BENCH NO.2

THE UTTAR PRADESH REAL ESTATE APPELLATE TRIBUNAL AT LUCKNOW

Appeal No. 237/2024

Tripti Agrawal. **…Appellant.**

Versus

Antriksh Developers & Promoters Pvt. Ltd. **…Respondent.**

Hon'ble Mr. Sanjai Khare, Judicial Member
Hon'ble Mr. Rameshwar Singh, Administrative Member

1. Heard Sri Aditya Tiwari, learned counsel for the appellant and Sri Siddharth Nandwani, learned counsel for the respondent on appeal, objections and rejoinder affidavit.

2. This appeal has been filed under Section 44 (2) of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as 'the Act 2016') by Sri Tripti Agrawal (hereinafter referred to as 'the appellant') against the order dated 22.09.2020 passed by the U. P. Real Estate Regulatory Authority, Regional Office, Gautam Budh Nagar (hereinafter referred to as 'the Regulatory Authority') in Complaint No.NCR144/11/0262/2019, whereby the following directions were given:-

(1) The respondent (promoter/builder) is directed to issue no dues and execute registry upto 31.12.2020 by taking due stamp fee and reasonable amount from the complainants/appellants as per agreement.

(2) The respondent shall provide to the complainants within 45 days the details with evidence regarding the amount demanded towards

electricity & water connection as well as farmers' compensation and receive proportionate amount from the complainants. The due amount shall be paid by the complainants after the evidence is provided.

(3) The respondent shall provide to the complainants the calculation sheet of the amount demanded under different heads.

(4) The parties shall ensure action regarding open parking as per agreement.

3. The facts of the case, as culled out from the memo of appeal, are that the appellant purchased a Flat, bearing no.P-1404 in the project of the respondent, namely Antriksh Golf View situated at Plot No.GH-005A, Sector-78, Noida (UP) under Flexi Payment Plan. Agreement to sale was executed between the parties on 21.09.2010. The booking of the flat was done in pre-launch and, therefore, some additional benefits, like external electrification cost was included in the same agreed cost of the flats, variation in the super area to a limit of +1-2%, higher compensation of Rs.10/- per sq. ft. per month of delay in possession, date of commencement of maintenance only after completion of complex in all respect, were given.

3.1 As per annexure B to the agreement, the possession of the unit was to be given by November 2012. The final demand letter for Flat No. L-1903 was issued on 08.03.2014 by the respondent asking for Rs.10,01,044/- in the following manner:-

Sl. No.	**Manners of payment made.**	**Rupees**
1.	Cheque No.647535, drawn on CIII Bank, New Delhi, dated 18.08.2014.	3,00,000.00
2.	Cheque No.867215 drawn on Yes Bank, Chanakyapuri, New Delhi, dated 15.11.2014.	4,00,000.00
3.	Cheque No.015514 drawn on ICICI Bank, Sector-1, Noida, dated 05.03.2015.	2,68,500.00
4.	Cheque No.933848 drawn on Yes Bank, New Delhi, dated 05.03.2015.	32,500.00
Total		10,01,000.00

The complainant made payments as mentioned above, under protest since the demand was raised by increasing the super area from 1380 sq. ft. to 1480 sq.ft. The said demand was raised without completing the unit and without adjusting the amount of compensation on account of delay in delivery of possession of the flat.

3.2 The respondent has given the physical possession of the flat on 03.03.2017 after about one year of payment of all dues against final demand letter, but has neither given the possession letter nor no dues certificate, which are required for registry of the flat.

3.3 As per clause 22 of the agreement, the possession of unit had to be given after execution of the Lease/Sub Lease Deed in favour of the allottee. However, the respondent is not providing NOC for execution of the lease deed even after more than two years after handing over of possession of the flat, which is causing delay in registration of the flat. The respondent issued a notice that it has started registration process after receiving completion certificate on 02.07.2018, after more than one year of handing over of the possession of the flat on 03.03.2017.

3.4 As per clause 29 of Annexure-B to the agreement, in case of delay in delivery of possession beyond February 2013 compensation @ Rs.10/- per sq. ft. is to be given for the period of delay. There was a delay of 48 months as the actual physical possession of flat was given in February 2017 and, therefore, the builder is liable to pay Rs.7,10,400/- for Flat No.P-1404.

3.5 The complainant/appellant made number of representations to the respondent, but he did not receive any response. Finally he made complaint against the respondent on 06.11.2019 before the Regulatory Authority praying for (i) refund of Rs.4,28,500/-, (ii) issue of No Dues Certificate, (iii) issue of Possession Letter, (iv) bear all delay charge/penalty levied by Noida Authority for registration of flat. The said complaint was disposed of with another complaint of Mr. Shyam Sunder Agrawal, by the Regulatory Authority vide impugned order dated 22.09.2020 with the directions as contained in para 1 above.

