RESERVED JUDGMENT

BENCH NO. 1

THE U.P. REAL ESTATE APPELLATE TRIBUNAL, LUCKNOW.

1. Appeal No. 545/2022

Ranjana Gupta ……….…………..**Appellant.**

Versus

Rudra Buildwell Infra Pvt. Ltd. …………………**Respondent.**

2. Appeal No. 555/2022

Vikas Gulati …………………Appellant

Versus

Rudra Buildwell Infra Pvt. Ltd. …………………Respondent

3. Appeal No. 554/2022

Utkarsh Gupta ………………….Appellant

Versus

Rudra Buildwell Infra Pvt. Ltd. …………………Respondent.

4. **Appeal No. 546/2022**

Raj Luthra ………………… Appellant

Versus

Rudra Buildwell Infra Pvt. Ltd. …………………Respondent

5. **Appeal No. 547/2022**

Navin Kumar Gupta ………………… Appellant

Versus

Rudra Buildwell Infra Pvt. Ltd. …………………Respondent

6. **Appeal No. 549/2022**

Divya Singh ……………….. Appellant

Versus

Rudra Buildwell Infra Pvt. Ltd. …………………Respondent

7. **Appeal No. 548/2022**

Uday Parmar ………………. Appellant

Versus

Rudra Buildwell Infra Pvt. Ltd. …………………Respondent

8. **Appeal No. 552/2022**

Samadarshi Mallick ………………… Appellant

Versus

Rudra Buildwell Infra Pvt. Ltd. …………………Respondent

9. **Appeal No. 550/2022**

Varun Saroha ………………..Appellant

Versus

Rudra Buildwell Infra Pvt. Ltd. …………………Respondent

10. **Appeal No. 551/2022**

Alok Malhotra ……………….. Appellant

Versus

Rudra Buildwell Infra Pvt. Ltd. …………………Respondent

11. **Appeal No. 553/2022**

Rahul Kumar …………………..Appellant

Versus

Rudra Buildwell Infra Pvt. Ltd. …………………Respondent

12. **Appeal No. 556/2022**

Wasim Ahmed ………………….Appellant

Versus

Rudra Buildwell Infra Pvt. Ltd. …………………Respondent

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

1. Before we proceed to examine the instant matter/issue, we deem it proper to place on record that on demitting office by Technical Member from 26.09.2023 the judicial functioning of the Tribunal had come to stand still with effect from 27.09.2023. On receipt of the notification dated 28.11.2023 with respect to appointment of Judicial

Member, in the larger interest as well as to resume the judicial functioning of the Tribunal and to achieve the mandate of Section 44(5) of the Real Estate (Regulation & Development) Act 2016 read with Regulation 22 and 25 a Bench consisting of Chairman and Judicial Member was constituted vide order dated 01.12.2023. The Registry was directed to issue cause list of fresh appeals and re-schedule the cause list of pending appeals from 27.09.2023 on joining of the Judicial Member. Accordingly an office order dated 02.12.2023 was issued by the Registrar, which reads as under:--

OFFICE ORDER

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

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

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

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

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

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

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

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

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

3. The submission of the learned counsel for the appellant is that the appeals listed from Serial Nos. 1 to 12 have been filed against a Composite order and appeal listed at Serial No. 9 (Appeal No. 545/2022 – Ranjana Gupta Vs. M/s Rudra Buildwell Infra Pvt. Ltd.) be taken as leading appeal. Appreciating the request of learned counsel for the appellant and with no objection from the respondent, all the 12 appeals were heard together and are being disposed of by a composite Judgment. We take Appeal No. 545/2022 (Ranjana Gupta Vs. M/s Rudra Buildwell Infra Pvt. Ltd.) as leading case.

4. The appellant has filed the instant appeal challenging the order dated 16.06.2022 (hereinafter referred to as the 'impugned order') passed by the Ld. Real Estate Regulatory Authority, Noida, Uttar Pradesh (hereinafter referred to as the "Regulatory Authority") in Complaint No. NCR144010063 of 2022 (Rudra Buildwell Infra Pvt. Ltd. Vs. Ranjana

Gupta & Shalini Gupta), whereby the Regulatory Authority gave following directions:

(i) The allottee was directed to pay balance amount after adjusting the interest of delayed period to the promoter within 30 days and ensure to take possession of the Unit.

(ii) To provide complete details of the amount to be received by the promoter from the allottee. Simultaneously, if there is any delay in payment of amount by the allottee, then in such circumstances interest not more than the rate of MCLR+1 % to be taken from the allottee. In the matter of other allottees, the calculation will be made as per Agreement.

(iii) The possession will be offered by the promoter in accordance with law and at the time of offering possession it will be ensured by the promoter that basic amenities are available, which are essential for living there.

(iv) If allottee fails to take possession after paying the balance amount within 60 days, then the promoter will be free to take action as per agreement.

5. The facts of the case, in brief, are that in March 2013, Respondent launched a group housing project by the name of Victory One Amara at Plot No. GH-05C, Sector 16, Greater Noida (West), District Gautam Budh Nagar (U.P) (hereinafter referred as 'said project') and invited the public at large to apply for the flat units in the said housing project by publishing advertisements in leading newspapers. The Respondent further engaged a number of agents/brokers/reality dealers as its representatives and agents to approach individual buyers through various modes to invest in the said project.

5.1 At the time of signing application for allotment, a substantial sum of money was taken in advance towards sale consideration which varied in the case of every allottee, depending on the size of the unit so allotted. The said applications for allotment stipulated terms and conditions of the transaction and were signed by the Respondent as well. Subsequently, Builder-Buyer Agreement/Allotment Letter was signed. The details of appellant with respect to date of agreement, unit allotted, agreed date of possession, consideration price, etc. is as under:-

Unit Holder Name as per Allotment Letter	**Booked Unit No.**	**Date of Allotment**	**Date of delivery**	**Total amount to be paid**	**Total Amount Paid**
Ranjana Gupta & Shalini Gupta	C-801	27.12.2013	27.12.2016	Rs. 36,30,000/-	Rs. 34,53,341/-

5.2 The Respondent and its representatives stated that they had already legally acquired the land in question thereby making them exclusive owners of the said land having unencumbered right, title and possession of the same via BR dated 20.09.2012, which has been leased by Greater Noida Authority vide lease dated 03.10.2012, the same having been duly registered as Doc. No. 19,000 at Sub-Registrar of Assurances, Greater Noida. The Respondent further claimed that it had obtained the respective licenses to commence the project and that the same had already been obtained from the concerned authorities. The said facts also finds mention in the allotment letter as issued to the Appellant. It is stated that none of the above enlisted licenses and the documents pertaining to the same were shown to the Appellant despite repeated requests and reminders.

