THE U.P. REAL ESTATE APPELLATE TRIBUNAL, LUCKNOW

Division Bench Court No. 1

APPEAL-93/2020

U.P AVAS EVAM VIKAS PARISHAD **.....Appellant**

Versus

RAKESH KUMAR SINGH **.....Respondent**

Counsel for Appellant	**Counsel for Respondent**
N.N. PANDEY	SHASHI KANT VERMA

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

1. The present appeal has been preferred by U.P. Avas Evam Vikas Parishad (hereinafter referred to as 'the appellant/Promoter') challenging the order dated 27.05.2019 passed by the Real Estate Regulatory Authority, Lucknow (hereinafter referred to as 'the Regulatory Authority') in Complaint No.9201820282, whereby the appellant/Promoter was directed to ensure delivery of possession of the allotted flat to Sri Rakesh Kumar Singh, the complainant (hereinafter referred to as 'the respondent/allottee') after obtaining occupation certificate and completion certificate from the competent authorities, and execution of the sale deed. The appellant/Promoter was further directed to pay interest to the respondent/allottee for the delayed period i.e. from the date of delivery of possession mentioned in the Registration Booklet till the date of actual possession at MCLR+1 percent per annum of State Bank of India. Further, the amount of interest will be adjusted towards final payment and if the amount of interest exceeds the amount of final payment, the excess amount shall be returned to the respondent/allottee.

   1.1 The case was initially numbered as Misc. Case No. 311/2019 and subsequently converted to Appeal No. 93/2020.

2. The facts of the case, in brief, are that the appellant/Promoter advertised a self financing Multi-storey Housing Scheme-2012 (Second Phase) in Vrindavan Yojna-4, Sector-17 named Himalaya Enclave to sell flats of different categories and to

complete the construction within 28 months from issuance of demand letter. The respondent/allottee booked a flat in the said housing scheme. A flat No. HM/B-5/806 in Himalaya Enclave, Sector 17 of Vrindavan Yojna-4 was allotted to the respondent/allottee and a demand letter for Rs. 29,77,000/- was issued on 02.04.2013. The respondent/allottee deposited the entire demanded amount i.e. Rs.29,77,000/- with the appellant/Promoter. The possession of the flat in question was not delivered to the respondent/allottee within the stipulated period i.e. by August 2015. The respondent/allottee got his complaint registered in the First Shikayat Samadhan Divas organized on 16.09.2015 by the appellant/Promoter, and subsequently, the appellant/Promoter issued Letter No. 1085/10/AVP/Nikh 19, Lucknow-39 dated 18.06.2016 with a promise to hand over the possession of the flat in question in the month of December, 2016. Thereafter, a second Shikayat Samadhan Divas was organized on 19.05.2016 by the appellant/Promoter wherein the respondent/allottee was again assured for handing over possession of the flat in the month of March 2017. Later, the appellant sent another Letter No. 1623/IGRS/AVP/Nikh 19, Lucknow/116 dated 27.07.2017 to the respondent/allottee with a promise to hand over possession of the flat in question latest by December 2017. Without obtaining completion certificate, a demand letter was issued on 17.10.2018 by the appellant/Promoter, asking the respondent/allottee to take possession of the flat in question after depositing the balance amount of Rs. 1,09,968/= otherwise delay charges at the rate of Rs. 75/= per day will be levied for the delay in making payment after 30.11.2018.

3. According to the submissions made by the appellant/promoter, the possession of the acquired land for the said housing scheme was delivered by the Special Land Acquisition Officer vide letter dated 01.12.2011 in respect of Khasra Plot Nos. 1070, 1075, 1533, 1144 and 1142. Thereafter, the land owners preferred a Writ Petition No. 110(L/A) 2011 (Smt. Gulshan Jahan Vs. State of U.P. and others) before the Hon'ble High Court, Lucknow Bench, Lucknow with respect to the

acquired land of plot nos. 1070 and 1075 wherein, on the basis of an interim order dated 26.05.2011 passed in Writ Petition No. 3869(MB)2011 (Chet Ram and others Vs. State of U.P. and others) by Hon'ble High Court directing maintaining of status quo as regards to possession and restraining the demolition of buildings till the next date of listing. Writ Petition No. 110(L/A)2011 was directed to be connected with Writ Petition No. 3869(MB)2011. Certain other writ petitions were also filed by the farmers before the Hon'ble High Court and similar interim orders were also passed in the said writ petitions which adversely affected the progress of construction and development of the scheme. An application for vacation of the interim order was moved by the appellant/Promoter which was taken up by the Hon'ble High Court on 21.08.2017 and the interim order was modified only with respect to construction of roads. The interim order has still not been vacated and the said writ petitions are still pending before the Hon'ble High Court.

3.1 After announcement of the scheme, several disturbances were created in its execution resulting in law and order situation due to holding agitations by the farmers from time to time. On 15.10.2012 some anti social elements started installing wired fencing around the land of the appellant/Promoter and despite objections and resistance made on the part of the employees of the appellant/Promoter, the unauthorized constructions were made on the land of the appellant/Promoter. The Executive Engineer of the appellant/Promoter wrote several letters to the Station House Officer, SGPGI apprising about the situation and requesting to lodge a first information report (FIR) with respect to the said incident.

3.2 During continuance of construction work in Sector 17 of the scheme, which was being carried out by M/s L&T Pvt. Ltd., a planned attack was carried out on the labour camp on 11.07.2013 in respect of which a first information

report under Sections 147, 323, 452, 336, 506 of IPC–1860 was lodged by the Project Manager on 11.07.2013.

3.3 As per lay out plan, the construction of Himalaya Enclave Scheme was conceptualized as 15 storey building but due to restrictions imposed by the Airport Authority of India the height of the building was reduced by two storeys which consequently resulted in change of plan and it was one of the several reasons on account of which the project was delayed.

3.4 The construction of the project for Phase-2 of Himalaya Enclave Scheme was undertaken by M/s Marg Ltd. in pursuance of the terms and conditions of the agreement dated 19.09.2013. As per the aforesaid agreement the construction work ought to have been completed by 18.12.2015 i.e. within the stipulated time. However, due to the disturbance, interruption in the construction work and law and order situation caused by the farmers' agitation the appellant/Promoter was constrained to extend the date of completion of construction work to 18.12.2016.

3.5 In view of restrictions imposed by the Airport Authority of India in its "No Objection Certificate" and the interim order passed by the Hon'ble High Court in Writ Petition No. 110 (L/A)2011, a decision was taken by the Housing Commissioner on 27.11.2013 to relocate the construction site to a new site after seeking approval of the allottees who had already been allotted flats beyond the 13th floor and to adjust them in other vacant flats of the scheme.

3.6 After enforcement of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as 'the Act, 2016') the Project of the appellant/Promoter was registered with the Regulatory Authority for a period of four years commencing from 28.02.2014 to 31.03.2018.

3.7 During pendency of the complaint before the Regulatory Authority, the construction of the flat has been completed and after final costing of the flat

the allotment letter dated 17.10.2018 has been issued to the respondent/allottee asking him to deposit the balance amount upto 30.11.2018 and take possession of the flat after completing formalities.

4. The appellant/Promoter has challenged the impugned order dated 27.05.2019 passed by the Regulatory Authority, on the following grounds:-

(A) The complaint has been filed by the respondent/allottee regarding the events and cause of action accrued to the respondent/allottee with respect to the matter before the Act, 2016 came into force. The complainant has filed the complaint before the Regulatory Authority in the matter where the complainant has been allotted his respective unit subject to the standard terms and conditions being agreed between the parties prior to coming into force of the Act, 2016 and, therefore, the Regulatory Authority should not have entertained the complaint filed by the respondent/allottee as the Act, 2016 does not have its retrospective effect.

(B) The impugned order has been passed by an authority which has no jurisdiction to pass the order under the Act, 2016.

(C) The order dated 27.05.2019 under challenge in this appeal is illegal, arbitrary, unjust and without jurisdiction inasmuch as the Regulatory Authority does not have the power to pass the order of interest @ MCLR+1% on the deposited amount due to the effect of Sections 15 and 71 of the Act, 2016.

(D) Section 71 of the Act, 2016 clearly provides that compensation u/s 12, 14, 18 and 19 of the Act, 2016 can be adjudged by an Adjudicating Officer and not by any other authority. In the present case, the impugned order dated 27.05.2019 has been passed by the Chairman of the Regulatory Authority. There is no notification to show that the Chairman who adjudicated the complaint and has passed the order is or has been a District Judge.

(E) Section 21 of the Act, 2016 clearly provides that the Regulatory Authority shall consist of a chairperson and not less than two whole time members to be appointed by the appropriate government. In the present case the impugned order has been passed by only the Chairman of the Regulatory Authority.

(F) An act which is specifically prescribed by the statute to be done in a particular manner cannot be done in contravention to the mandated provisions prescribed in the statute.

(G)&(H) It is settled law that question of jurisdiction can be raised at any time even in the execution proceedings.

