RESERVED JUDGMENT

BENCH-1

THE UTTAR PRADESH REAL ESTATE APPELLATE TRIBUNAL, AT LUCKNOW.

APPEAL NO. 314/2020

Ghaziabad Development Authority ……………Appellant.

Versus

Jagan Singh. ……………Respondent.

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

1. The present appeal has been preferred under Section 44(1) of the Real Estate (Regulation and Development Act, 2016 (hereinafter referred to as 'the Act 2016') by Ghaziabad Development Authority (hereinafter referred to as the 'appellant') against the order dated 16.04.2019 passed by the U.P. Real Estate Regulatory Authority, Regional Office, Gautam Budh Nagar (hereinafter referred to as the 'Regulatory Authority) in Complaint No. 9201819790 whereby the following directions were given:--

   (i) The appellant was directed to ensure execution of Registry and delivery of possession to the complainant/respondent within 45 days after taking legal fee and stamp fee.

   (ii) The appellant was directed to ensure payment of interest to the complainant/respondent on the amount deposited by the complainant at the rate of MCLR+1% from 19.04.2018 to the date of offering possession along with OC/CC.

2. The facts of the case, in brief, as culled out from the memo of appeal, are that the appellant floated a housing scheme, named 'Indraprastha Awas Yojna'. The scheme comprised of residential plots of various categories and sizes divided into various zones.

2.1 The respondent applied for a Flat in the Indraprastha Awas Yojna, Pocket-D, bearing Scheme Code: 844, Category:61 M, in the year 2015. Consequently the appellant allotted a Flat bearing Property No. H/902 in the scheme: Indraprastha Awas Yojna, Pocket-D, bearing Scheme Code:844, Category:61M admeasuring total area of 566 sq.ft.

2.2 The total cost of the aforesaid Flat was Rs.15,26,000/- out of which the respondent deposited Rs.14,85,000/-.

2.3 The said scheme was affected by many encumbrances due to illegal occupation, construction and agitation by the farmers over the land on which the scheme was launched. The illegal possession and construction by the farmers had been taken care of by removal after complete and due investigation by the authorities and under complete supervision of the authorities.

2.4 The appellant submitted application for extension of final date for completion of the Project, vide letter no. 101/4/EE Zone-8/2017-18 dated 16.05.2018 and its reminder no. 276/4/EE Zone-8/2019 dated 07.03.2019 before the RERA for granting extension of one year i.e. till 18.04.2019.

2.5 In pursuance to the aforesaid application for extension of the completion date of the Project the appellant also deposited a fee of Rs.2,48,000/- with RERA via Draft No. 48693.

2.6 The appellant, earlier, also approached the District Magistrate, Ghaziabad vide Letter No. 453/4/EE Zone-8/2017 dated 24.06.2017 seeking intervention of the District Magistrate to remove the constructions by providing Special Anti Land Grabbing Task Force.

2.7 The construction of the Flat is complete and the respondent can take possession of his flat after completing the formalities and registration before the Sub-Registrar.

3. The appellant has not mentioned any ground in the memo of appeal for challenging the impugned order dated 16.04.2019 passed by the Regulatory Authority. However, vide application dated 21.02.2021 the appellant submitted the following grounds:--

A. The impugned order dated 16.04.2019 passed by the Regulatory Authority is bad in the eyes of law as the Regulatory Authority has failed to take into account the material fact that on account of illegal encroachment/construction by the farmers at the Indraprastha Awas Yojna, there had been a delay in construction, as such the construction of the project and the residential unit of the respondent could not be completed in time.

B. The Regulatory Authority in its judgment and order dated 16.04.2019 has not taken into account that the appellant, for the extension of final date of completion of the project, had already submitted two applications by means of letter no. 101/4/EE Zone-8/2017-18 dated 16.05.2018 and its reminder bearing letter no. 276/4/EE Zone-8/2019 before RERA for grant of one year to complete the project in question till 18.04.2019.

C. The appellant had also submitted a draft no. 48693 of the requisite fee amount to Rs.2,48,000/- with the RERA, as extension fee.

D. In order to complete the project in question in time the appellant had informed the District Magistrate, Ghaziabad along with other authorities by means of letter no. 453/43/EE Zone-8/2017 dated 24.06.2017 by which the appellant sought intervention of the District Magistrate and other similarly situated authorities to remove the illegal encroachment/construction by providing Anti Land Grabbing Task Force.

E. The Regulatory Authority in its judgment and order dated 16.04.2019 has specifically mentioned the averment of the appellant with regard to the issues faced by the appellant due to illegal encroachment/construction while observing that due to lack of evidence to the effect the appellant cannot be given benefit of the aforementioned ground.

F. The appellant has exercised due diligence and has ensured that the respondent does not suffer at the hands of the appellant keeping in view the delay caused in completion of the project and as such had offered possession to the respondent in the month of December, 2019. However, the respondent had refused to take possession of the residential unit. In compliance of the order of this Tribunal the appellant issued a fresh letter of possession to the respondent on 24.12.2019 and subsequently the possession of the residential unit was handed over to the respondent.

G. The impugned order dated 16.04.2019 has been passed in an arbitrary manner and as such is based on conjectures and surmises. The Regulatory Authority has failed to give benefit of doubt to the appellant inasmuch as the factor affecting the completion of the project was ignored by the Regulatory Authority.

H. The impugned order dated 16.04.2019 cannot be allowed to sustain as the respondent has been given actual possession of the residential unit allotted to him and as such is enjoying the appreciated value of the residential unit in question.

I. The object of the Act is to ensure sale of plot, apartment or building in an efficient and transparent manner and as such the Regulatory Authority has failed to observe the bonafide of the appellant in completing the project which was 95% complete at the time of filing of the complaint.