3.6. The appellant has challenged the impugned order dated 22.09.2020 passed by the Regulatory Authority on the following grounds:--

(1) Final demand was raised by unilaterally increasing the super area from 1380 sq. ft. to 1480 sq. ft.

(2) Superfluous amount collected towards electrical charges in final demand letter.

(3) Interest on prepayment of final demand.

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

(i) To set aside the impugned order dated 22.09.2020 passed by the Real Estate Regulatory Authority, Regional Office, Gautam Buddha Nagar in Complaint No.NCR144/11/0262/2019 (Tripti Agrawal Vs. Antriksh Developers and Promoters Pvt. Ltd.).

(ii) To direct the respondent to make payment of delay interest from November, 2012 till the date of receipt of O.C./C.C.

(iii) To direct the respondent to return the amount paid twice by the Appellant with respect to charges levied as Electrical Charge, which were already covered under the agreement to sell.

(iv) To direct respondent to return the excess amount taken from the Appellant with respect to increase in area of the Unit beyond the permissible limit as per the Agreement to sell.

(v) To direct the respondent to execute registry of the Unit in favour of the Appellant.

(vi) To direct respondent to pay notional interest on pre-payment of other charges which is payable at the time of possession of flat as per the Agreement to sell.

(vii) Such other orders or direction which this Hon'ble Tribunal may deem just and proper given on the facts and circumstances of the same, may also be passed.

4. The respondent filed objections to the grounds of appeal and submitted that:

4.1 The relief sought by the appellant for disallowing charges paid by the appellant under the head of 'increased super area' and 'external electrification charges' cannot be granted by this Tribunal as no such relief was ever sought by the appellant before the Regulatory Authority in his complaint. In absence of adjudication of controversy qua the demand of 'increase in super area' and 'external electrification charges' by the Regulatory Authority in the complaint preferred by the appellant, this Tribunal cannot exercise its appellate jurisdiction to test the reliefs prayed by the appellant. This Tribunal cannot decide the relief claimed by the appellant for the first time. The appellant is precluded from raising the plea of disallowing the charges under the aforesaid head when the appellant had validly discharged such payments in the year 2016 itself. After lapse of about 6 years from the date of payment, the appellant is raising such plea.

4.2 No protest of any nature whatsoever was ever lodged by the appellant qua the demand of aforesaid charges before making the payment. The plea of protest cannot be raised at such a belated stage and that too after lapse of about 4 years from the date of cause of action.

4.3 In so far as the amount charged with respect to increased area of apartment is concerned, Annexure-B to the allotment letter provided that the area of the apartment agreed to be sold is tentative and the same can vary by 1 or 2%. In case the variation takes place beyond 1 or 2%, the appellant shall be at liberty to withdraw from the project. However, the appellant chose to take possession of the apartment even after variation of the area of more than 1 or 2%. The plea of the appellant is completely after thought.

4.4 The charges paid by the appellant under the head of electrification charges are with respect to the external electrification charges having been demanded by the Department of Electricity in the year 2014 i.e. after execution of the builder buyer agreement for the purpose of laying down independent line/independent feeder for the group housing complex as mandated by the provisions of Uttar Pradesh Electricity Code, 2005. The charges of electrification, therefore, are duly payable in terms of the builder buyer agreement and as per Section 19 of the Act 2016.

4.5 In so far as the challenge made to the impugned order rejecting the plea of the appellant of claiming delay interest in handing over the possession of the apartment is concerned it is completely devoid of merits. The appellant vide handover letter dated 03.03.2017 had already taken the possession of the apartment even before the enforcement of Section 18 of the Act, 2016. Moreover the liability of paying interest for delay period ceases to exist with the handing over of possession as for the purpose of claiming interest for delay period under Section 18 of the Act of 2016, there should be subsisting cause of action whereas the appellant did not have any subsisting cause of action at the time of filing of the complaint as the appellant had already taken the possession of the apartment. After taking the possession, the appellant is duly residing in the said apartment.

4.6 As per Section 18 of the Act 2016, an allottee for the purpose of claiming interest shall have subsisting cause of action. In the circumstances in hand, when the exercise of possession had already taken place prior to enforcement of Section 18 of the Act, 2016, there arises no question of inability of the respondent/promoter to handover the possession of the apartment to the appellant.

4.7 As a pre-requisite for the purposes of claiming interest for delay in handing over the possession, an allottee in terms of Section 18 of the Act 2016 has to satisfy that the promoter has failed to hand over the possession of the apartment or has failed to complete and is unable to handover the possession of the apartment at the time of preferring the complaint. In the circumstances in hand, there was no such occasion for the appellant to plead that the respondent promoter had failed to handover the possession of the apartment and therefore in such view of the circumstances, the claim of interest has been rightly denied by the learned Regulatory Authority.

4.8 As the provisions of the Act of 2016 are prospective in nature and specially, in the given circumstances when the appellant has already taken the possession of the apartment i.e. prior to filing enforcement of Section 18 of the Act, 2016, the prayer of the appellant for seeking delay charges in handing over the possession is completely misconceived.

