**RESERVED JUDGMENT**
**BENCH NO. 1**

**UTTAR PRADESH REAL ESTATE APPELLATE TRIBUNAL**
**AT LUCKNOW**

**1. Appeal No. D 220/2024**

Jitendra Kumar Shukla ………………. Appellant

Vs.

U.P. Awas Evam Vikas Parishad ……………… Respondent

With

**2. Appeal No. D 221/2024**

Vasudeo Bihari Sharan ………………. Appellant

Vs.

U.P. Awas Evam Vikas Parishad ……………… Respondent

With

**3. Appeal No. 222/2024**

Sunil Kumar Gandhi ………………. Appellant

Vs.

U.P. Awas EvamVikas Parishad ……………… Respondent

With

**4. Appeal No. 223/2024**

Sheo Prasad Singh ………………. Appellant

Vs.

U.P. Awas EvamVikas Parishad ……………… Respondent

With

**5. Appeal No. 224/2024**

Surya Bali Singh ………………. Appellant

Vs.

U.P. Awas EvamVikas Parishad ……………… Respondent

With

**6.** **Appeal No. 225/2024**

Atul Kumar Misra ………………. Appellant

Vs.

U.P. Awas Evam Vikas Parishad ……………… Respondent

With

**7.** **Appeal No. 226/2024**

Vaibhav Bhatnagar ………………. Appellant

Vs.

U.P. Awas Evam Vikas Parishad ……………… Respondent

With

**8.** **Appeal No. 227/2024**

Neelam Shukla ………………. Appellant

Vs.

U.P. Awas Evam Vikas Parishad ……………… Respondent

With

**9.** **Appeal No. 228/2024**

Priyadarshi Singh ………………. Appellant

Vs.

U.P. Awas Evam Vikas Parishad ……………… Respondent

With

**10.** **Appeal No. 229/2024**

Puja Singh ………………. Appellant

Vs.

U.P. Awas Evam Vikas Parishad ……………… Respondent

With

**11.** **Appeal No. 230/2024**

Siddharth Mishra ………………. Appellant

Vs.

U.P. Awas Evam Vikas Parishad ……………… Respondent

With

**12.** **Appeal No. 231/2024**

Krishna Chandra Mishra ………………. Appellant

Vs.

U.P. Awas Evam Vikas Parishad ……………… Respondent

With

**13.** **Appeal No. 232/2024**

Awadhesh Kumar Tiwari ………………. Appellant

Vs.

U.P. Awas Evam Vikas Parishad ……………… Respondent

With

**14.** **Appeal No. 233/2024**

Ranjeeta Gautam ………………. Appellant

Vs.

U.P. Awas Evam Vikas Parishad ……………… Respondent

With

**15.** **Appeal No. 234/2024**

Adesh Kumar ………………. Appellant

Vs.

U.P. Awas Evam Vikas Parishad ……………… Respondent

With

**16.** **Appeal No. D235/2024**

Santosh Kumar Saxena ………………. Appellant

Vs.

U.P. Awas Evam Vikas Parishad ……………… Respondent

With

**17.** **Appeal No.255/2024**

Pratima Singh ………………. Appellant

Vs.

U.P. Awas Evam Vikas Parishad ……………… Respondent

With

**18. Appeal No. 256/2024**

Bhoop Singh Sonal ………………. Appellant

Vs.

U.P. Awas Evam Vikas Parishad ……………… Respondent

With

**19. Appeal No. 257/2024**

Bhupendra Pratap Singh ………………. Appellant

Vs.

U.P. Awas Evam Vikas Parishad ……………… Respondent

With

**20. Appeal No. D 283/2024**

Dr. Ghanshyam Tripathi ………………. Appellant

Vs.

U.P. Awas Evam Vikas Parishad ……………… Respondent

With

**21. Appeal No. 285/2024**

Alok Kumar Singh ………………. Appellant

Vs.

Lucknow Development Authority ……………… Respondent

With

**22. Appeal No. 286/2024**

Vijay Kumar Singh ………………. Appellant

Vs.

Lucknow Development Authority ……………… Respondent

With

**23. Appeal No. D 296/2024**

Annupama Singh ………………. Appellant

Vs.

U.P. Awas Evam Vikas Parishad ……………… Respondent

With

**24.** **Appeal No. 312/2024**

Apurv Jain ………………. Appellant

Vs.

U.P. Awas Evam Vikas Parishad ……………… Respondent

With

**25.** **Appeal No. D 344/2024**

Vishal Singh ………………. Appellant

Vs.

U.P. Awas Evam Vikas Parishad ……………… Respondent

With

**26.** **Appeal No. 402/2024**

Qaiser Masroor Ansari ………………. Appellant

Vs.

U.P. Awas Evam Vikas Parishad ……………… Respondent

With

**27.** **Appeal No. 403/2024**

Rishabh Varshney ………………. Appellant

Vs.

U.P. Awas Evam Vikas Parishad ……………… Respondent

With

**28.** **Appeal No. 404/2024**

Sarita Devi ………………. Appellant

Vs.

U.P. Awas Evam Vikas Parishad ……………… Respondent

With

**29.** **Appeal No. 405/2024**

Badri Prasad Singh ………………. Appellant

Vs.

U.P. Awas Evam Vikas Parishad ……………… Respondent

With

**30.** **Appeal No. 406/2024**

Tarun Kumar ………………. Appellant

Vs.

U.P. Awas Evam Vikas Parishad ……………… Respondent

With

**31.** **Appeal No. 407/2024**

Rajeev Agarwal ………………. Appellant

Vs.

U.P. Awas Evam Vikas Parishad ……………… Respondent

With

**32.** **Appeal No. D 416/2024**

Vidya Singh ………………. Appellant

Vs.

U.P. Awas Evam Vikas Parishad ……………… Respondent

With

**33.** **Appeal No. 446/2024**

Prabhat Verma ………………. Appellant

Vs.

Lucknow Development Authority……………… Respondent

With

**34.** **Appeal No. 447/2024**

Archana Verma ………………. Appellant

Vs.

Lucknow Development Authority ……………… Respondent

With

**35.** **Appeal No. 448/2024**

Chandra Bhan Singh ………………. Appellant

Vs.

Lucknow Development Authority ……………… Respondent

With

**36.** **Appeal No. 452/2024**

Arun Prakash ………………. Appellant

Vs.

Lucknow Development Authority ……………… Respondent

With

**37.** **Appeal No. 471/2024**

Sujeet Kumar Sachan ………………. Appellant

Vs.

Lucknow Development Authority ……………… Respondent

With

**38.** **Appeal No. 472/2024**

Shivendra Nath Dwivedi ………………. Appellant

Vs.

Lucknow Development Authority ……………… Respondent

With

**39.** **Appeal No. 473/2024**

Siddharth Chowdhary ………………. Appellant

Vs.

Lucknow Development Authority ……………… Respondent

With

**40.** **Appeal No. 474/2024**

Ravi Varma ………………. Appellant

Vs.

Lucknow Development Authority ……………… Respondent

With

**41.** **Appeal No. 23/2025**

Avinash Tandon ………………. Appellant

Vs.

Lucknow Development Authority ……………… Respondent

With

**42.** **Appeal No. 300/2024**

Ram Prakash Singh ………………. Appellant

Vs.

U.P. Awas Evam Vikas Parishad ……………… Respondent

And

**43.** **Appeal No. 93/2025**

Sujit Kumar Sahu and Kavita Sahu ………………. Appellant

Vs.

Lucknow Development Authority ……………… Respondent

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**Hon'ble Mr. Justice Suneet Kumar, Chairman**
**Hon'ble Mr. Sanjai Khare, Judicial Member**
**Hon'ble Mr. Devindar Singh Chaudhry, Technical Member**

1. Heard Sri Amit Yadav, Sri Hridesh Srivastava, Sri Samrat Vaish, Sri Vikash Pratap Singh, Sri Prasoon Kumar Anjor, Sri Raj Singh Sri V.K. Singh, Sri Atul Tripathi, Sri Syed Mohd Abid, Sri Manish Shukla and Sri Abhishek Shukla, learned counsels for the appellants and Sri Prashant Chandra, Senior Advocate, assisted by Sri N N Pandey, Sri Saurabh Mishra & Sri Gautam Johri for U.P. Avas Evam Vikas Parishad, Sri Sanjay Bhasin, Senior Advocate, assisted by Sri Abhishek Khare & Ms Aahuti Agarwal, for Lucknow Development Authority, Sri Shireesh Kumar assisted Sri Achintya Kumar Ojha, for U.P. Real Estate Regulatory Authority, learned counsels for the respondents and Sri Anurag Singh, Advocate (*amicus curiae*).