5.3 The Respondent Developer was to carry on the development on the project land and construction was to be carried out in different phases and the allotted units was to be handed over to the buyers as and when the construction is completed, within a period of 30 months, with an extension of 6 months thereof from the date of making the first payment, as per Clause 15(a) of the Application for allotment. As per Clause 15(c) of the Application for Allotment, it was further assured by the Respondent that they would pay a sum of Rs. 10/- per sq. ft. of super area per month for a period of delay of three months and thereafter, Rs. 15/- per sq. ft. per month beyond the delayed period of three months. It is stated that majority of the Appellants in the impugned order have made their first payment as booking amount during the period of July-August 2013 therefore, they were to get possession of their respective units by July-August 2016-17 including the maximum extension of six months.

5.4 The appellant stated that despite a delay of more than two and a half years, the Respondent has failed to hand over the unit to the Appellant and has further refused to pay any delayed interest for the delay in handing over the units in question. As and when the demand letters were issued to the Appellant by the Respondent, the Appellant diligently met such demands in a timely manner. Despite a lapse of more than 6 years the project is far from completion and the construction and development of the Project is moving at a slow pace. The Respondent Developer is falsely claiming that only finishing work such as final coat of paint, sanitary fittings etc remains to be done in the project and raising final letters of demand to the appellant. The Appellant has paid approximately 95% of the value of the flat to the Respondent.

5.5 It is stated that the Appellant is paying EMI to the bank and due to delay in handing over the physical possession of the unit within the stipulated period and thus has caused immense pressure and financial burden on the Appellant. The Respondent, after expiry of almost two years, sent final demand letters in 2018 informing that the fit-out works were going to be carried out. The aforesaid letter clearly mentioned that the formal statutory compliances for the completion certificate are yet to happen. One of the co-appellant in this matter namely Mr. Samadarshi Mallick sought information under Right to information Act from the concerned authorities/Greater Noida Audyogik Vikas Pradhikaran which clearly establish that the Respondent has not obtained any approval or certificate whatsoever regarding the said project.

5.6 The appellant, being aggrieved by the actions of the respondent, filed a consumer complaint bearing no. CC/1279/2019 before the Hon'ble National Consumer Disputes Redressal Commission, highlighting the various irregularities committed by the Respondent and sought refund of the amounts paid towards the flat. The Respondent upon issuance of notice by the Hon'ble National Consumer Disputes Redressal Commission had filed its Reply. During the pendency of the Complaint filed on behalf of the Appellant, the Respondent with mala-fide intentions and with a sole objective to delay the proper adjudication of the disputes before the Hon'ble National Consumer Disputes Redressal Commission, filed a petition before the Ld. Authority, Noida, Uttar Pradesh. The Ld. Regulatory Authority passed the impugned order dated 16.06.2022 and aggrieved by the said order the appellant has preferred the instant appeal on the following grounds:

A. The Ld. Authority has failed to consider the true and correct facts arising in the Complaint and also the law applicable thereto and consequently issues of fact and issues of law arise in the present Appeal which necessitate consideration by the Hon'ble Appellate Tribunal.

B. The impugned order passed by the Ld. Authority is against the interests of the allottees pertaining to the said project in as much as the Respondent is not in a position to hand over the possession even after expiry of more than 6 years from the stipulated date of possession.

C. The Ld. Authority has summarily passed by the impugned order without taking into account that the Appellant has already filed a complaint seeking refund of the amounts deposited in view of the non-delivery of respective flats for more than 3 years. In fact even today, the Respondent, after 6 years, has failed to offer the possession of the flat.

D. The Ld. Authority failed to note that the Hon'ble Supreme Court in catena of judgments has held that even if there is a single day of delay, the buyers are entitled to seek refund of their entire amounts. Precisely, the Appellant filed the consumer complaint before the Hon'ble National Consumer Disputes Redressal Commission in 2019 after a lapse of more than 3 years.

E. The Ld. Authority was bound to follow the mandate of Section 71 of the Act, wherein it was clearly postulated that during the pendency of the complaint before the consumer forums, the Ld. Authority did not have the power to adjudicate on the same cause of action.

F. The Ld. Authority failed to consider that the petition filed by the Respondent was against the very same allottees who have already approached the Hon'ble National Consumer Disputes Redressal Commission in 2019 seeking refund of their amounts deposited.

G. The Ld. Authority had acted in contravention of the principle of comity of Tribunals as it ignored the specific and unambiguous request of refund, filed by the same set of allottees, in the form of a complaint filed before the Hon'ble National Consumer Disputes Commission, which is presently adjudicating the complaint.

H. The impugned order passed by the Ld. Authority is in contravention to the Section 88 of the Act wherein it was clearly stated that the Act would not be derogation to the provisions of any other law.

I. The Ld. Authority failed to note that by adjudicating on the frivolous petition, it has acted against the express mandate provided under Section 88 of the Act in as much as the Hon'ble National Consumer Disputes Redressal Commission was already adjudicating the complaint seeking refund filed by the same parties who were before the Ld. Authority.

J. The petition filed by the Respondent was contrary to the format prescribed as per Rules 33(1) of the U.P. Real Estate (Regulation & Development) Rules, 2016.

K. The Ld. Authority ought to have noted that the Respondent has not received the Occupation Certificate which is even admitted by Respondent in their Reply filed before Hon'ble National Consumer Disputes Redressal Commission.

L. The impugned order dated 16.06.2022 is contrary to the pleadings and submissions made by the Appellant before the Ld. Authority.

