RESERVED JUDGMENT
BENCH-1

THE UTTAR PRADESH REAL ESTATE APPELLATE TRIBUNAL, AT LUCKNOW.

1.APPEAL NO. 132/2023

U.P. State Industrial Development Authority. ……………Appellant.

Versus

Alpana Dwivedi. ……………Respondent.

With

2.APPEAL NO. 134/2023

U.P. State Industrial Development Authority. ……………Appellant.

Versus

Laxmi Devi Mishra. ……………Respondent.

With

3.APPEAL NO. 135/2023

U.P. State Industrial Development Authority. ……………Appellant.

Versus

Shweta Singh Rajput ……………Respondent.

With

4.APPEAL NO. 136/2023

U.P. State Industrial Development Authority. ……………Appellant.

Versus

Madhu Bajpai ……………Respondent.

With

5.APPEAL NO. 137/2023

U.P. State Industrial Development Authority. ……………Appellant.

Versus

Jogendra Singh Pal. ……………Respondent.

With

6.APPEAL NO. 138/2023

U.P. State Industrial Development Authority. ……………Appellant.

Versus

Sunil Kumar. ……………Respondent.

With

7.APPEAL NO. 139/2023

U.P. State Industrial Development Authority. ……………Appellant.

Versus

Indra Jeet Singh. ……………Respondent.

With

8.APPEAL NO. 140/2023

U.P. State Industrial Development Authority. ……………Appellant.

Versus

Manoj Awasthi ……………Respondent.

With

9.APPEAL NO. 143/2023

U.P. State Industrial Development Authority. ……………Appellant.

Versus

Jeetendra Kumar. ……………Respondent.

With

10.APPEAL NO. 144/2023

U.P. State Industrial Development Authority. ……………Appellant.

Versus

Rajesh Kumar Jaiswal. ……………Respondent.

With

11.APPEAL NO. 146/2023

U.P. State Industrial Development Authority. ……………Appellant.

Versus

Sapna Singh. ……………Respondent.

With

12.APPEAL NO. 148/2023

U.P. State Industrial Development Authority. ……………Appellant.

Versus

Ravi Sharma. ……………Respondent.

With

13.APPEAL NO. 149/2023

U.P. State Industrial Development Authority. ……………Appellant.

Versus

Archana Shukla. ……………Respondent.

With

14.APPEAL NO. 150/2023

U.P. State Industrial Development Authority. ……………Appellant.

Versus

Kuldeep Singh Negi. ……………Respondent.

With

15.APPEAL NO. 151/2023

U.P. State Industrial Development Authority. ……………Appellant.

Versus

Ashok Chandra Gupta. ……………Respondent.

With

16.APPEAL NO. 152/2023

U.P. State Industrial Development Authority. ……………Appellant.

Versus

Gurmeet Singh. ……………Respondent.

With

17.APPEAL NO. 154/2023

U.P. State Industrial Development Authority. ……………Appellant.

Versus

Akhilesh Chandra Saxena. ……………Respondent.

With

18.APPEAL NO. 155/2023

U.P. State Industrial Development Authority. ……………Appellant.

Versus

Anju Yadav. ……………Respondent.

With

19.APPEAL NO. 156/2023

U.P. State Industrial Development Authority. ……………Appellant.

Versus

Vandana Jaiswal. …………Respondent.

With

20.APPEAL NO. 157/2023

U.P. State Industrial Development Authority. ……………Appellant.

Versus

Mahesh Singh. ……………Respondent.

With

21.APPEAL NO. 158/2023

U.P. State Industrial Development Authority. ……………Appellant.

Versus

Raghvendra Singh. ……………Respondent.

With

22.APPEAL NO. 159/2023

U.P. State Industrial Development Authority. ……………Appellant.

Versus

Amit Singh. …………Respondent.

With

23.APPEAL NO. 160/2023

U.P. State Industrial Development Authority. ……………Appellant.

Versus

Hari Krishan Gupta. ……………Respondent.

With

24.APPEAL NO. 165/2023

U.P. State Industrial Development Authority. ……………Appellant.

Versus

Mata Deen Kanaujia. ……………Respondent.

With

25.APPEAL NO. 166/2023

U.P. State Industrial Development Authority. ……………Appellant.

Versus

Nisha Devi. ……………Respondent.

With

26.APPEAL NO. 167/2023

U.P. State Industrial Development Authority. ……………Appellant.

Versus

Rakesh Kumar Verma. ……………Respondent.

With

27.APPEAL NO. 168/2023

U.P. State Industrial Development Authority. ……………Appellant.

Versus

Malay Moitro. ……………Respondent.

With

28.APPEAL NO. 169/2023

U.P. State Industrial Development Authority. ……………Appellant.

Versus

Rajeev Kumar Yadav. ……………Respondent.

With

29.APPEAL NO. 170/2023

U.P. State Industrial Development Authority. ……………Appellant.

Versus

Bhanu Pratap Singh. ……………Respondent.

<u>Hon'ble Mr. Justice (Dr.) D. K. Arora, Chairman.</u>
<u>Hon'ble Mr. Sanjai Khare, Judicial Member.</u>

1. Before we proceed to examine the instant matter/issue, we deem it proper to place on record that on demitting office by Technical Member from 26.09.2023 the judicial functioning of the Tribunal had come to stand still with effect from 27.09.2023. On receipt of the notification dated 28.11.2023 with respect to appointment of Judicial Member, in the larger interest as well as to resume the judicial functioning of the Tribunal and to achieve the mandate of Section 44(5) of the Real Estate (Regulation & Development) Act 2016 read with Regulation 22 and 25 a Bench consisting of Chairman and Judicial Member was constituted vide order dated 01.12.2023. The Registry was directed to issue cause list of fresh appeals and re-schedule the cause list of pending appeals from 27.09.2023 on joining of the Judicial Member. Accordingly an office order dated 02.12.2023 was issued by the Registrar, which reads as under:--

OFFICE ORDER

It is hereby informed to all the concerned that the Tribunal was working with single Bench consisting of Hon'ble Chairman and Hon'ble Technical Member after demitting office by the Hon'ble Judicial Member on 31.12.2022. Hon'ble Technical Member also demitted office on 26.09.2023 and Hon'ble Administrative Member being on unauthorized leave from 30.09.2022 (who finally resigned on 29.10.2023) resulting the judicial functioning of the Tribunal to tune to standstill with effect from 27.09.2023.

The State Government vide Notification dated 28.11.2023 has appointed Hon'ble Judicial Member and as such presently, Hon'ble Chairman and Hon'ble Judicial Member having judicial back ground are available.

As per Section 43(3) of the Act 2016 every Bench of the Appellate Tribunal is to consist of at least one Judicial Member and one Administrative or Technical Member. The Appellate Tribunal is required to scrutinize judicially the appeals against the order of Regulatory Authority or Adjudicating Officer. Rule 30 of the Rules 2016 empowers the Appellate Tribunal to call upon such experts or consultants from the fields of economics, *commerce, accountancy, real estate, competition, construction, architecture or engineering or from any other discipline as it deems necessary, to assist the Appellate Tribunal in the conduct of any enquiry or proceedings before it.*

Section 55 of the Act 2016 protects the acts and proceedings of the Appellate Tribunal from being invalid merely for the reason of any vacancy in, or any defect in the constitution of the Appellate Tribunal or any defect in the appointment of a person acting as a Member of the Appellate Tribunal or any irregularity in the procedure of the Appellate Tribunal not affecting the merits of the case.

Accordingly in the larger interest and expeditious disposal of appeals as per mandate of Section 44(5) of the Act 2016 the Bench for hearing of appeals is constituted with Hon'ble Chairman & Hon'ble Judicial Member for judicial scrutiny of the appeals and in case any expert opinion/assistance is required the same will be taken as per provisions of Rule 30 of the Rules 2016 in appropriate cases or such cases will be deferred till availability of Administrative/Technical Member.

On joining of Hon'ble Judicial Member, the Registry is directed to issue cause list of fresh appeals and re-schedule the cause list of pending appeals from 27.09.2023 and upload the same on the website of the Tribunal and also inform all the parties/legal representatives about the same.

This order is issued with the approval of Hon'ble Chairman.

The judicial functioning of the Tribunal resumed with effect from 18.12.2023 after joining of the Judicial Member and the said Bench is still continuing on account of non-appointment of Technical and Administrative Members.

2. Now we proceed to deal with the instant matter.

3. Initially these appeals were dismissed by this Tribunal vide order dated 19.07.2023 on the ground of delay, but the Hon’ble High Court in the bunch of appeals filed by the appellants, vide judgment and order dated 04.10.2023 passed in RERA Appeal No. 28 of 2023 (UPSIDC Vs.

Gurmeet Singh) and 06.10.2023 passed in RERA Appeal No.41 of 2023 (UPSIDC Vs. Archana Shukla), along with other connected appeals, while condoning the delay, remanded back the appeals to the Tribunal for being decided on merits. As the directions of the Regulatory Authority and the issues involved in all these 29 appeals are same, therefore, they were heard together and are being disposed of by a common judgment. For the sake of convenience we take Appeal No.132/2023 (UPSIDC Vs. Alpana Dwivedi) as leading case.

4. These appeals have been preferred by U.P. State Industrial Development Corporation (now U.P. State Industrial Development Authority) (hereinafter referred to as the 'appellant') under Section 44 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as the 'Act, 2016') against 4 composite orders of the Regulatory Authority dated 29.12.2021, 27.04.2022, 24.08.2022 and 14.09.2022 passed in the bunch of complaints, whereby the Regulatory Authority passed the following directions:--

(i) The UPSIDC is directed to ensure delivery of possession to the complainants within 90 days from the date of uploading of the order, and execution of registry after taking stamp fee.