2. The batch of appeals (forty-three in number) are being heard and decided together with the consent of parties.

3. The facts of Appeal No. D 220/2024 (Jitendra Kumar Shukla Vs. U.P. Awas Evam Vikas Parishad) and Appeal No. 23/2025 (Avinash Tanton Vs. Lucknow Development Authority) are being referred for the sake of convenience.

4. The appellant-allottees, herein, were allotted an apartment (unit) in the project floated by the respondent-promoter. The project got delayed, but the allottees were not paid interest on their deposit till handing over possession of the unit. Aggrieved, allottees approached the Regulatory Authority by filing a complaint, inter alia, seeking interest

in terms of proviso to Section 18(1) of Real Estate (Regulation and Development) Act 2016 (in short 'Act 2016'). The learned Regulatory Authority rejected the complaint on the sole ground of limitation i.e. having been filed beyond three to seven years from the date of possession of the unit. The learned Regulatory Authority held that the complaint would be barred by limitation in view of the provisions of Limitation Act, 1963 (for short, 'Limitation Act'). Hence, the present appeals.

**POINTS FOR DETERMINATION**

5. The following questions arise for consideration:

(i) Whether Limitation Act, would be applicable to provisions of Act 2016 for instituting complaint under Section 31 of Act 2016;

(ii) Whether in the absence of limitation, what would be the reasonable time, for instituting the complaint by the allottee under Section 31 for relief under proviso to Section 18(1) of Act 2016;

(iii) The stage at which the promoter is required to comply its obligation to pay interest to the allottee under proviso to Section 18(1) of Act 2016, and/or, upon failure to comply its obligation whether the promoter can claim waiver of its obligation on execution of the conveyance deed.

6. This Tribunal on 08.04.2025 had framed the first two questions, however, during the course of arguments, the ancillary question arose for consideration, which is intertwined with the other questions in the given facts.

**FACTS:**

**(i) Appeal No. 220/2024 (Jitendra Kumar Shukla Vs. U.P. Awas Evam Vikas Parishad)**

7. The facts, inter se, parties are not in dispute. The appellant allottee instituted a complaint under Section 31 of Act 2016, before the Regulatory Authority (U.P. RERA) at Lucknow, bearing complaint no. LKO162/07/110546/2023, inter alia, seeking interest on his deposit from the date of allotment/agreement till the date of offer of possession. The appellant allottee was allotted a unit in the residential project floated by the respondent-UP. Awas Evam Vikas Parishad (for short, 'UP AVP'), in the name and style, 'Bhagirathi Enclave'. The flat was booked on 23.03.2013, bearing flat no. 2B/D7-401, duly allotted on 03.09.2013. As per Clause

9.1 of the brochure/booklet of the project, possession of the unit was to be handed over within 30 months i.e. 27.03.2016. The project got delayed and offer of possession of the unit came to be made by the respondent on 10.07.2017 i.e. after 15 months from the due date. The appellant against the sale consideration of the unit deposited 60,10,564/-. The project, being ongoing, was duly registered with U.P. RERA.

8. That upon deposit of the amount, lease/sale deed of the unit came to be executed on 25.09.2017 and physical possession of the unit was handed over to the appellant on 11.10.2017. The appellant further alleged that respondent had charged Rs.7,70,252/- over and above the sale consideration, and parking space was handed over after 3 years from the date of offer of possession, i.e. on 07.10.2020. The appellant had deposited Rs. 2,00,000/- towards, parking space. Hence, delay interest was claimed by the appellant till handing over possession of the unit.

9. The respondent promoter-UP AVP, put in appearance and contested the complaint by filing written statement, wherein, it was alleged that appellant, after offer of possession being made on 11.10.2017, instituted the complaint after 5 years. Hence, it was urged that the complaint, being barred by limitation, is liable to be rejected at the threshold. It was further submitted that the appellant had accepted the terms and conditions of the offer of possession with open eyes, thereafter, executed sale deed of the unit on 25.09.2017. The unit was accepted without any protest or objection being raised by the appellant. In the circumstance, it is not open for the appellant to take a somersault to claim interest on his deposit under proviso to Section 18 (1) of the Act 2016. The learned Regulatory Authority having due regard to the objections of the respondent-promoter rejected the complaint on 16.04.2024 being barred by limitation under the Limitation Act.

**(ii) Appeal No. 23 of 2025 (Avinash Tandon Vs. Lucknow Development Authority)**

10. The appellant-allottee had applied for booking of a flat (unit) on 16.11.2009 in the residential project floated by the respondent-Lucknow Development Authority (in short, ‘LDA’) in the name and style, ‘SRISHTI APARTMENT’. The respondent allotted flat no. 404, H – Block on 09.12.2010. As per Clause 2.4 of the brochure/ booklet, possession of the unit was to be handed over within 24 months i.e. 09.12.2012. The appellant deposited Rs.26,31,785/- towards sale consideration of the unit. The project got inordinately delayed, consequently, the appellant had to suffer

loss towards rented apartment and burden of bank loan. The project, being ongoing, was duly registered with U.P. RERA.

11. It was further alleged that the execution of lease/sale deed of the unit was done on 03.07.2019 after a lapse of 7 years. The physical possession of the unit was handed over on 31.01.2022. Aggrieved, appellant instituted a complaint, bearing complaint no. LKO162/06/109464/2023 before the learned Regulatory Authority, inter alia, seeking interest on his deposit in terms of proviso to Section 18(1) of the Act, 2016. The respondent promoter appeared by filing written statement and contested the complaint alleging that the complaint was filed after seven years from the date of execution of the conveyance deed, hence, was barred by the Limitation Act, 1963. The complaint came to be rejected on 30.05.2024 on the ground of limitation.

**Question No. 1: Whether Limitation Act is applicable**

12. The question is no longer res integra. The bar of limitation contained in Schedule to the Limitation Act apply to suits, appeals and applications. The question that arises is whether Limitation Act applies to Tribunals constituted under special enactments. The Schedule to the Limitation Act is divided into three divisions, Articles 1 to 113 in the first division deals with suits. On perusal of Section 3(2) of Limitation Act shows that 'suits' are understood as actions begun in courts of law established under the Constitution of India. The second division of the Schedule is with regard to appeals (under Articles 114 to 117) under Civil Procedure Code/Criminal Procedure Code [presently Bhartiya Nagrik Suraksha Samhita, 2023 (BNSS)] or intra-court appeals in the High Courts, these appeals are only to 'courts' established under the Constitution. Similarly, in the third division of the Schedule, all applications referred to under Articles 118 to 137 pertaining to 'courts', either under Code of Civil Procedure, 1908 or under other enactments. On plain reading of the provisions of the Limitation Act, it becomes clear that suits, appeals and applications are only to be considered (for the limitation point of view) if they are filed in 'courts' and not before quasi-judicial bodies (Vide: **M.P. Steel Corporation Vs. Commissioner of Central Excise, (2015) 7 SCR 291**).

13. In ***M.P. Steel*** (supra), Hon'ble Supreme Court, relying on several decisions, has established that Limitation Act applies only to 'courts' and not to 'Tribunals'. In ***Bharat Bank Limited, Delhi Vs. Employees of the Bharat Bank; 1950 SCR 459***, the distinction between 'courts' and quasi judicial bodies is explained and brought out. In ***Town Municipal Council, Athani Vs. Presiding Officer, Labour Court, Hubli;***

***(1969) 1 SCC 873***, wherein, an application made under Industrial Dispute Act or to a Labour Court, it was held that *'an Industrial Tribunal or a Labour Court dealing with applications or references under the Act are not courts and they are in no way governed either by the Code of Civil Procedure or the Code of Criminal Procedure'*. It was held that Article 137 of Limitation Act only contemplates applications to 'courts' and that the Labour Court is not a court within the meaning of Limitation Act.

