

THE U.P. REAL ESTATE APPELLATE TRIBUNAL, LUCKNOW

Division Bench Court No. 1

APPEAL-364/2024

U.P. AWAS EVAM VIKAS PARISHAD

.....Appellant

Versus

DIVYA SINGH AND ARVIND KUMAR

.....Respondent

Counsel for Appellant

SAURABH MISRA

GAUTAM JOHRI

Counsel for Respondent

PRAMOD MITRA

Hon'ble Mr. Justice Suneet Kumar, Chairman

Hon'ble Mr. Rameshwar Singh, Administrative Member

1. Heard Sri Saurabh Misra & Sri Gautam Johri, learned counsels for applicant/appellant and Sri Promod Mitra, learned counsel for the respondent.

Order on Application for Condonation of Delay

2. Perused the affidavit, accompanying application for condonation of delay.
3. The applicant/appellant seeking condonation of 67 days in instituting the appeal. The applicant/appellant has submitted that impugned order under challenge came to be passed 30.04.2024 and was uploaded on the portal of UP RERA on the same day/date. The appeal came to be instituted on 03.09.2024 i.e. with delay of 67 days beyond limitation.
4. The applicant/appellant submits Hon'ble Supreme Court in the case of **B. Madhuri Goud Vs. Ddamodar Reddy, reported in (2012) 12 SCC 693** has held that there should be a liberal, pragmatic, justice oriented, non-pedantic approach while dealing with the application for condonation of delay. Substantial justice being paramount and pivotal the technical considerations should not come in the ways of substantial justice. The applicant/appellant has further submitted that the present appeal is

challenging the jurisdiction exercised by learned Adjudicating Officer of Regulatory Authority at Lucknow.

5. On specific query, learned counsel for the respondent does not oppose condonation of delay.
6. With the consent of learned counsel for the respondent and cause shown by the applicant/appellant, application for condonation of delay is **allowed**. Delay in filing appeal is condoned.
7. **Registry is directed to convert instant defective appeal into regular appeal.**

Order on Appeal

8. The present appeal has been filed assailing the order dated 30.04.2024, passed by the Adjudicating Officer, U.P. Real Estate Regulatory Authority, Lucknow, in Complaint No. ADJ/LKO162/10/114434/2023, granting delay interest by way of compensation.
9. Learned counsel for appellant, at the outset, submits that in view of the decision rendered by the Hon'ble Supreme Court in the case of *M/s Newtech Promoters and Developers Pvt. Ltd. Vs. State of U.P. and others, 2021 SCC Online SC, 1044*, the Adjudicating Officer would lack inherent jurisdiction in granting delay interest of a delayed project. He further submits that the forum for seeking the relief was before the Regulatory Authority.
10. Main question involved in this appeal is whether the impugned order dated 30.04.2024, passed by the learned Adjudicating Officer, Lucknow, is without jurisdiction and whether in the given facts allottee/respondent is entitled for delay interest.
11. Learned counsel for respondent, on being confronted with the proposition of law does not dispute that the impugned order is without jurisdiction. He,

however, submits that it is not being disputed by the appellant that the project was inordinately delayed beyond the promised date, accordingly, the respondent would be entitled to delay interest on the deposit in terms of Section 18(1) of the Act. He, therefore, submits that this Tribunal should settle the lis, inter se, parties in respect of the delay interest on admitted facts instead of remanding the parties to adjudicate the matter afresh.

12. The appellant had launched a scheme in Vrindavan Yojna Part-4, Sector-18, Goverdhan Enclave. The appellant was duly allotted the Unit and the sale consideration was paid as per terms and conditions of the agreement/brochure.
13. Learned counsel for appellant does not dispute that the due declared date for completion of the project was 27.07.2018, whereas, the offer of possession of the Flat (Unit) was made on 12.07.2021. This has been admitted in para-1 of the memo of appeal.
14. Since the period of delay in completing the project and offer of possession of the Unit is not under dispute, accordingly, no purpose would be served in relegating the parties to the appropriate forum for delay interest for the very same period in view of Sub section (6) of Section 44 read with Sub section (1) of Section 53 of the Act. The relevant provisions are extracted:-

“Section 44. Application for settlement of disputes and appeals to Appellate Tribunal.

- (6) The Appellate Tribunal may, for the purpose of examining the legality or propriety or correctness of any order or decision of the Authority or the adjudicating officer, on its own motion or otherwise, call for the records relevant **to deposing**

of such appeal and make such orders as it thinks fit.”

“Section 53 – Powers of Tribunal.—(1) The Appellate Tribunal shall not be bound by the procedure laid by the Code of Civil Procedure, 1908 (5 of 1908) but shall be guided by the principles of natural justice...”

15. It is informed by the learned counsel for the parties that similar matters came to be challenged before the Hon’ble High Court in appeal. The Hon’ble High Court in ***RERA Appeal No. 72 of 2025 (Ratan Buildtech Private Limited V/S. Anil Kumar)*** and other connected appeals came to be decided on 04.08.2025. One of the questions before the Hon’ble High Court was, “whether an appeal would lie against the grant of interest under Section 18(1) of the RERA Act, granted on the basis of admission in between the parties” (Issue No. III). And the related issue, “whether grant of interest requires any adjudication or can be granted automatically as per Section 18(1) of the RERA Act”.
16. The Hon’ble High Court in Para-37, observed that pre-deposit prescribed under Section-18, cannot be adjudicated dues. The Court while answering Issue No. III in Para-42 of the report held as follows: -

“Even if the submission of the Counsel for the appellant that the appellate court was wrong in recording that there was admission with regard to delay in delivery of possession and the admission was confined only to that effect that apartment could not be delivered to the allottee and there was no admission to liability to pay interest, would not alter the final out come as it is already held that the statutory interest is

essentially a mathematical exercise and does not require any adjudicatory exercise ”.

17. Accordingly, the question is answered and the appeal is being disposed of on admitted facts between the parties by passing the following orders:-

- (i) The impugned order passed by the learned Adjudicating Officer dated 30.04.2024 is set aside and quashed.
- (ii) The respondent/allottee is entitled to delay interest w.e.f. 27.07.2018 to 12.07.2021 at the rate of MCLR+1% per annum on the deposited amount.
- (iii) The amount deposited in compliance of Section 43(5) of the Act towards the delay interest shall be released in favour of the respondent after verifying from the Regulatory Authority as to whether the execution proceeding is pending. In the event the execution proceeding is pending, the amount so deposited shall be remitted to the Regulatory Authority.
- (iv) Income tax liability, if any, will be of the beneficiary.

Dated: 08.10.2025
M. Singh/-

(Rameshwar Singh)

(Suneet Kumar)