M. The Ld. Authority did not consider that the as per Clause 15(a) of the Allotment Letter dated 27.01.2014, the Respondent was under obligation to hand over the possession of the respective flat within a period of 30 months + 6 months (grace period) from the date of starting of construction work on the site. As per update on the official website of the UP RERA, the development work at the site has been started in the month of May, 2013, therefore it is clear that the Respondent was bound to handover the possession till May, 2016.

N. The Ld. Authority failed to take judicial note of the judgment in Kolkata West International City Pvt. Ltd. V. Devasis Rudra, Civil Appeal No. 3182 of 2019, has held that the buyer cannot be expected to wait endlessly for his possession and moreover, if the specific prayer for refund has been made, it would be unfair to non-suit the buyer and deny his prayer.

O. The Ld. Authority failed to note the observation passed by the Hon'ble Supreme Court in the judgment of Imperia Infrastructures Pvt. Ltd. V. Anil Patni, Civil Appeal 3581/2020 has held as follows:

> ""23. It has consistently been held by this Court that the remedies available under the provisions of the CP Act are additional remedies over and above the other remedies including those made available under any special statutes;

> and that the availability of an alternate remedy is no bar in entertaining a complaint under the CP Act."

P. The Ld. Authority failed to follow the objects & reasons enumerated under the Act for the betterment of the allottees and express provision of compensation which in principle summarizes the right of an allottee to seek compensation in case of a delay.

Q. In terms of Section 18 of the RERA Act, if a promoter fails to complete or is unable to give possession of an apartment duly completed by the date specified in the agreement, the promoter would be liable, on demand, to return the amount received by him in respect of that apartment if the allottee wishes to withdraw from the Project.

R. The Ld. Authority failed to note that such right of an allottee is specifically made "without prejudice to any other remedy available to him". The right so given to the allottee is unqualified and if availed, the money deposited by the allottee must be refunded with interest at such rate as may be prescribed. It is up to the allottee to proceed either under Section 18(1) or under proviso to Section 18(1).

S. The Ld. Authority failed to note the specific directions passed by the Hon'ble Supreme Court in Pioneer Urban Infrastructure Ltd. V. Govindan Raghavan, 2019 (5) SCC

> "6.1 In the present case, admittedly the appellant builder obtained the occupancy certificate almost 2 years after the date stipulated in the apartment buyer's agreement. As a consequence, there was a failure to hand over possession of the flat to the respondent flat purchaser within a reasonable period. The occupancy certificate was obtained after a delay of more than 2 years on 28-8-2018 during the pendency of the proceedings before the National Commission.

6.2. The respondent flat purchaser has made out a clear case of deficiency of service on the part of the appellant builder. The respondent flat purchaser was justified in terminating the apartment buyer's agreement by filing the consumer complaint and cannot be compelled to accept the possession whenever it is offered by the builder. The respondent purchaser was legally entitled to seek refund of the money deposited by him along with appropriate compensation."

T. Because the Ld. Authority failed to note that the petition filed by the Respondent was not maintainable in as much as the reliefs sought by the Respondent were contrary to the terms and conditions of the allotment letter entered between the parties.

6. The appellant has prayed for following reliefs:

a. Setting aside of the Impugned Order dated 16.06.2022 passed by the Ld. Authority; and.

b. Pass any other order which this Hon'ble. Tribunal deems appropriate in the facts and circumstances of the present case.

7. The respondent filed objection to the appeal stating therein that the respondent launched a group housing project with the name and style of Victory One Amara (hereinafter referred to as "Project") at Plot No. GH-05C, Sector 16, Greater Noida (west), Gautam Buddh Nagar with an aim to provide habitable and peaceful group housing society to live in. It is further stated that there were no misleading claims by way of brochure to the prospective buyers. The appellant had approached the respondent and after thorough enquiry and after satisfying all their queries, booked he residential unit in the project with her free will and consent. The appellant had applied for allotment of a residential unit with full knowledge of laws/notifications and rules applicable to the area in general and the arrangements pertaining to the aid project after thorough enquiry and after satisfying all their queries and had satisfied herself in respect of ownership title of the property which was

explained by the respondent to the appellant. Subsequently, allotment letter was signed by the parties on 11.01.2013.

7.1 The respondent further stated that bare perusal of Clause 15(b) and note in Clause (C) of the allotment letter, it is evident that the service tax or any other statutory charges etc. is not included in total cost of the unit and is payable by the appellant at the time of possession. The respondent stated that the appellant is trying to mislead this Hon. Tribunal, whereas the fact is that the respondent has acquired right, title and interest on plot no. GH-05/C located at Sector-16, Greater Noida District Gautam Buddha Nagar, U.P. admeasuring 20,000 sq. mtr. which was leased by Greater Noida Authority vide lease dated 03.10.2012 which was duly registered as doc. No. 19000 at Sub-Registrar of Assurances Greater Noida and on the same date, possession was given to the respondent. Thereafter the respondent applied for approval for the building plans and subsequently, the building plans was approved and certificate was issued on 26.08.2013 by the GNIDA. The respondent procured the No Objection Certificate for height clearance issued by the Airport Authority of India for the project. The respondent also procured the Environmental Clearance Certificate for the project on 12.10.2013 from State Level Environment Impact Assessment Authority, Uttar Pradesh. Respondent also procured the Fire Certificate for the project on 19.05.2014. The respondent constructed the said project in accordance with the sanctioned building plan and necessary permissions from the concerned government authorities.

7.2 The respondent further stated that as per clause 15(a) of the allotment letter, the timeline for completion of the project and giving the possession to the allottee was a tentative timeline subject to force majeure conditions. It was dependent on certain conditions like market conditions, force majeure conditions, and timely payments of the buyer/allottees of the project etc. It was agreed between the parties that the respondent is entitled for the extension of time for the completion of the project in such circumstances. In the present case, the project in question got delayed due to the force majeure reasons that emerged unexpectedly for which the respondent is validly/legally entitled to get the exemption and extension for completion of the construction without any liability from the side of the respondent. The project in question got delayed due to delay in settlement of Greater Noida Industrial Development Authority issue with Farmers, recession in the real estate market, demoentisation, non-availability of raw materials, non-availability of labours, permission for excavation and Ban on ground water exploitation by Central Ground Water Authority and construction ban by NGT in respective years for particular period in each year in Delhi NCR due to pollution. In case any Court or Tribunal passed stay order even for one month, that directly impact with delay in progress and completion of the project from time to time.