14. A reference was made to a three Judge Bench in ***Kerala State Electricity Board Vs. T.P. Kunhaliumma; (1976) 4 SCC 634***, wherein, it was held that Limitation Act applies only to courts and not to quasi judicial Tribunals. Similarly, in ***Commissioner of Sales Tax, U.P. Lucknow Vs. Parson Tools and Plants, Kanpur; (1975) 4 SCC 22***, a three Judge Bench, inter alia, held that the authority under the Sales Tax Act, are not courts and thus, the Limitation Act will not apply to them. Again in ***Officer on Special Duty (Land Acquisition) Vs. Shah Manilal Chandulal; (1996) 9 SCC 414***, Hon'ble Supreme Court held that Land Acquisition Officer under the Land Acquisition Act, not being a court, the provision of Limitation Act will not apply. In ***Consolidated Engg. Enterprised Vs. Principal Secy. Irrigation Deptt. & Ors.; (2008) 7 SCC 169***, a three Judge Bench was asked to decide whether Section 14 of the Limitation Act would apply to Section 34(3) of the Arbitration and Conciliation Act 1996, the court, inter alia, after referring to the precedent held as follows:

> *"44. It may be noticed at this juncture that the Schedule to the Limitation Act prescribes the period of limitation only to proceedings in courts and not to any proceeding before a tribunal or quasi-judicial authority. Consequently Section 3 and 29(2) of the Limitation Act will not apply to proceedings before the tribunal.* ***This means that the Limitation Act will not apply to appeals or applications before the tribunals, unless expressly provided."***

15. In ***M.P. Steel*** (supra), the decision rendered in ***Mukri Gopalan Vs. Cheppilat Puthanpurayil Aboobacker; (1995) 5 SCC 5***, erroneously relied upon by the learned Regulatory Authority, came to be overruled to the extent that Mukri Gopalan is in conflict with the judgment in the Consolidated Engineering Enterprises case, (2008) 7 SCC 169, being no longer good law. Relevant Para 27 of the report is extracted:

> *"27. Obviously, the ratio of Mukri Gopalan does not square with the observations of the 3-Judge Bench in Consolidated Engineering Enterprises. In the latter case, this Court has unequivocally held that*

*Parson Tools is an authority for the proposition that the Limitation Act will not apply to quasi-judicial bodies or Tribunals.* ***To the extent that Mukri Gopalan is in conflict with the judgment in the Consolidate Engineering Enterprises case, it is no longer good law.***

16. The Hon'ble High Court in ***Rev. K.V. Abraham Vs. Commissioner, Varanasi and Ors. (WRIT-C No. 30501 of 2016)*** decided on 23.08.2016, was called upon to answer whether the Divisional Commissioner, exercising jurisdiction under the Societies Registration Act 1860, has authority to condone the delay under the provisions of Limitation Act. The court held that the Divisional Commissioner under Section 12-D (2), while functioning as the appellate authority is not a 'court' in strict sense, akin to a 'court' constituted under the Constitutional scheme, but would at best be a quasi-judicial body. Accordingly, it was held that the provisions of Limitation Act would not apply to proceedings before quasi-judicial body. Relying on ***M.P. Steel*** (supra) the court held that the principles on which Section 14 of Limitation Act is based, being principles which advance the cause of justice would nevertheless apply. The decision in M.P. Steel (supra) came to be followed in subsequent decision rendered by the Hon'ble Supreme Court in ***Andhra Pradesh Power Co-ordination Vs. M/s Lanco Kondapalli Power Ltd & Ors., 2016 (3) SCC 468***.

17. Having regard to the proposition of law noted hereinabove, Limitation Act would not be applicable to petitions before quasi-judicial authority/tribunals not being court under the Constitutional Scheme. (Refer: ***Ajaib Singh Vs. Sirhind Coop. Marketing-cum-Processing Service Society Ltd.; (1999) 6 SCC 82***, affirmed by three Judge Bench in ***Purohit & Co. Vs. Khatoonbee; (2017) 4 SCC 783***.

**(i) ACT 2016 and application of Limitation Act**

*18.* Act 2016, a special Act, came to be enacted to establish 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, 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, inter alia, of the Regulatory Authority and for matters connected therewith and incidental thereto.

19. On perusal of aims and objects of Act 2016, the principal purpose of the Regulatory Authority, inter alia, is for regulation and promotion of real estate sector, to protect the interest of consumers in the real estate sector and to establish an adjudicating mechanism for redressal and also to establish the Appellate Tribunal to hear appeals from the decisions, directions or orders of the Regulatory Authority. The Regulatory Authority is a body corporate having perpetual succession and a common seal, established under Section 20. The Regulatory Authority has been conferred powers to hear complaints under Section 31 instituted by any aggrieved person for any *'violation or contravention of the provisions of this Act or the rules and regulations made thereunder'* against any promoter, allottee or real estate agent, as the case may.

20. The Regulatory Authority in view of Section 35 on 'a complaint or suo motu' may call upon any promoter or allottee or real estate agent, as the case may be, at any time to furnish such information or explanation in relation to its affairs as the Authority may require. The Authority while exercising the powers under Sub-section (1) shall have the same powers as are vested in a civil court under Code of Civil Procedure, 1908 while trying a suit, inter alia, in respect of discovery and production of books of accounts; summoning and enforcing the attendance of persons and examining them on oath; issue commissions for the examination of witnesses or documents and any other matter which may be prescribed. The Regulatory Authority in exercise of its powers can issue any directions, inter alia, to the promoter which is binding (Section 37). Non-compliance of the directions ensues consequences under Chapter VIII of Act 2016.

21. On conjoint reading of the provisions, [Section 31, 35 and 37], Regulatory Authority is a quasi-judicial authority and not a court, having limited powers confined to adjudication of complaints for violation or contravention of the provisions of the Act or rules and regulations made thereunder, inter alia, against the promoter. The Regulatory Authority may call upon any promoter at any time on a complaint or suo motu to furnish information or explanation as the Authority may require. The Code of Civil Procedure, 1908 (CPC) is not applicable to proceedings before the Regulatory Authority except limited to summoning and enforcing the attendance of persons and examining them on oath; issuing commissions for the examination of witnesses or documents etc. For the purpose of Section 40(2) every order shall be enforced, inter alia, by the Regulatory Authority/Tribunal in the same manner as if it were a decree or order made by the principal Civil Court in a suit. The Regulatory Authority is to

be guided by the principles of natural justice and has power to regulate its own procedure. In view thereof, Regulatory Authority is not a 'court' contemplated under the Constitutional scheme, but a quasi-judicial authority. The Limitation Act would not apply to proceedings before the Regulatory Authority being a quasi-judicial authority and the Legislature not having made the application of Limitation Act to proceedings under Act 2016 cannot be imposed through interpretation.

22. The rigours of Code of Civil Procedure has not been made applicable to the proceedings before the Appellate Tribunal except for limited purposes. The Tribunal shall be guided by the principles of natural justice. The rules of evidence, contained in Indian Evidence Act, 1972 (presently, Bhartiya Sakshya Adhiniyam, 2023) is not applicable. The Appellate Tribunal has been conferred powers vested in a civil court under the Code of Civil Procedure for a limited purpose in discharging its functions in respect of summoning and enforcing the attendance of person and examining them on oath; requiring the discovery and production of documents; receiving evidence on affidavits; issuing commissions for the examinations of witnesses or documents; reviewing its decisions; dismissing an application for default or directing it *ex parte* etc. Proceedings before the Appellate Tribunal are deemed to be judicial proceedings under the Indian Penal Code/Code of Criminal Procedure (BNS/BNAS Act 2023).

23. Section 57 provides that orders passed by Appellate Tribunal to be executable as a decree of civil court and for the purpose Appellate Tribunal shall have all the powers of a civil court (Order XXI of CPC).

24. Section 58 provides for appeal to the High Court on the grounds specified in Section 100 of the Code of Civil Procedure, 1908. The limitation for instituting the appeal is 60 days, which can be condoned on the ground of sufficient cause.

25. On bare perusal of the provisions referred, herein above, it is explicitly clear that the Appellate Tribunal is not a 'court' falling under the Constitutional scheme provided for courts.

