.4 of its Brochure and submitted that the possession of the flat was proposed to be provided to the allottees within 24 months. Learned counsel for the Lucknow Development Authority further placed reliance at clause 13.1 and submitted that in the Brochure it is specifically provided that after allotment order conditions/rules applicable in Lucknow Development Authority or the State Government shall be binding upon the allottee.

14.2 On examination of the Brochure we found that in clause 13.1 it is mentioned that after allotment other conditions/rules applicable in Lucknow Development Authority and any amendment/supersession in such Rules by the Lucknow Development Authority or the State Government shall be binding upon the allottee, but specific conditions/rules have not been mentioned. Even it is also not mentioned in the Brochure, from where an applicant/allottee can find those conditions/rules. The Lucknow Development Authority cannot take advantage of clause 13.1 of the Brochure, while applying procedure for allotment of residential building of Lucknow Development Authority formulated in the year 1993 or subsequent new procedure framed in the year 2016, specially with respect to the rate of interest to be paid by the Lucknow Development Authority in case the allottee chooses to seek refund on account of delay in completion of the project or no interest for delay in completion of Project, if allottee chooses to opt or decide to take possession of the unit even delay in completion of the Project.

14.3 Another important aspect of the matter is that the grant of interest to the allottee by the Lucknow Development Authority if the allottee opts to withdraw from the project on account of delay, and providing no interest to the allottee in case he/she takes possession of the apartment in the project, is in violation as well as contrary to the provisions of sub-section (2) of Section 4 of the Uttar Pradesh Apartment (Promotion of Construction, Ownership and Maintenance) Act, 2010 (hereinafter referred to as 'the Apartment Act, 2010'). In order to appreciate sub-section (2) of Section 4 of the Apartment Act, 2010, the same is reproduced as follows:--

"CHAPTER II

DUTIES AND LIABILITIES OF PROMOTERS.

4. General liabilities of promoter.-- ………………

(2) Every promoter shall,

(a) specify in writing the date by which construction of the apartment is to be completed subject to force majeure clause and intimation sent to such purchaser;

(b) declare the penalty for delay in completion of the building and also penalty in the event of non-payment of instalment by the purchaser;

(c) declare the conditions for cancellation or withdrawal of allotment and the extent of compensation either way in the event of violations of any of the conditions;

(d) give on demand by the intending purchaser, on payment of photocopying charges, true copies of the documents referred to in this section.

The provisions of Sub Section (2) (b) of Section 4 of the Apartment Act, 2010 mandates the promoter to declare the penalty for delay in completion of the building and also penalty in the event of non-payment of instalment by the purchaser, meaning thereby that in the Brochure a promoter is required to mention about the penalty for the delay in completion of the building and also penalty in the event of non-payment of instalment by the purchaser. In the present case the Lucknow Development Authority in clause 2.1 of the Brochure only mentioned the obligation of the allottee to make payment of the instalment in time and in case of failure the allottee has to pay penalty at the rate of 15% per annum and if due instalment and penalty with interest are not paid within 90 days then his/her reservation/allotment was liable to be cancelled, whereas as per provisions of sub-section (2)(b) of Section 4 of the Apartment Act, 2010, the promoter was to declare and specifically mention the penalty to be paid by it, in case of delay in completion of the project. Thus the Procedure of 2016, is in violation of the Apartment Act, 2010 and being statutory organization, the Lucknow Development Authority is required to follow the concerned laws in its words and spirit.