7.3 The Central Ground Water Authority issued the public notice in the daily newspaper on 16.01.2013 and 17.01.2013 banning the ground water extraction in compliance of Hon'ble Green Tribunal order dated 11.01.2013 for all builders in Noida & Greater Noida. By means of orders dated 10.11.2016, 09.11.2017, 17.11.2017, 18.12.2017, the National Green Tribunal imposed restrictions on the construction. Further the Greater Noida Industrial Development Authority issued the public notice in reference to the order dated 07.04.2015 passed by the National Green Tribunal in O.A. No. 21/2014 and 95/2014 and the Greater Noida Industrial Development Authority banned the ongoing construction of the projects in Greater Noida region with immediate effect. The Greater Noida Industrial Development Authority issued the public notice in reference to the various orders passed by the National Green Tribunal on 09.11.2017 and the District Magistrate, Gautam Buddh Nagar banned the on-going construction of the projects in Greater Noida region with immediate effect. The Environment Pollution (Prevention & Control) Authority for the national capital region banned the construction from 01.11.2018 to 10.11.2018, 26.10.2019 to 30.10.2019 and from 04.11.2019 to 08.11.2019. Further in Civil Appeal No. 13029/1985 (M.C. Mehta Vs. UOI) the Hon. Supreme Court gave the directions to ban the construction from period 04.11.2019 to 14.02.2020 and later on vide order dated 09.12.2019 in the said case, lifted the complete ban and imposed the partial ban on the construction activities.

7.4 The respondent further stated that the Government of India has also considered the period from 25.03.2020 to 25.09.2020 under the ambit of force majeure due to the spread of Covid-19. The Greater Noida Industrial Development Authority issued the office order dated 16.11.2021 banning the construction for 4 days in compliance of order passed by the Hon'ble Supreme Court. It is stated that in spite of the project getting delayed due to the reasons mentioned above, the respondent sent the intimation for offer of possession on 01.08.2018, requesting the appellant to clear all pending dues and other charges. It was also informed by the respondent to the appellant that flat has been kept in pre-possession stage which means the final finishing work are not done which shall be taken up in the next few days after clearance of all pending dues and before handing over of possession.

7.5 The respondent submitted that the appellant is trying to mislead this Hon'ble Tribunal by stating that the appellant diligently met all such demands in a timely manner in reference to the demand letters issued by the respondent. In the present case, the appellant paid the total sum of Rs. 34,53,342/- against the total demand of Rs. 40,76,635/- and interest on delay payment of Rs. 7,67,561/-. The appellant has failed to adhere to the timeline for payment as per payment plan of the Allotment Letter which was communicated to the appellant through demand letters. The appellant on various occasions has made the payment with delay. As per Clause 10(d) of the Allotment Letter read with Section 19 of the Act, the timely payment is the essence of the contract, and the appellant is under an obligation to pay its dues as per the allotment letter and the appellant has failed to pay its dues to the respondent.

7.6 In the case of the appellant, the respondent has levied the interest on the delayed payment @ MCLR+1% after the RERA Act, 2016 came into force. After the order passed by the U.P. RERA on 16.06.2022, the respondent in compliance of the said order, sent a final demand letter dated 22.06.2022 to the appellant through e-mail as well as through courier after adjusting the delay interest and possession charges. The compliance was also submitted before the U.P. RERA on 23.06.2022.

7.7 The respondent submitted that the construction of the project is completed and the respondent has procured relevant NOCs and certificates from the competent authorities on different dates. It is further stated that in Tower B & C of the project, approx. 124 families are peacefully residing and approx. 131 flats out of 304 have been handed over to the respective allottees of the project. In spite of the project was completed, the appellant failed to take possession of residential unit, which led to filing of Complaint before the U.P. RERA. It is submitted that the proceedings before the National Consumer Disputes Redressal Commission is immaterial to the proceedings under the RERA Act, 2016 before the Uttar Pradesh Real Estate Regulatory Authority. The Ld. Presiding Officer, U.P. RERA has rightly observed in the order dated 16.06.2022 that before UP RERA, the promoter has filed a complaint against the allottee seeking direction to take possession, whereas the combined complaint on behalf of the allottee was instituted before the NCDRC seeking refund on the deposited money. The relief claimed by the allottee is entirely different as well as the cause of action is different.

7.8 The respondent relied upon paras 28, 29 and 30 of the Judgment and order dated 02.11.2020 passed in Civil Appeal No. 3581-3590 of 2020 (M/s Imperia Structures Ltd. Vs. Anil Patni and Anr.) and submitted that in reference to the observation made by the Hon'ble Supreme Court, the reliefs before RERA and Consumer Forum are concurrent and the Promoter/Respondent rightly filed Complaint before the RERA under the provisions of RERA Act, 2018 on non-payment of dues the allottee. It is further submitted that as per

Section 31 of the RERA Act, 2016 any aggrieved person can file a complaint before RERA.

7.9 The respondent further relied upon para-137 of the judgment and order dated 23.07.2019 passed in Civil Writ Petition No. 940 of 2017 (Bikram Chatterji & Ors. Vs. Union of India & Ors.) as well as upon para 29 of the judgment and order dated 09.08.2019 passed in Civil Writ Petition No. 43 of 2019 (Pioneer Urban Land and Infrastructure Ltd. Vs. Union of India & Ors.) and submitted that the objective and provisions of RERA Act is only to protect the interest of consumers in real estate sector but also to hold them responsible for the duties enjoined upon them under the statute, which has been observed by the Hon'ble Supreme Court in the above mentioned cases. Respondent submitted that the appellant failed to discharge her duties and obligations as envisaged under the statutory provisions of the Act read with Allotment Letter and Ld. U.P. RERA has rightly adjudicated over the complaint considering the provisions, facts and circumstances of the case.

8. Heard Sri Suyesh Pradhan, learned counsel for the appellant and Sri Rishindra Vikram Singh, learned counsel for the respondent.

8.1 Submission of learned counsel for the appellant is that the Builder-Buyer Agreement (BBA) was signed between the parties on 27.12.2013 and as per clause 15 (a), the completion of the development and construction of the flat was to be done within 30 months with an extension of six months. Thus the completion of the development and construction work was to be done by 26.06.2016 and if six months grace period is taken into account then by 26.12.2016.