(ii) The UPSIDC is directed to ensure payment of delay interest @ State Bank of India's MCLR+1% from December 2016 till receipt of OC/CC or the date of offer of possession, whichever is later. The amount of interest will be adjusted towards the amount of final payment. In case the amount of interest exceeds the amount due then the excess amount shall be refunded to the complainant. Keeping in view the force majeure, the delay interest shall not be reckoned for the period from 25.03.2020 to 25.09.2020.

(iii) If any rate of interest has been taken by the promoter from the allottee for default then the same rate of interest shall be given by the promoter for its default to the allottee as provided in Section 2 (za) (i). The allottee shall pay interest at the rate of MCLR+1%. If any amount has been taken from the allottee for the delay as interest more than MCLR+1% then the delay interest shall be reckoned at the same rate.

5. The facts of the leading case (Appeal No. 132/2023), as culled out from the memo of appeal, are that the appellant is an authority notified under Section 3 of the U.P. Industrial Development Act, 1976 by the State Government. The object and purpose of the appellant is to acquire and develop land for the purposes of promoting industrialization in the State of Uttar Pradesh.

5.1 The appellant launched “Trans Ganga City, Unnao” project which principally focused around “Future Perfect Self Sustained Industrial City”. Major portion of the project was for industrial use only. The allotment of residential plots had started from 15.08.2015. The Trans Ganga Project is developed as an Industrial Project and the same was notified by the State Government on 06.01.2018. The residential and commercial plots are allotted to the industrialists and others in furtherance to the achievement of industrial growth and development of the area. The residential plots are carved out not for the purpose of ‘Township’.

5.2 The respondent made an application for allotment of residential plot at Trans Ganga City, Unnao on 07.09.2015. As per the terms and conditions of the application form itself, it was crystal clear that the said allotment was on lease basis for 90 years and that the allottee shall not have any right to sell, mortgage or assign the property without the permission of the appellant.

5.3 In furtherance of the application dated 07.09.2015 a residential plot no. C-528, Sector-4, Industrial Area Trans Ganga (Housing), district Unnao, was allotted to the respondent. The conditions of the allotment letter also clearly stated that the allotment is on the basis of lease of 90 years and that the allottee shall not transfer the plot/house in any form by direct sale, mortgage, assignment etc. without prior permission of the appellant. The respondent had been allotted residential plot in the Industrial Area of Trans Ganga Housing.

5.4 The land for the project of Trans Ganga was acquired by notification under Section 4/17 of the Land Acquisition Act, 1894 on 23.07.2002. The declaration under Section 6/17 was issued on 26.02.2003 and the possession was handed over to the appellant on 06.04.2005, 09.05.2005 and 29.03.2007. The acquisition had started in the year 2002 and the decided land cost in 2002 was Rs.1,51,000/- per acre. The land cost was subsequently revised to Rs.5,51,000/- per bigha. Accordingly all the farmers were paid Rs.5,51,000/- per bigha. However, in the year 2013-14, the farmers again started the agitation for increase of compensation and accordingly meeting was held on 16.01.2014 by the officials of the appellant with the representatives of the farmers and in the said meeting it was decided that over and above the said rate, an ex gratia compensation of Rs. 7 lakhs per bigha shall be given to the farmers and further Rs.50,000/- shall be given to the farmers for rehabilitation. Accordingly the compensation was distributed amongst the farmers.

5.5 The appellant had paid Rs.232 crores as compensation to the farmers and then commenced the development work in 1100 acres land in 2015. The appellant has also spent Rs.226 crores in development work of the Trans Ganga Project. Therefore, a total sum of Rs.458 crores has been spent by the appellant for the said project.

5.6 Despite payment of the aforesaid compensation of Rs.232 crores, some of the agitationists raised an arbitrary demand for increase of compensation and when the same was refused, then those agitationists started causing hindrance in the development work of the Trans Ganga Project and illegally took over possession of certain plots. The agitationists also on 30.05.2018 forcibly shut the office of the appellant situated at the site. On 16.11.2019, when the appellant took 10 JCBs to the site for its construction activities, then around 200 agitationists gathered and stopped the construction work and threatened the officials of the appellant of dire consequences. The appellant had also from time to time taken action against the miscreants by filing FIRs dated 02.10.2017, 30.05.2018, 31.01.2019 and 16.11.2019.

5.7 Since 2016 the protest was going on and the members of the Kisan Union were causing hindrances in the execution of the project and accordingly the appellant had consistently been requesting the District Administration to intervene and stop the agitation so that the project can be executed. In this regard the appellant wrote 16 letters to the District Magistrate, Unnao on different dates.

5.8 On account of the aforesaid agitation, the development of the project was suspended in October 2017. Accordingly the appellant was unable to handover the possession of the land to the allottees, therefore, the respondent approached the Regulatory Authority by filing Complaint No. LKO186/11/85482/2021 in November 2021 praying for possession with payment of interest for delay. The said complaint was decided by the Regulatory Authority vide order dated 24.08.2022 in the manner mentioned in para 4 above.

6. The appellant has challenged the impugned order dated 08.09.2021 passed by the Regulatory Authority, on the following grounds:--

(A). Because the Ld. Authority erred in not considering the ratio laid down by the Hon'ble Supreme Court in the case of Bangalore Development Authority Vs. Syndicate Bank, 2007 (6) SCC 711.

(B). Because the Hon'ble Supreme Court in the case of Bangalore Development Authority Vs. Syndicate Bank, 2007 (6) SCC 711 has been pleased to lay down certain principles to guide and regulate the granting of relief to an applicant for allotment, who complains of delay in delivery or non-delivery.

(C). Because the paragraph 10 (c) of the case of Bangalore Development Authority Vs. Syndicate Bank, 2007 (6) SCC 711 shall be applicable in the present case wherein it has been stated that if an alternative site is offered or delivered at the same price then the allottee will not be entitled to interest or compensation as he would be entitled to the benefit of appreciation of value.

(D). Because in paragraph 10 (e) of the case of Bangalore Development Authority Vs. Syndicate Bank, 2007 (6) SCC 711 the Hon'ble Supreme Court has observed that in case the alternative plot is delivered at the market rate and not at the original agreed price, then in such a case the allottee shall be entitled to interest from the date of deposit till the date of delivery of plot. In the present case, the plot is being offered at the initial rate, therefore, the respondents are not entitled to interest on the deposited amount.

(E). Because the Ld. Authority has fail to take into consideration that the respondent was benefited by appreciation of price as the allotment rate stood revised from Rs.18000/- per sq. mtrs. to Rs.21600/- per sq. mtrs. vide office order dated 17.12.2021.

(F). Because the revised prevailing rate is not being charged from the respondents and accordingly the respondent is benefitted by escalation in price of plot.

(G). Because as per the ratio laid down by the Hon'ble Supreme Court in the case of Bangalore Development Authority Vs. Syndicate Bank, 2007 (6) SCC 711 no interest is payable to the allottees.

(H). Because the Ld. Authority has failed to consider that the development certificate has been issued to the appellants on 01.06.2022 and repeated reminders have been sent to the respondents to take the possession of the plot but still the respondents have not taken possession of the same.

(I). Because the Ld. Authority has failed to consider that Section 19(10) of the Real Estate (Regulation and Development) Act, 2006 mandates that the allottees have to take possession within 2 months of the issuance of the Occupancy Certificate.

(J). Because the respondent is deliberately not coming forward to take the possession as they are enjoying the delay interest alongwith the appreciation in price of land.

(K). Because the award of delay interest @MCLR+1% is leading to unjust enrichment of the respondents.

(L). Because the Ld. Authority has also wrongly awarded delay interest @ MCLR + 1% by placing reliance upon the "The Uttar Pradesh Real Estate (Regulation and Development) (Agreement for Sale/Lease) Rules, 2018".

(M). Because the said Rules provide for imposition of interest @ MCLR +1% only in cases where the entire amount is being refunded and not in cases where the delay interest is being awarded and thereafter possession is being given.

(N). Because as per Rule 9.2, the interest @ MCLR + 1 has to be granted in cases of full refund only and not when delay interest is being awarded in case of delayed possession.

(O). Because in the present case the interest @MCLR+1% cannot be awarded as the allottees are also enjoying the benefit of rise in prices.

(P). Because the proviso of section 18 of the Real Estate (regulation and Development) Act, 2016 provides that the delay interest shall be paid "*at such rate as may be prescribed"*.

(Q). Because the Rule 15 of The Uttar Pradesh Real Estate (Regulation and Development) Rules, 2016 talks about the Rate of interest payable by the promoter and the allottee.

(R). Because since the Rules do not prescribe any interest, therefore, the interest @ MCLR + 1% cannot be awarded in cases of delay interest.

(S). Because the Ld. Authority while awarding interest at rate of MCLR 1% has placed reliance on the case of Rudra Buildwell Constructions Pvt. Ltd. vs Poonam Sood And Another, Writ C No. 3289/2020, notwithstanding the fact that the said case pertains to refund of the entire amount and not delay interest and therefore the interest @ MCLR + 1% was awarded by the Hon'ble High Court in that case.

(T). Because the Ld. RERA while awarding interest at rate of MCLR + 1% has also wrongly placed reliance on the case of Habitech Infrastructure Ltd. vs State Of U.P. And 2 Others, Writ C No. 3289/2020, notwithstanding the fact that the said case also pertains to refund of the entire amount and not delay interest and therefore the interest @ MCLR + 1% was awarded by the Hon'ble Court.

(U). Because if the provisions of the Real Estate (Regulation and Development) Act, 2016 intended to impose interest @MCLR + 1% in case of delay interest then it ought to have been specified in the Rule 9.2 but the same has not been specified.

(V). Because the legislature never intended to prescribe award of delay interest @MCLR + 1% and the same is substantiated from a bare perusal of Rule 9.2 of the Uttar Pradesh Real Estate (Regulation and Development) Rules, 2016.