14.4 Having examined the terms and conditions of the Registration Booklet/Agreement, we would like to examine the laws on contracts. In this connection, it is useful to note what Chitty has to say about the old ideas of freedom of contract in modern times. The relevant passages are to be found in Chitty on Contracts, Twenty-fifth Edition, Volume I, in paragraph 4, and are as follows :-

> *"These ideas have to a large extent lost their appeal today. "Freedom of contract", it has been said, "is a reasonable social ideal only to the extent that equality of bargaining power between contracting parties can be assumed, and no injury is done to the economic interests of the community at large." Freedom of contract is of little value when one party has no alternative between accepting a set of terms proposed by the other or doing without the goods or services offered. Many contracts entered into by public utility undertakings and others take the form of a set of terms fixed in advance by one party and not open to discussion by the other. These are called "contracts d'adhesion" by French lawyers. Traders frequently contract, not on individually negotiated terms, but on those contained in a standard form of contract settled by a trade association. And the terms of an employee's contract of employment may be determined by agreement between his trade union and his employer, or by a statutory scheme of employment. Such transactions are nevertheless contracts notwithstanding that freedom of contract is to a great extent lacking.*
>
> *Where freedom of contract is absent, the disadvantages to consumers or members of the public have to some extent been offset by administrative procedure for consultation, and by legislation. Many statutes introduce terms into contracts which the parties are forbidden to exclude, or declare that certain provisions in a contract shall be void. And the courts have developed a number of devices for refusing to implement exemption clauses imposed by the economically stronger party on the weaker, although they have not recognised in themselves*

any general power (except by statute) to declare broadly that an exemption clause will not be enforced unless it is reasonable. Again, more recently, certain of the judges appear to have recognised the possibility of relief from contractual obligations on the ground of "inequality of bargaining power".

14.5 Now turning to the question regarding ex-facie one sided, unfair and unreasonable agreement terms of a contract, the Hon'ble Supreme Court in ***LIC of India and Anr. Vs. Consumer Education & Research Centre & Ors., (1995) 5SSC 482,*** decided on 10th May 1995, was pleased to observe that :-

"in dotted line contracts there would be no occasion for a weaker party to bargain or to assume to have equal bargaining power. He has either to accept or leave the services or goods in terms of the dotted line …….. imposed by the stronger party or go without them. It will also apply where a man has no choice, or rather no meaningful choice, but to give his assent to a contract or to sign on the dotted line………".

14.6 Recently, the Hon'ble Supreme Court in ***Pioneer Urban Land & Infrastructure Ltd. Vs. Govindan Raghavan, II (2019) CPJ 34(SC)***, rejected the plea of the builder that it should not be directed to pay interest at the rate of 10.7% as the agreement provided for 6% interest. The Hon'ble Supreme Court observed that:-

"6.7. A term of a contract will not be final and binding if it is shown that the flat purchasers had no option but to sign on the dotted line, on a contract framed by the builder. The contractual terms of the Agreement dated 08.05.2012 are ex-facie one-sided, unfair, and unreasonable. The incorporation of such one-sided clauses in an agreement constitutes an unfair trade practice as per Section 2 (r) of the Consumer Protection Act, 1986 since it adopts unfair methods or practices for the purpose of selling the flats by the Builder.

7. In view of the above discussion, we have no hesitation in holding that the terms of the Apartment Buyer's Agreement dated 08.05.2012 were wholly one-sided and unfair to the Respondent – Flat Purchaser. The Appellant – Builder could not seek to bind the Respondent with such one-sided contractual terms."

14.7 Subsequently, in ***Wg. Cdr. Arifur Rahman Khan & Ors. 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 time lines 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.

14.8 Moreover, Section 23 of the Contract Act, 1872 provides that what consideration and objects are lawful, and what are not. It says that the consideration or object of an agreement is lawful, unless, it is forbidden by law; or is of such a nature that, if permitted, it would defeat the provisions of any law; or is fraudulent; or involves or implies, injury to the person or property of another; or the Court regards it as immoral, or opposed to public policy. In each of these cases, the consideration or object of an agreement is said to be unlawful. Every agreement of which the object or consideration is unlawful is void.