(I) The complainant had applied for allotment of flat under self financing scheme by depositing registration amount and on the basis of estimated cost of the flat the demand letter had been issued on 02.04.2013 subject to final determination of price after completion of flat.

(J) The terms and conditions of clause 2.1(A) of the Registration Booklet provides that the cost of the flat mentioned in the Brochure is the estimated cost. Further clauses 2.1(A) and 9.1 provide the expected period of 30 months for completion of the construction of the flat.

(K) The terms and conditions of clauses 4.6 and 4.7 of the Registration Booklet provide that due to delay if the appellant could not be allotted the flat after six months of the payment of last installment, on the demand of the complainant the amount deposited by the complainant would be refunded along with interest at the rate payable on the saving bank account by the nationalized bank.

(L) The terms of Clause 4.6 of the Registration Booklet are applicable only when the allottee chooses to terminate the contract by claiming refund due to delay in the project; but there is no provision for payment of interest in case

the allottee claims the possession of the flat and agrees to pay the final cost of the flat.

(M) Where no time is stipulated for performance of the contract (i.e. delivery) or where time is not the essence of the contract and if the allottee, instead of rescinding the contract on the ground of non-performance, accepts the belated performance in terms of contract, there is no question of any breach of contract.

(N) Where the plot/flat/house has been allotted at a tentative price subject to final determination of price after completion of project, the promoter will be entitled to revise or increase the cost. The Allotment Letter had been issued after final costing but the complainant did not take possession after making final payment, and, therefore the allottee is not entitled to the interest on the deposited amount.

(O) Where the grievance is one of the delay in delivery of possession and the Promoter offered to deliver possession during pendency of the complaint at agreed price and such offer of delivery of possession is accepted, the question of awarding any interest on the amount deposited by the allottee does not arise.

(P)&(Q) It is settled law that flats under self financing scheme are constructed on 'no profit no loss' basis. After final costing, the price mentioned in the Allotment Letter being higher than the tentative price cannot be treated as revised higher rate, and therefore the allottee is not entitled to get any compensation.

(R), (S)&(T) The delay was caused by external circumstances and was beyond the control of the appellant/Promoter.

(U) The learned Regulatory Authority has not given any reason for passing the order relating to payment of interest at the rate of MCLR+1% per annum to

the respondent/allottee on the deposited amount and as such the impugned order is unsustainable.

(V) While adjudicating the quantum of compensation and interest the Regulatory Authority did not consider the case on the factors mentioned in Section 72 of the Act, 2016.

5. The respondent/allotte in his objections to the grounds of appeal has submitted that after filing of this appeal, the appellant/Promoter has sent letter no. 1552/PR-05/237 dated 08.08.2019 to the respondent/allottee for taking possession of the flat. Since the appellant/Promoter has sent this letter without calculating/adjusting interest payable to the respondent/allottee and without obtaining completion certificate as per order dated 27.05.2019 passed by the Regulatory Authority, the respondent vide his email and letter dated 19.08.2019 has replied the appellant/Promoter to comply the order dated 27.05.2019 of the Regulatory Authority in its true spirit. Further submissions of the respondent are as follows:-

5.1 The appellant/Promoter has filed this appeal just to harass the respondent/allottee and to delay the process.

5.2 The appellant/Promoter has failed to deposit the interest before the Tribunal as directed by the Regulatory Authority in its order dated 27.05.2019.

5.3 While filing this appeal the appellant/Promoter has admitted the delay in handing over the possession of the flat, under the garb of various lame excuses which are not at all permitted under the Act, 2016. The excuses so claimed are self contradictory and rebutted by their own conduct.

5.4 The appellant/Promoter has failed to prove by evidence that the interim orders of Hon'ble High Court were actually applicable on the land over which the flat of the respondent/allottee was to be constructed.

5.5 The alleged interim orders or public protests are of the period from 2011 to 2016 whereas the appellant/Promoter started the process of this Project in

the year 2013 and demanded/collected the money from the customers/allottees in 2015.

5.6 In spite of being a public organization, the appellant/Promoter has made false assertions in para 5.20 of the instant appeal.

5.7 The appellant/Promoter has totally ignored to consider the fact that the respondent/allottee has paid the cost of the flat after getting loan from Bank of India and is regularly paying the instalment with applicable interest.

5.8 It is wrong to say that the Regulatory Authority has not mentioned the crucial period for which the interest has been awarded.

5.9 Appellant/Promoter has tried to justify its negligence under the garb of a public institution which is absolutely false. The appellant/Promoter has himself admitted that it got the possession of the land as early as on 10.01.2011.

5.10 Excuse of delay as claimed by the appellant/Promoter is vehemently denied. The Project has started in the same period in between 2013 to 2015. The alleged law and order problems have no bearing on the beginning or completion of the project and it is just a lame excuse.

5.11 No Objection Certificate by the Airport Authority of India has been issued as early as on 21/23.08.2013 i.e. at the beginning of the Project. Being a public organization the appellant/Promoter was expected to start the Project after getting all legal clearances.

5.12 The appellant being a public body is doubly responsible to the time line as declared in the Booklet.

5.13 As soon as the respondent/allottee filed complaint before the Regulatory Authority, the appellant/Promoter issued a false and fabricated allotment letter dated 17.10.2018. The respondent personally visited the site and found that the finishing work viz. floor tiles fittings, door fittings and miscellaneous work was in process and the flat was not yet complete and

ready to take possession. During hearing of the complaint before the Regulatory Authority on 05.03.2019 the appellant itself admitted that respondent/allottee's flat was not yet complete.

5.14 It is wrong to say that the Project was to be completed within 30 months. True fact is that the Project was to be completed within 28 months and not 30 months. As per initial allotment letter dated 02.04.2013 the cost of the flat was Rs.31,606.32p. per square meter which was enhanced to Rs.34,158.11p. per square meter in subsequent letter dated 17.10.2018.

5.15 Refund clause as referred in the Booklet was optional to the parties. Neither the respondent/allottee ever claimed refund nor did the appellant/Promoter ever offered the same.

5.16 The aforesaid facts, circumstances and evidences clearly prove that this appeal is based on false and baseless grounds and due to delay on the part of the appellant, the respondent has to unnecessarily pay interest on loan taken for purchase of the flat.

6. The appellant/Promoter has not filed any reply to the objections of the respondent/allottee to the grounds of appeal.

7. Heard Sri N. N. Pandey, learned counsel for the appellant and Sri Shashi Kant Verma, learned counsel for the respondent and perused the record.

8. During the course of hearing of this appeal on 12.02.2020 it was brought to our notice that the appellant/Promoter is still ready to execute the sale deed if the formalities mentioned in the letter dated 17.10.2018 are completed by the respondent/allottee. The learned counsel for the respondent/allottee, after having consultation with the respondent/allottee, submitted that the demand raised vide letter dated 17.10.2018 will be deposited within 15 days. It was directed that the appellant/Promoter, on receipt of the amount will take steps for execution of sale-deed of the flat in question within a week thereafter. It was further directed that

copy of the sale deed will be presented before this Tribunal on 03.03.2020 i.e. the next date of listing.

8.1 On 03.03.2020 the learned counsel for the appellant/Promoter submitted copy of the sale deed and possession letter. After execution of the sale deed and delivery of possession of the flat in question to the respondent, now issue remains to be decided by the Tribunal is regarding the interest payable by the appellant/Promoter to the respondent/allottee on account of delay in possession of the flat in question. During the course of the argument, learned counsel for the appellant has drawn attention of this Tribunal regarding issuance of Completion Certificate of the project on 24.04.2019 as well as offer of possession dated 08.08.2019 after filing of the present appeal on 12.07.2019 and submitted that despite the request of the appellant no steps have been taken by the respondent for completing the formalities to enable it for execution of the sale deed of the allotted flat. Shri Shashi Kant Verma, learned counsel for the respondent placed before the Tribunal a copy of the letter dated 26.09.2019 issued by the Executive Engineer of the appellant in pursuance to the complaint made by the respondent on the portal of the appellant on 21.08.2019 and submitted that the authority of the appellant informed the respondent that appeal has been filed against the order of the Regulatory Authority dated 27.05.2019 and after the decision of the Tribunal action will be taken.

9. In order to examine the grounds taken by the appellant and the averments made by both the parties, we deem it fit to frame the following questions based on the grounds pressed by the learned counsel for the appellant, in order to examine the issues involved:-

(i) Whether the provisions of Act, 2016 are applicable to the Project of the appellant and the Regulatory Authority is vested with the powers and

jurisdiction to consider and decide the complaint of the respondent under the scheme of the Act, 2016?

(ii) Whether under the scheme of the Act, 2016 and Rules, 2016 any mechanism has been provided for determination of the interest or compensation for the delay in handing over possession of the apartment/plot to the allottee, if the allottee does not intend to withdraw from the Project?

(iii) Whether the Regulatory Authority ought to have examined the complaint of the respondent only on the basis of agreed terms and conditions mentioned in the Registration Booklet read with allotment letter?