(W). Because from a bare perusal of Rule 9.2 it is clear that the said Rule specifically prescribes for award of interest @MCLR+1% in case of refund of entire amount and specifically omits to mention the rate of interest in case of award of delay interest.

(X). Because the intent of legislature is clear from Rule 9.2 that it did not intend to impose delay interest @MCLR + 1%.

(Y). Because the intention of legislature in not prescribing in case of delay interest was apparently to give discretion to the Ld. RERA in awarding interest in light of the case passed by the Hon'ble Supreme

Court in the case of Bangalore Development Authority Vs. Syndicate Bank.

(Z). Because the intention of legislature has to be inferred only from the words used in the provision.

(AA). Because the Ld. RERA has wrongly placed reliance on Rule 9.2 while awarding delay interest.

(BB). Because the Ld. RERA has wrongly considered December 2016 to be the promised date of possession.

(CC). Because the Ld. Authority has failed to take into consideration that December 2016 and March 2017 was not the promised date of possession.

(DD). Because the clause 6 of the brochure categorically states that the possession shall be handed over on the date to be communicated. The said clause 6 of the brochure was also incorporated as clause 19 in the allotment letter.

(EE). Because a bare perusal of clause 6 it is clear that the date of possession was to be communicated by the appellants.

(FF). Because the date of December 2016 has not been mentioned in the allotment letter and accordingly cannot be considered to be the promised date of possession.

(GG). Because as per the judgment passed by the Hon'ble Supreme Court in the case of M/s. Fortune Infrastructure and others Vs. Trevor D'Lima and others, 2018 (5) SCC 442, in cases where no date has been promised, then a period of 3 years from the date of allotment has to be considered as the date of handing over possession.

(HH). Because the respondent was himself aware that the promised date of possession is not December 2016 and the same is substantiated from the fact that the allotment was made on 11.05.2016 and till then the major development works had not even commenced on account of kisan agitation and the respondents were also witness to it. Therefore, they were also aware that December, 2016 is not the promised date of possession.

(II). That it is also noteworthy to mention that the project was delayed on account of genuine reasons which were beyond the control of the appellant and therefore as per clause 7 of the form of agreement as contained in the Uttar Pradesh Real Estate (Regulation and Development) (Agreement for Sale/Lease) Rules, 2018 the appellant is entitled to extension of time.

(JJ). Because the land for the project of Trans Ganga was acquired by notification under Section 4/17 of the Land Acquisition Act, 1894 on 23.07.2002 and the declaration under Section 6/17 was issued on 26.02.2003 and the possession was handed over to UPSIDA on 09.05.2005, 06.04.2005 and 29.03.2007. The acquisition had started in the year 2002 and the decided land cost in 2002 was Rs. 1,51,000/- per acre. The land cost was subsequently revised to Rs. 5,51,000/- per bigha. Accordingly, all the farmers were paid Rs. 5,51,000/- per bigha. However, In the year 2013-14, the farmers again started the agitation for increase of compensation and accordingly meeting was held on 16.01.2014 by the officials of the appellant with the representative of the farmers ie. Mr. Ajay Anmol and In the meeting it was decided that over and above the said rate, an ex gratia compensation of Rs. 7 lakhs shall be given per bigha and furthermore Rs. 50,000 shall be given for rehabilitation cost to the families. Accordingly, the compensation was distributed amongst the farmers.

(KK). Because the appellants had paid Rs. 232 crores as compensation to farmers and then had commenced the development work in the 1100 acres land in 2015. The appellants have also spent Rs. 226 crores in development work of the Trans Ganga Project. Therefore a total sum of Rs. 458 crores has been spent by the UPSIDC for the said project till date.

(LL). Because despite the payment of the aforesaid compensation of Rs. 232 crores, some of the agitationist raised an arbitrary demand for increase of compensation and when the same was refused, then those agitationist started causing hindrance in the development work of the Trans Ganga Project and illegally took over possession of certain plots. The agitationist on 30.05.2018 also forcibly shut the office of the appellants situated at the site. Furthermore on 16.11.2019, when the appellants took 10 JCBs to the site for its construction activities, then around 200 agitationist gathered and stopped the construction work and threatened the officials of the appellants of dire consequences. The appellants had also from time to time taken action against such miscreants by filing FIR's dated 02.10.2017, 30.05.2018 and 16.11.2019.

7. The appellant has prayed for quashing the order dated 24.08.2022 passed in the complaints of the aforesaid respondents.

8. The respondent of the leading case (Alpana Dwivedi) filed objection to the memo of appeal stating that the appellant had launched a residential project in Unnao district on 15.08.2015 as Trans Ganga City. The respondent purchased a 120 sq. meter residential plot in the said project. The cost of the said plot is Rs.22,68,000/- (principal). Total amount of Rs.24,87,656/- has been paid by the respondent to the appellant on 10.08.2017.

8.1 Like the appellant, in other similar cases i.e. Appeal No. 84/2022 (UPSIDC Vs. Ankur Gupta), Appeal No.104/2022 (UPSIDC Vs. Anju Bala), Appeal No. 139/2022 (UPSIDC Vs. Pulkit Jain) and Appeal No. 152/2022 (UPSIDC Vs. Mayur Kant Tripathi) the appeals of the appellant have been rejected by the Tribunal. Therefore, the appeal filed on the above grounds is liable to be rejected.

8.2 At the time of launching of the said project, big dreams were shown to all the allottees through advertisement to invest in the project. The appellant had also promised to give possession of the residential plot in the said project by the month of December 2016 in its brochure and sale agreement.

8.3 The development work has been re-started in the last two years with very slow space. Before that the development work was wind up for about three years. The allottees in the said project have no hope of getting possession in near future.

8.4 The respondent lodged Complaint No. LKO186/11/85482/2021 before the Regulatory Authority on 27.11.2021 which was decided by the Regulatory Authority on 24.08.2022 directing the appellant to pay delay interest at the rate of MCLR+1% per annum for the delay period till the date of physical possession or till completion of the project.

8.5 The entire Trans Ganga City is divided into four zones i.e. (i) Residential, (ii) Commercial, (iii) Recreational, and (iv) Industrial. In the said project the respondent was allotted residential plot. Therefore, the plot allotted to the respondent by the appellant has no correlation with the industrial zone, hence the notification dated 06.01.2018 does not apply to the residential scheme. The said residential project was launched for the general public and not for the industrialists.

8.6 The said project was launched by the appellant as a Hi-tech City, which the appellant committed to develop as an eco-friendly city. The appellant committed to provide all modern amenities in the said city, but till date the appellant has not fulfilled that commitment.

8.7 The Act of 2016 as well as the Rules of 2016 and Regulations are fully applicable to all residential projects. The respondent purchased a residential plot in the said project. The appellant sold all the residential plots on lease hold. The sale of lease hold plot is fully covered under the Act 2016 and the Rules 2016, therefore, all the residential plots of Trans Ganga City come under the jurisdiction of the Regulatory Authority. The respondent is an allottee in the said project.

8.8 The appellant sold a residential plot No. C-528, situated in Sector-4, admeasuring 120 sq. meter. The said plot has been sold on the basis of lease hold for 90 years.

8.9 Due to non delivery of possession of the said plot by the appellant to the respondent, the respondent has to pay EMIs of the home loan.

8.10 The respondent filed the aforesaid complaint before the Regulatory Authority. The U.P. Real Estate Regulatory Authority has passed the order to give MCLR+ 1% interest to the Respondent by the appellant, that is not lawful because the appellant has also charged up to t4% interest from the respondent by making unilateral contract basis, Even after the implementation of RERA Act, the Appellant has charged 14% interest from the allottees on the total cost of plot, which is not fair because after the implementation of RERA Act, if any promoter or developer will recover the amount with which interest rate from allottees, in case of default of Promoter or developer, the promoter or developer has to return the amount to the allottee with the same rate of interest. The definition of interest in section 2(za) of the RERA Act is as follows :-

"interest" means the rates of interest payable by the promoter or the allottee, as the case may be.

Explanation.- For the purpose of this clause-

(i) the rote of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rote of interest which the promoter shall be liable to pay the allottee, in case of default;

(ii) the interest poyable by the promoter to the allottee shall be from the dote the promoter received the amount or ony port thereof till the dote the amount or part thereof and interest thereon is refunded, ond the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the dote it is paid.

8.11 All residential plots of the trans ganga city project by the appellant has been leased for 90 years. Appellant has sold only and only residential plot in the said residential project, development work is being done in the said project at a very slow pace, so it is a purely Real Estate Project and is covered under the jurisdiction of U.P. RERA Rules. Under section 2(zn) of the Act 2016 *"real estate project means the development of a building or o building consisting of apartments, or converting on existing building or a part thereof into apartment 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.*

8.12 ln the definition of allottee in 2(d) of the RERA Act, it is clearly mentioned that the residential plot allotted or sold on the basis of lease deed will come under the jurisdiction of U.P. RERA. Definition of Allottee in RERA Act is as follows-

"Allottee- ln relation to a real estate project, means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent."

The Respondent is an allottee in the trans ganga city project proposed by the appellant, in the said residential project all the residential plots are sold by the appellant on the basis of leasehold and as per section 2(d) of the RERA Act any residential plot whether it is freehold or on leasehold basis is sold, then the person receiving the plot is allottee for the said project, so this act of the appellant is fully covered under the jurisdiction of Uttar Pradesh Real Estate Regulatory Authority.

8.13 The provisions of RERA in Uttar Pradesh came into force on 1st May 2016. As RERA has no provisions at the time of the launch of the said project, so only the terms and conditions made by the Appellant at that time would be considered as the Agreement for sale. The Appellant himself has written that the said plots in the project will be given possession in December-

2016, so the Agreement for sale itself was broken by the appellant and not by the respondent.