14.9 The expression "public policy" or "opposed to public policy" has not been defined in the Contract Act. In **R.B. Singh Vs. State of U.P. a Division Bench of the Hon'ble Allahabad High Court** explained the meaning of word "Policy" and "Public Policy" as defined in various Dictionaries-

> *"30. In Grocier New Webster's Dictionary (page 304) "Policy" has been defined as a selected, planned line of conduct in the light of which individual decisions are made and coordination achieved. In Legal Glossary (1993, page 250) "policy" means a course of action adopted as advantageous or expedient. According to the Oxford Dictionary the word "Policy"*

means political sagacity, State-craft, prudent conduct, sagacity, craftiness, 'course of action adopted by Government'. According to Webster's New International Dictionary "policy" means a settled or definite course or method adopted and followed by a Government, institution, body or individual; a civil or ecclesiastical policy; Government; the science of Government.

31. In Law Lexicon with Legal Maxims it has been mentioned that the general head of "public policy" covers a wide range of topics, such as for example, trading with the enemy in time of war, stifling prosecutions, chaperty and maintenance, and various other mater's; it has even been said in the House of Lords that public policy is always an unsafe and treacherous ground for legal decision. In Black's Law Dictionary "Public Policy" mean community common sense and common conscience, extended and applied throughout the State to matters of public morals, health, safety, welfare, and the like; it is that general and well settled public opinion relating to man's plan, palpable duty to his fellowmen, having due regard to all circumstances of each particular relation and situation. In Words and Phrases (West Publishing Co.) the word "public policy" generally means that imports something that is uncertain and fluctuating, varying with the changing economic needs, social customs and moral aspiration of the people. Lord Wright in his Legal Essays and Addresses (Vol. III, pages 76 and 78) stated that public policy like any other branch of the common law ought to be and I thing is, governed by the judicial use of precedents..... If it is said that rules of public policy have to be moulded to suit new conditions of a changing world, that is true, but the same is true with the principles of the canon law generally; Lord Lindley held in Janson v. Driefontein Consolidated Mines Ltd. that "a contract or other branch which is against public policy i.e. against the general interest of the country is illegal."

14.10 In ***Gherulal Parakh v. Mahadeodas Malya, AIR 1959 SC 781*** the **Hon'ble Supreme Court** while defining the word "Public Policy" or the "Policy of Law" has held as under :-

"*Public policy or the policy of the law is an illusive concept; it has been described as "untrustworthy guide", "variable quality", "uncertain one", "unruly horse", etc. The primary duty of a Court of Law is to enforce a promise which the parties have made and to uphold the sanctity of contract which form the basis of*

> *society, but in certain cases, the court may relieve them of their duty on a rule founded on what is called the public policy for want of better words Lord Atkin describes that something done contrary to public policy is a harmful thing, but the doctrine is extended not only to harmful cases but also to harmful tendencies; this doctrine of public policy is only a branch of common law, and just like any other branch of common law it is governed by precedents; the principles have been crystallized under different heads and though it is permissible for courts to expound and apply them to different situations, it should only be invoked in clear and incontestable cases of harm to the public.*"

14.11 In the case of ***Central Inlad Water Transport Corpn. v. Brojo Nath Ganguly, (1986) 3 SCC 156*** the Hon'ble Supreme Court explained the above expressions and held-

> "*The Indian Contract Act does not define the expression "public policy" or "opposed to public policy". From the very nature of things, the expressions "public policy", "opposed to public policy" or "contrary to public policy" are incapable of precise definition. Public policy, however, is not the policy of a particular government. It connotes some matter which concerns the public good and the public interest. The concept of what is for the public good or in the public interest or what would be injurious or harmful to the public good or the public interest has varied from time to time."*

The Hon'ble Supreme Court, after discussing the different schools of thought including landmark judgments on the expression of "public policy", further explained in the above case that-

> "*It is thus clear that the principles governing public policy must be and are capable, on proper occasion, of expansion or modification, Practices which were considered perfectly normal at one time have today become obnoxious and oppressive to public conscience. If there is no head of public policy which covers a case, then the court must in consonance with public conscience and in keeping with public good and public interest declare such practice to be opposed to public policy. Above all, in deciding any case which may not covered by authority our courts have before them the beacon light of the Preamble to the Constitution. Lacking precedent, the court can always be guided by that light and the principles under lying*

> *the Fundamental Rights and the Directive Principles enshrined in our Constitution".*

14.12 Thus, where the terms of a contract show that the flat purchasers had no option but to sign on the dotted line, on a contract framed by the builder, then certainly the contractual terms of the Agreement are one sided, unfair and unreasonable. It would also be referred as an unconscionable bargain. An unconscionable bargain would be one which is irreconcilable with what is right or reasonable or the terms of which are so unfair and unreasonable that they shock conscience of the Court.