8.2 The unit was booked in "Victoryone Amara" project of the respondent and as per directions an amount of Rs 34,53,341/- was paid upto 25.04.2016 and intimation of fit out was issued by the respondent on 20.10.2018 (annexure No. 3) and the allottee was asked to clear the dues and summary of the account was also annexed with the said intimation which indicates that an amount of Rs 8,55,748/- was required to be paid by the appellant. (page-46)

8.3 Since the respondent did not have the OC/CC and project being delayed, the bunch of allottes which includes 12 appellants who are before this Tribunal approached National Consumer Disputes Redressal Commission on 16.07.2019 (annexure No.5) with a prayer to refund the deposited amount alongwith interest and penalty and compensation etc. The order sheet of the National Consumer Disputes Redressal Commission was brought on record through additional document which indicates that the respondent appeared before the National Consumer Disputes Redressal Commission on 03.09.2021. The respondent filed a complaint before Regulatory Authority on 20.09.2021 seeking relief of directing allottees to take possession and clear dues. The objections were filed before the Regulatory Authority by the appellant placing on record the reason for not disclosing the correct facts before Regulatory Authority regarding filing of complaint by the allottees before National Consumer Disputes Redressal Commission

8.4 Learned counsel for the appellant placed reliance on Hon'ble Green Tribunal's order dated 11.01.2013 (page 203) and submitted that the Greater Noida Industrial Development Authority (GNIDA) issued temporary NOC subject to conditions for 156 units of towers B & C.

8.5 Learned counsel for the appellant further submitted that in response to the reply of one of the allottees, GNIDA vide letter dated 16.09.2020 informed that occupancy certificate has not been issued for the complete project GH- 05C, Sector 16, Greater Noida and in pursuance to the letter dated 25.04.2019 objections were raised vide letter dated 26.08.2019 stating that after removal of the defects, OC can only be issued (annexure No. 4- Memo of Appeal).

8.6 The learned counsel for the appellant has also drawn our attention towards annexure No. RA-01 filed with reply to the objections of the respondent wherein GNIDA issued reminder on 03.10.2022 and also issued show cause notice for non-compliance.

8.7 The counsel for respondent while opposing the appeal submitted that the partial occupancy certificate was issued on 21.02.2020 and vide letter dated 06.06.2020, the permission for execution for tripartite lease was granted by the GNIDA. The respondent vide letter dated 26.07.2021 (page 200) requested for extension of OC but no response was received.

8.8 Learned counsel for the respondent submitted that as the competent authority issued partial OC, therefore, final demand was raised after passing of the impugned order by the Regulatory Authority on 21.06.2022 wherein details have been mentioned with respect to interest for delay which is to be paid by the other side but the appellant did not come forward to clear the dues and take possession.

8.9 Further submission of the learned counsel for the respondent is that there is no illegality or perversity in the impugned order and the instant appeal deserves to be dismissed.

8.10 A query was made from learned counsel for the respondent as to whether conditions imposed for temporary OC were complied with. Counsel for respondent submitted that there is nothing on record which indicates that the said conditions were complied with by the respondent.

8.11 On examination we found that even in the application for extension of temporary OC dated 26.07.2021, there is nothing mentioned about compliance of the conditions of temporary occupancy certificate. Another query was made from learned counsel for the respondent as to whether after partial OC/CC dated 21.02.2020, any offer of possession was given to allottees as the offer of possession dated 20.10.2016 was without OC/CC. Learned counsel for the respondent fairly accepted that no offer of possession was given to allottees and filed complaint seeking directions of the Regulatory Authority on 21.06.2021 and on passing of impugned order dated 21.06.2022. The final demand was raised in which the interest to be paid by the other side was adjusted.

8.12 After examination of the impugned order, we are of the considered view that the Regulatory Authority while examining the issue in light of National Consumer Disputes Redressal Commission's order and its powers and the complaint of the respondent, has misread specifically with respect to period of possession, completion of the project and consequently offer of possession in light of BBA with respect to the OC/CC.

9. Taking into consideration the averments of the respective parties and submissions of learned counsel for the parties, we frame following issues/questions in order to examine the impugned order:-

(1) Whether under the scheme of Act 2016 and Rules 2016 any mechanism has been provided for determination of the interest for delay in handing over possession of the apartment/plot to the allottee, if the allottee does not intend to withdraw from the project and/or refund with interest and compensation, if the allottee withdraws on account of not providing possession within the period prescribed in the agreement?

(2) Whether the project of the respondent was delayed?

(3) Whether it is necessary and mandatory for the Promoter to have first Completion Certificate (C.C.) and Occupation Certificate (O.C.) under the provisions of the Act of 2016 and Rules of 2016, read with the U.P. Apartments (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?

(4) Whether the appellant is entitled for interest for the delay in completion of the Project under the scheme of Act, 2016 and if yes, what rate of interest is required to be paid by the Promoter to the allottee?

(5) Whether there is any illegality or perversity in the impugned order passed by the Regulatory Authority, on the complaint of the promoter/respondent, directing the allottees to pay balance amount after adjusting interest of the delayed period to the promoter within 30 days and ensure to take possession of the unit, during pendency of complaints of the allottees/appellants before NCDRC, wherein the allottees/appellants sought refund of the deposited amount on account of delay in offer of possession?

10. **Question no. (1)** is, whether under the scheme of Act 2016 and Rules 2016 any mechanism has been provided for determination of the interest for delay in handing over possession of the apartment/plot to the allottee, if the allottee does not intend to withdraw from the project and/or refund with interest and compensation, if the allottee withdraws on account of not providing possession within the period prescribed in the agreement.

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

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

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

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

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

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

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

10.5 The provisions of Section 18(1) acclaimed two rights of the Allottee in cases where there is a delay in handing over of the possession by the promoter of the allotted unit in accordance with the terms of agreement forsale:–

A. When an Allottee wishes to withdraw from the project due to delay in handing over of the possession, on demand the Allottee shall be refunded the entire deposited amount along with the *interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act.* Hence when an Allottee withdrew from the project he has the right to receive his deposited amount with interest at such rate as may be prescribed in the rules including compensation in the manner prescribed in the Act. Thus an Allottee can Receive "interest" and "COMPENSATION" both from the promoter alongwith the deposited amount.