26. The Maharashtra Real Estate Appellate Tribunal, Mumbai, in ***M/s Siddhitech Homes Pvt. Ltd. & Anr. Vs. Karanveer Singh Sachdev and Ors., (2021) ibclaw.in 58 REAT***, was called upon to, inter alia, answer as to whether complaint after expiry of three years from the date of purported date of possession was barred by limitation as per Article 54 of the Limitation Act. Learned Tribunal answered the question in para-29 of the report, which is extracted herein below:

*"29. Agreeing entirely with the Allottee, it is observed that RERA nowhere provides any timeline for availing reliefs provided thereunder. A developer cannot be discharged from its obligations merely on the ground that the complaint was not filed within a specific period prescribed under some other statutes. Even if such provisions exist in other enactments, those are rendered subservient to the provisions of RERA by virtue of non obstante clause in Section 89 of RERA having overriding effect on any other law inconsistent with the provisions of RERA.* ***In the absence of express provisions substantive provisions in RERA prescribing time line limit for filing complaint reliefs provided thereunder cannot be denied to Allottee for the reason of limitation or delay and laches.***

27. Similarly, Assam Real Estate Appellate Tribunal at Gauhati in ***M/s Arunudoi Apartments Pvt. Limited & Ors. Vs. Smt. Lalita Jain***, ***(2022) ibclaw.in 78 REAT*** one of the questions posed before the learned Tribunal was as to whether complaint for relief claimed by the claimants is barred by law of limitation. The learned Tribunal answered the question in para-28, which is extracted:

*28. For an answer to the above aspect on limitation, first and foremost, it is to be understood that the Real Estate (Regulation and Development) Act, 2016 has been enacted in the interests of effective consumer protection, uniformity and standardisation of business practices and transactions in the real estate sector.* ***From the language of section 89, coupled with the fact that there is express bar of jurisdiction of civil courts and it is only the forums constituted under the Act that can entertain matters relating to business practices and transactions in the real estate sector, we are of the considered view that an aggrieved person, seeking to file complaint under section 31 of the Act, cannot be non-suited and left without legal remedy merely on ground of limitation. There is no direct provision under the Act laying down period of limitation for filing complaint under section 31****. We, therefore, hold that the complaint of the respondent/complainant was rightly entertained and decided on merits. Objection made on point of limitation fails.*

28. This Tribunal in ***Lucknow Development Authority Vs. Rakesh Kumar Sajjan and Anr. (Appeal No. 115 of 2022),*** decided on 29.09.2022, was required to examine as to whether under the scheme of Act 2016 and Rules 2016, there is a limitation prescribed for filing complaint from the date of cause of action. The Tribunal answered the question in para 15.3, which is extracted:

> *15.3* ***Thus, we are of the considered view that there is no limitation prescribed under the Act 2016 read with Rules 2016 for filing a complaint before the Regulatory Authority or the Adjudicating Officer against any violation or contravention of the provisions of the Act 2016 or the rules and regulations made thereunder, against any promoter, allottee or real estate agent, as the case may be. Issue no. (6) is answered accordingly.***

29. It is settled law that decision of the superior forum/court, be it the High Court or Supreme Court, is rule of law. The decisions are considered to be binding on the lower courts. In legal jurisprudence, this is known as the judicial discipline doctrine. In other words, it tantamounts to judicial indiscipline if the lower court/forum does not obey the decision of the higher court/tribunal, even though it is placed before the court/forum for its consideration. The judicial discipline and propriety promotes certainty and consistency in judicial decisions providing assurance to individuals/litigants as to the consequences of their actions. Accordingly, lower courts/sub-ordinate forums do not have the authority to contradict the decisions of higher courts, more so on an issue of law that has been adjudicated upon and decided. [***Mary Pushpam Vs. Telvi Curusumary & others; (2024) 1 S.C.R. 11: 2024 INSC 8].***

30. Legislature was conscious of the provisions of the Limitation Act, however, Limitation Act was not made applicable to proceedings under Act 2016. The provisions of Limitation Act cannot be invoked by a court/quasi-judicial authority/Tribunal by implication, and/or, by way of interpretation to read/incorporate something into the statute, which otherwise has explicitly not been provided. The learned Regulatory Authority was not justified in ignoring/bypassing the binding decision rendered on the point of limitation by this Tribunal in **Rakesh Kumar Sajjan** (supra), thereby, supplanting the wisdom of the Legislature by its own to provide a limitation, more so, in what it believes to be the appropriate period for instituting complaint under Section 31 of Act 2016. The Regulatory Authority

breached the doctrine of judicial discipline sitting in appeal over the binding precedent on the issue of limitation. The Limitation Act would not apply to Act 2016, in particular, to complaints filed under Section 31 for interest under proviso to Section 18(1) of the Act 2016. **Question no. 1 is accordingly answered**.

**Question no. 2: Reasonable time/latches/acquiescence**

31. Shri Prashant Chandra, learned Senior Advocate, appearing for the respondent-promoter-UP AVP at the outset concedes that Limitation Act would not be applicable to proceedings under Section 31 of Act 2016. He, however, submits that in absence of limitation, it would certainly not mean that the allottee at any time can approach the Regulatory Authority for redressal of his grievance under Section 31. The principle of equity, conduct and fairness would require the allottee to seek redressal of his grievance within a reasonable period. It is urged that inordinate unexplained delay/latches would disentitle allottee the relief. A large number of decisions were cited at Bar and relied upon by the respondents in support of their submission. The reports pertain to exercise of jurisdiction, in absence of limitation, by the Constitutional courts under Article 226/136 of the Constitution of India; revisional power of the authority; reference to Labour Court etc. We need not refer to all of the cited decisions, wherein, the principles set out for considering a delayed petition, in absence of limitation, are almost common and universal.

32. We have already held while answering question no. 1 that Limitation Act would not apply to proceedings under the Act 2016. The Regulatory Authority/Adjudicating Officer/Appellate Tribunal is not a 'court' under the Constitutional scheme, rather, a quasi-judicial authority/tribunal.

33. In the backdrop of admitted facts, the question that arises for consideration is whether in absence of limitation for instituting complaint under Section 31, is it open to the aggrieved person, (allottee), to approach the Regulatory Authority for redressal of his grievance with inordinate delay. In the alternative, whether respondent-promoters can take a plea of delay/latches without having complied their mandatory statutory obligation to pay delay interest at the due time to non-suit the claim of the allottee.

34. Section 31 of the Act 2016 provides for filing of complaint with the Authority or the Adjudicating Officer, as the case may be. Sub-Section (1) of Section 31 is extracted:

> ***"Any aggrieved person may file a complaint*** *with the Authority or the adjudicating officer, as the case may be,* ***for any violation or contravention of the provisions of this Act or the rules and regulations***

*made thereunder against any promoter/allottee or real estate agent, as the case may be."*

35. The complaint may be filed by an aggrieved person for 'any violation or contravention of the provisions of this Act or the rules and regulations'.

36. In the given facts of the case at hand, the allottees continued in the delayed project and were belatedly handed over possession of the unit on different dates by the respondent-promoter after executing lease/conveyance deed. The respondent promoters admit that the project was delayed beyond the contractual declared date of completion. The allottees, herein, approached the Regulatory Authority filing complaints, inter alia, seeking interest in terms of proviso to Section 18(1) of the Act 2016. It is not in dispute that complaints came to be instituted after lapse of 4 to 7 years, as the case may be, from handing over possession/execution of sale-deed of the unit.

37. Learned counsel for the respondent has urged that in absence of limitation being prescribed under Section 18, read with, Section 31, it would not mean that power to adjudicate can be exercised at any point of time and revive matters that has been settled. A dispute, which is stale, cannot be the subject matter for adjudication. In short, it is submitted that the principles of procedural law, viz estoppel, waiver and acquiescence are equally applicable to proceedings before the Tribunal/quasi judicial authority. A person, in a certain situation may even be held to be bound by the doctrine of 'acceptance sub silentio'. (Refer: **Haryana State Coop. Land Dev. Bank Vs. Neelam, 2005 (5) SCC 91**, **Nedungadi Bank Ltd. Vs. K.P. Madhavankutty**, 2000 (2) SCC 455).