8.14 Appellant is trying to mislead the Hon'ble Bench as the RERA Rules & Regulations were already implemented in Uttar Pradesh in May, 2016. Agreement for sale/lease has been notified vide notification no. 1673/Eight-3-18-65 dated 12-10-2018 in Uttar Pradesh in U.P. RERA Rules in which in the case of the promoter's default (in point number 9.2), the allottee is entitled to get interest on the amount deposited within the project from promoter.

8.15 On the 07-09-2015 when the Respondent applied for the allotment of the plot in the said project, along with the Application Form issued by the appellant, 10% of the total cost of the plot Rs.2,16,000.00 was also deposited by the allottee. Behind the same application for allotment of the plot terms and conditions were described as RERA Act was not in force at the time of launching of the project, so only the terms & conditions of the said application form will be considered as the Agreement for sale.

8.16 Allotment of Residential plots in the Trans Ganga City Residential project by the appellant was done in the year 2016. At that time the development works in the said project by the appellant were going on at full swing but in the year 2017, the development works suddenly stopped and the anti-social elements with alliance of some officers and employees of the appellant, took possession of the entire project. lt means that due to the negligence of the appellant, the delay occurred in getting possession of the plots in said project. The appellant himself is responsible for all the above acts. All the conditions of the sale agreement were fulfilled by Respondent but none of the conditions of the Sale Agreement were fulfilled by the Appellant.

8.17 ln another similar case of Mr. Deepak Dwivedi Vs. UPSIDC (Complaint No. 8201816417) due to non-compliance of the order of the U.P -RERA, the U.P-RERA has also imposed penalty of Rs. 7,19,100.00 u/s-63 of the RERA Act.

8.18 Both the cases M/S. Rudra Buildwell Constructions pvt. Ltd. Vs. Poonam Sood And Another, Writ C No. 3289/2020, & Habitech lnfrastructure Ltd. vs State of U.P. and 2 Others Writ C No. 3289/2020 indicated by the appellant in the appeal memo have been rejected by @ the Hon'ble Allahabad High Court respectively and the facts of the case of respondent do not match with indicated cases. It is self-evident from the said act of the Appellant that he is misleading the Hon'ble Bench and wasting the time of the bench in the said case.

8.19 ln the impugned order passed by UP-RERA, the period from 25-03-2020 to 25-09-2020 has been considered as force majeure, which is not legally maintainable because there is no any matter of force majeure in Trans Ganga City because allotment of Residential plots in the Trans Ganga City Residential project by the appellant was done in the year 2016.

8.20 In view of the above circumstances, the appeal of the appellant is liable to be rejected, in the interest of justice.

9. The appellant did not choose to file any reply to the objections of the respondent.

10. Heard Sri Kartikey Dubey, learned counsel for the appellant and Sri Deepak Dwivedi, learned counsel for the respondents.

11. On examination of the pleadings, records and the submissions of respective parties, the admitted position is as under:

12. The appellant launched a project ‘Trans Ganga City Unnao’ on 15.08.2015 with the aim to develop an echo friendly hi-tech city. The respondent approached for allotment of a residential plot in the said scheme on 07.09.2015 and in furtherance of the application a residential plot no. C-528, Sector-4, Industrial Area Trans Ganga (Housing), district Unnao was allotted to the respondent for a consideration of Rs. 22,68,000/- (principal) and the said amount was paid by the respondent to the appellant on 10.08.2017.

12.1 As per Brochure of the project, the possession of the residential plot was proposed to be given by December 2016. As the appellant failed to provide possession of the plot, the respondent was constrained to approach RERA by lodging Complaint No. LKO186/11/85482/2021 on 27.11.2021. The said complaint of the respondent was clubbed with 4 other similar complaints and was decided by a composite order dated 24.08.2022. Similarly three other bunch of 24 complaints were also decided by RERA vide composite orders dated 29.12.2021, 27.04.2022 and 14.09.2022.

13. The RERA while deciding the bunch of complaints by four composite orders dated 29.12.2021, 27.04.2022, 24.08.2022 and 14.09.2022 mainly framed two issues, which are as under:--

(i) Whether the project of the respondent is delayed or not, if so for what period? Whether the respondent is entitled to get any relief during the period of delay in the project due to the protest at the project site by the farmers?

(ii) Whether it is proper to provide the complainant the possession and the interest for delayed period? If yes, what will be the rate of interest?

14. While examining the issue regarding delay in completion of the project and opposition/demonstration by the farmers at the site of project, the Regulatory Authority examined the provisions of the Act and the judgment of **Hon'ble Supreme Court** in **M/s Fortune Infrastructure (now known as HICON Infrastructure) and Anr. Vs. Trevor D'Lima & Ors** (Civil Appeal Nos. 3533-3534 of 2017 decided on 12.03.2018) and the provisions of Section 6. Further, taking into consideration the fact that the as per the allotment letter dated 10.05.2016 and as per the Rules/Terms the possession was to be given by December 2016, whereas the UPSIDC got the project registered vide Registration No. UPRERAPRJ786654, wherein the date of start of the project has been indicated as 21.12.2016 and the date of completion as 21.12.2024. The Regulatory Authority pleased to hold that the project of UPSIDC falls in the category of ongoing project and is delayed.

14.1 The RERA on the issue of possession and the interest for delayed period examined the judgment in **Writ Petition No. 2737/2017 (M/s Neelkamal Realtors Suburban Pvt. Ltd. &Anr. Vs. Union of India) and the provisions of para 9.2 (ii) of the Uttar Pradesh Real Estate (Regulation & Development) (Agreement for Sale/Lease) Rules, 2018 and the judgment of Hon'ble Allahabad High Court in Writ Petition No. (c) 3289/2020 (M/s Rudra Buildwell Constructions Pvt. Ltd. Vs. Poonam Sood and Anr.) as well as Writ Petition No.(c) 0120/2020 (M/s Habytech Infrastructure Ltd. Vs. Govt. of UP &Anr.) and the judgment of Hon'ble Supreme Court in Civil Appeal No. 6649-60/2018 (M/s Supertech Ltd. Vs. Rajni Goyal)** and treated the period from 25.03.2020 to 25.09.2020 as force majeure on account of Covid-19 Pandemic and while holding the project of UPSIDC delayed, directed for calculating the delay period w.e.f. December 2016 onwards and in other cases as per the prescribed period in the allotment letter and accordingly directed the UPSIDC to provide possession after execution of the conveyance deed after taking necessary stamp fee and pay interest for delayed period from December 2016 till receipt of OC/CC or till the date of offer of possession whichever is later at the rate of MCLR+ 1 percent of the State Bank of India and the amount of interest will be adjusted in the last payment and in case the amount of interest exceeds the amount payable then the excess amount will be given to the complainant.

14.2 The RERA, after examining the issue and the definition provided under Section 2 (za)(i) of the Act of 2016, held that the promoter cannot charge interest for delay in payment more than MCLR+ 1 percent p.a. as per the provisions of Section 2(za)(i) after 01.05.2016.

14.3 The appellants, feeling aggrieved by the impugned order of Regulatory Authority filed separate appeals against each complainant/allottee.

15. In order to appreciate the controversy on the basis of pleadings on record, grounds pressed by the learned counsel for the appellant as well as submissions of the learned counsel for the parties, we deem it proper to frame the following questions:-

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

(2) Whether the respondent is entitled for interest due to delay in possession of the allotted unit/plot and/or while seeking refund on the deposited amount under the scheme of Act 2016 and if yes, what rate of interest is required to be paid by the promoter/appellant to the allottee/respondent?

(3) Whether the project of the appellant/promoter is delayed?

(4) Whether the impugned order has been passed by the RERA in violation of the order of Hon'ble Supreme Court in the case of ***Bangalore Development Authority Vs. Syndicate Bank, 2007 (6) SCC 711***?

(5) Whether the Regulatory Authority erred in not taking into consideration the difficulties faced by the appellants in completion of the project as per promised time schedule or the order of the Regulatory Authority is in consonance with the provisions of Act 2016 and Rules 2016?

16. **Question No. (1)** is as to whether under the scheme of the Act, 2016 and Rules, 2016 any mechanism has been provided for determination of the interest or compensation for the delay in handing over possession and/or refund with interest if allottee chooses to withdraw from the Project.

16.1 The Real Estate (Regulation & Development) Act, 2016 has been enacted to establish the real estate regulatory authority for regulation and promotion of the real estate sector and to ensure sale of plot, apartment or building, as the case may be, or sale of real estate project, in an efficient and transparent manner and to protect the interest of consumers in the real estate sector 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. The Real Estate (Regulation & Development) Act, 2016 delineates functions and duties of promoter in chapter 3 and rights and duties of allottees in chapter 4. The Real Estate Regulatory Authority has been assigned functions and has been given powers as detailed out in chapter 5.

16.2 The Real Estate (Regulation & Development) Act, 2016 is not only curative but also preventive. The powers, roles, domain and jurisdiction of the authority as well as adjudicating officer have been clearly defined and demarcated by this legislation. The interpretation of the law has to be done keeping in view the whole scheme, aim and object of the Act and not in isolation. 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 in case of authority and compensation or interest in case of adjudicating officer.

16.3 The purposes for filing complaints before authority or to the adjudicating officer are different.

(a) The purpose of filing complaints before authority is to seek compliance of obligations cast upon promoter, real estate agent or allottee, getting directions issued by the authority for compliance of provisions of the Act, the rules and regulations thereunder, for initiating penal proceeding against the defaulters.

(b) Whereas purpose of initiating proceedings before the adjudicating officer is to seek compensation in case of violations of provisions of the Act, Rules, Regulations & terms and conditions of the agreement. Hence depending on the purpose of complaint it is filed either before the authority or before the adjudicating officer.