(iv) Whether there was a delay in handing over of the possession of the Unit by the appellant to the respondent, and if yes whether the benefit of force majeure can be given to the appellant/promoter?

(v) Whether the respondent is entitled for interest and/or compensation on account of delayed possession under the scheme of the Act, 2016 and whether the rate of interest granted by the Regulatory Authority is in accordance with the provisions of the Act, 2016, Rules 2016?

(vi) Whether the allottee(respondent) can claim interest and/or compensation for delayed possession of the Unit by the appellant after execution of the conveyance deed and taking over possession of the unit during the pendency of the Complaint/Appeal?

10. In order to examine question no. (i), we proceed to examine the relevant provisions of the Real Estate (Regulation and Development) Act, 2016 (herein after referred to as the 'Act of 2016').

The preamble of the Act of 2016, provides 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 and 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. From the preamble it is evident that the Act 2016 has been promulgated for regulation and promotion of real estate sector and sale of real estate in an efficient and transparent manner and to protect the interest of consumers in the real estate sector.

10.1 In Chapter 1 (which normally provides for applicability and exemptions under an Act) nowhere, it is mentioned that this Act is applicable only to registered projects. It has also not been indicated anywhere in the Act, 2016 that certain projects are out of the ambit of the Act, 2016. Section 3(2) only provides for those categories of projects where no registration shall be required.

10.2 The definition of the project provided in section 2(zj) reads as under:-

Section 2(zj):-

"project" means real estate project as defined in clause 2(zn) under this Act.

Section 2(zn):-

"real estate project" means the development of a building or a building consisting of apartments, or converting an existing building or a part thereof, into apartments or the development of land into plots or apartment, as the case may be, for the purpose of selling all or some of the said apartments or plots or building, as the case may be, and includes the common areas, the development works, all improvements and structures thereon, and all easement, rights and appurtenances belonging thereto;.

Accordingly, project means a real estate project as defined in clause 2(zn).

10.3 In this definition, it is not mentioned that real estate project means registered real estate project. There is requirement of prior registration of real estate projects, unless exempted, and also restriction on certain activities without registering the projects. Registration of real estate projects for certain categories have been exempted from prior registration under Section 3(2) but not from the provisions of Act, 2016. Otherwise, it would have been mentioned in the applicability part by saying that this Act is applicable only to registered real estate projects.

10.4 The domain of the Regulatory Authority extends even to the projects which have not been registered, and also those exempted from prior registration. No promoter shall advertise, market, book, sell or offer for sale, or invite persons to purchase in any manner any plot, apartment or building, as the case may be, in any real estate project or part of it, in any planning area, without registering the real estate project with the Regulatory Authority established under this Act. In case of violation, the Regulatory Authority may take action for non-registration under Section 59 of the Act of 2016. Accordingly, the projects which have not been registered, but are registrable under Section 3 come within the domain of the Regulatory Authority and the Regulatory Authority is well within its power to initiate penal proceedings and also to entertain complaints regarding violation of the provisions of the Act of 2016. The Regulatory Authority cannot take a stand that the project is unregistered and accordingly it has no jurisdiction to entertain the complaint and the home buyer/complainant cannot be left in lurch, helpless and in miserable condition. The complainant may make a complaint to the Regulatory Authority regarding non-registration of the project as well as may request the Regulatory Authority for compliance of obligations by the promoter in case the promoter violates any of the provision of the Act, the rules and the regulations made there under. The Regulatory Authority in

such case cannot take a stand that let the project be got registered and only thereafter it will entertain the complaint. If a complaint in such cases is not entertained by the Regulatory Authority, a scrupulous promoter or builder or developer may not register the project to avoid jurisdiction of the Regulatory Authority. This will frustrate the very purpose of the Act regarding giving relief to the complainant and ensuring compliance of the obligations by the promoters, real estate agents and allottees.

10.5 The Act provides for obligations of the promoter, real estate agent and allottees both during the registration phase as well as post-expiry of validity of registration i.e. after the completion of the project. The obligations post-expiry of the validity of registration are to be ensured by the authority both in case of projects which were registered, and validity of registration expired as well as for the projects where completion certificate was obtained prior to coming into force of this Act and exempted from prior registration. The obligations of the promoter after completion of the project such as handing over of possession and executing a registered conveyance deed within specified period, workmanship and structural defects rectification liability upto five years after giving possession, land title defect liability without any limitation period etc. are applicable for all the real estate projects, both registered as well as exempted from prior registration.

10.6 Further, in case of a project where completion certificate has been obtained for a real estate project but there is unsold inventory left out then it is true that there won't be any requirement of prior registration of the project as the project has already been completed prior to coming into force of this Act. The registration of projects serves mainly three purposes.

(i) to monitor the progress of the project so that the project is completed timely;

(ii) to ensure that the amount collected from the buyers is not diverted to any other purpose; and also

(iii) to see that layout plan, building plan, specifications etc. as approved by the competent authority are followed by the promoter. The requirement of registration is to monitor the project from commencement to completion. The validity of registration expires on issuance of completion certificate or on expiry of period for completion of project declared by promoter under section 4(2)(ℓ)(c), keeping in view the provisions of section 5(3).

10.7 There are certain obligations of the promoters which are to be complied by them. Some of these obligations are during registration phase and some of the obligations are post expiry of validity of registration. Accordingly, there are large number of obligations of the promoter which are not linked with the completion of the project, but those provisions relate to regulating relationship between promoter and allottee such as conveyance deed, giving possession, workmanship and structural defect rectification liability, defective land title liability, etc. The projects which have been issued completion certificate prior to commencement of the Act have been taken out of prior registration requirement, but not out of the ambit of the Act. The unsold inventory of such projects sold after commencement of this Act falls within the purview of this Act as these projects have not been kept out of the ambit of the Act, 2016.

10.8 After the commencement of Act 2016, the buyers of the real estate, out of unsold inventory where the promoter has obtained completion certificate prior to commencement of the Act, cannot be left in lurch in case possession is not handed over or conveyance deed is not made as per the agreement for sale, defective land title, structural defect and workmanship defects, etc. Whenever sale of real estate takes place after commencement of Act of 2016 and a project qualifies to be a real estate project as per definition given in the

Act and the promoter is covered in the definition of promoter as given in the Act, then a complaint in respect of matters where this Act casts certain obligations upon the promoter can be made to the Regulatory Authority. There cannot be two different authorities to be approached for similar types of complaints. The registration certificate of real estate project is valid from the date of registration and it expires as soon as the project is completed, and the completion certificate is issued i.e. the time period declared by the promoter in accordance with section 4(2) (ℓ) (C) for completion of the project. Hence, even after the expiry of validity of registration there are large number of obligations which are to be discharged by the promoter. Hence, in respect of those obligations complaints of projects registered or exempted irrespective of the fact whether the sale has taken place before the commencement of the Act or after commencement of the Act can be made to the Regulatory Authority and such projects are squarely covered in the ambit of the Real Estate Regulatory Authority. In nutshell, this Act primarily protects the interest of the consumers in case of sale of real estate.

10.9 There will be three categories of real estate projects which can be sold by a promoter:

(i) Real estate projects where completion certificate of the project has been obtained prior to commencement of the RERA Act, 2016 but there is unsold inventory of real estate project.

(ii) The real estate projects which are "on-going" and where the completion certificate has not been issued on the date of commencement of the RERA Act, 2016. So, these are to be registered as real estate projects with the Regulatory Authority.

(iii) New real estate projects to be taken up after commencement of this Act: Here, there can be two types of real estate projects which can be

put to sale by the promoter. (a) where the promoter intends to market/sell real estate project only after obtaining completion certificate; (b) where promoter intends to advertise, market or sell real estate during construction phase i.e. prior to obtaining completion certificate.

All these projects come within the ambit of the Real Estate Regulatory Authority.

10.10 Chapter 2 of the Act, 2016 relates to registration of real estate projects.

Section 3 of the Act, 2016 provides prior registration of real estate project with the Real Estate Regulatory Authority as follows: -

> **3. *Prior registration of real estate project with Real Estate Regulatory Authority***. –
> *"(1) No promoter shall advertise, market, book, sell or offer for sale, or invite persons to purchase in any manner any plot, apartment or building, as the case may be, in any real estate project or part of it, in any planning area, without registering the real estate project with the Real Estate Regulatory Authority established under this Act ..... "*

Section 3(1) provides for certain restrictions on the promoter without registering a real estate project with the real estate regulatory authority concerned.