4.9 Apart from charges as duly payable in terms of the demand letter, as the appellant has not paid the instalments as and when they had become due and charges in terms of demand letter on time, he is also liable to pay interest in terms of Section 19 of the Act, 2016 for delay in discharging his obligation of paying the amount.

4.10 It is submitted that the delay in delivery of the real estate project was on account of stay order passed by the Hon'ble National Green Tribunal in issue pertaining to Okhla Bird Sanctuary. The Hon'ble National Green Tribunal had stayed all the construction activities within 10 kms. radius of Okhla Bird Sanctuary, vide order dated 14.08.2013. The dispute qua Okhla Bird Sanctuary was put to rest ultimately by issuance of notification dated 19.08.2015 by the Ministry of Environment and Forest declaring 100 meter from eastern, western and southern boundary and 1.27 kilometres from Northern Boundary of New Okhla Bird Sanctuary as eco-sensitive zone. The State Government considering the delay caused in construction of real estate project of the answering respondent proceeded to declare zero period from 14.08.2013 to 19.08.2015, vide order dated 23.07.2023, therefore, the respondent cannot be held liable for delay in construction of real estate project from 14.08.2013 to 19.08.2015.

4.11 The no dues certificate in respect of flat as prayed by the appellant cannot be issued by the respondent in favour of the appellant as the appellant has failed to pay the amount due under the head of Additional Farmer' Compensation and water connection charges. The amount of additional compensation is due and payable in light of the judgment and order dated 21.10.2011 passed by the Hon'ble High Court in Writ C No. 37443 of 2011 titled as ***'Gajraj and Others versus State of U.P. & Ors."*** wherein the Hon'ble High Court had directed the development authority to pay the amount of additional compensation to the land owners of plot. The Hon'ble High Court had also observed that the amount of additional compensation shall also be recovered from the respective allottees.

The appellant is under obligation to pay the amount of water connection charges in terms of the agreement as also under Section 19(6) of the Act of 2016.

4.12 The learned Regulatory Authority has rightly dealt with the issue of charging amount under the head of the water charges and pratikar charges. In absence of any relief qua disallowing charges made either in the complaint or in appeal, the pleas qua disallowing the charges under the head of water charges and pratikar charges cannot be tested by this Hon'ble Tribunal.

4.13 The relief being claimed by the appellant against the respondent for execution of sub-lease deed is completely misconceived as it is the New Okhla Industrial Development Authority who has to execute the sub-lease deed in favour of the appellant being the Lessor of the plot on which the real estate project has been developed as covenanted in the lease deed as also in terms of the allotment letter executed by and between the appellant and the respondent.

4.14 The dispute qua the dues of the plot allotted to the respondent is pending adjudication before the Noida Authority pursuant to the order of the Hon’ble High Court of Judicature at Allahabad, passed in Writ-C No.19225 of 2024 wherein, the direction has been issued to the Noida Authority to decide the representation of the respondent company as regard to dispute regarding computation of dues. In such view of the circumstances, the execution of sub-lease deed is withheld on account of pendency of dispute qua outstanding dues by the Noida Authority. Therefore, the claim of appellant regarding delay interest, is liable to the rejected with costs.

4.15 The dispute qua the recovery of dues of the allottees of the Noida authority is gaining the attention of the Hon'ble Supreme Court in Writ Petition no. 940 of 2017 titled as Bikram Chatterjee Vs. Union of India. The Hon'ble Supreme Court is ceased with the controversy in respect to the rate of interest levied by the Noida Authority upon the allottees in respect to their land dues. The liability of the respondent has not yet been crystallized and in such view of the circumstances, the proceedings qua the registration of the sub-lease deed, be taken after the final order/judgement of the Hon'ble Supreme Court. The present appeal is liable to be dismissed with costs.

5. The appellant filed his rejoinder affidavit to the objections of the respondent, denying the averments made by the respondent and reiterating the averments made by the appellant in the memo of appeal. The appellant further submitted that:

5.1 The charging of increased area and electrical charges, are misconceived, incorrect, and are denied in toto. It is submitted that the present appeal has been validly filed under Section 44 of the Real Estate (Regulation and Development) Act, 2016, against a composite order dated 01.06.2020 passed by the Leamed Regulatory Authority at Gautam Buddh Nagar.

5.2 As per the reasoning given by the Hon'ble National Consumer Disputes Redressal Commission in the matter of ***Manmeet Kunwar and Trapta Chauhan & 16 Ors. Vs Ms Vahe Projects Private Limited*** in ***Consumer Case No. 2022/2018***, particularly the clarification order that was rendered on the date of 03.12.2023 whereby the Hon'ble NCDRC, after placing reliance on the judgment of Hon'ble Supreme Court in ***Supertech Lid. va Rajni Goyal (2019) 17 SCC 681*** that possession (physical or otherwise) is legal only when the developer has obtained a Occupancy Certificate or Completion Certificate. Therefore Respondent's plea that the Applicant is delayed in raising claim for increase in area and electrical charges are completely untenable.