16.4 The provisions of compensation are provided in sections 12, 14, 18 and section 19. The domain of adjudicating officer is restricted to adjudging of compensation only in the matters which are covered under these sections.

16.5 The U.P. Real Estate (Regulation and Developments) Rules, 2016, lays down the procedure for filing of complaint with the authority under Rule 33 and Rule 34 lays down the procedure for filing the complaint with the adjudicating officer.

16.6 From the bare perusal of Sections 12, 14, 18 and Section 19 one will get the picture that some of the provisions of these sections provide for compensation and in case of failure of the promoter to comply specified obligations, such as Sections 12, 14(3), 18(1), 18(2), 18(3) and Section 19(4) then these matters come within the domain of exercising the power by the adjudicating officer but limited to adjudging compensation.

16.7 Section 18(1) provides some specific obligations of the promoter alongwith compensation. Similarly, Section 19(4) provides for certain rights of the allottee and in case of violation of the right by the promoter, the allottee shall be entitled to claim refund of amount paid alongwith interest at the prescribed rates alongwith compensation. As far as adjudging of compensation is concerned, it is squarely within the power of the adjudicating officer.

16.8 The powers such as power to register projects, power to register real estate agents, power to issue directions for compliance of obligations, power to impose penalty in case of any violation or contravention of the provisions of this Act or the rules or regulations made thereunder against any promoter, allottee or real estate agent as the case may be is with the authority.

As far as compliance of obligations by the promoter or real estate agent or allottee is concerned it is the function of the authority and not of the adjudicating officer. In case the obligation by the promoter, real estate agent or allottee is not complied with by any of them, it is violation of the provision of the Act providing that particular obligation and a complaint may be filed under section 31 by any aggrieved person seeking order under section 37 from the authority to ensure compliance of obligation by the defaulter, being the function of the authority under section 34(f).

Section 34(f) provides specific functions of the authority as under:-

> ***34. Functions of Authority.***
>
> *"The function of the authority shall include …….*
>
> *(f) to ensure compliance of the obligations cast upon the Promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.*
>
> *…….."*

The obligation cast upon the promoters, the allottee and the real estate agents has been given in various provision of the Act, the rules and regulations. It is the function of the authority to ensure compliance of the obligations including the obligations of the promoter mentioned in sections 12, 14, 18 and section 19.

16.9 In case of non-compliance of obligations by the promoter as given in section 14(1) and 14(2) if the allottee has suffered some loss or injury and intends to file compensation application he may do so and file such application for compensation with the adjudicating officer who is the sole authority under the Act to adjudge compensation. Although sections 14(1) and 14(2) do not provide for any kind of compensation specifically, but once the provisions are read with Section 18(3) it may initiate compensation proceedings. The power under section 18(3) to decide compensation is provided as under:

18. Return of amount and compensation.—

> *"(3) If the promoter fails to discharge any other obligations imposed on him under this Act or the rules or regulations made thereunder or in accordance with the terms and conditions of the agreement for*

sale, he shall be liable to pay such compensation to the allottees, in the manner as provided under this Act."

This power to adjudge compensation given to the adjudicating officer in section 18(3) is general in nature which covers all the obligations cast upon the promoter throughout the Act and not only limited to sections 12, 14, 18 and section 19 i.e. in case a promoter fails to discharge any other obligation imposed on him under this Act or the rules or regulations thereunder or even in accordance with the agreement for sale he shall be liable to pay such compensation to the allottee in the manner as provided under the Act.

16.10 The general power given in section 18(3) by implication crystallizes that the separate domain of power is to be exercised by the authority and the adjudicating officer. Accordingly, the role of the authority extends to any other matter as provided under the Act except the power to adjudge compensation.

16.11 Now if we deeply examine section 18 as a whole, the following are the express provisions for providing compensation to an Allottee under section 18:-

A. *Where the Allottee wishes to withdraw from the project, without prejudice to any other remedy available, on demand he shall be liable to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act.*

B. *The promoter shall compensate the allottees in case of any loss caused to him due to defective title of the land, on which the project is being developed or has been developed, in the manner as provided under the Act.*

C. *If the promoter fails to discharge any other obligations imposed on him under this Act or the rules or regulations made there under or* *in accordance with the terms and conditions of the agreement for sale, he shall be liable to pay such compensation to the allottees, in the manner as provided under this Act.*

16.12 As per the provisions of Section 18, compensation can be sought by an Allottee in case of defective title of the land, and also if the promoter fails to discharge any other obligations imposed on him under this Act or the rules or regulations made there under or in accordance with the terms and conditions of the agreement for sale.

16.13 The word "Any Other" signifies beside these, meaning thereby that apart from the delay in possession, any other breach of the terms & conditions of the Agreement to sell or breach of the obligations imposed on him by the provisions of the Act or Rules shall also be liable to compensate the Allottee.

16.14 If we critically analyze the section, we will find that the word 'compensation' has been used in every sub-section covering almost all the scenario except the word compensation has not been used in the case where Allottee decides to stay in the project even due to delay in handing over of the possession and he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed only.

16.15 The intention of the legislature was to provide Compensation only to those Allottees who exit the project and also regarding defective title and breach of agreement to sale and obligations imposed on, by the Act and Rules, but not to those who wishes to stay in the project, for them beside the other provision of compensation in term of defective title and breach of agreement to sale as well as obligations imposed on by the Act and Rules is applicable, but in case of delay in handing over of possession ,the Allottee is entitled for only INTEREST at a prescribed rate and not "compensation" as the Suffix "including compensation" has not been provided by the Act.

16.16 Thus the intention of the legislature was clear in providing the compensation of delay to only those who exit the project and not to those who wishes to stay in the project and apparently while enacting the proviso to Section 18(1), the legislature had in mind the findings of the Hon'ble Supreme Court in ***Chief Administrator Huda Vs. Shakuntala Devi***, wherein the Hon'ble Supreme Court has opined that in case of delayed possession the appreciated value of the property is also to be taken as a factor of compensation while reducing the quantum of compensation awarded by the national commission.

Further section 18(1) empowers an allottee to choose or to exercise one of the two options mentioned therein i.e. an allottee either can withdraw from the project or continue with the project. In case of failure of the promoter to complete or give possession as per agreement for sale and for both the eventualities specific obligations have been cast on the promoter.

16.17 On analysis of the provision of Section 71, it is clear that the purpose of appointing adjudicating officer by the authority is to adjudge compensation under sections 12, 14, 18 and section 19.

Sub-sections (2) and (3) of section 71 of the Act lay down the procedure to be followed for exercising the power to adjudicate, and section 72 lays down the factors to be taken into account by the adjudicating officer for adjudging the quantum of compensation or interest.

16.18 Section 71(3) gives jurisdiction to the adjudicating officer for holding inquiry for his satisfaction that the person has failed to comply with the provisions of any of the sections 12, 14, 18 and 19. Section 71 (3) reads as under:-

71. Power to adjudicate.—

……………

……………

"(3) While holding an inquiry the adjudicating officer shall have power to summon and enforce the attendance of any person

acquainted with the facts and circumstances of the case to give evidence or to produce any document which in the opinion of the adjudicating officer, may be useful for or relevant to the subject-matter of the inquiry and if, on such inquiry, he is satisfied that the person has failed to comply with the provisions of any of the sections specified in subsection (1), he may direct to pay such compensation or interest, as the case any be, as he thinks fit in accordance with the provisions of any of those sections."

The purpose of holding inquiry by the adjudicating officer is to satisfy that the person has failed to comply with the provisions of any of these sections referred above providing for compensation. Accordingly, he will decide compensation keeping in view the factors to be taken into account as provided in Section 72. The adjudicating officer has been given powers for adjudging compensation. He has not been given any other specific power under the Act where other remedies are also available to the allottee in case the promoter has failed to comply with the provision of any of Sections 12, 14, 18 and Section 19.

16.19 Section 72 further provides guidance to the adjudicating officer as what factors are to be taken into account by the adjudicating officer for adjudging the quantum of compensation under section 71. Section 72 reads as under:-

72. Factors to be taken into account by the adjudicating officer.—

"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:-

(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;

(b) the amount of loss caused as a result of the default;

(c) the repetitive nature of the default;

(d) such other factors which the adjudicating officer considers necessary to the case in furtherance of justice."

16.20 Thus we may concluded from the above is that if a complainant is successful in his/her/its claim for compensation under sections 12, 14, 18 or section 19 of the Act, the adjudicating officer would adjudge the compensation to be paid by the promoter to the aggrieved person. However, despite being under an obligation to pay the compensation quantified by the adjudicating officer, the promoter fails to pay the compensation, in such a situation, the authority would have the jurisdiction to impose penalty and interest on the promoter because failure of the promoter to pay compensation would constitute contravention of sections 12, 14, 18 or 19 of the Act read with sections 71 and 72. This consequence would flow despite the fact that the compensation can be recovered from the promoter under section 40(1) of the Act read with rule 24 of the rules and paid to the complainant.

16.21 As the purpose of inquiry by the adjudicating officer is to satisfy that the person has violated or contravened any of the provisions of sections 12, 14, 18 and section 19 and then only he will proceed to adjudge compensation. For other remedies or relief, the action is to be taken by the authority. The purpose of inquiry by the authority is again to see whether the person has failed to comply with the provisions of any of the sections in the Real Estate (Regulation and Development) Act, 2016 including sections 12, 14, 18 or 19, and contravened the provisions of the Act, the rules and regulations made thereunder and then it shall proceed to pass such orders including imposition of penalty in accordance with the provisions of the Act or rules and regulations thereunder. **Hence the power to hear the complaints for violation or contravention of sections 12, 14, 18 or 19 rests with the both the adjudicating officer as well as the authority, but outcome in both the cases is different. In case of complaint before the adjudicating officer regarding violation/contravention of the provision of the Act, outcome is compensation or interest to the allottee and in**

case of complaint before the authority it is either penalty and/or compliance of obligation etc. but not compensation.