4. The appellant has prayed for setting aside the order dated 16.04.2019 passed by the Regulatory Authority in Complaint No. 9201819790 whereby it has been directed to pay interest at the rate of MCLR+1% from 19.04.2018 till the date of possession.

5. The respondent (Jagan Singh) filed his counter affidavit/objection to the appeal whereby he submitted that the impugned order dated 16.04.2019 is a detailed order considering the law as well as the facts of the case and does not have any legal impediment and, therefore, the same is liable to be upheld by dismissing the appeal.

5.1 The application for extension of time for completion of the Project moved by the appellant was not allowed as such there was no update for extension of time on the official website of UP RERA.

5.2 As per Brochure of the Scheme issued by the appellant the time specified for handing over physical possession of the unit was April, 2018. The last date for registration in the Project of the appellant was 10.04.2015 and the final date to hand over the units to the allottees was 19.04.2018.

5.3 The appellant approached the District Magistrate, Ghaziabad only on 24.06.2017 i.e. after more than 26 months from the last date for registration of the allottees for the Project and that too for demolishing illegally constructed one room. The aforementioned reason cannot be treated as a defence for delaying the entire Project for more than 21 months. Further the appellant made an averment to handover the unit on or before May 2019, before the Regulatory Authority in para 8 of the written submission filed by the appellant and relying over the averments made before the Regulatory Authority the impugned order dated 16.04.2019 was passed.

5.4 The Regulatory Authority while deciding the complaint and passing the impugned order dated 16.04.2019 has dealt with the ground on which the appellant is relying.

5.5 While deciding the complaint the Regulatory Authority has appreciated the arguments advanced by both the parties.

5.6 The Project of the appellant has yet not completed and a detailed application dated 23.12.2019 mentioning the details of the incomplete project was submitted before the appellant.

5.7 The respondent till date has deposited Rs.16,26,194/- with the appellant.

5.8 The appellant has not produced any document on record to support the submissions raised by it except an application dated 24.06.2017 preferred before the District Magistrate Ghaziabad for demolishing one room and the said application was preferred before the

Authorities after 26 months from the last date of registration of the allottees.

5.9 The complainant/respondent has paid an amount of Rs.15,05,036/-, but at the time of filing of complaint before the Regulatory Authority it was mistakenly written as Rs.14,85,000/-.

5.10 The Regulatory Authority directed the appellant to offer possession by May, 2019 relying on the averments made by the appellant that the project is 95% finished and the unit allotted to the respondent will be offered to him by May 2019.

5.11 The Project was delayed and the project lacks basic amenities such as lift, lid over septic tanks, clean and safe project as all the construction waste is dumped all over the project, proper street light are lacking, etc.

5.12 The possession was to be offered to the respondent by 19.04.2018 as such the appellant is liable to pay delay interest to the respondent.

5.13 Neither the RERA provided any extension upon the application of the appellant nor the appellant produced any document on record for the delay except the application preferred before the District Magistrate, Ghaziabad for demolishing a single room.

5.14 The appellant has approached the Tribunal with malice hands and with intention to grab the hard earned money of the respondent and to unnecessarily delay the possession of the unit and further to engage the respondent in unnecessary litigation as well as to exhaust the respondent financially. As such the appeal deserves to be dismissed with cost.

6. The respondent has also filed a supplementary affidavit dated 09.09.2020 stating that the appellant issued a letter dated 24.12.2019 asking the respondent to take possession of the unit allotted to him by 07.01.2020, in compliance of the order passed by this Tribunal. The respondent took possession of the unit allotted to him and pointed out all shortcomings in the unit as well as in the tower vide his application dated 21.12.2019. The appellant replied the said application stating that the lift is in working condition. On the

contrary the panel of the lift in the tower allotted to the respondent was not installed till 09.08.2020 and thereafter the panels were installed and the wires for calling the lift were left loose.

6.1 As per monthly progress report (Zone-8) dated 31.03.2017 the Indraprastha Awas Yojna is Part A and in the remark column it is mentioned that the land is under dispute, therefore, work could not be started whereas in Part B, C and D the work is in progress. The letter dated 26.06.2017 was sent by the appellant for removing the illegal encroachment on Part A of the Project as mentioned in the monthly progress report dated 31.03.2017 and it has nothing to do with Part-C of the project.

6.2 The appellant was issued Completion Certificate for Part B, C and D of the project on 18.04.2019 and thereafter the respondent raised a complaint before IGRS bearing complaint no. 40014020024070 dated 30.07.2020 seeking Occupancy Certificate of Part B,C and D. The Occupancy Certificate of the project was issued on 22.04.2020 which was attached along with the report dated 10.08.2020. This certificate was signed by Sri S. K. Sinha, Executive Engineer on 22.06.2020.

6.3 Although the Occupancy Certificate was issued on 22.04.2020 but the panel of the lift was not installed till 09.08.2020.

6.4 The appellant submitted its report to the IGRS wherein the appellant itself admitted that they have deposited the requisite fee of Rs.2,17,552/- along with GST of Rs.22,959/- through demand draft on 19.06.2020 and the electrification of the common area and the lift will be made in next 1 or 2 days while on the contrary the Occupancy Certificate was issued on 22.04.2020.

7. The respondent also filed his objections against the grounds of appeal, on 26.03.2021 wherein he reiterated all the above mentioned facts. He further submitted that the letter of possession was offered to the respondent on 24.12.2019, even without having OC and CC of the project and the project lacks the basic amenities.

7.1 The Regulatory Authority while deciding the complaint and passing the impugned order dated 16.04.2019 has dealt with the ground on which the appellant is relying. The delay penalty will be calculated as per the initial agreement for sale and as per the provisions of Section 18 of the Act 2016.