5.3 It may also be noted that the Increase in Super Area permissible as per the Agreement was to be within a limit of 1-2% under Clause 27. Any variation of area more than 2%, it has to be informed to the allottee under Clause 28. No intimation/clarification as to the increase as well as how it was increased to 7,25% against the limit of 1-2% as per Agreement was provided. Final demand letter included 254,500/-towards this increase in area charges (Increase in area of 100 Sq ft i.e. 1,480-1,380) x (2,150 Basic Price + 375 Other Charges +20 IFMS)-254,500/-.

5.4 These two issues namely increased area and electrical charges were clearly mentioned in the RERA Compliant No. NCR144/11/0262/2019 It is mentioned under Facts of the Cases/Any other details that final demand letter for Remaining balance issued on 08.03.2014 was paid under protest. Final demand was raised by increasing the super area from 1.380 sq feet to 1.480 sq feet, and accordingly sought Refund of Rs.4,28,500/- excess amount paid towards these components under protest.

5.5 The issue relating to Electrical Charges has been conclusively settled by this Hon'ble Tribunal in ***Appeal No. 824 of 2020-Shyam Sundar***

Agrawal vs Antriksh Developers Pvt. Ltd, where in paragraph 17, the Hon'ble Tribunal observed the same. On this point, the appellant has relied on paragraphs 5.4 to 5.10 of the memo of appeal.

5.6 It has been submitted that the claim of the appellant is squarely covered with the case decided by this Tribunal in the case of Shri Shyam Sundar Agrawal (supra). The original complaints were considered jointly, and the order dated 22.09.2020 was passed as a composite determination of both complaints. In this view, the Appellant is entitled to seek parity of relief, in line with the settled principle that similarly situated allottees cannot be treated differently. It is submitted that the delay in handing over possession in the instant case is not denied by the respondent, and in fact stands admitted by their conduct. The Hon'ble UPREAT in the case of Shyam Sundar Agrneal (supra), has already adjudicated this issue and held that the delay in delivering possession is unjustified and that the allottee is entitled to interest under Section 18(1) of the Act. The appellant, having suffered from the very same delay in respect of the same unit, is equally entitled to such relief.

5.7 It is a settled position that delay Interest under Section 18 of the Act, 2016, is not time-barred so long as possession is either not offered or is offered belatedly in breach of agreed timelines. This very issue was also considered and the plea of the respondent was rejected in the case of Shyam Sundar Agrawal (supra) by the Hon'ble Tribunal. The appellant therefore prays that similar relief be granted in this appeal as well.

5.8 The appellant has further reiterated that the cause of action for both the appellant and the co-complainant arose from the respondent's failure to deliver timely possession. It is further submitted that such cause of action continues until actual possession is offered and accepted in terms of law. In the absence of proper possession, the appellant remains entitled to claim delay interest till the date of receipt of Occupancy Certificate even after taking possession. This is supported by the reasoning given by the Hon'ble National Consumer Disputes Redressal Commission in the matter of ***Manmeet Kunwar and Trapta Chauhan & 16 Ors. Vs Mis Vahe Projects Private Limited in Consumer Case No. 2022/2018***, particularly the clarification order that was rendered on the date of

03.12.2023 whereby the Hon'ble NCDRC, after placing reliance on the judgment of Hon'ble Supreme Court in ***Supertech Ltd. vs Rajni Goyal (2019) 17 SCC 681*** that possession (physical or otherwise) is legal only when the developer has obtained a Occupancy Certificate or Completion Certificate. Even if an allottee has taken physical possession of the allotted Unit, he is still entitled to payment of delay interest not just till the date of possession but till the date of receipt of O.C/C.C.

5.9 The argument that the appellant has not paid the instalment as and when they had become due and charges in terms of demand letter on time, that they are liable to pay interest in terms of Section 19 of the Act, 2016. The demand letters were issued at a regular interval of 3 to 4 months without providing any proof/any documents (such as photographs and or architecture certificate) in support of achievement of defined construction milestones thereby clearly indicating that it was raised without linking any linkage to the defined construction progress as required under the Agreement.

5.10 The appellant has further stated that there has never been any demand from the Builder regarding interest on delay payment before filing of RERA complaint. The final demand letter was issued towards "Remaining balance" which implies no further liability on the part of Appellants. There was no mention Interest due on delay payment in that final demand letter, therefore liability of interest on delay payment by Appellant does not arise and is completely denied. This amount was paid by the appellant under protest, and thereafter the possession of flat was given by the Builder. Further, the fact that there has never been any demand from the Builder regarding interest on delay payment before filing of RERA complaint, raising this demand subsequently is a mere retaliation against the valid grievances filed by the Appellant with the Authority.