16.22 The adjudicating officer after conducting inquiry regarding failure to comply with the provisions of any of these sections 12, 14, 18 or 19 may direct to pay such compensation or interest as he thinks fit. He may refer his inquiry report regarding his satisfaction that contravention of provision of the Act has taken place, to the authority for other remedies available to the promoter, allottee and real estate agent under the Real Estate (Regulation and Development) Act, 2016, for exercising of power by the authority in respect of imposing penalty. 11.23 If the inquiry is conducted on the basis of complaint or suo-motu by the authority and it comes to the conclusion that violation or contravention of any of the provision of the Real Estate (Regulation and Development) Act, 2016, the rules or regulations thereunder has occurred including any of the sections 12, 14, 18 or 19 the authority may order for compliance of obligations as provided in the Real Estate (Regulation and Development) Act, 2016 and may also take other action of imposing penalty. The authority does not have the power to decide compensation in case a person has failed to comply with the provisions of sections 12, 14, 18 or 19, then the complaint has a right to approach the adjudicating officer for adjudging compensation and the directions to pay such compensation or interest as think fit by the adjudicating officer.

16.23 The Act nowhere puts any bar on conduct of inquiry by the authority for violation of any of sections 12, 14, 18 or 19. The jurisdiction of the adjudicating officer is to adjudge compensation to be paid for which he can hold his own inquiry regarding person's failure to comply with any of the provisions of sections 12, 14, 18 or 19 and further proceeding to adjudge the compensation. In case the complaint is filed regarding violation of any of the provisions of the Real Estate (Regulation and Development) Act, 2016 and certain relief but **NOT** the compensation has been sought from the authority along with penal action then the authority has powers to hold an inquiry into such matter including non-compliance of sections 12, 14, 18 or 19 and the applicant shall be at liberty to go to the adjudicating officer and make an application for compensation in addition. In case the complaint has been made regarding violation of provisions of sections 12, 14, 18 or 19 and allottee has sought both relief, penal action and compensation then the authority may refer the complaint to the adjudicating officer both for ascertaining whether the person has failed to comply with the provisions of any of these sections and also to adjudge compensation to be paid. Based on the report of the adjudicating officer regarding failure of the person to comply with the provisions of any of these sections, the authority may order the relief/remedy as provided in the Real Estate (Regulation and Development) Act, 2016 along with penal action. The language of Section 34(f) is very clear that the function of the authority shall include ensuring compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.

The attention can be drawn to Section 38 of the Real Estate (Regulation and Development) Act, 2016 regarding powers of the authority. Section 38(1) is reproduced as under :

38. Powers of Authority.—

> *"(1) The Authority shall have powers to impose penalty or interest, in regard to any contravention of obligations cast upon the promoters, the allottees and the real estate agents, under this Act or the rules and the regulations made thereunder."*

From the above it is clear that the authority has powers to impose penalty or interest in regard to any contravention of obligation cast upon the promoter or allottee or real estate agent. This power is about the whole Act without any exclusion of sections 12, 14, 18 or 19. So, in case of contravention of obligations cast upon the promoters in these sections also the authority has the power to impose penalty or interest. This power to impose penalty has not been given anywhere to the adjudicating officer in the Act. Adjudicating officer is appointed for the sole purpose of adjudging compensation and for satisfying himself regarding failure of person to comply with the provisions of sections 12, 14, 18 or 19 of the Act so that he may direct the promoter to pay such compensation or interest as he thinks fit. It is to be noted that compensation proceedings can be brought against promoters not against allottee or real estate agent, whereas penalty proceedings can be initiated against promoter, real estate agent and allottee. Similarly, directions to comply with provisions of the Act and to comply obligation by promoters, allottees and real estate agent may be issued by authority but not by adjudicating officer.

If any application is before the adjudicating officer for compensation, in some of the sections specific provisions for compensation have been made as in sections 12, 14(3), 18(1), 18(2) and 18(3) read with 19(4). In section 12, the penalty proceedings are in the eventuality of sustaining any loss or damage by reason of any incorrect, false statement etc. In section 14(3) again, compensation shall be payable in the event of promoter's failure to rectify defects. In section 18(1), compensation shall be payable in case of failure of the promoter to give possession by the due date specified in agreement for sale. Section 18(2) provides compensation to the allottee in case of any loss caused to him due to defective title of the land. Section 18(3) is general in nature which provides for compensation to the allottee in case of failure of promoter to discharge any other obligations imposed on him under this Act or the rules or regulations made thereunder or in accordance with the terms and conditions of the agreement for sale.

The allottee may make an application for compensation in case of failure of the promoter to meet the obligations cast on him. This compensation is for the loss caused as a result of default, amount of disproportionate gain or unfair advantage as a result of default, nature of default etc.

Sections 12, 14, 18 or 19 provide both for certain specified obligations cast on promoters and also compensation provisions in case of failure of promoters to meet with the obligations.

Compensation provision has been made in sections 12, 14, 18 or 19 in addition to other remedy available to the allottee such as return of amount received by the promoter on demand and interest at the prescribed rate. Similarly, interest at the prescribed rate is to be paid for every month of delay till the handing over of the possession.

16.24 The domain of exercising powers by the authority and the adjudicating officer are different. If the purpose of complaint is compensation then it is the adjudicating officer not only in respect of sections 12, 14, 18 or 19 but also on failure of promoter to fulfill his obligations in any other provisions of the Act or the rules or regulation made there under or as per terms and condition in the agreement for sale as mentioned in Section 18(3) giving sweeping powers to the adjudicating officer for deciding compensation in the eventuality of failure of promoter to fulfill the obligations. If the purpose of complaint is to initiate penal proceedings against the defaulting promoter, real estate agent or allottee, then the power to entertain such complaints vest with the authority. Similarly in case of failure of promoter to fulfill any obligations cast on him, the complainant may also make a request to the authority for ensuring compliance of the obligations by the promoter, real estate agent or allottee, including the compliance of obligations of promoters mentioned in sections 12, 14, 18 or 19 except the power to adjudge compensation. The power to file complaint for prosecution in certain cases also vests with the authority and not with the adjudicating officer. The cognizance of offence under the Act can be taken only on a complaint made in writing by the authority or by any officer authorized for this purpose.

16.25 In the eventuality of failure of promoter to give possession in accordance with the terms and conditions of agreement for sale, the allottee has two options:-

(1) Where allottee wishes to withdraw from the project –

the promoter shall be liable on demand to the allottee without prejudice to any other remedy available to return the amount received by him with interest at the rate as may be prescribed. In this case there are two obligations of the promoter:-

(a) to return of the amount received by him along with interest at the prescribed rates;

(b) to make payment of compensation in the manner as provided under this Act.

(2) In case allottee doesn't intend to withdraw –

(a) in this case allottee shall be paid by the promoter interest at the prescribed rates for every month of delay till the handing over of possession at the rate as may be prescribed.

(b) In the second option there is no direct provision of compensation.

In the first case, where the allottee wishes to withdraw from the project, there is a liability on the promoter to return the amount received by him on demand to the allottee along with interest at the prescribed rates. If the promoter fails to fulfill his obligations, then the allottee is at liberty to approach the authority for compliance of the obligations imposed under section 18(1) keeping in view the provisions contained in section 34(f). This is a plain and simple obligation to be fulfilled by the promoter and nothing is to be adjudged as the promoter is to return the amount received by him and interest at the prescribed rates. In this case directions issued by the authority to the promoter to return the amount received by him alongwith interest at the prescribed rate are binding on the promoter and in case of non-compliance penal proceedings may be initiated against the promoter. The second part of this obligation is payment of compensation in the manner as provided under this Act. If compensation demanded by the allottee is paid by the promoter nothing remains to be decided regarding compensation. In case promoter fails to pay compensation as demanded by the allottee then in that eventuality role of adjudicating officer will come and the adjudicating officer shall adjudge the compensation on an application made by the complainant/allottee.

The word 'compensation' the manner as provided in the Act is to be noted. The manner has been provided in section 71(2), 71(3) and section 72. The application for adjudging compensation shall be dealt with by the adjudicating officer as provided in sections 71(2) and section 71(3). The purpose of inquiry by the adjudicating officer is to satisfy himself that the person has failed to comply with provisions of any of these sections specified in sub-section 71(1). He may direct to pay such compensation or interest as he thinks fit in accordance with the provisions of any of these sections i.e. sections 12, 14, 18 or 19. The power to give compensation herein is limited to the compensation in accordance with the provisions of any of these sections i.e. compensation as mentioned in section 12, 14(3),18(1), 18(2), 18(3) and section 19(4). The adjudicating officer has no powers to issue directions for compliance of obligations by the promoter. He has powers only to decide compensation in case of violations of the obligations by the promoter. The application for compensation in such eventuality is maintainable only with the adjudicating officer and not with the authority. The allottee may also give application for ensuring compliance of the obligations by the promoter to the authority and authority may issue directions for compliance of the obligations.

So, this part is an automatic obligation on the promoter for which nothing is to be adjudged by the adjudicating officer where this obligation is mandatory in nature and in case of its non-compliance the allottee may approach the authority and authority is duty bound to ensure compliance by the promoter and shall issue directions accordingly.

The authority may also initiate penalty proceedings apart from giving directions to return the amount with prescribed interest as has been provided under this sub-section. But this will be applicable only prospectively. The matter left to the adjudicating officer is only about adjudging the compensation or interest nothing more, nothing less.