38. In ***State of Punjab & Ors. Vs. Bhatinda District Cooperative Milk Producers Union, (2007) 11 SCC 363***; Hon'ble Supreme Court observed that-

> *"18. It is trite that if no period of limitation has been prescribed, statutory authority must exercise its jurisdiction within a reasonable period.* ***What, however, shall be reasonable period would depend upon the nature of the statute, rights and liabilities thereunder and other relevant factors****."*

39. The principles of delay, latches and acquiescence was explained by the Hon'ble Supreme Court in ***Union of India & Ors. Vs. N. Murugesan and Ors., (2002) 2 SCC 25.*** Relevant paras 20, 21, 22, 23, 25 and 26 are extracted:

> *"20.The principles governing delay, laches, and acquiescence are overlapping and interconnected on many occasions. However, they have*

*their distinct characters and distinct elements. One can say that delay is the genus to which laches and acquiescence are species. Similarly, laches might be called a genus to a species by name acquiescence. However, there may be a case where acquiescence is involved, but not laches. These principles are common law principles, and perhaps one could identify that these principles find place in various statutes which restrict the period of limitation and create non-consideration of condonation in certain circumstances. They are bound to be applied by way of practice requiring prudence of the Court than of a strict application of law. The underlying principle governing these concepts would be one of estoppel. The question of prejudice is also an important issue to be taken note of by the Court.*

*21.The word laches is derived from the French language meaning "remissness and slackness". It thus involves unreasonable delay or negligence in pursuing a claim involving an equitable relief while causing prejudice to the other party. It is neglect on the part of a party to do an act which law requires while asserting a right, and therefore, must stand in the way of the party getting relief or remedy.*

*22.Two essential factors to be seen are the length of the delay and the nature of acts done during the interval. As stated, it would also involve acquiescence on the part of the party approaching the Court apart from the change in position in the interregnum. Thus, a man responsible for his conduct on equity is not expected to be allowed to avail a remedy.*

*23.A defence of laches can only be allowed when there is no statutory bar. The question as to whether there exists a clear case of laches on the part of a person seeking a remedy is one of fact and so also that of prejudice.*

*25. Acquiescence would mean a tacit or passive acceptance. It is implied and reluctant consent to an act. In other words, such an action would qualify a passive assent. Thus, when acquiescence takes place, it presupposes knowledge against a particular act. From the knowledge comes passive acceptance, therefore instead of taking any action against any alleged refusal to perform the original contract, despite adequate knowledge of its terms, and instead being allowed to continue by consciously ignoring it and thereafter proceeding further, acquiescence does take place. As a consequence, it reintroduces a new implied agreement between the parties. Once such a situation arises, it is not open to the party that acquiesced itself to insist upon the compliance of the original terms.*

*26.These phrases are borrowed from the Scott's law. They would only mean that no party can be allowed to accept and reject the same thing, and thus one cannot blow hot and cold. The principle behind the doctrine of election is inbuilt in the concept of approbate and reprobate. Once again, it is a principle of equity coming under the contours of common law. Therefore, he who knows that if he objects to an instrument, he will not get the benefit he wants cannot be allowed to do so while enjoying the fruits. One cannot take advantage of one part while rejecting the rest. An element of fair play is inbuilt in this principle. It is also a species of estoppel dealing with the conduct of a party."*

40. It is, however, settled principle of law that estoppel and the doctrine of 'approbate and reprobate' is only a species of estoppel, and it cannot operate against the provisions of a statute. In ***State of Punjab Vs. Dhanjit Sinigh Sandhu, (2014) 15 SCC 14;*** Hon'ble Supreme Court held as follows:

> *"22. The doctrine of "approbate and reprobate" is only a species of estoppels, it implies only to the conduct of parties. As* ***in the case of estoppel it cannot operate against the provisions of a statute."***

41. In ***M/s North Eastern Chemicals Industries (P) Ltd. & Anr. Vs. M/s Ashok Paper Mill (Assam) Ltd. & Anr***, ***(2023) 15 SCR 821;*** while answering the question whether in absence of limitation, could the appeal filed against the order of the Commissioner of Payments be held maintainable having been filed after a period of three years from the said order. The court after considering the precedents, held in para 24 and 25 as follows:

> *"24. We further refer to observations made in Ajaib Singh Vs. Sirhind Coop. Marketing-cum-Processing Service Society Ltd; (1999) 6 SCC 82, to the effect that Courts should be wary of prescribing specific period of limitation in cases where the legislature has refrained from doing so.* ***It was further observed that where the defence of delay is employed in a situation where no limitation is prescribed vide statute, the exact prejudice or loss suffered by the party if such a delay is condoned, must be shown on facts. In other words, in the absence of a specific limitation it would be improper for courts to dismiss a plea solely on the ground of delay without having examined the nature of laws or the prejudice caused to the other party in the facts and circumstances of the case at hand.***
>
> *The holding in Ajaib Singh (supra) was affirmed by a three-Judge Bench of this court in Purohit & Co. Vs. Khatoonbee."*
>
> *25. In light of above discussion, it is clear that when a Court is seized of a situation where no limitation stands provided either by specific applicability of the Limitation Act or the special statute governing the dispute,* ***the Court must undertake a holistic assessment of the facts and circumstances of the case to examine the possibility of delay causing prejudice to a party****. When no limitation stands prescribed, it would be inappropriate for a Court to supplant the legislature's wisdom by its own and provide a limitation, more so in accordance with what it believes to be the appropriate period.* ***A court should, in such a situation consider in the facts and circumstances of the case at hand, the conduct of the parties, the nature of the proceeding, the length of delay, the possibility of prejudice being caused, and the scheme of the statute in question.*** *It may be underscored here that when a party to a dispute raises a plea of delay despite no specific period being prescribed in the statute,* ***such a party also bears the burden of demonstrating how the delay in itself would cause the party additional prejudice or loss as opposed to, the claim subject matter of dispute, being raised at an earlier point of time.***

42. The Hon'ble Supreme Court answered the question in para 30.2 of the report, holding that in absence of limitation being prescribed, the filing of appeal would be governed by the principle of reasonable time, but no straight jacket formula can be laid down. Para 30.2 of the report is extracted:

> ***"30.2 In the absence of any particular period of time being prescribed to file an appeal, the same would be governed by the principle of 'reasonable time'****, for which, by virtue of its very nature, no straitjacket formula can be laid down and it is to be determined as per the facts and circumstances of each case."*

**(i) <u>The principles governing delay/latches</u>**

43. The principles that can be culled out from the cited precedents, for the authority/tribunal dealing with a petition/complaint filed belatedly, in absence of limitation, would include:

(i) the authority/tribunal/court should be wary of prescribing specific period of limitation in case where legislature has refrained from doing so;

(ii) in absence of limitation being prescribed, the principles of 'reasonable time' would apply to file petition, but no straight jacket formula can be laid down, it is to be determined as per facts and circumstances of each case;

(iii) where a defense of delay is taken by a party, it must show the exact prejudice/loss suffered if such a delay is condoned;

(iv) it would be improper for an authority/tribunal/court to dismiss the petition solely on the ground of delay without having examined the nature of the law/statute, rights and liabilities thereunder, governing the parties, in the given facts and circumstances of the case;

(v) the authority/court/tribunal must undertake a holistic assessment of the facts and circumstances, causing prejudice to the other party;

(vi) the principle of estoppel governs the concepts viz. delay, latches and acquiescence which are overlapping and connected; the principle of estoppel cannot, however, operate against the statute;

(vii) the neglect/failure on the part of a party to comply its obligation which the statute mandates cannot turn around and take the plea of delay/latches to seek waiver of its legal obligation.

44. In view of the principles noted herein above, the question as to when delay/latches would be fatal to a party would depend on facts and circumstances of each case and the statute governing the parties. The petition/complaint, however, cannot be rejected out- rightly on the principle of delay/latches by the quasi-judicial authority on mere asking of the contesting party to the *lis*, without the party setting up a case of loss and prejudice that may be caused on the delay being condoned. It is worthy to note that the cases relied upon by the learned counsel for the respondent, the petitioners, therein, had approached the forum/court belatedly after the cause of action had arisen to the petitioners.