5.11 The appellant has refuted the argument of the respondent that the stay order passed by the Hon'ble National Green Tribunal in issue pertaining to Okhla Bird Sanctury (Zero period from 14.08.2013 to 19.08.2015 vide order dated 23.07.2023), therefore respondent cannot be held liable for delay in construction of real estate project during said period. The appellant has stated that this order is not applicable in the instant case because it was the prerogative of the Respondent Builder to have ascertained that all the obligations and procedure was in compliance of the established law and, therefore, it only amounts to business hardship, for which the appellant allottee cannot be made to face the brunt of the issue. The appellant further stated that the respondent has raised the demand letter towards 8th and final instalment towards "On start of finishing work" on 26.10.2012, before the start of the so called zero period, and also respondent raised final demand letter towards Remaining Balance" on 08.03.2014, during the zero period. Therefore, the Zero Period excuse for delay in possession is misconstrued, and liable to be rejected in toto.

5.12 The appellant has further stated that the demands raised by the Respondent under the heads of "Farmer Compensation," "Electrical Charges," and "Water Charges" are illegal, arbitrary, and not supported by the terms of the Builder-Buyer Agreement or by any statutory provision, and are therefore liable to be quashed. It has been submitted that this very issue has been conclusively settled by this Hon'ble Tribunal in the case of Shyam Sundar Agrawal (supra) in paragraph 15 to 18 of the judgment. The appellant submits that the present case stands on absolute identical footing, where the respondent has imposed these heads of charges without any corresponding clause in the agreement and without any independent legal authority. Such charges are not only beyond the contractual framework but also amount to unjust enrichment by the Respondent at the cost of the consumer. On the basis of above, the appellant submitted that these charges be held unenforceable and be set aside, in parity with the relief already granted in the case of the co-complainant.

5.13 The appellant has reiterated the para 5.14 of memo of appeal and has stated that his grievance is based on continuing wrong and persistent breach of contract by the respondent,

5.14 The appellant has further stated that the 2nd Page of the Agreement provides that possession of the unit will be given by Dec 2012 subject to receipt of the entire basic price, extra charges, lease rent charges, registration charges and other charges as may be intimated by the company. It further provides that the possession of the unit will be given after execution of the Lease/ Sub-Lease deed in favour of the allottee. Para 22 of the Agreement provides that the possession of the unit will be given after execution of the Lease/ Sub-Lease deed in favour of the allottee. However, incomplete possession was given on 03.03.2017, after about two years of receipt of all payments, and that too without obtaining the required Occupancy Certificate from the NOIDA Authority, which was issued only on 06.06.2018.

5.15 The appellant has stated that page No.9 Cl No.30 provides that the allottee has to make payment of the balance amount and take possession of the flat within 90 days of the written offer of possession from the company, failing which the allottee shall be liable to pay holding charges, at Rs. 51/- per square feet. Therefore, the Appellant was forced to take possession of flat without OC.

5.16 The appellant has submitted that the appellant has never received any valid and complete offer of possession in accordance with the agreement and applicable law. Furthermore, even assuming a purported offer was made, it cannot defeat the appellant's right to seek interest for delayed possession as held in multiple judgments of this Hon'ble Tribunal, including the order in the case of Shyam Sundar Agrawal (supra).

5.17 It has been submitted that the respondent has attempted to deny relief on hyper-technical grounds, despite a clear pattern of delay and breach on the respondent's part, which is unjust and legally unsustainable. It has been submitted that the appellant is a bona fide allottee who has paid substantial sums and continues to be deprived of clear ownership of the unit and benefits thereof.

5.18 It has been submitted by the appellant that his case is squarely covered with that of ***Shyam Sundar Agrawal*** (supra), therefore, the instant case also be decided accordingly.

5.19 It has been further stated that the respondent's demand letter issued to the appellant, after handing over possession of flat is illegal, arbitrary and unsustainable, and is liable to be set aside in light of the reasoning adopted by this Hon'ble Tribunal in the case of ***Shyam Sundar Agrawal*** (supra) wherein, it has been categorically held that the demand raised by the respondent therein, being unsupported by lawful basis and in violation of the terms of the builder-buyer agreement, was unjustified and thus set aside. The relevant portion of the order (para 17) emphasized that any demand not in conformity with the construction milestones or agreed payment plan constitutes an illegal financial burden on the allottee. In the present case as well, the impugned demand letter raised against the appellant is in breach of the agreed construction-linked payment schedule and has been issued despite significant delay in offering lawful possession of the Unit. Therefore, the appellant submits that the said demand, being similarly illegal and devoid of merit, deserves to be quashed and set aside, in parity with the relief already granted to the allottee/appellant (co-complainant) in the matter of ***Shyam Sundar Agarwal*** (supra) and the impugned order passed by Ld. RERA Authority in Complaint No.NCR144/11/0262/2019, is liable to be set aside.

6. The Regulatory Authority in the impugned order dated 22.09.2020 framed 5 issues of which issue nos. 3,4 and 5 are as under:--

   (3) Whether the demand of the respondent with respect to electricity, water connection and farmers' compensation, is justified?