The proviso to Section 3(1) further provides for registration of ongoing Projects:-

> *".....Provided that projects that are ongoing on the date of commencement of this Act and for which the completion certificate has not been issued, the promoter shall make an application to the Authority for registration of the said project within a period of three months from the date of commencement of this Act."*

10.11 This provision requires that the projects which fulfill following two conditions are required to be registered within a period of three months from the date of commencement of this Act. The commencement date of the Real Estate (Regulation and Development) Act, 2016 is 01.05.2017, except Section 2, 20 to 39, 41 to 58, 71 to 78 and 81 to 92, which came into force with effect from 01.05.2016. Accordingly, by 31.07.2017 the following projects covered in proviso 3(1) of the Act have to register with the Regulatory Authority:

(i) The projects that are ongoing on the date of commencement of the Real Estate (Regulation and Development) Act, 2016; and

(ii) The projects for which completion certificate has not been issued.

10.12 For the issuance of the completion certificate material date is 01.05.2017 i.e. the date of commencement of the Real Estate (Regulation and Development) Act, 2016. Accordingly, all those projects where completion certificate has not been issued on the date of commencement of this Act are necessarily to be registered with the Regulatory Authority within a period of three months.

10.13 The proviso to section 3(1) provides that the projects that are ongoing on the date of commencement of this Act and for which completion certificate has not been issued, the promoter shall make an application to the authority for registration of the said project within a period of three months from the date of commencement of the Act. This Act came into force on 01.05.2017- barring some sections which came into force on 01.05.2016. Section 3 of the Act came into force w.e.f. 01.05.2017 and accordingly, for the on-going projects registration was to be applied by the promoter within three months, i.e., by 31.07.2017.

10.14 Section 3(2) provides those categories of projects where no registration of real estate projects shall be required. The section 3(2) reads as under: -

"Notwithstanding anything contained in sub-section (1)- no registration of the real estate project shall be required-

a) where the area of land proposed to be developed does not exceed five hundred square meters or the number of apartments proposed to be developed does not exceed eight inclusive of all phases:

Provided that, if the appropriate Government considers it necessary, it may, reduce the threshold below five hundred square meters or eight apartments, as the case may be, inclusive of all phases, for exemption from registration under this Act;

b) where the promoter has received completion certificate for a real estate project prior to commencement of this Act;

c) for the purpose of renovation or repair or re-development which does not involve marketing, advertising selling or new allotment of any apartment, plot or building, as the case may be, under the real estate project

Explanation. -For the purpose of this section, where the real estate project is to be developed in phases, every such phase shall be considered a stand-alone real estate project, and the promoter shall obtain registration under this Act for each phase separately."

In sub-section 3 (2) (b) it has been mentioned that those projects where the promoter has received the completion certificate for real estate project prior to commencement of the Act, 2016 have been taken out of the ambit of registration and not the real estate projects which may have received the completion certificate after the commencement of this Act. Section 3(2) exempts certain categories of real estate projects only from prior registration related provisions but not from the ambit of other provisions of the Act, 2016.

10.15 From the plain reading of section 3, it is evident that the projects for which the completion certificate has been issued prior to commencement of this Act have only been exempted from prior registration, if the proviso to section 3(1) is read with section 3 (2) (b). Section 3 (2) provides for categories of projects where no prior registration shall be required. This section 3 (2) (b) specifically provides that no prior registration of the real estate project shall be required where the promoter has received completion certificate for a real estate project prior to commencement of this Act, i.e. prior to 01.05.2017.

In other words all projects, where completion certificate has not been issued are ongoing projects and completion certificate issued by the competent authority on or before 30.04.2017 is the conclusive proof of the fact that the project is complete, and it is not "on-going".

10.16 The Hon'ble Bombay High Court in the case of ***Neelkamal Realtors Suburban Pvt. Ltd. & others Vs. Union of India,*** (2018)1AIR Bom R 558, was pleased to observe in para 255 as under:

> *"The intention of RERA is to bring the complaints of allottees before one Authority and simplify the process. If the interpretation suggested by the petitioners, namely, that the provision is applicable only after coming into force RERA is accepted, this would result in allottees having to approach different fora for interest prior to RERA and subsequent to RERA. In fact, Section 71 of RERA provides that the cases pending before the Consumer Court can be transferred to Authority. Reference to pending cases is obviously a reference to claims for interest and or compensation pending when the RERA came into force."*

10.17 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, in para 23, observed as under:--

> ***"23.*** *In terms of Section 18 of the RERA Act, if a promoter fails to complete or is unable to give possession of an apartment duly completed by the date specified in the agreement, the Promoter would be liable, on demand, to return the amount received by him in respect of that apartment if the allottee wishes to withdraw from the Project. Such right of an allottee is specifically made "without prejudice to any other remedy available to him". 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. 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). The case of Himanshu Giri came under the latter category. The RERA Act thus definitely provides a remedy to an allottee who wishes to withdraw from the Project or claim return on his investment."*

10.18 The **Hon'ble Punjab and Haryana High Court in *CWP No. 38144 of 2018 Experion Developers Pvt. Ltd. Vs. State of Haryana and others*** and other connected matters vide judgment dated 16th October, 2020 while examining the challenge to Sections 13, 18(1) and 19(4) of the Act, 2016 and Rules 3 to 16 of the Haryana Rules as regards their retroactive application to the ongoing projects, vide paras 73 to 80, pleased to observe as under:-

> *"73. The last issue concerns the retroactivity of the provisions of the Act particularly with reference to 'ongoing' projects. The expression "Real Estate Project" is defined in Section 2 (zn) of the Act to mean:*

"the development of a building or a building consisting or apartments, or converting an existing building or a part thereof into apartments, or the development of land into plots or apartments, as the case may be, for the purpose of selling all or some of the said apartments or plots or building, as the case may be, and includes the common areas, the development works, all improvements and structures thereon, and all easement, rights and appurtenances belonging thereto."

74. The Act is intended to apply even to 'ongoing' Real Estate Projects. The expression 'ongoing project' has not been defined under the Act but under Rule 2 (o) of the Haryana Rules which reads as under:

"ongoing project" means a project for which a license was issued for the development under the Haryana Development and Regulation of Urban Area Act, 1975 on or before the 1st May, 2017 and where development works were yet to be completed on the said date, but does not include:

(i) any project for which after completion of development works, an application under Rule 16 of the Haryana Development and Regulation of Urban Area Rules, 1976 or under sub code 4.10 of the Haryana Building Code 2017, as the case may be, is made to the Competent Authority on or before publication of these rules and

(ii) that part of any project for which part completion/completion, occupation certificate or part

thereof has been granted on or before publication of these rules."

75. The expression 'Completion Certificate' has been defined under Section 2 (q) of the Act as under:

"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."

76. This has to be read along with the expression 'occupancy certificate' which is defined under Section 2 (zf) of the Act as under:

"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."

77. Rule 3 of the Haryana Rules talks of application for registration and Rule 4 of 'additional disclosure by Promoters of ongoing projects.' Therefore, all 'ongoing projects' i.e. those that commenced prior to the Act, and in respect of which no completion certificate is yet issued, are covered under the Act. It is plain that the legislative intent was to make the Act applicable to not only to the projects which were to commence after the Act became operational but also to ongoing projects. The issue that arises is whether this is permissible in law?

78. The decision of the Bombay High Court in Neelkamal Realtors Suburban Pvt. Ltd. (supra) has dealt with this issue quite extensively. The conclusion of the Bombay High Court that this retroactive application of the Act, as distinguished from retrospective effect, in relation to ongoing project is consistent with the legal position in this regard. A very conscious decision was taken that the Act should apply not only to new projects but to existing projects as well.

79. The following observations of the Bombay High Court in Neelkamal Realtors Suburban Pvt. Ltd. (supra) are relevant in this context:

> *"86. On behalf of the Petitioners it was submitted that registration of ongoing project under RERA would be contrary to the contractual rights established between the promoter and allottee under the agreement for sale executed prior to registration under RERA. In that sense, the provisions have retrospective or retroactive application. After assessing, we find that the projects already completed are not in any way affected and, therefore, no vested or accrued rights are getting affected by RERA. The RERA will apply after getting the project registered. In that sense, the application of RERA is prospective in nature. What the provisions envisage is that a promoter of a project which is not complete/sans completion certificate shall get the project registered under RERA, but, while getting project registered, promoter is entitled to prescribe a fresh time limit for getting the remaining development work completed. From the scheme of RERA and the subject case laws cited above, we do not find that first proviso to Section 3(1) is violative of Article 14 or Article 19(1)(g) of the Constitution of India. The Parliament is competent to enact a law affecting the*

antecedent events. In the case of State of Bombay v. Vishnu Ramchandra AIR 1961 SC 307, the Apex Court observed that the fact that part of the requisites for operation of the statute were drawn from a time antecedent to its passing did not make the statute retrospective so long as the action was taken after the Act came into force. The consequences for breach of such obligations under RERA are prospective in operation. In case ongoing projects, of which completion certificates were not obtained, were not to be covered under RERA, then there was likelihood of classifications in respect of undeveloped ongoing project and the new project to be commenced. In view of the material collected by the Standing Committee and the Select Committee and as discussed on the floor of the Parliament, it was thought fit that ongoing project shall also be made to be registered under RERA. The Parliament felt the need because it was noticed that all over the country in large number of projects the allottees did not get possession for years together. Huge sums of money of the allottees is locked in. Sizable section of allottees had invested their hard earned money, life savings, borrowed money, money obtained through loan from various financial institutions with a hope that sooner or later they would get possession of their apartment/flat/unit. There was no law regulating the real estate sector, development work/obligations of promoter and the allottee. Therefore, the Parliament considered it to pass a central law on the subject. During the course of hearing, it was brought to notice that in the State of Maharashtra a law i.e. MOFA on the subject has been in operation. But MOFA provisions are not akin to regulatory provisions of RERA.