**(ii) <u>Taking advantage of one's own fault</u>**

45. In the backdrop of the principles, the question that requires consideration is whether the respondent-promoter can take advantage of their own fault under the garb of delay/latches without having complied their mandatory obligation under Section 18(1) proviso.

46. It is not being disputed by the respondent-promoters that they have defaulted in not complying the mandate of proviso to Section 18(1) of the Act 2016. The interest due and admissible to the appellant was neither computed, nor complied by the promoter at the stage of offer of possession of the unit. It is settled law that no party can take advantage of their own fault to non-suit the statutory right of the other party.

47. In ***Mrutunjay Pani Vs. Narmada Bala Sasmal, AIR 1961 SC 1353***, Hon'ble Supreme Court observed as under:

> ***"5***…… *The same principle is comprised in the Latin maxim commodum ex injuria sue nemo habere debet,* ***that is, convenience cannot accrue to a party from his own wrong. To put it in other words, no one can be allowed to benefit from his own wrongful act."***

48. Hon'ble Supreme Court in the matter of ***Kusheshwar Prasad Singh Vs. State of Bihar and others, (2007) 11 SCC 447,*** held as follows:-

> *"12...... The appellant is right in contending that final statement ought to have been issued immediately or in any case within "reasonable time". The authority cannot neglect to do that which the law mandates and requires doing. By not issuing consequential final settlement under Section 11 (1) of the Act, the authority had failed to discharge its statutory duty.* ***Obviously, therefore, the appellant is justified in urging that such default in discharge of statutory duty by the respondents under the Act cannot prejudice him. To that extent, therefore, the grievance of the appellant is well founded.***

> *16. It is settled principle of law that a man cannot be permitted to take undue and unfair advantage of his own wrong to gain favourable interpretation of law.* ***It is sound principle that he who prevents a thing from being done shall not avail himself of the non-performance he has occasioned. To put it differently, "a wrongdoer ought not to be permitted to make a profit out of his own wrong."***

*(Refer:* ***Nirmala Anand Vs. Advent corporation (Pvt.) Ltd. and others (2002) 5 SCC 481***).

49. Recently Hon'ble Supreme Court in the matter of ***Municipal Committee Katra & others Vs. Ashwani Kumar (Civil Appeal Nos. 1470-71 of 2017),*** decided on 09.05.2024. held that no one can be permitted to take undue and unfair advantage of its own wrong to gain favourable interpretation of law. It is a sound principle that he who prevents a thing from being done shall not avail himself of the non-performance he has occasioned. A wrong doer ought not to be permitted to make profit out of his own wrong. Relevant para No.19 of the judgment is being extracted: -

> *19. It is beyond cavil of doubt that no one can be permitted to take undue and unfair advantage of his own wrong to gain favourable interpretation of law. It is a sound principle that he who prevents a thing form being done shall not avail himself of the non-performance he has occasioned. To put* ***it differently, a wrong doer ought not to be permitted to make profit out of his own wrong****.* [Refer: **Nirmala Anand Vs. Advent Corporation (Pvt.) Ltd. & others, (2002) 5 SCC 481), Union of India vs. Maj.Gen. Madan Lal Yadav, (1996) 4 SCC 127]**

50. The respondent-development authority, herein, are State agencies, inter alia, engaged in the construction/development of real estate project. They fall within the definition of 'promoter' under Act 2016. The Act does not confer any special privileges/immunity to the State agencies. The projects floated by the respondent i.e. 'Bhagirathi Enclave/Srishti Apartment' etc., came to be registered as ongoing projects. The provisions of Act 2016, rules and regulations made thereunder would apply to the respondent-promoters. The relationship between the development authority and the applicant for allotment of a unit is that of seller and buyer, therefore, governed by the law of contract. However, in the present case, a statute (Act 2016) steps in and casts statutory obligations and duty, inter alia, on the development authority (promoter). The contractual field, inter se parties, upon enactment of Act 2016, would be governed by the provisions of the statute. The terms and conditions of the contract to the extent being in conflict with the statutory provision, would not bind the applicant/allottee. The State or its agents (development authority) are bound by the statutory obligations cast upon the promoter- development authority vis-à-vis

the allottee. The development authority cannot resile or retract from their statutory obligation cast upon them by adopting an invidious method so as to wriggle out of the mandatory statutory provisions, in particular, proviso to Section 18(1) of Act 2016. The default in discharge of statutory duty by the respondent-promoter by not computing and paying the delay interest to the allottee cannot prejudice the cause of the appellant allottee merely on the plea of delay/latches. No one can be allowed to make a profit from his own wrong.

**Question no. 2 is, accordingly, answered.**

**Question No. 3: The Stage of compliance under Section 18 of Act 2016**

**(i) Section 18 : Scope and time line**

51. The learned counsel for the respondent contesting parties have heavily relied on Section 18 of Act 2016, to submit that despite the promoter having not paid the interest due to the allottee, still the allottee should have approached the Regulatory Authority within a reasonable time. The mandate of Section 18 and purport of the provision requires to be examined in depth.

52. Section 18 of the Act, 2016, falls under Chapter III pertaining to functions and duties of promoter. In other words, Section 18 cannot be read independently but is dependent on satisfying the functions/duties and obligations cast by the Legislature upon the promoter. Section 18 provides for return of amount and compensation on certain eventualities.

Section 18 is extracted:

**Section 18:**

*"(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.***
>
> *(2) 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 this Act, and the claim for compensation under this subsection shall not be barred by limitation, provided under any law for the time being in force.*
>
> *(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."*

53. The period of limitation has not been provided therein by the Legislature, for the aggrieved party to file complaint. Sub-Section (2) of Section 18 entitles the allottee to receive compensation, in case of any loss caused to him due to defective title of land on which the project is being developed or has been developed and the claim for compensation under this sub-section shall not be barred by limitation provided under any law for the time being in-force. The non obstante clause specifically bars limitation to receive compensation.

54. Sub-Section (3), of Section 18 provides that 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 allottee, in the manner as provided under this Act. The embargo of limitation has not been provided for claiming compensation.

55. Under Sub-Section (1) of Section 18, the timeline for the allottee to raise a demand/withdrawal from the project is incorporated under the provision itself. It is mandated that in case the promoter 'fails to complete' or 'is unable to give possession' of an apartment, plot or building, as the case may be, the promoter shall be liable on demand to the allottee, in case the allottee wishes to withdraw from the project, 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. The right of the allottee to withdraw from the project is unqualified on failure to complete or unable to handover possession of the unit as promised.

56. In other words, allottee is required to exercise his option/intention to withdraw before the project is 'complete' or the promoter is 'unable to give possession' of the unit. In the event of completion of the project or possession of the unit being offered to the allottee by the promoter, proviso to Section 18(1) would become operative i.e. such an allottee would be entitled to interest for the delay till handing over possession of the unit. The allottee, therefore, upon completion of the project or promoter making an offer of possession of the unit, as the case may be, is bound to take possession of the unit.

57. It, therefore, follows that, in a case, where the allottee despite completion of the project or offer of possession of the unit being made, declines to take possession of the unit and insists to withdraw from the project, in that event allottee seeks termination of the Agreement of the unit. In such a case, the terms and conditions governing cancellation of the Agreement at the behest of the allottee would follow. In other words, time line for the allottee, who intends to withdraw from the delayed project is provided in Section 18(1) i.e. before completion/handing over possession of the unit and not later depending on facts of each case. The allottee continues in the project thereafter is bound to take possession of the unit and is entitled to interest for the delayed period to be paid by the promoter. [proviso to Section 18(1)]

**(ii) <u>Proviso to Section 18(1) and the stage for computation of interest</u>**

58. Proviso to Section 18(1) of the Act, 2016 mandates that the allottee, who does not intend to withdraw from the project, *'shall be paid, by the promoter, interest for every month delay, till handing over possession'*. The agreement entered into between the development authority and the allottee, in so far as, the terms and conditions of the agreement/rules/operative procedure, as the case may be, are in conflict with the proviso to Section 18(1) would not bind the allottee being against statutory provision. The promoter, in the event of default in completing the project by the due declared date of completion, cannot escape the positive statutory mandate of paying interest for the delay period to the allottee, who continued in the project. The obligation cast upon the promoter is unqualified and by operation of law. The allottee is not required to make demand for interest with the promoter. The promoter is required to pay the interest at the time of handing over possession of the unit/settlement of accounts of the unit and not later.