14.13 Now again the question is that under which head an unconscionable bargain would fall? If it falls under the head of undue influence, it would be voidable but if it falls under the head of being opposed to public policy, it would be void. The word "unconscionable" is defined in the *Shorter Oxford English Dictionary,* 3rd Edn., Vol. II, p. 2288, when used with reference to actions etc, as *"showing no regard for conscience; irreconcilable with what is right or reasonable".*

14.14 The Hon'ble Supreme Court in the case of ***DLF Universal Ltd. Vs. Town & Country Planning Deptt.*** reported in ***(2010) 14 SCC*** was pleased to quote in the heading **"Interpretation of contract"** as follows:-

> ***"Interpretation of contract***
>
> *13. It is settled principle in law that a contract is interpreted according to its purpose. The purpose of a contract is the interests, objectives, values, policy that the contract is designed to actualize. It comprises joint intent of the parties. Every such contract expresses the autonomy of the contractual parties' private will. It creates reasonable, legally protected expectations between the parties and reliance on its results. Consistent with the character of purposive interpretation, the court is required to determine the ultimate purpose of a contract primarily by the joint intent of the parties at the time the contract so formed. It is not the intent of a single party; it is the joint intent of both parties and the joint intent of the parties is to be discovered from*

the entirety of the contract and the circumstances surrounding its formation.

> ***"14.*** *As is stated in Anson's Law of Contract:*
>
> *a basic principle of the Common Law of Contract is that the parties are free to determine for themselves what primary obligations they will accept….Today, the position is seen in a different light. Freedom of contract is generally regarded as a reasonable, social, ideal only to the extent that equality of bargaining power between the contracting parties can be assumed and no injury is done to the interests of the community at large.*
>
> ***15.*** *The Court assumes:*
>
> *that the parties to the contract are reasonable persons who seek to achieve reasonable results, fairness and efficiency…. In a contract between the joint intent of the parties and the intent of the reasonable person, joint intent trumps, and the Judge should interpret the contract accordingly. A party who claims otherwise, violates the principle of good faith."*

14.15 As far as the submission of the learned counsel for the Lucknow Development Authority regarding non-applicability of Section 18 of the Act, 2016 on account of absence of agreement to sell executed between the Lucknow Development Authority and Smt. Sneh Lata Verma & Shri Gyan Prakash Singh is concerned, we note that the Lucknow Development Authority had floated a scheme of multi storeyed residential apartments in 2009-10 at Sector-J, Extension, Jankipuram, Kursi Road, Lucknow in the name Srishti Apartments and in pursuance to the advertisement of the Lucknow Development Authority Smt. Sneh Lata Verma and Shri Gyan Prakash Singh purchased the Brochure and preferred an application for allotment of a unit having 3 bed rooms and the Lucknow Development Authority on 09.12.2010 allotted a unit having three bed rooms bearing flat no. 1103, F Block in Srishti Apartments. Subsequently on the request of the allottees the said flat was changed and 3 BHK Flat No. 102, F Block, in the same scheme, was allotted by the LDA after taking 1% conversion fee on 01.07.2011.

14.16 We are of the view that the Registration Booklet, letter of allotment or agreement for sale, or any written document called by whatever name is kind of an offer of sale and once it is executed or signed or issued or the first payment of booking amount is made by the buyer and accepted by the seller, it becomes a 'Contract' and, therefore, the submission of the Learned counsel for the Lucknow Development Authority that in absence of agreement to sell executed between allottees and the Lucknow Development Authority, no action can be taken in pursuance of Section 18 of the Act, 2016, is misconceived.