Keeping in view the above position whenever the complaint is made to the authority even in case of failure by the promoter to discharge his obligations under section 18(1) and request is made to the authority for ensuring compliance, i.e. return of amount received by the promoter along with prescribed interest, the authority is well within its powers to issue directions to the promoter to return the amount along with the interest as prescribed, exercising the powers vested in the authority under section 34(f) and section 37. Here, the interest is also mentioned as the interest as prescribed. The interest rate has been prescribed in the rules. So as far as this interest as prescribed in the rules is concerned is different than the interest as provided in sections 71(3) and 72 compensation or interest as the case may be.

16.26 On examining the provisions of Section 72 with the provisions of Section 18 the position emerges as under:-

A. The interest in both the sections are distant, as in section 18 the interest is coupled with the suffix at such rate as may be prescribed, but not in section 72, meaning thereby the Adjudicating Officer is not bound by the rate of interest as may be prescribed and he is free to quantify the compensation or interest according to the facts and circumstances of a case and the evidences produced.

B. The calculation of interest in section 18 is dependent on the rate prescribed, which is static and the period of delay, but in section 72 there are 4 factors which are to be mandatorily kept in mind by the Adjudicating Officer.

C. Numerous reliefs can be claimed under Section 18 from the Authority, whereas in Section 71 and 72 the Adjudicating Officer may only direct to pay such compensation or interest, as the case may be, as he thinks fit.

16.27 The Hon'ble Supreme court in the case of M/s. NEWTECH PROMOTERS AND DEVELOPERS PVT. LTD Vs STATE OF U.P. and Others [2021(11) ADJ 280], [2022 (1) R.C.R.(Civil) 357] while dealing with the jurisdiction of the Authority and the Adjudicating officer under the provision of the Real Estate (Regulation and Development) Act, 2016 has framed a question as follows:-

> "1. Whether the authority has jurisdiction to direct return/refund of the amount to the allottee under Sections 12, 14, 18 and 19 of the Act or the jurisdiction exclusively lies with the adjudicating officer under Section 71 of the Act?"

After elaborate discussion, the Hon'ble Apex court at paragraph 86 held that:

> *" 86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like 'refund', 'interest', 'penalty' and 'compensation', a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount,* ***or directing payment of interest for delayed delivery of possession,*** *or penalty and interest thereon, it is the regulatory authority which has the power to examine and determine the outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act. If the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and functions of the adjudicating officer under Section 71 and that would be against the mandate of the Act 2016".*

16.28 On examination of the above finding of the Hon'ble Apex Court with the provision of the section 18 of the Act 2016, it is clear that when the Allottee decides to stay in the project even due to delay in handing over of the possession, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed, meaning thereby in this situation the Allottee is entitled for interest for every month of delay till the handing over of the possession, at such rate as may be prescribed, and not "compensation" as the Suffix "including compensation" in case of seeking refund due to delay beyond the period prescribed in the agreement.

16.29 The scheme of the provisions of Section 18 of the Act 2016 clearly provides that in cases where the Allottee intends to stay in the project, the Allottee is entitled only for interest as per the rate prescribed and its jurisdiction of determination lies in the regulatory authority and not with Adjudicating Officer, and hence the Adjudicating Officer cannot grant interest as compensation, because the Statute does not provide any scope of compensation in such situation.

16.30 From the aforementioned discussion, it is clear that the Act of 2016 provides a mechanism for determination of interest as per the rate prescribed by the Regulatory Authority for the delay in handing over possession of the unit to the allottee and promoter is required to pay interest for every months' delay in handing over of possession, if the allottee wishes to stay with the project.

Further, if allottee seeks refund of the amount by withdrawing from the project then such refund could be together with interest as may be prescribed and would be independent of the compensation payable to an allottee either in terms of Section 18(1), (2) & (3) of the Act read with other provisions as well as for violation of the terms and conditions of the agreement excluding the claim of delay in possession. **Question no. (1)** is answered accordingly.

17. **Question No. (2)** is regarding respondent's entitlement for interest due to delay in possession of the allotted unit/plot and/or while seeking refund, on the deposited amount under the scheme of the Act, 2016 and if yes, what rate of interest is required to be paid by the promoter to the allottee/respondent.

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

17.2 The Hon'ble Bombay High Court in the case of ***Neelkamal Realtors Suburban Pvt. Ltd. And others Vs. Union of India (supra)*** observed that the requirement to pay interest is not a penalty as the payment of interest is compensatory in nature in the light of the delay suffered by the allottee who has paid for his apartment/plot but has not received possession of it. The obligation imposed on the promoter to pay interest till such time as the apartment/plot is handed over to him is not unreasonable. The interest is merely compensation for use of money.

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

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

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

> ***Rule 9.2(ii)***
>
> *The Allottee shall have the option of terminating the Agreement in which case the Promoter shall be liable to refund the entire money paid by the Allottee under any head whatsoever towards the purchase of the apartment, along with interest at the rate equal to MCLR (Marginal*

Cost of Lending Rate) on home loan of State Bank of India + 1% unless provided otherwise under the Rules, within forty-five days of receiving the termination notice:

Provided that where an Allottee does not intend to withdraw from the Project or terminate the Agreement, he shall be paid, by the Promoter, interest at the rate prescribed in the Rules, for every month of delay till the handing over of the possession of the Apartment/Plot, which shall be paid by the Promoter to the Allottee within forty-five days of it becoming due.

<u>Rule 9.3</u>

The Allottee shall be considered under a condition of Default, on the occurrence of the following events :

<u>Rule 9.3(i)</u>

In case the Allottee fails to make payments for 2(two) consecutive demands made by the Promoter as per the Payment Plan annexed hereto, despite having been issued notice in that regard the Allottee shall be liable to pay interest to the promoter on the unpaid amount at the rate equal to MCLR (Marginal Cost of Lending Rate) on home loan of State Bank of India + 1% unless provided otherwise under the Rules. The Promoter must not be in default to take this benefit.

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

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

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

17.8 The **Hon'ble Supreme Court** in ***Civil Appeal Nos. 4910-4941/2019 DLF Homes Panchkula Pvt. Ltd. Vs. D. S. Dhanda etc.etc. with Civil Appeal Nos. 4942-4945/2019 DLF Homes Panchkula Pvt. Ltd. Vs. Sudesh Goel etc. decided on 10.05.2019*** held in para 3 of the judgment as under:-

> *"…… We feel it appropriate that, considering that the subject units in question are dwelling units, in a residential housing project, the rate of interest for house building loan for the corresponding period in a scheduled nationalized bank (take, State Bank of India) would be appropriate and logical, and, if floating/varying/different*

rates of interest were/are prescribed, the higher rate of interest should be taken for this instant computation."

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

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

17.10 In view of the aforementioned, we are of the view that the respondent is entitled for interest on account of delayed possession 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 2016 and Rules 2016. **Question no. (2)** is answered in affirmative in favour of the respondent.

18. Vide **question no. (3)** we are required to examine as to whether the project of the appellant/promoter is delayed.

18.1 The appellant launched 'Trans Ganga City Unnao' on 15.08.2015 with the aim to develop an echo friendly hi-tech city. The respondent approached for allotment of a residential plot in the said scheme on 07.09.2015 and in furtherance of the application a residential plot no. C-528, Sector-4, Industrial Area Trans Ganga (Housing), district Unnao was allotted to the respondent for a consideration of Rs. 22,68,000/- (principal). The said amount was paid by the respondent to the appellant on 10.08.2017.

18.2 As per Brochure of the project, the possession of the residential plot was proposed to be given to the respondent by December 2016. But the appellant failed to provide possession of the plot to the respondent.

18.3 There are two groups of allottees/respondents and as per provisions of their respective brochures the possession of the developed residential plot was to be given either by December 2016 or by March 2017.

18.4 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 D'lima & 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……"*

18.5 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 ……"*

18.6 The appellant is still not in a position to offer possession to the respondents. Further, the appellant cannot be permitted to take stand that on the ground of proposed possession the allottee can be made to wait indefinitely.

18.7 Though the proposed period of offer of possession to the allottees/respondents was December 2016 and March 2017 respectively, there can always be variation in actual time, but an allottee cannot be made to wait indefinitely for handing over possession merely on the ground that the time specified in the brochure is an estimated period.

18.8 We are of the considered view that possession of the booked plots was required to be given to the respective allottees by December 2016 / March 2017 $\pm$ a month or so required for final finishing/shape.

18.9 In view of the above, we hold that the project of the appellant is delayed. **Question no. (3)** is decided accordingly.

19. **Question no. (4)** is as to whether the impugned order has been passed by the RERA in violation of the order of Hon'ble Supreme Court in the case of ***Bangalore Development Authority Vs. Syndicate Bank, 2007(6) SCC 711.***

19.1 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.*
>
> *……………………………………………."*

19.2 Subsequently the Hon'ble Apex Court in ***Civil Appeal No. 6051/2002 (Ghaziabad Development Authority Vs. Shakuntala Rohatgi***) decided on 04.03.2009 placed reliance on the principles laid down regarding award of interest in ***Ghaziabad Development Authority Vs. Balbir Singh (2004)5 SCC 65, Municipal Authority Chandigarh and others Vs. Shanti Nikunj, (2006)4 SCC 109 and Bangalore Development Authority Vs. Syndicate Bank (2007) 6 SCC 711***, while reiterating Para 10 of **Bangalore Development Authority Vs. Syndicate Bank.**

19.3 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 and Rules 2016 have been correctly applied by the RERA while deciding the complaints of the respondents. Further, the provisions of the Act have also been upheld by the **Hon'ble Bombay High Court in Neelkamal Realtors Suburban Pvt. Ltd. Vs. Union of India (2018) 1 AIR Bom R 558** and subsequently by the **Hon'ble Supreme Court in Civil Appeal No.(s). 6745-6749 of 2021** ***(M/s Newtech Promoters & Developers Pvt. Ltd. Vs. State of U.P. & others)*** decided on 11.11.2021. **Question no. (4)** is answered accordingly.