B. When the Allottee decides to stay in the project even due to delay in handing over of the possession, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed. In this case an Allottee is entitled for interest for every month of delay till the handing over of the possession, at such rate as may be prescribed only.

10.6 If we closely examine the above two provisions, it comes out that in a case where the Allottee exits the projects, the Act expressly provides INTEREST AND COMPENSATION both, but in cases where the Allottee tends to stay in the project the Allottee is only entitled for interest of every month till the handing over of the possession. Thus the intention of the legislature was to provide Compensation only to those Allottees who exit the project and not to those who tends to stay in the project.

10.7 Now if we study the section 18 as a whole, the following are the expressprovisions for providing compensation to an Allottee under section 18:-

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

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

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

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

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

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

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

10.12 Thus the intention of the legislature was clear in providing the compensation of delay to only those who exit the project and not to those who wishes to stay in the project.

When one turns to the powers of the Authority, it is seen that under Section 31, the complaints can be filed either with the Authority or with the Adjudicating Officer (AO) for violation or contravention of the provisions of the Act or the Rules and Regulations. Such complaint can be filed against "any promoter, allottee or real estate agent", as the case may be. Such complaint can be filed by "any aggrieved person". The Explanation to Section 31 (1) of the Act states that for the purposes of said sub-section "person" shall include an association of allottees or any voluntary consumer association registered under any law for the time being in force. Section 31

(2) states that the form, manner and fees for filing a complaint under sub-section (1) shall be such as may be prescribed.

10.13 Having gone through the relevant Sections of the Act, we find that as per Sections 12, 18 and 19 of the Act, the allottee, in case of default by the promoter, is entitled to refund of his/her entire investment along with "interest at such rate as may be prescribed" and "compensation in the manner provided under the Act". Whereas in Section 12, the part dealing with interest and the part dealing with compensation are joined with the word "and" while in Section "18" they are joined with the word "including". Also, "at such rate as may be prescribed" is suffixed to the word "interest" in the context of refund of investment, but the expression "at such rate as may be prescribed" is neither prefixed nor suffixed to the word "compensation" in any of the Sections of the Act. The term compensation is suffixed by the expression "in the manner as provided under this Act" in Sections 12, 14, 18 & 19 of the Act. However, compensation and interest are qualified by the term "as he thinks fit in accordance with the provisions of any of those sections" in Section 71 of the Act. The Act only lays down for "holding an enquiry in the prescribed manner, after giving any person concerned a reasonable opportunity of being heard" under Section 71. The Act very clearly provides that the quantum of compensation or “interest as he thinks fit” under Section 71 will be decided taking into consideration the factors listed under Section 72 of the Act.

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

Extract of Section 31 of the Act

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

Explanation

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

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

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

Extract of Rule 33(1) of Rules-

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

10.16 It is evident from Rule 33(1) of the Rules that the complaints filed with the Regulatory Authority should be in Form M, except those complaints which require to be adjudicated by the Adjudicating Officer. On top of Form M, it is clearly written that it is as per provisions of Rule 33(1) and is meant for filing complaint under Section 31 of the Act. Further Column 5 of the Form M specifically requires a complainant to indicate the relief(s) sought.

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

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

"Section 18(1)(b) lays down that if the promoter fails to complete or is unable to give possession of an apartment due to discontinuance of his business as a developer on account of suspension or revocation of the registration under the Act or for any other reason, he is liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice in this behalf including compensation. If the allottee does not intend to withdraw from the project he shall be paid by the promoter interest for every month's delay till handing over of the possession. The requirement to pay interest is not a penalty as the payment of interest is compensatory in nature in the light of the delay suffered by the allottee who has paid for his apartment but has not received possession of it. The obligation imposed on the promoter to pay interest till such time as the apartment is handed over to him is not unreasonable. The interest is merely compensation for use of money".

10.19 The Hon'ble Supreme court in the case of **M/s. NEWTECH PROMOTERS AND DEVELOPERS PVT. LTD Vs STATE OF U.P. and Others [2021(11) ADJ 280], [2022 (1)**

R.C.R.(Civil) 357] while dealing with the jurisdiction of the Authority and the Adjudicating Officer under the provision of the Real Estate (Regulation and Development) Act, 2016 has framed a question as follows:-

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

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

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

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

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

10.22 It is to be noted that **discretionary powers also vest with the Adjudicating officer** as he can direct to grant compensation as "HE THINKS FIT" after the enquiry, in conformity with the provisions of Section 72, meaning thereby that he has the power to "ACCEPT OR REJECT" the claim of the Allottee after an enquiry, but no such powers lie with the Authority in granting interest for delayed period.

10.23 From the aforementioned discussion, it is clear that the Act of 2016 provides a mechanism for determination of interest as per the rate prescribed only by the Regulatory Authority for the delay in handing over possession of the unit to the allottee, if the allottee wishes to stay with the project and or refund with interest and compensation, if allottee wished to withdraw from the project. **Question no. (1)** is answered accordingly.

11. **Vide question no. (2)** we are required to examine as to whether the project of the respondent was delayed?

11.1 In the month of March 2013 the respondent launched a Group Housing Project by the name of 'Victory One Amara' situate at Plot No.Gh-05C, Sector-16, Greater Noida (West), district Gautam Budh Nagar and invited the public at large to apply for the flats in the said housing project. At the time of signing application for allotment, a substantial sum of money was taken in advance towards sale consideration of the plot, which varied in the case of every allottee, depending upon the size of the unit. The said applications for allotment stipulated terms and conditions of the transaction and were signed by the respondent as well.

11.2 The respondent and its representatives stated that they had already legally acquired the land in question thereby making them exclusive owner of the said land having unencumbered right, title and possession of the same, which has been leased by Greater Noida Authority vide lease deed dated 03.10.2012. The respondent further claimed that it had obtained the respective licenses to commence the project. The said facts also find mention in the allotment letter issued to the appellant.