14.17 On the basis of the aforesaid analysis we are of the view that the terms and conditions mentioned in the Brochure are binding on both the parties except clause 2.1 read with concerned provisions i.e. 14.2 of Lucknow Development Authority Procedure for Registration and Allotment of Residential Properties, 2016 which provides that, "in case allottee accepts the possession despite of delay, no interest/compensation shall be payable to such an allottee", which is unreasonable and contrary to the provision of sub-section (2) (b) of Section 4 of the Apartment Act, 2010 apart from being unilateral and unfair. The issue nos. (3) is decided against the Lucknow Development Authority.

15. **Vide Issue No. (4)** we are required to examine as to whether the project in question of the respondent is delayed?

15.1 Smt. Sneh Lata Verma and Sri Gyan Prakash Singh (allottees) were initially allotted 3 BHK Flat No. 1103-F Block, in Srishti Apartment, Sector-J, Sitapur Road Scheme, Jankipuram, Lucknow vide allotment letter dated 09.12.2010. Thereafter, at the request of the allottees the said flat was changed and 3 BHK Flat No. 102-F Block, in the same scheme, was allotted by the LDA after taking 1% conversion fee on 01.07.2011.

15.2 In pursuance to the subsequent allotment letter dated 01.07.2011 the allottees deposited the entire cost of Rs.24,85,000/- and also deposited the amount of compound interest amounting to Rs.2,27,166/- imposed by the LDA from time to time. Thus the allottees paid a sum of Rs.27,40,168/- to LDA till 18.07.2012. The allottees also deposited Rs.65,844/- on 19.12.2018 towards maintenance charges etc. As such the allottees have paid total amount of Rs.28,06,012/- to LDA.

15.3 On examination of the provisions of clause 2.4 of the Brochure of the Scheme it is evident that the LDA was to complete the project within 24 months. In the grounds of appeal various reasons have been shown for the delay, but they do not fall in the category of force majeure.

15.4 Even LDA failed to comply the order of the Regulatory Authority dated 25.05.2018, regarding providing possession to the complainant/allottees along with OC/CC by 30.09.2018. In absence of OC/CC conveyance deed cannot be executed and the allottee cannot take legal possession of the booked apartment/flat. Therefore, we hold that the project of the respondent is delayed. Issue no. (4) is decided accordingly.

16. **Issue No. (5)** is as to whether offer of possession can be given by a promoter without completion and occupation certificate or is it necessary and mandatory to obtain the same before offering possession and asking the allottee to settle the account and satisfy the final demand, under the scheme of Act & Rules 2016, read with U.P. Apartments Act 2010.

16.1 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;"*

16.2 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.

16.3 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."

16.4 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.

16.5 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.

16.6 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. (5) is decided accordingly.

17. **Issue No (6)** 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.

17.1 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 power 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.

17.2 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 that 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.

17.3 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, 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.

17.4 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 the 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).

17.5 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.

17.6 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.

17.7 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........."*

17.8 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."*

It is our considered view that drawing light from the Rules of 2018, and the fact that often an allottee/buyer has to supplement his savings by taking loan at the MCLR percent interest (compound), the simple rate of interest at MCLR+1 percent balances the equities and is in line with the word and spirit of the Act and can be taken as "interest at such rate as may be prescribed" as mentioned in Sections 12,18 and 19 of the Act, till the rate of interest for the purpose is notified by the State Government.

17.9 On the basis of aforesaid analysis the issue no. (6) is decided in affirmative in favour of appellants of Appeal No. 179/2019.

18. Vide **Issue no. (7)** the Tribunal is required to examine as to whether the allottee is bound to make payment of the installments without there being any development or achieving milestone of the project by the promoter and if any allottee stops payment of the installments, he will fall in the category of defaulter.

18.1 In order to examine the issue it would be necessary to examine the scheme of the Act 2016 relating to functions and duties of the promoter as well as right and duties of the allottees. The entire Act is divided into 10 chapters.