   (4) Whether the demand of the respondent with respect to car parking is justified?

   (5) Whether the complaint will fall under Section 18 if the complainant has already taken possession?

7. The Regulatory Authority, while examining issue no. (3) with respect to demand of electricity, water connection and farmers' compensation placed reliance on the judgment of Hon'ble Supreme Court in Civil Appeal No.6649-50/2018 ***Supertech Vs. Rajni Goel*** and directed the respondent to provide bifurcation of calculation and liability of the complainant.

8. On issue No.(4) regarding additional open car parking it was observed by the Regulatory Authority that the agreement between the parties is binding on both the sides, hence the parties are to take action in accordance with the provision of the agreement.

9. On issue No.(5) regarding applicability of Section 18 of the Act 2016 it has been observed that since the complainant has taken physical possession in the year 2017 and thereafter the complaint has been filed on 06.11.2019 and the fact of possession has been admitted by the complainant, hence the claim of the appellant was rejected. The Regulatory Authority directed the respondent to provide no dues certificate to the appellant by 31.12.2020 after taking rest amount as per the agreement and execute conveyance deed after taking necessary stamp fee. The respondent was also directed to provide details of the deposits made by the respondent with respect to electricity, water connection and farmers' compensation and to take proportionate amount from the complainant. The respondent was further directed to provide calculation sheet with respect to demand and take action for open parking as per provisions of the agreement.

10. Before we proceed to examine the matter, we deem it proper to extract relevant terms and conditions of allotment letter dated 21.09.2010 and its Annexure-B, which are as under:--

ALLOTMENT LETTER

POSSESSION

Possession of the unit will be given by December 2012 subject to receipt of the entire basic price, Extra Charges, Lease Rent Charges, Registration charges and other charges as may be intimated by the Company.

Further, the possession of the unit will be given after execution of the Lease/ Sub Lease Deed in favour of the allottee/s.

Note:

Extra charges, which are over and above the Basic Price as mentioned in various clauses of this Allotment Letter shall become payable within 30 days from the date of demand which shall normally be 90 days before completion date.

Other Terms and Condition as per Annexure-B

8. That the drawings shown in the sale documents are subject to changes by the architect/ company before or during the course of construction without any objection or claim from the allottee/s. Within the agreed consideration cost, the company shall complete all the civil work, plumbing, sanitary work, joinery, painting & polishing, internal electrification (excluding bulbs, tubes, fans, geysers etc.) The unit shall, in particular, comprise of specifications as mentioned in the Specification Sheet.

9. That the following facilities will be provided by the company on extra payment:

(i) *Expenditure in obtaining clearance from fire officer and provision of fire fighting system/equipment as per statutory requirements shall be shared by the allottee/s proportionately.*

(ii) *The stand by generator for running the lift, tubes wells and water pump shall be provided by the company without any extra cost but if common generator lines or any other power back-up system is provided within the residential units, the same shall be charged extra at a rate intimated by the company. The running cost of the power back-up system to the apartments shall proportionately be borne by the allottee/s over and above the general maintenance charges.*

E POSSESSION

20. *That the Lease/ Sub Lease deed of the unit shall be executed in favour of the allottee/s by the company after the entire payment and dues in respect of the allotment are cleared by the allottee/s.*

21. *That all charges, expenses, stamps duty, official fees etc. toward sub Lease Deed Including documentation, will be done by the allottee/s. If the company incurs any expenditure towards the registration of the unit, the same will be reimbursed by the allottee / s to the company, in case the stamp duty or other charges payable by the allottee/s to the Authority at the time of registration is discounted due to reason of prior payment of some / all charges by the company, such discount availed by the allottee /s shall be reimbursed to the company prior to registration.*

26. *That the final super area of flats will be intimated after final physical measurement after construction. In case of variation in actual super area vis-à-vis booked super area, necessary adjustment in cost, plus or minus, will be made at the rate prevalent at the time of booking. Super area may vary without any change in built-up area or dimensions of the flats. Similar measurement and calculations will be done for exclusive lawn and terrace areas also.*

27. *That the sizes and given areas are tentative which can be modified due to technical and other reasons e.g. change in position or design of the unit, number of the unit, its boundaries, dimensions or its area. The company shall be liable only for cost adjustments arising out of super area variations.*

GENERAL TERMS AND CONDITIONS

32. *That the basis of calculating the proportionate charges payable by the allottee/s will be the proportion of the built up area of his unit to the total built up area of all units affected by that charge.*

<u>Annexure-B to allotment letter.</u>

Cl./Page No. of allotment letter.	*Clarification*
Second Page	*Possession of unit shall be given by **November 2012**. Date of demand for other charge payment shall be after completion of unit. Other charges shall be paid within one month from date of possession intimation letter.*