87. The important provisions like Sections 3 to 19, 40, 59 to 70 and 79 to 80 were notified for operation from 1/5/2017. RERA law was enacted in the year 2016. The Central Government did not make any haste to implement these provisions at one and the same time, but the provisions were

made applicable thoughtfully and phase- wise. Considering the scheme of RERA, object and purpose for which it is enacted in the larger public interest, we do not find that challenge on the ground that it violates rights of the Petitioners under Articles 14 and 19(1)(g) stand to reason. Merely because sale and purchase agreement was entered into by the promoter prior to coming into force of RERA does not make the application of enactment retrospective in nature. The RERA was passed because it was felt that several promoters had defaulted and such defaults had taken place prior to coming into force of RERA. In the affidavit-in reply, the UOI had stated that in the State of Maharashtra 12608 ongoing projects have been registered, while 806 new projects have been registered. This figure itself would justify the registration of ongoing projects for regulating the development work of such projects.

88. On behalf of the Petitioners it was submitted that Parliament lacks power to make retrospective laws. Series of judgments cited above would indicate a settled principle that a legislature could enact law having retrospective/retroactive operation. It cannot be countenance that merely because an enactment is made retrospective in its operation, it would be contrary to Article 14 and Article 19(1)(g). We find substance in the submissions advanced by the learned counsel appearing for the respondents that Parliament not only has power to legislate retrospectively but even modify pre-existing contract between private parties in the larger public interest. No enactment can be struck down merely by saying that it is arbitrary and unreasonable unless constitutional infirmity has been established. It is settled position that with the development of law, it is desirable that courts should apply the latest tools of interpretation to arrive at a more meaningful and definite conclusion. A balance has to be struck between the restrictions imposed and the social control envisaged by Article 19(6). The application of the principles will vary from case to

case as also with regard to changing conditions, values of human life, social philosophy of the Constitution, prevailing conditions and the surrounding circumstances.

89. Legislative power to make law with retrospective effect is well recognized. In the facts, it would not be permissible for the Petitioners to say that they have vested right in dealing with the completion of the project by leaving the proposed allottees in helpless and miserable condition. In a country like ours, when millions are in search of homes and had to put entire life earnings to purchase a residential house for them, it was compelling obligation on the Government to look into the issues in the larger public interest and if required, make stringent laws regulating such sectors. We cannot foresee a situation where helpless allottees had to approach various forums in search of some reliefs here and there and wait for the outcome of the same for indefinite period. The public interest at large is one of the relevant consideration in determining the constitutional validity of retrospective legislation."

80. This Court concurs with the above conclusions. No order of the Supreme Court either entertaining a Special Leave Petition against the above decision in Neelkamal Realtors Suburban Pvt. Ltd. (supra) or staying its operation has been shown to this Court. In any event, the Court is of the view that there is nothing unreasonable and arbitrary in making the provisions of the Act applicable to all ongoing projects. There is a clear indication in the Act read with the Haryana Rules of what can be considered to be an ongoing project. If it is the case of the promoter that the completion certificate has been deliberately delayed, that would be examined by the AO, the Authority or the Appellate Tribunal,

as the case may be, and the decision on that issue shall be taken into account while deciding the case. The mere fact that there may be an instance where there has been deliberate delay in issuing the completion certificate will not render the retroactivity of the provisions unreasonable or arbitrary. Consequently, this Court rejects the challenge to Sections 13, 18 (1) and 19 (4) of the Act and Rules 3 to 16 of the Haryana Rules as regards their retroactive applicability to 'ongoing projects'."

10.19 It is an accepted fact that Multi-storeyed Housing Scheme by the name of Himalaya Enclave under Vrindavan Yojana, Sector-17, Lucknow was advertised in the year 2012 and on the basis of the allotment/demand letter dated 02.04.2013, the cost of the flat was Rs. 29.77 Lacs and the money was deposited in installments by the respondent and the possession was given on the direction of the Tribunal on 12.02.2020, i.e. much after the date of coming into force of the Act, which came into force w.e.f. 01.05.2017. Since the Completion Certificate (C.C.) was issued on 24.04.2019, therefore, the project of the appellant falls under the category of ongoing projects and this is the reason appellant got registered the project in question with UP RERA vide Registration No- UPRERAPRJ8977. Therefore, the provisions of the Act of 2016 will apply.

10.20 For the sake of argument, even if we assume that the Act applies only to those projects where the agreement was signed after 01.05.2017, then where will the buyer go for seeking relief if they have entered into an agreement prior to 01.05.2017 and the possession of their units/flats/plots has not been given even after 01.05.2017. The Act of 2016 has been promulgated primarily in order to protect the interests of the consumers (buyers), since the Consumer Protection Act 1986 was not adequate to address all the

concerns of the buyers and promoter in the Real Estate Sector. Applying the provisions of the Act to only those projects where agreement has been signed after 01.05.2017 and not applying them to the projects where the agreement was signed prior to 01.05.2017 is quite illogical, and if accepted, will defeat the very objective for which the Act was promulgated.

10.21 The legislature not only has power to legislate retrospectively but even to modify pre-existing contracts between the parties in the larger public interest. There is nothing unreasonable or arbitrary in making the provisions of the Act applicable to all ongoing projects including the present case as the project in question falls within the category of ongoing projects as defined under Section 3 of the Act. We are of the considered view that the jurisdiction of the Regulatory Authority and the Adjudication Officer applies even to the projects where some kind of written understanding has been reached between the parties, even prior to coming into force of the Act, as the Act is retroactive in nature. Therefore, the argument of the appellant/promoter that the project in question does not fall within the jurisdiction of the Regulatory Authority is not tenable, and legally not valid.

10.22 Thus, we are of the considered view that a complaint pertaining to violation of provisions of the Act, 2016, the Uttar Pradesh Real Estate (Regulation and Development) Rules, 2016 (hereinafter referred to as Rules, 2016) and regulations made thereunder may be filed by any aggrieved person in respect of real estate belonging to any real estate project which qualifies to be real estate project as per the definition given in section 2(zn) of the Real Estate (Regulation and Development) Act, 2016. Further, for the project in question the Regulatory Authority is vested with the powers & jurisdiction to consider and decide the complaint of respondent under the Scheme of Act,

2016, Rules 2016 and Regulations framed there under. Question no. (i) is answered accordingly.

11. Question no. (ii) is regarding, whether under the scheme of the Act, 2016 and Rules, 2016 any mechanism has been provided for determination of the interest or compensation for the delay in handing over possession.

11.1 The Act envisages adjudication by the Regulatory Authority in terms of the powers under Chapter V of the Act and in particular Sections 31, 32, 34, 35 and 40 of the Act, and for adjudging compensation by the Adjudicating Officer in terms of the power under Chapter VIII of the Act and in particular Sections 71 and 72 thereof.

11.2 The Act spells out the obligations of the promoter of a real estate project and the consequence of the promoter failing to fulfill those obligations. Some of those obligations are enumerated in Section 11, 12 to 18 of the Act.

11.3 Section 18 of the Act talks of the consequence of the failure by the promoter to complete or to be unable to give possession of an apartment, plot or building either in terms of the agreement for sale or failure to complete the project by the date specified therein or on account of discontinuance of his business either on account of suspension or revocation of the registration under the Act or for any other reason. In the event of either of the above contingencies under Section 18 (1) (a) of the Act, the promoter is made liable on the demand of the allottee:

(i) In the event that the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by the promoter in respect of that apartment, plot, building, as the case may be, together with "interest at such rate as may be prescribed" "including compensation in the manner as provided under this Act";

(ii) Where an allottee does not intend to withdraw from the project the promoter shall pay him for every month's delay in the handing over of the possession, "interest at such rate as may be prescribed". Section 18 (2) of the Act mandates that in case loss is caused to allottee due to the defective title of the land, on which the project is being developed or has been developed, the promoter shall compensate the allottee and that such claim for compensation under Section 18 (2) shall not be barred by limitation provided under any law for the time being in force.

11.4 Section 18 (3) of the Act states that where the promoter fails to discharge any other obligations under the Act or the Rules or Regulations made there under or in accordance with the terms and conditions of the agreement for sale, the promoter shall be liable to pay "such compensation" to the allottees, in the manner as provided under the Act.