7.2 The impugned order dated 16.04.2019 is a detailed order considering the law as well as the facts of the case and does not have any legal impediment and therefore the same is liable to be upheld by dismissing the present appeal and imposing cost on the appellant.

8. The appellant filed its reply to the supplementary affidavit of the respondent, on 17.11.2020, whereby it submitted that physical possession of the house allotted to the respondent has been handed over on 20.01.2020.

8.1 The respondent had moved a complaint demanding compensation in lieu of inadvertent delay caused in completion of the project and the unit of the respondent. The said complaint was rejected vide a speaking order dated 14.02.2020.

8.2 Entire compliance of the order of the Regulatory Authority has already been made and supporting documents have been submitted before this Tribunal.

8.3 The respondent has resorted to execution proceedings against the appellant before the Regulatory Authority and has made a statement on 16.09.2020 that the residential unit allotted to him, of which he has got physical possession, is satisfactory and the elevator in his residential tower is functional.

8.4 The appellant had issued a letter dated 29.09.2019 to the respondent for the purpose of completing the formalities of registry of the unit allotted to the respondent but no satisfactory response was received from the respondent. On 12.12.2019 this Tribunal was pleased to direct the appellant to forthwith handover the allotted unit to the respondent. Subsequently a fresh letter for completing the registration of the allotted unit was issued to the respondent on 24.12.2019. After completing the formalities of registration a letter of possession was issued on 18.01.2020 and physical possession of the unit was handed over to the respondent on 20.01.2020.

8.5 At the time of inception of the Samajwadi Awas Yojna in Part B, C and D there were numerous land/property disputes along with encroachments due to which the progress of the project suffered.

8.6 The elevator in the building where the residential unit has been allotted to the respondent has been functional much before 09.08.2020.

8.7 The respondent is indulging in a baseless and vindictive exercise of pressing allegations upon the appellant in order to gain sympathy from the Tribunal. The electricity and other related services were being provided by the appellant by means of a diesel generator.

9. Heard Sri Rishabh Raj, learned counsel for the appellant and Sri Tushar Bahadur, learned counsel for the respondent.

10. In order to examine the issue raised by the appellant regarding non consideration of the difficulties faced by the appellant in completing the project as per time schedule indicated in the Registration Booklet/Brochure of the scheme and the grant of interest for delay by the Regulatory Authority, we deem it proper to frame the following issues:--

(i) Whether the extension of project under Section 6 has any bearing on the rights of the allottee under Section 18 (1) (a) of the Act, 2016?

(ii) Whether it is necessary and mandatory for the Promoter to have first Completion Certificate and Occupancy Certificate under the provisions of Act, 2016, Rules 2016 read with Uttar Pradesh Apartment (Promotion of Construction, Ownership and Maintenance) Act, 2010 before offering possession as well as asking the allottee to settle the account and satisfy the final demand?

(iii) Whether the allottee/appellant is entitled for interest due to delay in completion of the Project and giving possession under the Scheme of Act, 2016 and if yes, what rate of interest is required to be paid by the Promoter to allottee?

11. In order to examine **issue no. (i)** it would be necessary to examine the scheme of Act, 2016 in depth.

11.1 The entire Act of 2016 has been divided into ten chapters. In order to examine the issue of force majeure or inability of promoter to complete the project without its fault, we are required to examine chapter ll, lll and lV.

11.2 Chapter II deals with the provisions regarding registration of real estate projects, extension, revocation and obligation of authority consequent upon lapse of or on revocation of the registration as well as registration and functions of real estate agents. Chapter lll provides for functions, duties, obligations of promoter as well as the return of amount and compensation, if the promoter fails to complete or is unable to give possession of an apartment/plot/building in accordance with the terms of the agreement for sale. Chapter lV lays down right and duties of allottees.

11.3 Before we proceed to examine the provisions of Chapters II, III and IV, it is necessary to examine the definition of the term "project" and "Real Estate Project". The definition of the term 'project' is provided in section 2(zj) which reads as under:-

> ***Section 2(zj):-***
>
> *"project" means real estate project as defined in clause 2(zn) under this Act.*

The definition of the term "Real Estate Project" is provided in Section 2 (zn), which reads as follows:--

> ***Section 2(zn):-***
>
> *"real estate project" means the development of a building or a building consisting of apartments, or converting an existing building or a part thereof, into apartments or the development of land into plots or apartment, as the case may be, for the purpose of selling all or some of the said apartments or plots or building, as the case may be, an includes the common areas, the development works, all improvements and structures thereon, and all easement, rights and appurtenances belonging thereto;.*

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

11.4 Chapter II of the Act , 2016 relates to registration of real estate projects. Section 3 of the Act, 2016 provides prior registration of real estate project with the Real Estate Regulatory Authority as follows: -

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

Section 3(1) provides for certain restrictions on the promoter without registering a real estate project with the real estate regulatory authority concerned. The proviso to Section 3(1) further provides for registration of ongoing Projects:-

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

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

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

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

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

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

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

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

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

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

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

c) for the purpose of renovation or repair or re-development which does not involve marketing,

> *advertising selling or new allotment of any apartment, plot or building, as the case may be, under the real estate project*
>
> *Explanation. -For the purpose of this section, where the real estate project is to be developed in phases, every such phase shall be considered a stand-alone real estate project, and the promoter shall obtain registration under this Act for each phase separately."*

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

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

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

11.8 The registration of projects serves mainly three purposes.

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

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

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

11.9 There are certain obligations of the promoters which are to be complied by them. Some of these obligations are during registration phase and some of the obligations are post expiry of validity of registration. Accordingly, there are large number of obligations of the promoter which are not linked with the completion of the project, but those provisions relate to regulating relationship between promoter and allottee such as conveyance deed, giving possession, workmanship and structural defect rectification liability, defective land title liability, etc.