18.2 Chapter II deals with registration of real estate project and registration of real estate agents. A reading of the provisions of Chapter-II demonstrates how a promoter is expected to commence/register a project after having title, sanctioned plan, permissions and source of funding etc. Chapter III spells out the functions and duties of promoter and the consequences if the promoter fails to fulfill those obligations.

18.3 Section 11 mandates the promoter to make available to the allottee information such as (i) sanctioned plans, layout plans along with specifications approved by the competent authority by display at the site or as specified by the authority; (ii) the stage wise time schedule of completion of the project including the provisions for civic infrastructure.

18.4 Section 12 emphasizes obligation on the promoter regarding veracity of the advertisement or prospectus and provides that where any person makes an advance or a deposit on the basis of the information contained in the notice, advertisement or prospectus, or on the basis of any model apartment, plot or building , as the case may be, and sustains any loss or damage by reason of any incorrect, false statement included therein, he shall be compensated by the promoter in the manner as provided under the Act.

18.5 Section 13 relates to “no deposit of advance to be taken by promoter without first entering into agreement for sale”. The promoter shall not accept a sum more than 10% of the cost of the apartment, plot or building, as an advance payment or an application fee from a person without entering into a written agreement for sale, as per law in force.

18.6 Section 14 mandates the promoter for adherence to sanctioned plans and project specifications and also bars a promoter from any additions and alterations in the sanctioned plans, layout plans and specifications and the nature of fixtures, fittings and amenities described therein in respect of the apartment, plot or building, as the case may be, which are agreed to be taken, without the previous written consent of at least 2/3rd allottees.

18.7 Chapter IV deals with rights and duties of allottees. Section 18 deals with the return of amount and compensation. This section relates to return of amount and compensation. If the promoter fails to complete or is unable to give possession of an apartment, plot or building in accordance with the terms of the agreement for sale or duly completed by the date specified therein or 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 shall be liable on demand of the allottees, in case the allottee wishes to withdraw from the project, to return the amount received by him in respect of that apartment, plot or building, with interest including compensation in the manner as provided under the Act. Where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed. This section further provides that the promoter shall compensate the allottees in case of any loss caused to him due to defective title of the land on which the project is being developed or has been developed, in the manner as provided under the Act and claim for compensation shall not be barred by limitation provided under any law for the time being in force. In case the promoter fails to discharge any other obligations imposed on him under the Act or in accordance with the terms and conditions of the agreement for sale, he shall be liable to pay such compensation to the allottees in the manner as provided under the Act.

18.8 Section 19 of the Act provides that the allottee shall be entitled to obtain the information relating to sanctioned plans, layout plans along with specifications, approved by the competent authority and such other information as provided under the Act, Rules and Regulations made thereunder or the agreement for sale signed with the promoter. The allottee shall also be entitled to know stage-wise time schedule of completion of the project including other amenities and services as agreed to between the promoter and the allottee in accordance with terms and conditions of the agreement for sale. The allottee shall be entitled to claim the possession of apartment, plot or building. The allottee shall be entitled to claim refund of amount paid along with interest at such rate as may be prescribed and compensation as provided under the Act from the promoter, if the promoter fails to comply or is unable to give possession of the apartment, plot or building in accordance with the terms of agreement for sale or due to discontinuance of his business as a developer on account of suspension or revocation of registration under the provisions of the Act. The allottee shall be entitled to have necessary documents and plans after handing over the physical possession of the apartment or plot or building by the promoter.