11.5 It is apparent on a reading of Section 18 of the Act as a whole that upon the contingencies spelt out therein, (i) the allottee can either seek refund of the amount by withdrawing from the project; (ii) such refund could be together with interest as may be prescribed; (iii) the above amounts would be independent of the compensation payable to an allottee either in terms of Sections 18 (2) or 18 (3) of the Act read with other provisions; (iv) the allottee who does not intend to withdraw from the project will be required to be paid by the promoter interest for every month's delay of handing over possession.

11.6 When one turns to the powers of the Authority, it is seen that under Section 31, the complaints can be filed either with the Authority or with the Adjudicating Officer (AO) for violation or contravention of the provisions of the Act or the Rules and Regulations. Such complaint can be filed against "any promoter, allottee or real estate agent", as the case may be. Such complaint can be filed by "any aggrieved person". The Explanation to

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

11.7 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.

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

Extract of Section 31 of the Act

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

Explanation

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

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

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

Extract of Rule 33(1) of Rules-

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

It is evident from Rule 33(1) of the Rules that the complaints filed with the Regulatory Authority should be in Form M, except those complaints which require to be adjudicated by the Adjudicating Officer. On top of Form M, it is clearly written that it is as per provisions of Rule 33(1) and is meant for

filing complaint under Section 31 of the Act. Further Column 5 of the Form M specifically requires a complainant to indicate the relief(s) sought.

11.9 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.

11.10 It is clear from Rule 34 (1) of the Rules that a complaint for "compensation" under Sections 12, 14, 18 and 19 of the Act is to be filed before the Adjudicating Officer in Form N. It is mentioned on top of Form N itself that it is an application to Adjudicating Officer for claim of compensation under Rule 34(1) of the Rules and under Section 31 of the Act read with Section 71 of the Act. A complainant is required to indicate in Column 5 of Form N, the compensation sought.

11.11 Thus, it is our considered view that Form N is to be filed before an "Adjudicating Officer" for only claiming "compensation" under Rule 34(1); whereas Form M is to be filed before the Regulatory Authority under Rule 33(1) of the Rules for all types of reliefs, barring "compensation", for any violation under the Act, Rules or Regulations.

11.12 We have also examined the provisions of Sections 71 and 72 of the Act. The opening words of Section 71 (1) of the Act make it clear that the scope and functions of the Adjudicating Officer (AO) are only for ‘adjudging

compensation under Sections 12, 14, 18 and 19 of the Act'. If the legislative intent was to expand the scope of the powers of the AO, then the wording of Section 71 (1) ought to have been different. On the contrary, even the opening words of Section 71 (2) of the Act make it clear that an application before the AO is only for 'adjudging compensation'. Even in Section 71 (3) of the Act, it is reiterated that the AO may direct 'to pay such compensation or interest as the case may be, as he thinks fit' in accordance with provisions of Sections 12, 14, 18 and 19 of the Act. This has to be seen together with the opening words of Section 72 of the Act, which read *"while adjudging the quantum of compensation or interest, as the case may be, under Section 71, the adjudicating officer shall have due regard to the following factors, namely,……."*

On a collective reading of Sections 71 and 72 of the Act, the legislative intent becomes explicit. This is to limit the scope of the adjudicatory powers of the AO for determining "compensation or interest as he thinks fit" in the event of violation of Sections 12, 14, 18 and 19 of the Act.

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

Furthermore, the legislation has clearly, intentionally and suitably used the word “penalty” or “interest at such rate as may be prescribed” in case of Authority and “compensation” or “interest as he thinks fit” in case of Adjudicating Officer.

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

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

From the aforementioned discussion, it is clear that the Act of 2016 provides a mechanism for determination of interest and/or compensation for the delay in handing over possession of the unit to the allottee, if the allottee wishes to stay with the project. Question no. (ii) is answered accordingly.

12. Question no. (iii) is regarding whether the Regulatory Authority ought to have examined the complaint of the respondent only on the basis of agreed terms and conditions mentioned in the Registration Booklet read with allotment letter?

12.1 We now examine the relevant Clauses of the Registration Booklet and the conditions of the demand letter dated 17.10.2018.

Approximate English version of Clauses 4.5, 4.6, 4.7, 9.1 & 9.2 are as follows:-

Clause 4.5 If an applicant applies to get his registration amount back within 3 months after the eligibility selection, then the balance amount will be returned to him without interest after deducting 20 percent of the registration amount. But if such an application is submitted after 3 months, the balance registration amount will be refunded without interest after deducting 50 percent of the registration amount, and the registration will be cancelled. The prescribed refund voucher and acknowledgment receipt will have to be submitted along with the application form to the concerned property management office to receive the registration amount. No claim will be accepted for reviving the registration so cancelled at a later stage.

Clause 4.6 If the Parishad is unable to allot the flat even after six months from the deposit of final prescribed installment, due to delay in construction of the flats, then the deposited amount of the allottee will be returned with interest calculated from the next month after depositing the last installment till the month before the demand of refund of the amount, as per the rules of the Parishad in force for the time being i.e. the interest rate payable on the savings account by a nationalized bank.

Clause 4.7 If for any reason the Parishad decides not to operate this scheme, then the deposited amount of the registered applicants/allottees will be refunded as per rules. But in this situation, the interest will be paid only if the amount remains deposited in the account of the Parishad for more than one year, and the interest rate payable on the bank account will be the same as given by the nationalized bank.

Clause 9.1 The construction of the flats is proposed to be completed within a period of 28 months from the date of issue of demand letter.

Clause 9.2 The allottee is required to pay the price of the flat and all other dues including stamp duty before the registry/sale deed is executed in his favour. The physical possession of the unit will be handed over only after payment of stamp duty, registry charges and after execution of the conveyance deed.

The demand letter dated 17.10.2018, states as follows:-

Terms and condition – If the payment (of Rs. 1,09,968/=) is not made by the prescribed date (i.e. 30.11.2018) as indicated in the demand letter, then the installment amount due will be liable for payment of delay charges at the rate of Rs. 75/= per day.

12.2 Having examined the terms and conditions of the Registration Booklet/Allotment letter, 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 para 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".

12.3 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……..".

12.4 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."

12.5 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.

12.6 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.

12.7 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."

12.8 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."

12.9 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".

12.10 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.

12.11 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".*

12.12 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."

12.13 The appellant/promoter has submitted that the Regulatory Authority's order dated 27.05.2019 is illegal, arbitrary and unjust in as much as the Regulatory Authority does not have the power to pass the order of interest at the rate of MCLR+1% on the deposited amount due to the effect of Section 15 & 71 of the Act. The appellant has further submitted that clause 4.6 & clause 4.7 of the Registration Booklet provide that the amount deposited by the

respondent would be refunded alongwith interest at the rate payable on the savings bank account of the Nationalized Bank, if the appellant could not allot the flat after six months of the payment of last instalment, if a refund is demanded by the respondent. The respondent/allottee submitted that as per the Registration Booklet issued by the appellant/promoter, and as per their demand letter dated 17.10.2018, a delay charge at the rate of Rs. 75/= per day is being charged (on Rs. 1,09,968/=) by the appellant/promoter from the respondent/allottee for any default in payment.

12.14 At certain places, the appellant/promoter has mentioned about Section 15 of the Act. A perusal of Section 15 of the Act indicates that it is regarding obligations of the promoter in case of transfer of Real Estate Project to a third party. In our considered view Section 15 does not apply to the present case.

In the rejoinder affidavit filed by the appellant/promoter, there is a mention about Rule 15 of the Rules 2016.

We therefore examine Rule 15 of U.P. Real Estate (Regulation and Development) Rules, 2016 which deals with "Rate of interest payable by the promoter to the allottee". Although, there is a misprint in Rule 15 to the extent that Rule 14(4) has been copied against Rule 15, yet the intent of the Legislation is clear from the heading of Rule 15 that promoter has to pay interest to the allottee for any violation of any of the provisions of the Act and Rules by the promoter. We do not find much force in the appellant's averments that the rate of interest payable by the promoter is governed by Rule 15 of the Rules 2016, in which no rate of interest is prescribed. We therefore find that the averments made by the appellant/promoter in this regard are misconceived.

12.15 An examination of Section 71 of the Act reveals that an A.O. may be appointed by the Regulatory Authority in consultation with the Government. The A.O. alone has powers to deal with the applications for adjudging compensation under Section 71 read with Sections 12, 14, 18 & 19 of the Act. Section 71(3) further provides that the A.O. has powers to decide compensation or interest "as he thinks fit" in accordance with the provisions of Section 12, 14, 18 & 19 of the Act. In the instant case, the Regulatory Authority has directed the promoter to pay interest at the rate of MCLR+1percent per annum. No "compensation" has been awarded in this case, which is in the exclusive domain of an A.O.