59. The promoter, having regard to Section 17, read with, Section 19, on completion of the project is required to obtain completion/occupancy certificate of the project.

Thereafter, an offer of possession of the unit is to be made to the allottee, calling upon the allottee to settle the accounts. In other words, the offer of possession is to be accompanied by final statement of accounts of the unit. It is at this stage the promoter is required to comply its obligation to compute the interest of the delayed period at the prescribed rate and disclose/offer to the allottee in the statement of accounts. In other words, offer of possession along with due computation of interest must duly reflect in the statement of accounts which precedes the exercise to be undertaken by the promoter for execution of conveyance deed. In the event, promoter defaults in computing the interest, the promoter fails to comply the statutory obligations mandated under proviso to Section 18(1) of the Act.

60. In other words, until and unless the interest is computed for the delayed period and the rate at which it is computed is not informed by the promoter to the allottee in the final statement of accounts, the argument of the learned counsel for the respondent that by taking possession or on having executed the lease/conveyance deed, the allottee has acquiesced/waived its right to delay interest, is misconceived. The question of waiver of right/acquiescence/delay in claiming interest would only arise after the promoter has complied its statutory obligation by computing and quantifying the interest for the delayed period and thereafter informing the allottee. The cause of action insofar it relates to the allottee arises thereafter.

**(iii) <u>Section 11 of Act 2016</u>**

61. Shri Prashant Chandra, learned Senior Advocate placed reliance on Sub-section 4(a) of Section 11 under Chapter III of Act 2016, mandating functions and duties of promoter. Section 11 (4) (a) and (g) is extracted:

> *(a) be responsible for all obligations, responsibilties 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:*
>
> ……………………………….
>
> *(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):*

62. It is submitted that after the promoter has executed the lease/conveyance deed of the unit, all obligations of the promoter under the agreement or the statutory provisions of the Act 2016 or rules and regulations made thereunder, including proviso to Section 18(1), is no longer the responsibility of the promoter. It is urged that the appellant allottees are not entitled to claim interest for the delay period after execution of the conveyance deed of the unit, and on the contrary, it is urged that the promoter is absolved from complying its obligation thereafter in view of Section 11 (4)(a).

63. In rebuttal, Shri Abhishek Shukla, learned counsel appearing for the appellant has placed reliance on the proviso to sub-clause (g) of sub-Section 4 of Section 11 to urge that the promoter shall be liable to pay/comply any liability before transferring the real estate project to the said allottees or association of allottees and shall continue to liable even after transfer of the property. It is urged, that the expression 'any liability' would include the statutory obligations of the promoter towards the allottee.

64. On careful reading of sub-section 4(a) of Section 11, Legislature has not waived/absolved the promoter of any of its obligations, responsibilities and liabilities under the provisions of Act 2016, or to the allottees on execution of the conveyance of the apartments. The provision merely mandates that the promoter shall be responsible for all obligations, responsibilities and liabilities under the Act mandated/accrued upon the promoter 'till the execution of conveyance of all the apartments' to the allottees. In other words, whatever is the obligation, or the liabilities of the promoter till the execution of the conveyance deed, the responsibility is upon the promoter to comply. Any liability of the promoter existing, statutory or otherwise, under the statute/agreement, does not get waived/obliterated on mere execution of the conveyance deed, but continues thereafter.

65. On conjoint reading of Section 11 4(a) and (g), along with Section 18(1), the obligation to pay interest for the delayed period to the allottee accrues much before the stage of execution of the conveyance deed. The promoter is required and bound to comply its obligation to pay delay interest at the stage of offer of possession/settlement of accounts, which precedes the execution of the conveyance deed. The mandate is unqualified, imposed by operation of law which cannot be avoided or evaded by the promoter. The submission of the learned Senior counsel, if accepted, would render the obligation under proviso to Section 18(1) redundant and to the detriment of the allottee. None of the promoters, be it state or private promoters, would comply their obligation to pay delay interest, rather on one pretext or the other,

coerce the allottee to execute the conveyance deed on their terms to evade the burden of interest. The submission of learned counsel for the promoter lacks merit and is not in consonance with the scheme of Act 2016. Hence, rejected.

**(iv) <u>Statute, contracts and waiver of right by the allottee</u>**

66. The learned senior counsel for the respondent, in the alternative, argued that once the allottee has accepted the terms of offer of possession and thereafter executed the conveyance deed, the allottee has acquiesced by his conduct to the explicit terms of the sale deed, wherein, it is categorically provided that the allottee is fully satisfied and there is nothing left to be received from the promoter. It is urged that the interest that is being claimed by the allottee, after the sale deed of the unit, stands waived in view of the contract executed by the allottee. The submission requires consideration.

67. Statutes are laws enacted by a legislative body that establish mandatory legal standards that must be followed and are designed to protect public interest, ensure fairness and justice, and to establish minimum standards of behaviour. A contract, on the contrary, is an agreement between the parties that can set out the terms and obligations between the parties, which the parties are generally free to negotiate and outline the terms and legal boundaries. Contract, however, cannot contradict and circumvent statutory requirements. The statutes represent mandatory legal standards and may at times intervene with the terms and conditions of the contract as is in the case of Act 2016 mandating the duties and obligation of the parties.

68. In **Asha John Dvianathan Vs. Vikram Malhotra & others, AIR (2021) SC 2932: AIRONLINE (2021) SC 134,** Hon'ble Supreme Court held that a contract is void if it is prohibited by statute, even without an express declaration that the contract is void. The court emphasized that the statutory provisions cannot be circumvented through private agreements. **(Refer: Nabha Power Limited (NPL) Vs. Punjab State Power Corporation Limited (PSPCL), (2018) 11 SCC 508).**

69. The home buyer in view of the statutory frame work of Act 2016, rules and regulation framed thereunder does not loose his/her right to claim compensation/interest for the delay in possession even after execution of the conveyance deed and taking possession of the unit booked by him/her. The argument, on behalf of the allottees, alternatively is urged that adverse terms and conditions were imposed by the promoter before execution of the sale deed making it a condition precedent to hand over possession of the unit, leaving no choice to the allottee but to sign on the dotted lines.

70. Under the Contract Act, 1872, Section 3 concerns itself with an act of communication, acceptance, and revocation of proposal. When an offer is made, it is required to be accepted by the receiver to partake the character of a concluded contract. Hence, knowledge of the terms of offer is a primary and essential factor for acceptance thereof. This is for the reason that an unaccepted offer creates neither any right nor obligation. Such an acceptance as existing under Section 7 of the Act must be absolute and unqualified. Hence, an absolute and unqualified acceptance would give birth to the contract along with the terms of the offer.

71. In the given facts, admittedly, the respondent-promoter, was required in the first instance to comply the mandatory statutory obligation of computing delay interest and offering it to the allottee on completion of the project. It is only, thereafter, the allottee may accept the interest/period/rate, as the case may be, offered/computed by the promoter to bind the allottee. In the event, allottee disputes the quantum of interest/period/rate, as the case may be, in that event, the allottee would be an 'aggrieved person' contemplated under Section 31 of Act 2016. The remedy, thereafter, would lie to the aggrieved allottee to approach the Regulatory Authority by instituting a complaint, assailing the quantum of interest/period/rate, as the case may be. The intermediary stage between offer and acceptance is that provided under Section 35, read with, Section 37. The Regulatory Authority should have exercised its power in the first instance, on the complaint of the allottee, by directing the promoter to comply its obligation under proviso to Section 18(1) of the Act. On compliance, thereafter, cause of action would arise to the allottee, if aggrieved. The settlement of accounts of the unit cannot be made an issue for determination on exchange of pleadings between the contesting parties. The promoter as per the scheme of Act, 2016 is bound to compute and settle the accounts which necessarily would include the delay interest payable to the allottee.

72. The respondents, on repeated query, admit that they have not computed and complied their mandatory statutory obligations till date, nor, do they have the intention and desire to do so. The terms of offer of possession and the sale-deed is based on the one-sided standardized format imposed by the promoter. In that event, there was no occasion for the allottee to have accepted/acquiesced, explicitly or by conduct, to the interest component under proviso to Section 18(1) of the Act 2016. The acceptance or rejection by the allottee of the computed/offered interest/rate/period, as the case may be, could have followed, in the event promoter had complied its obligation in

computing the interest for the delay while settling the accounts at the time of offer of possession of the unit.