Page 5 C1.9 shall be read as	*I. Expenditure in obtaining clearance from fire officer and provision of fire fighting system/equipment as per statutory requirements.* *II. The stand by generator for running the lift, tubes wells and water pump. Power back-up system within the residential units, with 2KVA back-up shall be given free of cost The running cost of the power back-up system to the apartments shall proportionately be borne by the allottee/s over and above the general maintenance charges.* *III. The cost of External Electrification of the complex, which includes proportionate cost of sub-station, cost of transformer, main electrical panel and cost of cable up to the distribution box.*
Page 8 C1. 27	*Variation in the Super area to a limit of +1-2% keeping the ratio of built up area to super area same, is acceptable and cost adjustment for the same shall be made accordingly.*
Page No. 9 C1.28	*For any variation of area more than +-2%, It shall be sole discretion of allottee whether to accept the unit with revised cost or not. In case allottee desires to withdraw his allotment due to area variation only, The company shall refund all the money deposited by the allottee with 8% interest. No Earnest Money shall be forfeited in this case.*
Page No. 9 C1. No. 29 shall be read as	*That the possession period agreed upon is only indicative and the company may offer possession before that date. In case of early possession, the balance instalments shall become due immediately. The allottee/s has to take possession of the unit within 90 days of the written offer of possession from the company failing which the unit shall lie at the risk and cost of the allottee/s. In case of delay in delivery of possession beyond November 2012 plus minus Three months which is attributable to the delay or negligence of the "Company", in that event the Company shall pay to the Allottee Rs. 10/- per sq.ft. per month for the period of delay.*

11. On the basis of pleadings, record and submissions of the appellant in person, we deem it proper to frame the following questions/issues:--

(i) Whether the project of the respondent is delayed?

(ii) Whether the appellant is entitled for interest for the delay in possession even after taking physical possession of the unit?

(iii) Whether the demand raised by the respondent towards electricity, water connection and farmers' compensation etc. was justified?

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

12. **Vide Question No.(1)** we are required to examine as to whether the project of the respondent is delayed.

12.1 The appellant purchased a Flat No. P-1404 in the project of the respondent, namely 'Antriksh Golf View' situated at Plot No.Gh-005A, Sector-78, Noida under Flexi Payment Plan. Agreement to sale was executed between the parties on 21.09.2010. As per annexure-B to the agreement, the possession of the unit was to be given by November 2012. The final demand letter was issued on 03.10.2020 and the respondent has given physical possession of the flat to the appellant on 03.03.2017. Thus, there was delay of more than four years.

12.2 In view of the aforesaid analysis, we are of the considered view that the project of the appellant was delayed. **Question No.(1)** is answered accordingly.

13. **Question No.(2)** is as to whether the appellant is entitled for interest for the delay in possession even after taking physical possession of the unit.

13.1 As per annexure-B to the agreement dated 21.09.2010 the possession of the unit was to be given by November 2012. The final demand letter was issued by the respondent to the appellant on 03.10.2020 and the physical possession of the flat was given on 03.03.2017 i.e. after a delay of 4 years and three months.

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

"34. The developer has not disputed these communications. Though these are four communications issued by the developer, the appellants submitted that they are not isolated aberrations but fit into a pattern. The developer does not state that it was willing to offer the flat purchasers possession of their flats and the right to execute conveyance of the flats while reserving their claim for compensation for delay. On the contrary, the tenor of the communications indicates that while executing the Deeds of Conveyance, the flat buyers were informed that no form of protest or reservation would be acceptable. The flat buyers were essentially presented with an unfair choice of either retaining their right to pursue their claims (in which event they would not get possession or title in the meantime) or to forsake the claims in order to perfect their title to the flats for which they had paid valuable consideration. In this backdrop, the simple question which we need to address is whether a flat buyer who seeks to espouse a claim against the developer for delayed possession can as a consequence of doing so be compelled to defer the right to obtain a conveyance to perfect their title. It would, in our view, be manifestly unreasonable to expect that in order to pursue a claim for compensation for delayed handing over of possession, the purchaser must indefinitely defer obtaining a conveyance of the premises purchased or, if they seek to obtain a Deed of Conveyance to forsake the right to claim compensation. This basically is a position which the NCDRC has espoused. We cannot countenance that view.

35 The flat purchasers invested hard earned money. It is only reasonable to presume that the next logical step is for the purchaser to perfect the title to the premises which have been allotted under the terms of the ABA. But the submission of the developer is that the purchaser forsakes the remedy before the consumer forum by seeking a Deed of Conveyance. To accept such a construction would lead to an absurd consequence of requiring the purchaser either to abandon a just claim as a condition for obtaining the conveyance or to indefinitely delay the execution of the Deed of Conveyance pending protracted consumer litigation.