11.10 Section 4 of Act, 2016 provides the method for submission of application for registration of Real Estate Projects. The relevant provision for examining the issues involved in the instant appeal is being reproduced as follows:--

"4. Application for registration of real estate projects.- *(1) Every promoter shall make an application to the Authority for registration of the real estate project in such form, manner, within such time and accompanied by such fee as may be specified by the regulations made by the Authority.*

(2) The promoter shall enclose the following documents along with the application referred to in sub-section (1), namely:—

(a) ………………

(b) ………………

(c) ………………

………………

(l) a declaration, supported by an affidavit, which shall be signed by the promoter or any person authorized by the promoter, stating:-

(A) …………..

(B) ………….

(C) the time period within which he undertakes to complete the project or phase thereof, as the case may be:

……………….."

11.11 As per the provisions of section 4 every promoter is required to make an application to the authority for registration of the real estate project enclosing several documents provided in sub- section (2) and an affidavit giving declaration by the promoter or any person authorized by the promoter regarding legal title to the land, details of encumbrances, if any etc. Further promoter is also required to make declaration authority in compliance of the provisions of section 4 (2) (ℓ) (C) with respect to time period within which he undertakes to complete the project or of phase thereof, as the case may be.

Section 5 provides for grant of registration by the RERA on receipt of the application under sub Section 1 of Section 4. The provision of Section 5 is being reproduced as under:

"5. Grant of registration*.- (1) On receipt of the application under sub-section (1) of section 4, the Authority shall within a period of thirty days.*

(a) grant registration subject to the provisions of this Act and the rules and regulations made thereunder, and provide a registration number, including a Login Id and password to the applicant for accessing the website of the Authority and to create his web page and to fill therein the details of the proposed project; or

(b) reject the application for reasons to be recorded in writing, if such application does not conform to the provisions of this Act or the rules or regulations made thereunder:

Provided that no application shall be rejected unless the applicant has been given an opportunity of being heard in the matter.

(2) If the Authority fails to grant the registration or reject the application, as the case may be, as provided under sub-section (1), the project shall be deemed to have been registered, and the Authority shall within a period of seven days of the expiry of the said period of thirty days specified under sub-section (1), provide a registration number and a Login Id and password to the promoter

for accessing the website of the Authority and to create his web page and to fill therein the details of the proposed project.

(3) The registration granted under this section shall be valid for a period declared by the promoter under sub-clause (C) of clause (1) of sub-section (2) of section 4 for completion of the project or phase thereof, as the case may be."

If any promoter fails to complete project by the declared time period under section 4 (2) (ℓ) (C) can seek extension of registration granted under section 5 on two grounds (i) due to force majeure, provided in the explanation of the section as per a case of war, flood, drought, fire, cyclone, earthquake or any other calamity caused by the nature affecting the regular development of the real estate project. (ii) the authority may in reasonable circumstances, without default on the part of promoter, based on the facts of each case, and for the reasons to be recorded in writing, extend the registration granted to a project for such time as it considers necessary, which shall, in aggregate, not exceed a period of one year.

11.12 Section 6 deals with extension of registration on an application made by the promoter due to *force majeure* and in reasonable circumstances, without default on the part of the promoter the project could not be completed, after examining the facts of each case, by a reasoned order. The provision of Section 6 is extracted as below:-

"6. Extension of registration.- *The registration granted under section 5 may be extended by the Authority on an application made by the promoter due to force majeure, in such form and on payment of such fee as may be specified by regulations made by the Authority:*

Provided that the Authority may in reasonable circumstances, without default on the part of the promoter, based on the facts of each case, and for reasons to be recorded in writing, extend the registration granted to a project for such time as it considers necessary, which shall, in aggregate, not exceed a period of one year: Provided further that no application for extension of registration shall be rejected unless the applicant has been given an opportunity of being heard in the matter.

Explanation.— For the purpose of this section, the expression "force majeure" shall mean a case of war, flood, drought, fire, cyclone, *earthquake or any other calamity caused by nature affecting the regular development of the real estate project."*

This provision puts a reasonable restriction, when considered in the context of public interest. If the promoter is genuinely suffering hardship as a consequence of the lapse of registration under Section 6, this hardship can also be alleviated by the authority while passing an order under Section 8 or while giving directions under Section 37 of Act of 2016, and thus we are of the considered view that time limit prescribed under Section 6 is reasonable and has been imposed in public interest.

Further scheme Act of 2016 and its provisions on reading as a whole would demonstrate how a promoter is expected to commence/register a project after having proper title, sanction plans, permissions, sources of funding etc. Therefore, except in cases of Force Majeure or extension for maximum period one year the registration will lapse. Under Section 8 the authority has wide power to take appropriate action and in a given case may require the promoter to continue/complete construction, allow him to sell flats or entrust the compensation to the allottees or such a third person as it may deem fit.

The Act spells out the obligations of the Promoter of a real estate project and the consequences if the Promoter fails to fulfill those obligations. In Chapter III, some of those obligations are enumerated in Section 11,12,13 and 18 of the Act which are as follows:--

"11. Functions and duties of promoter.—

(1)………………………

(2)………………………

(3)………………………

(4) The promoter shall—

(a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common

areas to the association of allottees or the competent authority, as the case may be: Provided that the responsibility of the promoter, with respect to the structural defect or any other defect for such period as is referred to in sub-section (3) of section 14, shall continue even after the conveyance deed of all the apartments, plots or buildings, as the case may be, to the allottees are executed.