12.16 On scrutiny of demand letter dated 17.10.2018 (placed at S. No. 82-83 of the appeal), we find that the amount payable by the buyer/allottee to the promoter in case of default in payment of Rs. 1,09,968/=, as mentioned in Condition para of the said letter is Rs. 75/= per day, which is much higher than the interest or delayed penalty payable by the promoter to the buyer/allottee in case of default/delayed possession as provided in the Registration Booklet, wherein it is provided that the promoter will refund the money after certain deductions to the allottee without any interest as mentioned in Clause 4.5 of the Registration Booklet; and with an interest at the rate of savings account interest of a Nationalized Bank as laid down in Clauses 4.6 & 4.7 of the Registration Booklet. It is evident from these terms and conditions of the Demand Letter and the Clauses of Registration Booklet that they do not provide a level playing field between the appellant/promoter and the allottee/respondent. We feel that this imbalance is on account of the fact that the buyer/allottee has much less bargaining power as compared to the promoter, and since the buyer/allottee had no choice but to accept such "dotted line, one sided, unjust and unreasonable" terms and conditions of the Registration Booklet, and of the Demand Letter as framed by the

appellant/promoter. Such terms and conditions which are one-sided, unjust and unreasonable cannot be made binding on the allottee/respondent.

12.17 The Hon'ble Supreme Court in Civil Appeal Nos. 1232 and 1443-1444 of 2019 ***(R. V. Prasannakumaar and Ors. Vs. Mantri Castles Pvt. Ltd. and Ors)*** decided on 11.02.2019, reported in MANU/SC/0235/2019, while examining the award of interest by the National Consumer Disputes Redressal Commission (NCDRC) for delay in giving possession by the Builder/Promoter to the allottee/home buyer, pleased to observe that the jurisdiction of the NCDRC to award just compensation under the provisions of the Consumer Protection Act, 1986 could not in the circumstances be constrained by the terms of the agreement if the agreement is one sided and does not provide sufficient recompense to the flat purchasers. The relevant paras 8 and 9 of the said judgment are reproduced below:-

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

by the terms of the agreement. The agreement in its view is one sided and does not provide sufficient recompense to the flat purchasers."

12.18 In the light of above, we are of the view that the appellant in the present case is a corporation of the State Government having wide powers for acquisition of land and for development of residential projects. The rules, terms & conditions provided in the Registration Booklet and the Demand letter are heavily loaded in favour of the promoter (i.e. appellant) and the buyer (respondent) is in an obvious disadvantaged position and has no real choice but to agree to the rules, terms & conditions of the Registration Booklet and of the Demand Letter in order to buy a residential flat of his dreams, using his hard earned savings. Such terms and conditions of agreement, called by any name whatsoever, fall in the category of "dotted line" agreements or "one sided, unfair and unreasonable" agreements, as observed by the Hon'ble Apex Court in several cases. We thus while rejecting the argument of the appellant that Regulatory Authority's order is not sustainable merely on the ground that it has ordered the appellant to pay to the respondent an interest which is higher in rate than what is provided in the Registration Booklet, hold that the Regulatory Authority is required to examine a complaint as per the provisions of the Act, Rules and Regulations and not merely on the basis of the terms and conditions of the Registration Booklet or as provided in the Demand Letter only. Question no. (iii) is accordingly answered against the appellant/promoter.

13. The question no. (iv), is regarding determination as to whether there was a delay in handing over the possession of the unit and if yes, the benefit of force majeure can be given to appellant/promoter.

13.1 In the present case, the complainant (respondent) filed his complaint on 29.09.2018 before the Regulatory Authority seeking direction to the appellant for payment of required bank interest from January 2015 and for early handing over of the possession. The Regulatory Authority in its order dated 27.05.2019 has directed the appellant/promoter to handover possession of the unit after obtaining OC/CC and execution of conveyance deed as well as pay interest at the rate of MCLR+1% per annum to the respondent/allottee from the promised date of delivery, up till the date of actual possession.

13.2 The appellant/promoter has submitted that no time is stipulated for delivery of the flat in question. Further, it is submitted that if the allottee, in spite of rescinding the contract on the ground of non performance, accepts the belated delivery of the possession of the flat in question then the allottee is not entitled to get any interest on the deposited amount.

13.3 On perusal of Clause 9.1 of the Registration Booklet, it is evident that the construction of the flat was to be completed within 28 months from the date of issuance of demand letter. In the instant case, the demand letter has been issued on 02.04.2013. Accordingly, the flat in question should have been constructed and delivered by 01.08.2015.

13.4 The Hon'ble Supreme Court has time and again held that where the buyer has to suffer on account of delay beyond a reasonable time then he/she has to be compensated either by way of interest or penalty and in this connection Hon'ble Supreme Court in ***M/s. Fortune Infrastructure Vs. Trevor Dlima & Ors (2018) 5SCC 442*** observed as follows -

> *".....Moreover, a person cannot be made to wait indefinitely for the possession of the flats allotted to them and they are entitled to seek the refund of the amount paid by them, along*

with compensation. Although we are aware of the fact that when there was no delivery period stipulated in the agreement, a reasonable time has to be taken into consideration……"

13.5 Hon'ble Supreme Court in ***Civil Case No. 3182 of 2019 Kolkata West International City Pvt. Ltd. Vs. Devashish Rudra , 2019(6) SCALE 462*** has observed that :-

"…… it would be unreasonable to require a buyer to wait indefinitely for the possession ……"

13.6 It is an accepted fact that the Completion Certificate was issued on 24.04.2019 and offer of possession dated 08.08.2019 was given by the appellant after filing of the present appeal on 12.07.2019. But subsequently, Executive Engineer of the appellant in pursuance to the Complaint of the respondent on the portal of the appellant on 21.08.2019 informed the respondent vide letter dated 26.09.2019 that the appeal has been filed against the order of the Regulatory Authority dated 27.05.2019 and after the decision of the Tribunal action will be taken.

13.7 The possession of the flat in question was handed over to the allottee (respondent) on 25.02.2020, on the direction of the Tribunal dated 12.02.2020, which means that there was a delay of 4 years and 6 months in handing over of the possession calculated from the promised date of possession. Since, there has not been any default or delay in making the payments by the allottee/respondent, therefore delay is attributable to the appellant/promoter.

13.8 We may further observe that delay was further caused due to inaction on the part of the officers of the appellant, who after offer of possession dated 08.08.2019 of the appellant informed the respondent vide letter dated

26.09.2019 in pursuance to the complaint of the respondent dated 21.08.2019 that action will be taken after decision of the Tribunal on the appeal. In our considered view, there was no justification to deny possession to the respondent on account of the pendency of the appeal as appellant could not have been aggrieved by the direction of the RERA to give possession to the respondent, except the interest part.

13.9 The appellant/promoter has pleaded for being given the benefit of force majeure on account of the delay caused by external circumstances which were beyond the control of the appellant. It is submitted by the appellant/promoter that an interruption in the work was caused due to action initiated by Kisan Union and land owners as they proceeded to Hon'ble High Court by filing Land Acquisition Writ Petition No. 110/2011 and obtained stay in the matter.

13.10 The force majeure has been explained in Section 6 of the Act of 2016, wherein it has been mentioned that the registration granted under section 5 may be extended by the Authority on an application made by the promoter due to force majeure, in such form and on payment of such fee as may be specified by regulations made by the Authority:

The explanation to Section 6 defines the force majeure, that "for the purpose of this section, the expression "force majeure" shall mean a case of war, flood, drought, fire, cyclone, earthquake or any other calamity caused by nature affecting the regular development of the real estate project."

13.11 Under Rule 7.1, of the Real Estate (Regulation and Development) (Agreement for Sale/Lease) Rules 2018, the procedure and conditions of possession of the apartment/ plot alongwith situation, which can be called as

force majeure, has been defined and prescribed. Rule 7.1 is extracted as follows:-

7. POSSESSION OF THE APARTMENT/PLOT

7.1 *"……The Promoter assures to hand over possession of the [Apartment/Plot] along with ready and complete Common Areas with all specifications, amenities and facilities of the Project in place on - _____ , unless there is delay or failure due to war, flood, drought, fire, cyclone, earthquake or any other calamity caused by nature affecting the regular development of the real estate project ("Force Majeure"). If, however, the completion of the Project is delayed due to the Force Majeure conditions then the Allottee agrees that the Promoter shall be entitled to the extension of time for delivery of possession of the [Apartment/Plot]:*

Provided that such Force Majeure conditions are not of a nature which make it impossible for the contract to be implemented. The Allottee agrees and confirms that, in the event it becomes impossible for the Promoter to implement the project due to Force Majeure conditions, then this allotment shall stand terminated and the Promoter shall refund to the Allottee the entire amount received by the Promoter from the allotment within 120 days from that date. The Promoter shall intimate the Allottee about such termination at least thirty days prior to such termination. After refund of the money paid by the Allottee, the Allottee agrees that he/she shall not have any rights, claims etc. against the Promoter and that the Promoter shall be released and discharged from all its obligations and liabilities under this Agreement……"

13.12 Recently, in ***Civil Appeal No. 940/2017 (Vikram Chatterjee and Ors. Vs. Union of India and Ors.),*** the Hon'ble Supreme Court has defined Force Majeure as under :-

"Force Majeure shall mean a case of war, flood, drought, fire, cyclone, earthquake or any other calamity caused by nature".