36. It has been urged by the learned counsel of the developer that a consequence of the execution of the Deed of Conveyance in the present case is that the same ceases to be a transaction in the nature of "supply of services" covered under the CP Act 1986 and becomes a mere sale of immovable property which is not amenable to the jurisdiction of Consumer Fora. In Narne Construction (P)

Ltd. v. Union of India21, this Court distinguished between a simple transfer of a piece of immovable property and housing construction or building activity carried out by a private or statutory body falling in the category of "service" within the meaning of Section 2 (1) (o) of the CP Act 1986. This Court held that:

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

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

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

14. **Vide Question No.(3)** we are required to examine as to whether the demand raised by the respondent towards electricity, water connection, farmers' compensation and delay interest was justified.

14.1 We have examined the demand letter dated 3rd October 2020 issued by the respondent to the appellant, placed at Annexure No.8 to the memo of appeal. In this demand letter advance maintenance for 6 months has been demanded from 08.03.2014 while possession of the unit has been given to the appellant on 03.03.2017. The respondent has demanded the maintenance charge for the period before the delivery of possession while it can claim the maintenance charges for the period falling after the delivery of possession. Delay payment interest of Rs.11,37,456/- has been demanded vide said demand letter. No calculation of the same has been provided by the respondent. This amount of Rs.11,37,456/- does not appear to be correct. No calculation has also been provided for the electrical charges, water connection charges and farmers' compensation.

14.2 In view of the aforesaid analysis, we are of the considered view that the demand raised by the respondent towards electricity, water connection, farmers' compensation and delay payment interest was not justified. **Question No.(3)** is answered accordingly.

15. **Question No.(4)** is as to whether the appellant is entitled for interest for the delay in completion of the Project under the scheme of Act, 2016 and if yes, what rate of interest is required to be paid by the Promoter to the allottee.

15.1 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.

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

"Section 18(1)(b) lays down that if the promoter fails to complete or is unable to give possession of an apartment due to discontinuance of his business as a developer on account of suspension or revocation of the registration under the Act or for any other reason, he is liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice in this behalf including compensation. If the allottee does not intend to withdraw from the project he shall be paid by the promoter interest for every month's delay till handing over of the

possession. The requirement to pay interest is not a penalty as the payment of interest is compensatory in nature in the light of the delay suffered by the allottee who has paid for his apartment but has not received possession of it. The obligation imposed on the promoter to pay interest till such time as the apartment is handed over to him is not unreasonable. The interest is merely compensation for use of money".

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

15.4 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).

15.5 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.

15.6 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.

15.7 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........."

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

"If compensation comprises of two parts, (i) by way of interest on the deposited amount from the assured date (milestone date) of completing construction and handling over possession to the actual date of handling over possession, and, (ii) lumpsum amount, we find nothing wrong in it. We do not agree with the builder co.'s contentions that interest on the deposited amount should not be provided since it is not a case of refund but a case of delay in possession. The interest on the deposited amount has to be viewed in the light of the purpose for which it is intended. It is but a way of computing compensation for delay in possession that is commensurate with the amount deposited by the complainant, and here it has been computed after adopting a milestone date as per the builder co.'s own (unfair and deceptive) letter of 05.06.2013. There can be and is no question of not agreeing to an endorsing the award of interest from the said milestone date. Here we may however add that the rate of interest also cannot be arbitrary or whimsical, some reasonable and acceptable rationale has to be evident, subjectivity has to be minimized, a logical correlation has to be established. Albeit detailed arithmetic or algebra is not required. Logical (to the extent feasible) objective parameters should be adopted. Rounding off simplification etc. to make the computation doable could be adopted. We feel it appropriate that, considering that the subject units in question are dwelling units, in a residential housing project, the rate of interest for house building loan for the corresponding period in a scheduled nationalized bank (take, State Bank of India) would be appropriate and logical, and, if 'floating'/varying/different rates of interest were/are prescribed, the higher rate of interest should be taken for this instant computation."

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

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

15.10 On the basis of aforesaid analysis the **Question No.(4)** is answered in affirmative in favour of appellant.

16. On the basis of the aforesaid analysis, we come to the conclusion that the appellant is entitled for delay interest for the period from December, 2012 (after the promised date of possession November, 2012, as per allotment letter) till 03.03.2017 (the date of handing over physical possession); and the demand letter dated 03.10.2020 is liable to be set aside.

17. **Accordingly, the appeal is partly allowed.** While upholding the order of the Regulatory Authority dated 22.09.2020 the following directions are given:--

(A) The respondent is directed to pay delay interest to the appellant on the deposited amount at the rate of MCLR+1% from December 2012 till 03.03.2017.

(B) The demand letter dated 03.10.2020 is set aside. The respondent is directed to issue fresh demand letter keeping in view the observations made in para 14.1 above read with the provisions of Allotment Letter/Agreement dated 21.09.2010 including its Annexure-B.

(C) The aforesaid directions as well as the directions of the Regulatory Authority be complied by the respondent within 45 days from the date of upload of this judgment/order.

(D) In case of non-compliance of this order the appellant will be at liberty to approach UPRERA for execution of this order.

18. No order as to costs.

(Rameshwar Singh) **(Sanjai Khare)**

Dated: 16.07.2025
RajneeshPS)