(b) *be responsible to obtain the completion certificate or the occupancy certificate, or both, as applicable, from the relevant competent authority as per local laws or other laws for the time being in force and to make it available to the allottees individually or to the association of allottees, as the case may be;*

(c) *be responsible to obtain the lease certificate, where the real estate project is developed on a leasehold land, specifying the period of lease, and certifying that all dues and charges in regard to the leasehold land has been paid, and to make the lease certificate available to the association of allottees;*

(d) *be responsible for providing and maintaining the essential services, on reasonable charges, till the taking over of the maintenance of the project by the association of the allottees;*

(e) *enable the formation of an association or society or co-operative society, as the case may be, of the allottees, or a federation of the same, under the laws applicable:*

Provided that in the absence of local laws, the association of allottees, by whatever name called, shall be formed within a period of three months of the majority of allottees having booked their plot or apartment or building, as the case may be, in the project;

(f) *execute a registered conveyance deed of the apartment, plot or building, as the case may be, in favour of the allottee along with the undivided proportionate title in the common areas to the association of allottees or competent authority, as the case may be, as provided under section 17 of this Act;*

(g) *pay all outgoings until he transfers the physical possession of the real estate project to the allottee or the associations of allottees, as the case may be, which he has collected from the allottees, for the payment of outgoings (including land cost, ground rent, municipal or other local taxes, charges for water or electricity, maintenance charges, including mortgage loan and interest on mortgages or other*

encumbrances and such other liabilities payable to competent authorities, banks and financial institutions, which are related to the project):

Provided that where any promoter fails to pay all or any of the outgoings collected by him from the allottees or any liability, mortgage loan and interest thereon before transferring the real estate project to such allottees, or the association of the allottees, as the case may be, the promoter shall continue to be liable, even after the transfer of the property, to pay such outgoings and penal charges, if any, to the authority or person to whom they are payable and be liable for the cost of any legal proceedings which may be taken therefor by such authority or person;

(h) after he executes an agreement for sale for any apartment, plot or building, as the case may be, not mortgage or create a charge on such apartment, plot or building, as the case may be, and if any such mortgage or charge is made or created then notwithstanding anything contained in any other law for the time being in force, it shall not affect the right and interest of the allottee who has taken or agreed to take such apartment, plot or building, as the case may be;

(5)…………………..

(6)…………………..

12. Obligations of promoter regarding veracity of the advertisement or prospectus.— *Where any person makes an advance or a deposit on the basis of the information contained in the notice advertisement or prospectus, or on the basis of any model apartment, plot or building, as the case may be, and sustains any loss or damage by reason of any incorrect, false statement included therein, he shall be compensated by the promoter in the manner as provided under this Act:*

Provided that if the person affected by such incorrect, false statement contained in the notice, advertisement or prospectus, or the model apartment, plot or building, as the case may be, intends to withdraw from the proposed project, he shall be returned his entire investment along with interest at such rate as may be prescribed and the compensation in the manner provided under this Act.

13. No deposit or advance to be taken by promoter without first entering into agreement for sale. –

> (1) *A promoter shall not accept a sum more than ten per cent of the cost of the apartment, plot, or building as the case may be, as an advance payment or an application fee, from a person without first entering into a written agreement for sale with such person and register the said agreement for sale, under any law for the time being in force.*
>
> (2) *The agreement for sale referred to in sub-section (1) shall be in such form as may be prescribed and shall specify the particulars of development of the project including the construction of building and apartments, along with specifications and internal development works and external development works, the dates and the manner by which payments towards the cost of the apartment, plot or building, as the case may be, are to be made by the allottees and the date on which the possession of the apartment, plot or building is to be handed over, the rates of interest payable by the promoter to the allottee and the allottee to the promoter in case of default, and such other particulars, as may be prescribed.*

11.13 A plain reading of Section 11 and 12 of the Act reveals that a promoter has an obligation and responsibility towards the allottees in terms of the Agreement for Sale. The promoter is also responsible for obtaining the C.C. and/or O.C. from the Competent Authority, as well as for execution of the registered conveyance deed in favour of the allottees. Further, in case a person is aggrieved on account of misinformation or false information, he/she has a right to withdraw from the project, and the promoter is liable to return his entire investment alongwith interest and/or compensation. Section 13 imposes responsibilities on the promoter for not accepting a sum of more than 10 percent of the cost of the apartment without first entering into and registering an agreement for sale, which should indicate the payment schedule for the allottees as well as the date on which possession of the apartment is to be handed over to the allottees.

11.14 Section 18 deals with the issue of return of amount and compensation, the relevant portion of Section 18(1) is extracted as follows:-

> ***"Section 18- Return of amount and compensation –(1)*** *If the promoter fails to complete or is unable to give possession of an apartment, plot or building,–*
>
> *(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or*
>
> *(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason, he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, 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 :*
>
> *Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."*

11.15 Section 18(1) of the Act provides that if an allottee wishes to withdraw from the project on the ground that the promoter has failed to complete or is unable to give possession of the property in accordance with the agreement for sale within the date specified therein, or due to discontinuance of the promoter's business on account of suspension or revocation of its registration or for any other reason, then the promoter shall return the amount received from the allottee in respect of that property with interest and compensation, on the allottee's demand. Further, if an allottee does not wish to withdraw from the project, he shall be paid by the promoter interest for every month of delay till the handing over of the possession, at such rate as may be prescribed.

As per the provisions of Section 18 of the Act, the option of either withdrawing from the project or staying in the project remains with only the allottee. The intent of the legislature is quite clear that the right of exercising the option of either staying in the project or for withdrawing from it is unqualified and if the option is availed by the allottee to withdraw from the project, the money deposited by the allottee has to be refunded by the promoter along with interest at such rate as may be prescribed.