13.13 Force majeure clause is generally provided in the Contracts/Agreements and this clause typically spells out specific circumstances or events, which would qualify as force majeure events. The consequences of occurrence of such events, to qualify for the benefit of force majeure, they should be beyond the control of the parties and the parties will be required to demonstrate that they have made attempts to mitigate the impact of such force majeure events. Depending upon the language of the force majeure clause, the parties may be required to issue a notice formally intimating the other party of the occurrence of such events and the invocation of the force majeure clause.

13.14 A perusal of the Registration Booklet and the Allotment Letter indicates that no specific circumstances or events have been spelled out in these documents which can be termed as force majeure events. We also find that the appellant/promoter did not issue any formal notice intimating the allottee/respondent about the delay taking place in completion of the project due to any event which would qualify as force majeure.

13.15 It is clear from the above that the expression force majeure, as defined in the Act of 2016, means a case of war, flood, drought, fire, cyclone, earthquake or any other calamity caused by nature. We also find that the Registration Booklet in Clause 9.1 clearly spells out the expected date of possession as "within 28 months from the date of issuance of demand letter", and there is no force majeure clause mentioned therein. We also find that the project in question was launched in 2012, whereas the land dispute was before the Hon'ble High Court since 2011. The appellant/promoter has failed to explain

as to why the fact of land dispute was not made public in the Registration Booklet/Advertisement issued after 2011, and as to why the project was launched on the disputed land, as well as the payments/installments were taken from the allottees, despite stalling of the project due to the order of the Hon'ble High Court passed in 2011.

13.16 It is evident from the facts mentioned earlier that there has been a delay of 4 years and 6 months in handing over of the possession despite the allottee/respondent having made payments on time as per demand. The delay caused in completion of the project is solely on account of the appellant/promoter. There is little force in the averments made by the appellant/promoter that the benefit of force majeure be given as the circumstances were beyond its control. Accordingly, question no. (iv) is answered against the appellant/promoter.

14. The question no. (v), is regarding respondent's entitlement for interest and/or compensation on account of delayed possession and whether the rate of interest granted by the A.O. is in accordance with law.

14.1 A perusal of the complaint dated 29.09.2018 (placed at S. No. 84 of the Appeal) made by the respondent before the Regulatory Authority indicates that the respondent had asked for early handing over of the possession and sought direction to the appellant for payment of required bank interest from January 2015.

14.2 An examination of the Regulatory Authority's order passed on 27.05.2019 reveals that the Regulatory Authority has directed the appellant/promoter to handover possession of the unit after obtaining OC/CC and execution of the conveyance deed as well as to pay interest at the rate of MCLR+1 percent per annum for the delay period from the date of promised delivery uptill the date of actual possession.

14.3 Section 18(1) of the Act clearly specifies that if a promoter fails to give possession of a flat duly completed by the date specified, and if an allottee does not intend to withdraw from the project, then he shall be paid interest by the promoter for every month of delay till handing over of the possession at such rate as may be prescribed. We, therefore, hold that an allottee (respondent) is entitled for getting interest and/or compensation on account of delayed possession under the scheme of the Act of 2016.

14.4 On examining the quantum of interest to be paid by the appellant to the respondent, we first examine the meaning of MCLR. The term MCLR stands for the Marginal Cost of Lending Rate, which is the minimum interest that a bank can lend at. The RBI introduced the MCLR methodology for fixing interest rate from 01.04.2016 and the MCLR replaced the base rate structure, which had been in place since July 2010. Banks review and publish MCLR's every month. Since the allottees of the Real Estate have to often take loan to supplement their savings before buying a property, the A.O.'s direction for interest at the rate of MCLR +1% is equitable and just for the reason that the home buyers when they receive an interest at the rate of MCLR +1% for the period of delayed possession, their cost of borrowing money from the bank, gets more or less off-set by the interest they get for the delayed possession.

14.5 We have come across various orders of the Regulatory Authority as well as of the A. O. wherein they had granted interest at the rate of MCLR+1% per annum in case of delayed projects. This Tribunal 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**, in which the Tribunal had held as follows:-

"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....."

14.6 In view of the aforementioned, we are of the view that the respondent is entitled for interest on account of delayed possesson and the rate of interest i.e. MCLR+1% granted by the Regulatory Authority is fair, just and reasonable – as it balances the equities between the parties and the Regulatory Authority's action is in accordance with the provisions of the Act. Question no. (v) is answered accordingly.

15. The question no. (vi), is regarding, whether a home buyer who obtained possession or executed deed of conveyance during the pendency of the complaint case has lost his right to claim interest and/or compensation for the delay in handing over possession of the Unit/Apartment/Flat?

15.1 As per record, the conveyance deed was executed by the appellant in favour of the respondent and possession of the Unit/Apartment/Flat was given to the respondent on 25.02.2020, in pursuance to the Tribunal's direction dated 12.02.2020, whereas, as per Registration Booklet of the appellant, the possession of the Unit/Apartment/Flat was to be given to the respondent in 28 months from the date of allotment, i.e. by 01.08.2015.

15.2 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."

15.3 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 execution of the conveyance deed and taking possession of the Unit/Apartment/Flat booked by him, during the pendency of the complaint case or even thereafter. The question no. (vi) is answered accordingly.

16. The appellant/promoter has relied upon the judgment passed in the case of ***Bangalore Development Authority Vs. Syndicate Bank***, decided by Hon'ble Apex Court in the matter of self financing scheme. On examination, we find that Hon'ble Supreme Court in the case of Bangalore Development Authority Vs. Syndicate Bank (supra) while laying down principles for delay in the delivery of possession was pleased to observe that if some statute steps in and creates any statutory obligation on the part of the Development Authority in the contractual field, the matter will be governed by the provisions of that statute. The relevant portion of para 10 is being extracted hereinbelow:-

"10. Where a Development Authority forms layouts and allots plots/flats (or houses) by inviting applications, the following general principles regulate the granting of relief to a consumer

(applicant for allotment) who complains of delay in delivery or non-delivery and seeks redressal under the Consumer Protection Act, 1986 ('Act' for short) - [vide : Lucknow Development Authority vs. M. K. Gupta - 1994 (1) SCC 243, Ghaziabad Development Authority vs. Balbir Singh - 2004 (5) SCC 65, and Haryana Development Authority vs. Darsh Kumar - 2005 (9) SCC 449, as also Ghaziabad Development Authority vs. Union of India - 2000 (6) SCC 113]:

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

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

……."

16.1 The appellant/promoter has also placed reliance on judgment dated 04.03.2009 passed by Hon'ble Apex Court in ***Civil Appeal No. 6051/2002 (Ghaziabad Development Authority Vs. Shakuntala Rohatgi***). As far as this judgment is concerned, the Hon'ble Supreme Court while making following observations, placed reliance on the principles laid down

regarding award of interest in ***Ghaziabad Development Authority Vs. Balbir Singh (2004)5 SCC 65, Municipal Corporation Chandigarh and others Vs. Shanti Nikunj, (2006)4 SCC 109 and Bangalore Development Authority Vs. Syndicate Bank (2007) 6 SCC 711.*** The relevant portion of Para 10 of **Bangalore Development Authority Vs. Syndicate Bank** has been extracted in the preceding para:-

With utmost humility at our command, we observe that the ratio of cases ***Bangalore Development Authority Vs. Syndicate Bank*** *and* ***Ghaziabad Development Authority Vs. Shakuntala Rohatgi*** do not apply to the present case, since both the judgments are prior to the promulgation of the Act of 2016. It is our considered view that the provisions of the Act of 2016 are to be examined for deciding the instant case.

17. On the basis of aforesaid analysis and examining the material on record, as well as the grounds of appeal in detail, we do not find any force in the grounds of appeal. There is no illegality, infirmity or perversity in the order of the Regulatory Authority. Accordingly, while upholding the order dated 27.05.2019 of the Regulatory Authority, we **dismiss** the appeal.

18. We direct the Registry to transfer the entire amount deposited by the promoter under the provisions of Section 43(5) of the Act to the concerned account of the U.P. Real Estate Regulatory Authority (UP RERA), who will dispose it off in accordance with its' judgment/order dated 27.05.2019. We hope and trust that UP RERA will remit the amount to the respondent/buyer after due diligence and proceed for recovery of the balance amount from the appellant/promoter, if necessary. In case the amount being transferred to UP RERA is in excess of what is due to be paid to the respondent/buyer, then the remaining balance amount will be returned to the appellant/promoter. This is being done in order to protect the interests of the real estate allottees/buyers, who have very little bargaining power as

against that of the promoter, and also in accordance with the spirit of the Act of 2016.

19. No order as to costs.

(Rajiv Misra) (D.K. Arora)

Dated: 10.08.2021
GAURAVSRI

This judgment was pronounced in open court through video conferencing.

(Rajiv Misra) (D.K. Arora)

Dated: 10.08.2021
GAURAVSRI