73. In the afore-noted backdrop, the reasonable time for filing complaint by the allottee cannot be put in a straight jacket formula or judicially quantified in the form of days etc. It depends on the facts and circumstances of each case, and the statutory provisions governing the rights and obligations of the parties. The party (promoter) does not comply its statutory obligation mandated under the Act 2016 by computing the interest for the delayed period and incorporating it in the statement of accounts at the time of offer of possession/settlement of accounts, the promoter normally would not be permitted to take defence of latches/delay and/or, acquiescence by the other party (allottee).

74. In such a case, the delay furnished a continuing and recurring cause of action to the allottee because of inaction of the promoter. It is not a case that the allottee has abandoned his right to the interest due, either express or implied by his conduct. Abandonment implies intentional act to acknowledge a corresponding computation of the interest. In the absence of computation of interest (offer), there was no occasion of abandonment of the right to interest or acquiescence by the allottee. The language of proviso to Section 18(1) makes the legislative intent clear, explicit and unambiguous. The expression **'he (allottee) shall be paid, by the promoter',** leaves no scope for the promoter to claim waiver of its obligation to pay interest under the garb of delay/latches/settlement/sale deed etc. in the absence of computation of interest. The provision, read with, Section 11(4)(a) and (g) further clarifies that the promoter would be responsible for all its obligation having arisen till the execution of the sale deed of the unit. The liability of the promoter to pay delay interest arises at the stage of making offer of possession of the unit i.e. prior to execution of conveyance/lease deed and would continue thereafter being a recurring cause of action.

75. In the circumstances, complaint of the allottee for delay interest under proviso to Section 18(1), was instituted by the allottee being primarily a complaint, read with, Section 35 of Act 2016, requesting Regulatory Authority to call upon the promoter and seek an explanation and compliance of its obligation i.e. to compute the interest for the delayed period and pay. The cause of action to the allottee, if aggrieved by the computation, would arise thereafter, and until then it was a recurring cause of action

as the interest accrues every month until computed and satisfied. The submission of the learned counsel lacks merit.

**(iv) Balance interest of stake holders by the Regulatory Authority**

76. The learned counsel appearing for the Regulatory Authority, finally, submits that as per the aims and object of the Act, 2016 and the provisions thereunder, it is the duty and function of the Regulatory Authority to protect the interest of all the stake holders, in a real estate project, including, that of the promoter. The provisions of the Act, 2016 is not tilted in favour of the allottee qua promoters. He submits that the allottee had not approached the Regulatory Authority within the period of limitation, therefore, are not entitled to any relief for delayed interest. There was no occasion for the Regulatory Authority in compelling the respondent-promoter, being State agency, to pay interest at a belated stage. The learned counsel emphatically submits that it will not be in the interest of the promoter to direct the respondent-promoters to pay interest to the allottee at this stage as it may adversely affect the financial health of the project or that of the development authority.

77. In other words, taking the submission on face value, Regulatory Authority is not only espousing the cause of the promoters, being State agencies, but in the same breath holding their brief under the garb of public interest/financial health of the project. Such authority and power is not vested with the Regulatory Authority. The submission that the Regulatory Authority has to balance the interest of all the stake holders in a real estate sector, prima facie, appears to be justified. In the given facts, the learned Regulatory Authority, however, has totally tilted the balance in favour of the promoters against the statutory provisions, at the cost of the allottees. The respondents have not laid foundation or taken a plea of adverse financial implication on the project, in the event delay interest is paid belatedly, either before the Regulatory Authority, or this Tribunal. In the event the submission is accepted, then Regulatory Authority would exceed its power and authority to facilitate the respondent-promoter to pocket the money towards delay interest that was statutorily due and admissible to the allottees. The respondent-promoters, as per their own case continue to hold the money, due and admissible to the allottees, in their hand and have since utilized it. The Regulatory Authority committed gross error by not exercising its statutory powers and functions mandated under Act 2016 or rules and regulations thereunder. The obligation imposed on the promoter under Section 18(1) and the proviso is absolute, unqualified and unconditional. There is no provision of waiver of

obligations cast upon the promoter on the pretext of adverse financial health, either express or implied. The learned Regulatory Authority by declining to exercise its powers and functions under the Act (Section 35, 37 and 38) has not only facilitated the promoters (State agencies) of unjust enrichment/windfall gain, but has legitimised it.

78. Section 18(1) is compensatory in nature and not penal. The requirement to pay interest is not a penalty. The payment of interest is to compensate the allottee in the backdrop of the delay suffered by the allottee who has paid for the unit but has not received possession on the agreed time. Under provision of Act 2016, 70 per cent of the amount paid by the allottees is to be utilized for the proposed project and 30 per cent of the deposit is enjoyed and utilized by the promoter for other purposes. It is therefore, not unreasonable to require the promoter to pay interest to the allottee on his money (deposit) when the project is delayed beyond the contractual agreed period. The allottee cannot be said to be acting gratuitously. The promoter enjoying the benefit of the deposit of the allottees is bound to compensate the allottees by paying interest for the delayed period.

79. On close scrutiny and examination of the submission of the learned counsel for the respondent suffers from serious fallacy from another point of view. The statute while defining ‘promoter’ does not make a distinction between government promoter (state agency) and private promoter, neither, does the statute confer any special right and privilege upon the promoters (state agency) as against private promoters. In the event the submission of the learned counsel for the respondent is accepted then in that event the private promoters in the State of Uttar Pradesh would claim parity with state promoters to absolve themselves from paying delay interest to the allottees, on one pretext or the other. The stand of the learned counsel that the object of the Regulatory Authority to protect the state promoters from loss/financial distress would equally be applicable to private promoters, who probably out- number the state promoters. The stand, if accepted, primarily facilitates the cause of the promoters to pocket the money against the interest of the allottee. The submission lacks merit.

**(v) <u>Waiver of obligation by promoter- whether permissible</u>:**

80. The plea that is being urged by the learned counsel for the respondent has another dimension. If accepted, would tantamount to unjust illegal enrichment/windfall gain accruing to the promoters at the expense of the allottees. The conduct of the respondent is writ large from their blatant arrogance in retracting from their statutory

obligation to non-suit the allottees. The doctrine of estoppel for non-compliance of statutory obligation, is not available against law. The terms and conditions of a contract/settlement/sale deed, as the case may be, against the statutory provisions imposed by the promoter to absolve itself of its liability, is nullity and unenforceable to that extent. The allottee has no choice but to accept the terms and conditions imposed by the promoter before execution of the conveyance and handing over possession of the unit. The allottee is trapped between the devil and the deep sea. The allottee has parted with his money for the unit, and possession thereof is resisted by the promoter unless the allottee succumbs to the one-sided terms and conditions being imposed by the promoter to absolve itself of the burden of delay interest.

81. In the given facts there was no occasion for the allottee to accept/acquiesce to a computation/offer, which was yet to see the light of the day. The promoters, herein, in the absence of computation of interest, are primarily seeking waiver of their statutory obligation under the garb of an agreement/sale deed etc., which is impermissible in law. The Regulatory Authority, on the admission of the respondent-promoter in not having complied its obligation, should have exercised its power and authority under Section 35, 37 and 38, read with, Section 61 under Chapter VIII of Act 2016 to compel the promoter to compute the interest for the delayed period and pay it to the allottee.

**Question no. 3 is, accordingly, answered**.

82. Having due regard to the facts and circumstances of the case and for the reasons assigned, herein above, the **appeals succeed, accordingly, allowed** by passing following orders:

(i) The orders passed by the Regulatory Authority, impugned in the batch of appeals, is quashed.

(ii) The complaints of the appellant/allottees are restored to its original file and number.

(iii) Regulatory Authority is directed to decide the complaint on merits expeditiously in light of the observations made herein above.

(iv) Registry to supply certified copy of the order to U.P. RERA for compliance.

(v) No order as to cost.

**(Devindar Singh Chaudhry)** **(Sanjai Khare)** **(Suneet Kumar)**

**Dated**:29.08.2025
Tanveer/-