18.9 On deeply examining the provisions of Chapters II,III and IV it is evident that the allottee is entitled to know the time period at the time of booking/issuance of allotment letter, sanctioned plans, layout plans along with specifications approved by the competent authority and such other information as provided under the Act, Rules and Regulations made thereunder or the agreement for sale signed with the promoter, like water supply, electricity and obtaining of OC or CC or both.. The allottee is also entitled to know stage-wise time schedule of completion of the project including other amenities and services as agreed to between the promoter and the allottee in accordance with terms and conditions of the agreement for sale. The allottee is also entitled to claim the possession of apartment, plot or building. The allottee shall be entitled to claim refund of amount paid along with interest at such rate as may be prescribed and compensation as provided under the Act from the promoter, if the promoter fails to comply or is unable to give possession of the apartment, plot or building in accordance with the terms of agreement for sale or due to discontinuance of his business as a developer on account of suspension or revocation of registration under the provisions of the Act. The allottee is also entitled to have necessary documents and plans after handing over the physical possession of the apartment or plot or building by the promoter. For the purpose of registration of project the promoter is also required under Section 4(*l)*(D)l to submit a declaration supported by an affidavit to the effect that seventy percent of the amounts realized for the real estate project from the allottees, from time to time, shall be deposited in a separate account to be maintained in a scheduled bank to cover the cost of construction and the land cost and shall be used only for that purpose provided that the promoter shall withdraw the amounts from the separate account , to cover the cost of the project, in proportion to the percentage of completion of the project and the promoter shall get his accounts audited within six months after the end of every financial year by a chartered accountant in practice.

18.10 If any promoter is not informing the progress of the project to its allottees and the withdrawal from the separate account proportionate to the percentage of completion of the project then an allottee can always stop payment to the promoter till the milestones disclosed by the promoter have not been achieved and he cannot be said to be a defaulter in such situation. Similar issue was examined by NCDRC in CC 189/2017 (Pradeep Kumar Gupta Vs. Irio Grace Realtech Pvt. Ltd.). The relevant portion of the judgment is being reproduced as under:--

> *"In my opinion, since the Ops were already in default as far as the offer of possession was concerned, when the 5th, 6th, 7th and 8th installments were demanded, the complainants were under no obligation to pay the said installments. As far as the default in payment of the 4th installment by the complainants in CC No. 1999/2016 & CC No. 2000/2016 is concerned, it would be seen that the said installment was raised at the stage of casting of roof slab of the lower basement. The demand was raised about two weeks before the last date for offering possession of the flats to the said complainants. Since the construction was still at the stage of casting roof slab of the lower basement at that time, the complainants knew that even if they pay the 4th installment, it was impossible for the Ops to deliver possession of the apartments to them by the last date stipulated in this regard i.e. 23.01;.2017 or within six months thereafter, to them. When a flat buyer who is saddled with a demand applicable at the stage when the construction is at a very initial stage and the demand is raised just two weeks before the last date*

> *for offer of possession, he is not expected to sink more money with the builder despite knowing that the builder will not be able to honour his contractual obligation even if the benefit of grace period of six months which was otherwise available only in case of unforeseen circumstances, is given to him. Therefore, even the complainants in CC No.1999/2016 and CC No.2000/2016 cannot be said to be defaulters, in the sense that they would lose their legal right to claim refund of the amount paid by them and the compensation for the defect/deficiencies on the part of the builder in rendering services to them."*

18.11 On the basis of the aforesaid analysis we are of the considered view that an allottee cannot be said to be a defaulter if he stops making payment of installments if the promoter fails to achieve the target/milestone disclosed/declared in the advertisement, allotment letter or agreement. Issue no (7) is decided accordingly.

19. Vide **Issue no. (8)** we are required to examine as to whether it is obligatory on the part of the Promoter to provide all the assured facilities, amenities and other features promised vide advertisement/allotment letter/agreement.

19.1 The features, amenities and services advertised by the respondent through its brochure, attracted the appellant and other home buyers and they have invested their hard earned money to buy homes of their dreams and the respondent is required to fulfill the promised amenities etc. The Hon'ble Supreme Court in the recent case of ***Wg. Cdr. Arifur Rahman Khan and Aleya Sultana and Ors. Vs. DLF Southern Homes Pvt. Ltd and Ors.*** (supra) while examining the issue of non-fulfilling the promise and providing features, amenities and services as mentioned in the brochure, in para -43 was pleased to observe as follow:-