11.3 As per clause 15(a) of the application for allotment, the possession of the allotted flat was to be handed over to the allottees/appellants within a period of 30 months, with an extension of 6 months from the date of making the first payment. Majority of the appellants have made their first payment as booking amount in July/August 2013, therefore, the possession of the flat was to be delivered to the appellants by July/August 2016, including the extension period of six months.

11.4 Despite delay of more than seven years, the respondent has failed to handover the possession of the flat to the appellants. In its objections to the grounds of appeal the respondent, while admitting the delay in completion of the project, has stated the reasons for delay i.e. (i) the Central Ground Water Authority issued the public notice in the daily newspaper on 16.01.2013 and 17.01.2013 banning the ground water extraction in compliance of Hon'ble Green Tribunal's order dated 11.01.2013 for all builders in Noida

& Greater Noida, (ii) by means of orders dated 10.11.2016, 09.11.2017, 17.11.2017, 18.12.2017, the National Green Tribunal imposed restrictions on the construction, (iii) further the Greater Noida Industrial Development Authority issued the public notice in reference to the order dated 07.04.2015 passed by the National Green Tribunal in O.A. No. 21/2014 and 95/2014 and the Greater Noida Industrial Development Authority banned the ongoing construction of the projects in Greater Noida region with immediate effect, (iv) the Greater Noida Industrial Development Authority issued the public notice in reference to the various orders passed by the National Green Tribunal on 09.11.2017 and the District Magistrate, Gautam Budh Nagar banned the on-going construction of the projects in Greater Noida region with immediate effect, (v) the Environment Pollution (Prevention & Control) Authority for the national capital region banned the construction from 01.11.2018 to 10.11.2018, 26.10.2019 to 30.10.2019 and from 04.11.2019 to 08.11.2019, and (vi) further in Civil Appeal No. 13029/1985 (M.C. Mehta Vs. UOI) the Hon. Supreme Court gave the directions to ban the construction from 04.11.2019 to 14.02.2020 and later on vide order dated 09.12.2019 in the said case, lifted the complete ban and imposed the partial ban on the construction activities.

11.5 In view of the aforesaid facts, we are of the considered opinion that the project of the respondent was delayed. **Question no. (2)** is answered accordingly.

12. **Question No. (3)** 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,-

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…………………………………………………………………

"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 Further, Section 11(4)(b) and Section 17 of the Act 2016 mandate the promoter to obtain completion certificate or occupancy certificate or both, as applicable, from the competent authority and make it available to the allottees individually or to the association of allottees, as the case may be, and execute a registered conveyance deed in favour of allottee along the undivided proportionate title in the common areas to the association of the allottees or the competent authority, as the case may be, and hand over the possession within three months from the date of issue of occupancy certificate and corresponding obligation has been imposed upon the allottee to take physical possession of the unit within a period of two months of the occupancy certificate issued for the said apartment, plot or building, as the case may be, vide Section 19(10) of the Act 2016.

12.7 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. **Question no. (3)** is answered accordingly.

13. **Vide question no. (4)** we are required to examine as to whether the appellant is entitled for interest for the delay in completion of the Project under the scheme of Act, 2016 and if yes, what rate of interest is required to be paid by the Promoter to the allottee.

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. The power of exercising the option of either staying in the Project or for withdrawing from it lies only with the Allottees under the provisions of Section 18 (1) of the Act. Further, Section 19(4) of the Act 2016 gives right to the allottees to claim refund along with interest and/or compensation in case the Promoter fails to give possession of the apartment in accordance with the terms and conditions of Agreement for sale.

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*** observed as under:--

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

including compensation. If the allottee does not intend to withdraw from the project he shall be paid by the promoter interest for every month's delay till handing over of the possession. The requirement to pay interest is not a penalty as the payment of interest is compensatory in nature in the light of the delay suffered by the allottee who has paid for his apartment but has not received possession of it. The obligation imposed on the promoter to pay interest till such time as the apartment is handed over to him is not unreasonable. The interest is merely compensation for use of money".

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 thee 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 below :-

Rule 9.2(ii)

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

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

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 mention herein that the **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.

It is our considered view that drawing light from the Rules of 2018, and the fact that often an allottee/buyer has to supplement his savings by taking loan 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.

13.10 On the basis of aforesaid analysis the **question no. (4)** is answered in affirmative in favour of appellant.

14. **Vide question no. (5)** we are required to examine as to whether there is any illegality or perversity in the impugned order passed by the Regulatory Authority, on the complaint of the promoter/respondent, directing the allottees to pay balance amount after adjusting interest of the delayed period to the promoter within 30 days and ensure to take possession of the unit, during pendency of complaints of the allottees/appellants before NCDRC, wherein the allottees/appellants sought refund of the deposited amount on account of delay in offer of possession.

14.1 From the pleadings on record it is evident that in pursuance to the advertisement of the respondent, the appellants applied for allotment of a unit. As per clause 15(a) of the application for allotment the possession was to be handed over to the buyers within 30 months, with extension of six months thereof, from the date of making first payment. Clause 15(c) further provides that the respondent would pay a sum of Rs.10/- per sq. ft. of super area per month for a period of delay of three months and thereafter Rs.15/- per sq. ft. per month beyond the delayed period of three months. As per pleadings the majority of the appellants had made their first payment as booking amount during the period of July/August 2013 and, therefore, they were to get possession of their respective unit by July/August 2016, including extension of six months.

14.2 When the respondent failed to handover the possession of the respective units to the appellants despite lapse of more than six years and the project was far from completion, the appellants approached the National Consumer Disputes Redressal Commission (NCDRC) by filing Complaint No. CC/1279/2019 highlighting various irregularities committed by the respondent and sought refund of the amount paid towards the flat. The respondent, upon issuance of notice, had filed its reply. During the pendency of the complaints filed by the appellants before the NCDRC the respondent filed a complaint before the Regulatory Authority on 29.01.2020 raising grievance against the allottees of not taking possession and sought direction for making payment by the allottees. Before the Regulatory Authority the appellants raised objection by pointing out pendency of their complaints before the NCDRC seeking refund and the Regulatory Authority, after noting the objections of the appellants, was pleased to observe that the complaint of the respondent/promoter has been filed under Section 19 of the Act 2016 seeking direction against the allottees for taking possession, whereas the complaint of the allottees before the NCDRC is for seeking refund, thus, it is clear that at both the places the reliefs are different and there being no similarity it will be appropriate to pass orders on the complaint of the promoter/respondent.