11.16 In Chapter IV, Section 19 deals with the Rights and Duties of allottees. Sub-section (4) is relevant for the present case and the same is reproduced hereinbelow:--

> "***19. Rights and duties of allottees.—***
>
> *(1) …………………………*
>
> *(2)…………………………*
>
> *(3)…………………………*
>
> *(4) The allottee shall be entitled to claim the refund of amount paid along with interest at such rate, as may be prescribed and compensation in the manner as provided under this Act, from the promoter, if the promoter fails to comply or is unable to give possession of the apartment, plot or building, as the case may be, in accordance with the terms of agreement for sale or due to discontinuance of his business as a developer on account of suspension or revocation of his registration under the provisions of this Act or the rules or regulations made thereunder."*

From the conjoint reading of these provisions, it is evident that if the Promoter/developer fails to fulfill his obligations to hand over the possession as per terms of the agreement, the allottee is entitled to claim refund, along with interest and compensation.

11.17 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 7.1, the procedure and condition of possession of the apartment/plot along with situation, which can be called as force majeure and in Rule 9.2 (ii) and Rule 9.3 (i), the rate of interest payable by the promoter or by the allottee respectively have been prescribed in case of default by either of the party. These rules are extracted as follows : –

> ***"Rule 7.1-*** *Schedule for possession of the said (apartment/Plot)- The Promoter agrees and understands that timely delivery of possession of the (Apartment/Plot) to the allottee and the Common Areas to the association of allottees or the competent authority, as the case may be, is the essence of the Agreement. The Promoter assures to hand over*

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

Provided that such Force Majeure conditions are not of a nature which make it impossible for the contract to be implemented. The Allottee agrees and confirms that, in the event it becomes impossible for the Promoter to implement the project due to Force Majeure conditions, then this allotment shall stand terminated and the Promoter shall refund to the allottee the entire amount received by the Promoter from the allotment within 120 days from that date. The Promoter shall intimate the Allottee about such termination at least thirty days prior to such termination. After refund of the money paid by the Allottee, the Allottee agrees that he/she shall not have any rights, claims etc. against the Promoter and that the Promoter shall be released and discharged from all its obligations and liabilities under this Agreement. In case the project is developed in phases, it will be the duty of the promoter to maintain those common areas and facilities which are not complete and handover all the common areas and facilities to the RWA once all phases are completed. The promoter shall not charge more than the normal maintenance charges from the allottees.

Rule 9.2 (ii)- *The Allottee shall have the option of terminating the Agreement in which case the Promoter shall be liable to refund the entire money paid by the Allottee under any head whatsoever towards the purchase of the apartment, along with interest at the rate equal to MCLR (Marginal Cost of Lending Rate) on home loan of State Bank of India +1% unless provided otherwise under the Rules, within forty five days of receiving the termination notice:*

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

Rule 9.3(i)- *In case the Allottee fails to make payment 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."

11.18 The state government way back in the year 2010 with a view to promoting group housing, framed The Uttar Pradesh Apartment (Promotion of construction, Ownership And Maintenance) Act, 2010 for the ownership of an individual apartment in a building of an undivided interest in the common areas and facilities appurtenant of such apartment and to make such apartment and interest heritable as well as transferable. The provision of section 4 provides for general liabilities of promoter. In order to appreciate sub section (2) of section 4 is being reproduced as under: –

***"Section 4(2)-** Every promoter shall,*

(a) specify in writing the date by which, construction of the apartment is to be completed subject to force majeure clause and intimation sent to such purchaser:
(b) declare the penalty for delay in completion of the building and also penalty in the event of non-payment of installment by the purchaser:
(c) declare the conditions for cancellation or withdrawal of allotment and the extent of compensation either way in the event of violations of any of the conditions;
(d) give on demand by the intending purchaser, on payment of photocopying charges, true copies of the documents referred to in this section."

11.19 The Hon'ble Bombay High Court in the case of ***Neelkamal Realtors Suburban Pvt. Ltd. Vs. Union of India and others*** ; 2017 SCC Online Bombay 932, examined the issue of extension of registration due to delay on account of no fault on the part of the promoter and giving revise date of completion of project and handover possession vide paras 256, the same are extracted below:

"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 in agreement for sale. Section 4(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.*

11.20 On thorough examination of the aforesaid provisions and judgment of ***Neelkamal Realtors Suburban Pvt. Ltd. Vs. Union of India and Ors*** (supra), we come to the conclusion that the provisions of extension of registration vide section 6 of the Act 2016 in chapter II only empowers the RERA to grant extension of the registration granted under section 5, on the request of the promoter taking into consideration the force majeure or such reasonable circumstances which resulted delay in completion of the project without the fault on the part of the promoter by means of reasoned order for a period not exceeding one year. In the explanation to the section 6, it has been provided that for the purpose of said section, the expression "force majeure" shall mean a case of war, flood, drought, fire, cyclone, earthquake or any other calamity caused by the nature affecting the regular development of the real estate project, thus the term "force majeure" as explained is only applicable for the purposes of extension of the registration only.

11.21 Further the provisions of chapter III and lV have independent status and applicability. The extension of registration of a project saves the promoter from the panel consequences laid down under the provisions of Act 2016 and not absolved him of the liability under the agreement of sale or other provisions of the Act 2016, Rule 2016, Rule 2018 and Act 2010. The issue nos. (i) is decided accordingly.

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

12.1 In order to appreciate the issue, we examine Section 2(q) and Section 2(zf) of the Act of 2016, which defines Completion & Occupancy Certificate, the same are extracted as follows:-

> ***"Section 2:- Definitions - In this Act, unless the context otherwise requires,-***
>
> ………………………………………………………………………………
> ………………………………………………………………………
>
> ***"Section 2 (q)*** *"completion certificate" means the completion certificate, or such other certificate, by whatever name called, issued by the competent authority certifying that the real estate project has been developed according to the sanctioned plan, layout plan and specifications, as approved by the competent authority under the local laws;"*
>
> ***"Section 2 (zf)*** *"occupancy certificate" means the occupancy certificate, or such other certificate by whatever name called, issued by the competent authority permitting occupation of any building, as provided under local laws, which has provision for civic infrastructure such as water, sanitation and electricity;"*

12.2 On examination of the provisions of Section 2 (q) and Section 2(zf), we find that completion certificate is basically a certificate issued by the competent authority certifying that the Real Estate Project has been developed according to the sanctioned plan, lay out plan and specifications, as approved by the competent authority under the local laws. On the other hand, the occupancy certificate is issued by the competent authority permitting occupation of any building, as provided under local laws, which has provision for civic infrastructure such as water, sanitation and electricity etc.