> *"43. In other words, what the developer holds out as a defence is that though there has been a failure on their part to provide the amenities, the flat buyers have the benefit of facilities in the surrounding area which has become urbanised. We cannot agree with this line of*

submissions. The reply of the developer seeks to explain the failure to construct the facilities on the ground that the "existing population cannot sustain these facilities" – a school, commercial complex and health care facilities. This is a case involving an experienced developer who knew the nature of the representation which was being held out to the flat purchasers. Developers sell dreams to home buyers. Implicit in their representations is that the facilities which will be developed by the developer will provide convenience of living and a certain lifestyle based on the existence of those amenities. Having sold the flats, the developer may find it economically unviable to provide the amenities. The flat purchasers cannot be left in the lurch or, as in the present case, be told that the absence of facilities which were to be provided by the developer is compensated by other amenities which are available in the area. The developer must be held accountable to its representation. A flat purchaser who invests in a flat does so on an assessment of its potential. The amenities which the builder has committed to provide impinge on the quality of life for the families of purchasers and the potential for appreciation in the value of the flat. The representation held out by the developer cannot be dismissed as chaff. True, in a situation such as the present it may be difficult for the court to quantify the exact nature of the compensation that should be provided to the flat buyers. The general appreciation in land values results in an increase in the value of the investment made by the buyers. Difficulties in determining the measure of compensation cannot however dilute the liability to pay. A developer who has breached a clear representation which has been made to the buyers of the amenities which will be provided to them should be held accountable to the process of law. To allow the developer to escape their obligation would put a premium on false assurances and representations made to the flat purchasers. Hence, in factoring in the compensation which should be provided to the flat buyers who are concerned in the present batch of appeals, we would necessarily have to bear this issue in mind."

19.2 In view of the aforesaid analysis, we are of the view that the amenities, facilities and services advertised by the promoter in its Brochure are required to be fulfilled and provided to the allottees of the project. Accordingly, the issue no. (8) is decided in favour of the appellant.

20. Further, the allottees deposit amount under the hope and trust that they will get the flats 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 for delayed delivery of possession, as the allottees have parted with money which was earning interest. To that extent for the delayed period, the allottees are entitled to interest, which in our considered view will be in accordance with the principles of equity.

21. As per the impugned order dated 25.05.2018 passed by the Regulatory Authority, the Lucknow Development Authority was required to deliver legal possession of the apartment to the allottees , Smt. Sneh Lata Verma and Sri Gyan Prakash Singh by 30.09.2018 and on examination of supplementary affidavit and second supplementary affidavit filed by Smt. Sneh Lata Verma (appellant no. 1 of Appeal No. 179 of 2019) the Occupancy Certificate was issued by the competent authority to the Lucknow Development Authority on 25.05.2019. We have examined the issue regarding offer of possession without OC/CC vide issue no. (5) and held that 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. As the OC/CC was issued to the Lucknow Development Authority on 25.05.2019 (i.e. 01.07.2013) after the date prescribed for handing over possession, therefore, we are of the considered view that Smt. Sneh Lata Verma and Sri Gyan Prakash Singh are entitled for interest on Rs.27,40,168/- from the promised date of possession till offer of possession after issuance of OC/CC by the competent authority, on the same rate of interest (i.e. MCLR+1% p.a.) awarded by the Regulatory Authority.

22. Accordingly, while **allowing Appeal No. 179 of 2019** (Smt. Sneh Lata Verma and another Vs. Lucknow Development Authority), we direct the Lucknow Development Authority to pay interest to the allottees (appellants of Appeal No. 179/2019) on the deposited amount from the promised date of possession till offer of legal possession by the Lucknow Development Authority after receipt of OC/CC from the competent authority, within 45 days. The amount already recovered from LDA, and either paid to the allottees or lying with UPRERA under execution proceedings, will be adjusted while executing this order.

23. Appeal No. 117/2022 (Lucknow Development Authority Vs. Sneh Lata Verma and another) is **dismissed.**

24. No order as to costs.

Dated*:* March 15, 2022
Shakir **(Rajiv Misra)** **(D. K. Arora)**