

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

DIVISION BENCH COURT NO. 2

APPEAL-259/2023

RATAN BUILDTECH PRIVATE LIMITED**Appellant**

Versus

DEVENDRA SINGH RAWAT**Respondent**

Counsel for Appellant
MAHIMA PAHWA

Counsel for Respondent
SURYANSH NARULA

Hon'ble Mr. Sanjai Khare, Judicial Member

Hon'ble Mr. Rameshwar Singh, Administrative Member

1. Heard Ms Mahima Pahwa, learned counsel for the appellant and Sri Amit Yadav, Advocate, holding brief of Sri Suryansh Narula, learned counsel for the respondent on appeal.
2. The instant appeal has been filed against impugned judgement/order 15.02.2023, passed in complaint No. ADJ/NCR144/10/101374/2022 (Devendra Singh Rawat Vs Ratan Buildtech Pvt. Ltd.) wherein learned Adjudicating Officer has granted delayed interest by way of compensation.
3. 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.
4. Main question involved in this appeal is whether the impugned order dated 15.02.2023, passed by the learned Adjudicating Officer, Gautam Buddha Nagar, is without jurisdiction and whether in the given facts allottee/respondent is entitled for delay interest.
5. 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.

6. The appellant had launched a housing scheme namely **Ratan Pearls (Phase-I)**. The appellant was duly allotted a dwelling Unit in the aforesaid project/scheme of appellant and the sale consideration was paid as per terms and conditions of the agreement/brochure. The agreement to sale was executed on 16.08.2019.
7. Learned counsel for appellant does not dispute that the due declared date for completion of the project/due date of handing over of possession was December 2019, whereas, the offer of possession of the dwelling unit was made on 27.09.2022. This period of delay is not being disputed by the learned counsel for the appellant. Learned counsel for the appellant submits that Regulatory Authority has jurisdiction for grant of interest for delayed project.
8. 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...**"

9. 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 15.02.2023 is set aside and quashed.
- (ii) The respondent/allottee is entitled to delay interest with effect from 01.01.2020 to 27.09.2022 at MCLR+1% on the deposited amount except for the six months *force majeure* period on account of Covid-19.
- (iii) The amount deposited in compliance of Section 43(5) of the Act 2016 towards the delay interest shall be released in favour of the respondent allottee 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.

Dated: 10.02.2025
M. Singh/-

(Rameshwar Singh)

(Sanjai Khare)