12.3 Similarly, Section 4(5) of the U.P. Apartments Act, 2010 prescribes for Completion Certificate, which reads as follows:-

> *"**Section 4(5) of the U.P. Apartments Act, 2010**:-An apartment may be transferred by the promoter to any person only after obtaining the completion certificate from the prescribed sanctioning authority concerned as per building bye-laws. The completion certificate shall be obtained by promoter from prescribed authority [within the period specified for completion of the project in the development permit or the building permit as the case may be] Provided that if the construction work is not completed within the stipulated period, with the permission of the prescribed authority;*
>
> *Provided further that if the completion certificate is not issued by the prescribed sanctioning authority within three months of*

> *submission of the application by the promoter complete with all certificates and other documents required, the same shall be deemed to have been issued after the expiry of three months.*
>
> *Explanation: For the purposes of this sub-section "completion" means the completion of the construction works of a building as a whole or the completion of an independent block of such building, as the case may be."*

12.4 Section 4(5) of the U.P. Apartments Act 2010 clearly lays down that an apartment may be transferred by the Promoter to any person (allottee) only after obtaining the C.C. from the prescribed sanctioning authority concerned as per building by-laws. The C.C. is required to be obtained by the Promoter, meaning thereby that Allottee has no role to play in obtaining C.C. from the prescribed authority. A Promoter is required to first obtain C.C./O.C. from the prescribed authority, only thereafter register conveyance deed of the real estate in favour of the Allottee(s) and a legal & habitable possession can be offered to the Allottees.

12.5 The issue of offering handing over possession prior to obtaining occupancy certificate was also examined by the Hon'ble Supreme Court in ***Civil Appeal Nos. 1232 and 1443-1444 of 2019 R.V. Prasannakumaar and ors. Vs. Mantri Castles Pvt. Ltd. and ors. decided on 11.02.2019*** wherein it has been observed that possession cannot be handed over prior to obtaining occupancy certificate.

12.6 In view of the aforesaid analysis, we are of the considered view that as per the provisions of the U.P. Apartments Act, 2010 read with the provisions of Act, 2016 a Promoter is required to offer legal and habitable possession to the allottees only after obtaining C.C./O.C. and ask for clearing dues by raising final demand. Issue no. (ii) is decided accordingly.

13. **Issue No (iii)** relates to the entitlement of the appellant for the interest on account of delay in completion of the Project under the scheme of Act, 2016 and the rate of interest required to be paid by the Promoter to the allottee for delay, if any.

13.1 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. However, if an allottee wishes to stay with the project he/she is entitled for payment of interest/compensation for every month of delay till handing over of possession. 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.

13.2 The Hon'ble Bombay High Court in the case of ***Neelkamal Realtors Suburban Pvt. Ltd. And others Vs. Union of India (2018)1 Bom R 558,*** vide paras 257, 258 and 259, was pleased to observe as follows:--

> *"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 to any other remedy available, to return the amount received in respect of that apartment with interest at such rate as may be prescribed in this behalf including compensation. If the allottee does not intend to withdraw from the project he shall be paid by the promoter interest for every month's delay till handing over of the possession. The requirement to pay interest is not a penalty as the payment of interest is compensatory in nature in the light of the delay suffered by the allottee who has paid for his apartment but has not received possession of it. The obligation imposed on the promoter to pay interest till such time as the apartment is handed over to him is not unreasonable. The interest is merely compensation for use of money".*
>
> *258. In paragraph-9 of Alok Shanker Pandey 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."

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

13.4 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).

13.5 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 as follows :- -

Rule 9.2(ii)

The Allottee shall have the option of terminating the Agreement in which case the Promoter shall be liable to refund the entire money paid by the Allottee under any head whatsoever towards the purchase of the apartment, along with interest at the rate equal to MCLR (Marginal Cost of Lending Rate) on home loan of State Bank of India + 1% unless provided otherwise under the Rules, within forty-five days of receiving the termination notice:

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

Rule 9.3

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

Rule 9.3(i)

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

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

13.7 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.........”*

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

> *“If compensation comprises of two parts, (i) by way of interest on the deposited amount from the assured date (milestone date) of completing construction and handling over possession to the actual date of handling over possession, and, (ii) lumpsum amount, we find nothing wrong in it. We do not agree with the builder co.’s contentions that interest on the deposited amount should not be provided since it is not a case of refund but a case of delay in possession. The interest on the deposited amount has to be viewed in the light of the purpose for which it is intended. It is but a way of computing compensation for delay in possession that is commensurate with the amount deposited by the complainant, and here it has been computed after adopting a milestone date as per the builder co.’s own (unfair and deceptive) letter of 05.06.2013. There can be and is no question of not agreeing to an endorsing the award of interest from the said milestone date. Here we may however add that the rate of interest also cannot be arbitrary or whimsical, some reasonable and acceptable rationale has to be evident, subjectivity has to be minimized, a logical correlation has to be established. Albeit detailed arithmetic or algebra is not required. Logical (to the extent feasible) objective parameters should be adopted. Rounding off simplification etc. to make the computation doable could be adopted. We feel it appropriate that, considering that the*

> *subject units in question are dwelling units, in a residential housing project, the rate of interest for house building loan for the corresponding period in a scheduled nationalized bank (take, State Bank of India) would be appropriate and logical, and, if 'floating'/ varying/different rates of interest were/ are prescribed, the higher rate of interest should be taken for this instant computation."*

13.9 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.