14.3 The Regulatory Authority, thereafter, took note of the judgment of Hon'ble Supreme Court in Civil Appeal Nos. 3581-3590/2020 ***M/s Imperia Infrastructures Vs. Anil Patni and others*** observed that the allottee and promoter are free to file complaint either before NCDRC or before the RERA and taking note of the provisions of

Section 19(6), 19(7) and 19(8) of the Act 2016 directed the allottees to take possession and pay the balance amount after adjusting the interest for the delay period.

14.4 The provisions of Section 19 of the Act 2016 are mirror image of Section 18 of the Act 2016 wherein the allottee has been given unconditional right to seek refund of the deposited amount along with interest, including compensation, if the promoter fails to complete the project or is unable to give possession of the unit in terms of the agreement for sale and the provisions of Section 19 talk of the rights and duties of the allottees. The provision of Section 19(4) of the Act reiterates the provision of Section 18 providing therein to the effect that 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 the 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 of sale or due to discontinuance of his business as a developer on account of suspension or revocation of his registration under the provisions of the Act 2016 or the rules or regulations made thereunder.

14.5 Subsection (6) of Section 19 of the Act 2016 imposes responsibility on the allottee to take an apartment, plot or building, as the case may be, under Section 13 and to make necessary payments in the manner and within the time, as specified in the agreement for sale at the proper time and place as well as sharing the registration charges, municipal taxes, water and electricity charges, maintenance charges, ground rent and other charges, if any.

14.6 Subsection (7) of Section 19 of the Act 2016 further imposes on the allottee to pay interest, at such rate as may be prescribed, for any delay in payment towards any amount or charges to be paid under sub-section (6).

14.7 In our considered view, on being informed by the allottees/appellants regarding their claim pending before the NCDRC for refund of deposited amount due to delay and as per Section 18(1) as well as Section 19(4) of the Act 2016, which give unconditional and unqualified right to the allottee to seek refund in case the promoter fails to offer possession as per the terms and conditions of the agreement for sale, it was not proper for the Regulatory Authority to proceed with the matter.

14.8 Further, the Regulatory Authority observed that it was option of the allottee or promoter either to approach consumer forum under the Consumer Protection Act 1986 or the Regulatory Authority under the Act 2016. As per Section 88 of the Act 2016, the provisions of the Act 2016 shall be in addition to, and not in derogation of the provisions of any other law for the time being in force. Thus a duty was cast upon the Regulatory Authority to examine the complaint of the respondent seeking direction for payment and possession on the point as to whether the offer of possession was given by the complainant/promoter as per terms and conditions of agreement for sale. Our analysis on the issue with respect to delay hereinabove makes it crystal clear that the respondent failed to offer possession within the timeline indicated in clause 15(a) of the application form, which compelled the appellants to approach NCDRC seeking refund and pointing out various irregularities by the promoter.

14.9 The Regulatory Authority failed to examine the issue in its correct perspective. The right of seeking refund by an allottee is mentioned in Section 18(1) as well as 19(4) of the Act 2016. It is admitted fact that partial OC was received by the respondent on 21.02.2020 for a period of 18 months and permission for lease was given by the competent authority on 06.06.2020, whereas the respondent without having OC/CC vide letter dated 20.10.2018 gave intimation to the allottees/appellants regarding completion and fit out and asked the allottees/appellants to clear dues. The extension of OC without complying the conditions imposed in the partial OC dated 21.02.2020 has been applied and apparently the same has not been extended. On the request of one of the allottees/appellants the GNIDA replied under the provisions of RTI Act vide letter dated 16.09.2020 that OC has not been issued for plot no. GH054-C, Sector-16, Greater Noida and in pursuance to the application dated 25.04.2019 for 304 units objections were raised vide letter dated 26.08.2019 stating that after removal of defects OC can only be issued. Vide RA-1 annexed with the rejoinder the GNIDA has issued reminder to the respondent on 03.10.2022 and also issued show cause notice for non-compliance.

14.10 A specific query was made from the learned counsel for the respondent as to whether after partial OC dated 21.02.2020 any offer of possession was given to the allottees as earlier offer of possession dated 20.10.2018 was without OC/CC. Learned counsel for the respondent informed that no offer of possession was given and direct complaint was filed before the Regulatory Authority on 29.01.2022 seeking direction to the allottees to make payment of balance amount and take possession, but after passing of the impugned order dated 16.06.2022 final demand was raised after adjusting the interest part on 22.06.2022.

14.11 The Regulatory Authority without appreciating the provisions of Section 18(1) and 19(4) of the Act 2016, only relying on the submission of the respondent, issued direction to the appellants/allottees to take possession and clear dues. It was open for the Regulatory Authority either to defer the proceedings or to thorough examine the claim of the respondent as well as objection of the appellants and fulfillment of the obligation as also as to whether the respondent/promoter has offered possession as per terms and conditions of the agreement and decide the issue. The reliance placed by the Regulatory Authority on the provisions of sub-sections (6), (7) and (8) of Section 19 of the Act 2016, ignoring the provisions of sub-section (4) of Section 19 of the Act 2016, with the observation that reliefs claimed in both the forums are different, is misconceived. Hence the direction of the Regulatory Authority is not sustainable.

14.12 In view of the aforesaid analysis, we are of the considered view that the appellants/allottees, in pursuance to the provisions of Sections 18(1) and 19(4) of the Act 2016 have unqualified right to seek refund of the deposited amount on account of promoter/respondent's failure to offer possession within timeline. **Question no. (5)** is answered accordingly.

15 **Accordingly the impugned order dated 16.06.2022 passed by the Regulatory Authority is set aside and the matter is remanded back to the Regulatory Authority** to examine the issue in the light of the provisions of Section 18(1) read with Section 19(4) of the Act 2016 as well as pleadings of the respective parties.

16. Since both the sides are represented through their respective counsel, they are directed to appear before the Regulatory Authority. The Registrar of the Tribunal is directed to communicate this order to the Secretary of the Regulatory Authority for being placed before the concerned Bench.

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