20. Vide **question no. (5)** we are required to examine as to whether the Regulatory Authority erred in not taking into consideration the difficulties faced by the appellant in completion of the project as per promised time schedule or the order of the Regulatory Authority is in consonance with the provisions of the Act 2016 and Rules 2016.

20.1 The promoter/appellant has also challenged the impugned order on the ground of agitation and hindrance created by previous land owners, which resulted in suspension of work since October, 2017.

20.2 It is admitted position that in pursuance to the advertisement issued by the promoter/appellant for allotment of residential plots in Trans Ganga City the respondent applied for a plot and was allotted a residential plot bearing no. C-580, Sector-6, measuring approximately 120 sq.mts. in the industrial area, Trans Ganga (Housing), District Unnao through lottery system on lease basis for a period of 90 years and as per the Brochure of the Scheme the plot was to be delivered by December 2016. Therefore, the respondent, feeling aggrieved, filed complaint on 02.12.2020 seeking direction for possession of the developed plot as per commitment and interest as is being charged by the Banks and compensation.

20.2 Under the scheme of the Act, 2016, there is no provision for extending the period of possession as promised vide allotment letter/Builder Buyer Agreement. Section 5 of the Act provides for grant of registration to the project of a promoter by the RERA and Section 6 of the Act provides for extension of registration granted under Section 5 by the authority on application made by the promoter, due to force majeure. Further the authority may, in reasonable circumstances without fault on the part of the promoter, based on the facts of each case, may extend the registration granted to the project not exceeding a period of one year by recording reasons for the same and under explanation clause of Section 6 force majeure has been defined as 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. This extension of registration by RERA is only to save the promoter from penal consequences of non compliance of the various provisions of the Act, 2016.

20.3 The Hon'ble Bombay High Court in the case of ***Neelkamal Realtors Suburban Pvt. Ltd. Vs. Union of India and others (supra)*** vide paras 256, 257 & 258 was pleased to observe as under:--

> *"256. Section 4(2)(l)(C) enables the promoter to revise the date of completion of project and hand over possession. The provisions of RERA, however, do not rewrite the clause of completion or handing over*

possession inagreementforsale.Section4(2)(l)(C) enables the promoter to give fresh time line independent of the time period stipulated in the agreements for sale entered into between him and the allottees so that he is not visited with penal consequences laid down under RERA. In other words, by giving opportunity to the promoter to prescribe fresh time line under Section 4(2)(l)(C) he is not absolved of the liability under the agreement for sale.

257. 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 allotteewho 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.

*258.In paragraph-*9 ***of AlokShankerPandey v. Union of India,*** *(2007) 3 SCC 545, the Apex Court has held that "There is misconception about interest. Interest is not a penalty or punishment at all, but it is the normal accretion on capital. …………….. The object of Section 18 is to recompense an allottee for depriving him of the use of the funds paid by him. The promoter who has received money from the allottee but has failed to adhere to his contractual or statutory obligations, cannot claim that he is entitled to utilize the monies without paying any interest with respect thereto to the allottee."*

259. A perusal of Section 18 indicates that payment of interest including compensation or interest, as the case may be, is payable on account of default committed by the promoter. Although this Section does not consider a

> *situation where the promoter is unable to complete or handover possession for no fault of his own, it would be open to him to claim frustration in such a case and return the money to the allottee with interest thereby stopping the interest that is to be paid till handing over possession. The provisions of RERA ensure that the allottees' money is not misused or unreasonably retained by the promoter.*

20.4 The term "Force Majeure" is defined in the Concise Law Dictionary by P. RamanathaAiyar as follows:-

> *Force Majeure – Irresistible force or compulsion; circumstance beyond one's control.*

20.5 The Hon'ble Supreme Court in the case of **Dhanrajamal Govindram v. Shamji Kalidas and Co., AIR 1961 SC 1285, 1291** was pleased to observe that *the expression 'force majeure' is not a mere French version of the Latin expression "vis major". It is a term of wider import. Strikes, breakdown of machinery, which though normally not included in "vis major" are included in "force majeure", the intention is to save the performing party from the consequences of anything over which he has no control.*

20.6 The Hon'ble High Court, Orissa examined the issue of force majeure in the case of **Mohd. Serajuddin v. State of Orissa, AIR 1969 Ori. 152 at 162** and was pleased to observe that, *force majeure means act of God, war, insurrection, riot, civil commotion, strike, earthquake, tide, storm, tidal wave, flood, lightning, explosion, fire and any other happening which the lessee would not reasonably prevent or control.*

20.7 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 follows:-

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

20.8 The term 'force majeure' has been defined in Black's Law Dictionary, as *'an event or effect that can be neither anticipated nor controlled. It is a contractual provision allocating the risk of loss if performance becomes impossible or impracticable, especially as a result of an event that the parties could not have anticipated or controlled.'*

20.9 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.

Further a developer, in the position of appellant would be conscious of the delays/difficulties claimed and cannot set this up as a defense to claim for compensation, where a delay has been occasioned beyond the contractually agreed period for handing over possession.

20.10 The claim of the promoter/appellant regarding non consideration of its difficulties in completion of the project is beyond the scope of the scheme of the Act and if there is any delay either in delivery of possession or an allottee chooses to withdraw from the project due to delay or otherwise then the allottee is entitled for interest/compensation/penalty.

20.11 The Hon'ble Supreme Court, vide paragraph 25 in ***M/s Newtech Promoters and Developers Pvt. Ltd. Vs. State of U.P. & Ors.*** (supra) was pleased to observe that unqualified right of the allottee to seek refund referred under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. Para 25 reads as under:--

"25. The unqualified right of the allottee to seek refund referred under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottee, if the promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the allottee/home buyer, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act with the proviso that if the allottee does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed."

20.12 As per record, the possession of the developed plot was required to be given by the promoter/appellant as per the scheduled mentioned in column (E)of the table (in para 2), and the Regulatory Authority, after examining the pleadings and appreciating the submissions of the parties, directed for providing possession within time frame and interest at the rate of MCLR+1% since December 2016/March 2017 as applicable, till the date of actual possession, which should be as "from the proposed date of possession till the date of OC/CC or handing over of actual possession whichever is earlier". **Question no. (5)** is answered accordingly.

21. In view of the preceding observations, after 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 to interfere with the impugned order and the same is upheld. There is no illegality, infirmity or perversity in the order of the Regulatory Authority dated 24.08.2022 in awarding the interest w.e.f. December 2016 in the leading complaint (i.e. LKO186/11/85482/2021) of the impugned order (i.e. Appeal No. 132/2023 herein) and in the rest

complaints, as per their entitlement according to the terms of the brochure/allotment letter. Accordingly, while upholding the orders of the Regulatory Authority, we **dismiss all the 29 appeals.**

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

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

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

> *"127. It may further be noticed that under the present real estate sector which is now being regulated under the provisions of the Act 2016, the complaint for refund of the amount of payment which the allottee/consumer has deposited with the promoter and at a later stage, when the promoter is unable to hand over possession in breach of the conditions of the agreement between the parties, are being instituted at the instance of the consumer/allottee demanding for*

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

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

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

"140. It is settled principle of law that if the plain interpretation does not fulfill the mandate and object of the Act, this Court has to

interpret the law in consonance with the spirit and purpose of the statute. There is indeed a visible inconsistency in the powers of the authority regarding refund of the amount received by the promoter and the provision of law in Section 18 and the text of the provision by which such refund can be referred under Section 40(1). While harmonizing the construction of the scheme of the Act with the right of recovery as mandated in Section 40(1) of the Act keeping in mind the intention of the legislature to provide for a speedy recovery of the amount invested by the allottee along with the interest incurred thereon is self explanatory. However, if Section 40(1) is strictly construed and it is understood to mean that only penalty and interest on the principal amount are recoverable as arrears of land revenue, it would defeat the basic purpose of the Act."

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

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

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

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

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

22.5 In the instant case, this Tribunal while upholding the order of Regulatory Authority has **dismissed** the appeals filed by the promoter. We, therefore, direct the Registry to transfer the entire amount deposited by the appellant/promoter under the provisions of Section 43(5) of the Act to the concerned account of the U.P. Real Estate Regulatory Authority (U.P. RERA). Further, we direct the Regulatory Authority to dispose of this amount during the execution proceedings in accordance with its orders passed in the complaint cases.

22.6 The functioning of the Tribunal became paperless from January 2022, but the system for depositing payment through online mode by the litigants under different heads could not be made operational and the same was to be deposited by the litigants in the shape of Bank Draft, but subsequently NIC and State Bank of India succeeded in providing solution for making payment under all the heads through online mode and the State Bank of India also agreed to convert the amount deposited by the promoter under Section 43(5) of the Act into fixed deposit indicating complaint number, appeal number etc. within 24 hours for a period of 60 days with auto renewal thereafter, so that after decision in the appeal the amount be released as per direction of the Hon'ble Tribunal along with accrued interest on the said fixed deposit.

22.7 Discussion was made with the officials of the State Bank of India regarding providing benefit of interest on the deposited amount in the pending appeals. SBI also agreed to convert the amount deposited in different appeals, on the details provided by the Tribunal, into Fixed Deposits for a period of 60 days with auto renewal thereafter in the pending appeals. Accordingly, in all the pending appeals of the promoters, the amount deposited in pursuance to the provisions of Section 43(5) of the Act has been converted into fixed deposit in the month of June, 2023.

22.8 Registry is directed to take steps for redemption of the amount of fixed deposit in the instant appeal and send the same to the Regulatory Authority to be taken care as per the directions hereinabove.

22.9 It will be the liability of the beneficiary to pay the income tax on the interest earned on the deposited amount, if any.

23. No order as to costs.

Dated: 07th May, 2024
Shakir **(Sanjai Khare)** **(D.K. Arora)**