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

Sections 12,18 and 19 of the Act, till the rate of interest for the purpose is notified by the State Government.

13.11 On the basis of aforesaid analysis the issue no. (iii) is decided accordingly.

14. On the basis of pleadings, record and submissions of learned counsel for the parties the admitted position is that:

14.1 The respondent, in pursuance to the scheme launched by the appellant, applied for a flat in 'Indraprastha Avas Yojna' Pocket-D, bearing Scheme Code: 844, Category: 61 M in the year 2015. Consequently the appellant allotted a Flat bearing Property No. H/902 in the said scheme at the total cost of Rs.15,26,000/- and the respondent deposited Rs.14,85,000/-.

14.2 Learned counsel for the parties have not brought on record the Registration Booklet/Brochure of the project as well as allotment letter. From the pleadings of the parties it appears that the last date for registration was 10.04.2015 and final date to handover possession of the unit to the allottee(s) was 19.04.2018.

14.3 As the appellant failed to provide possession as per the terms and conditions/provisions mentioned in the Registration Booklet/Brochure of the project, the respondent approached the Regulatory Authority on 14.09.2018 vide complaint No. 9201819790 raising his grievance regarding delayed possession and sought relief for refund of Rs.14,85,000/- (paid amount)+ 12% interest (as charged by Authority)+ 6% penalty interest.

14.4 The Regulatory Authority, after exchange of pleadings and taking into consideration the progress of the project as well as the averments made in para 8 of the Written Statement of the appellant regarding handing over possession of the unit before May, 2018, vide impugned order dated 16.04.2019 directed the appellant to provide possession to the allottee/respondent and execute conveyance deed after taking necessary legal fee and stamp fee within 45 days from the date of uploading of the order. The Regulatory Authority further directed the appellant to ensure payment of interest to the complainant/respondent on the amount deposited by the complainant/respondent at the rate of MCLR+1% from 19.04.2018 to the date of offering possession along with OC/CC. The Regulatory Authority also gave liberty to the respondent to raise the issue of compensation before the Adjudicating Officer of RERA. The Ghaziabad Development Authority (Promoter) approached this Tribunal feeling aggrieved against the impugned order dated 16.04.2019, primarily aggrieved against direction no. 2 regarding payment of interest at the rate of MCLR+1% from the promised date of possession till the date of offer of possession along with OC/CC.

14.5 Initially in the memo of appeal no grounds were raised for challenging the impugned order dated 16.04.2019 but during the course of proceedings, on the request of learned counsel for the appellant, grounds were permitted to be added vide order dated 05.02.2021.

14.6 Learned counsel for the appellant, during the course of arguments on 08.10.2021 vehemently argued that the appellant is only aggrieved on account of non-consideration of the difficulties faced by the appellant in completing the project as per schedule indicated in the Registration Booklet/Brochure of the Project and there was no justification for grant of interest on account of delay caused in handing over possession of the unit to the respondent due to the difficulties faced by the appellant without there being any default on its part.

14.7 During the pendency of the appeal the appellant offered possession of the unit to the respondent on 24.12.2019. During the course of hearing on 07.01.2020 the respondent submitted that he has received the letter of possession on 30.12.2019 and he would take steps for possession of the apartment in question within a week after duly execution of the sale deed and apprise the Tribunal if there is any shortcoming in the apartment.

14.8 The respondent brought to the knowledge of the appellant as well as this Tribunal through a supplementary affidavit regarding deficiencies and not working of the lift till 09.08.2020. ‘

14.9 The appellant was issued completion certificate for Part B, C and D of the Project on 18.04.2019 and thereafter the respondent raised a complaint before the IGRS bearing complaint no. 40014020024070 dated 30.07.2020 seeking the occupancy certificate of the project wherein vide report dated 10.08.2020 the Occupancy Certificate for Part B, C and D was issued on 22.04.2020 but the panel for the lift in the tower allotted to the respondent was not installed till 09.08.2020.

14.10 On examination of the record and pleadings one thing is clear that even after giving possession of the flat in question to the respondent there were various shortcomings and deficiencies, specially the lift was not functional while the appellant was issued completion certificate for Part B, C and D on 22.04.2020.

15. Thus, we come to the conclusion that the appellant was required to handover possession of the unit to the allottee(s) by 19.04.2018. The offer of possession was given by the appellant on 24.12.2019 and the possession was handed over on 20.01.2020 whereas occupancy certificate was issued by the competent authority on 22.04.2020. Thus, there was delay in handing over of possession of the booked unit by the appellant to the respondent.

16. On the basis of the aforesaid analysis we do not find any force in the grounds to challenge the impugned order dated 16.04.2019 and the submissions of the appellant and we are of the considered view that there is no illegality or perversity in direction no. 2 of the impugned order dated 16.04.2019. Accordingly the appeal is **dismissed.**

17. 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.

17.1 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.

17.2 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.

17.3 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.

17.4 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.

17.5 In the instant case, this Tribunal while upholding the order of the Regulatory Authority dated 16.04.2019 dismissed the appeal of the promoter, accordingly, we direct the Registry to transfer the entire amount deposited by the promoter under the provisions of Section 43(5) of the Act to the concerned account of the U.P. Real Estate Regulatory Authority (U.P. RERA). Further, we direct the Regulatory Authority to dispose of this amount during the execution proceedings in accordance with its order dated 16.04.2019 passed in complaint case no. 9201819790.

18. No order as to cost.

(Rajiv Misra) **(D. K. Arora)**

Dated: March 23, 2022
Shakir