AFR
BENCH NO.1.

THE UTTAR PRADESH REAL ESTATE APPELLATE TRIBUNAL

AT

LUCKNOW.

1. Appeal No.D97 OF 2025

Ratan Buildtech Pvt.Ltd. …….. Appellant.

Vs.

Vishal Mani Chaturvedi …… Respondent.

With

2. Appeal No.442 of 2023

Ratan Buildtech Pvt.Ltd. …….. Appellant.

Vs.

Vishal Mani Chaturvedi …… Respondent.

Hon'ble Mr. Justice Suneet Kumar, Chairman.
Honble Mr.Sanjai Khare, Judicial Member.
Hon'ble Mr. Rameshwar Singh, Administrative Member.

1. Heard Ms.Mahima Pahwa, learned counsel for appellant promoter and Sri Manish Singh, learned counsel for respondent allottee and perused the record.

Order on Delay Condonation Application

2. Learned counsel for appellant submits that in Appeal No.D97 of 2025 there is delay of 99 days in filing the appeal beyond the period of limitation. Learned counsel for respondent has no objection in the event the delay is condoned and both the appeals are heard together on merits.

3. Accordingly, the application for condonation of delay in filing Appeal No.D97 of 2025 is **allowed**. Delay in filing the same is condoned. Office is directed to covert Appeal No.D97 of 2025 into regular appeal.

Order on the Appeals

4. On the consent of learned counsel for parties, both the appeals are being heard together. Respondent in both the appeals is the same allottee. The unit and project is same in the appeals. The appellant is the promoter of the project.

5. For the sake of convenience, facts of Appeal No.D97 of 2025 is being referred.

6. It is not being disputed by the respective parties that both the appeals pertain to the same unit i.e. Unit No.B-2102, Ratan Pearls, Phase 1, Noida. The respondent allottee had earlier preferred a complaint (bearing no.ADJ/NCR144/09/100359/2022) before the Adjudicating Officer, seeking interest for the delayed period in handing over possession of the unit. The complaint came to be allowed. It appears, having regard to the decision rendered by the Hon'ble Supreme Court in **M/s.Newtech Promoters and Developers Pvt. Ltd. Vs. State of U.P. and others,** 2021 SCC Online SC-1044, wherein, it was held that for interest/compensation for the delayed period of the project, Adjudicating Officer would lack inherent jurisdiction. The aggrieved allottee has to approach the Regulatory Authority under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (for short 'Act 2016). It is submitted that respondent allottee, on legal advice, preferred a subsequent complaint bearing no.NCR144/06/109689/2022, before the Regulatory Authority, seeking interest for the delayed period in terms of Section 18 (1) of Act, 2016. The respondent allottee by the impugned order dated 09.10.2024 has been granted interest for the delayed period.

7. The appellant promotor has challenged the order passed by Adjudicating Officer (Appeal No. 442/2023) and order passed by the Regulatory Authority (Appeal No. 97/2025), submitting that the earlier complaint and the order passed therein was without jurisdiction. Further, the second complaint for the same cause of action was barred being claim preclusion (*res judicata)*.

8. By the instant appeal, appellant promoter has raised challenge to the judgment and order dated 09.10.2024, passed by the Regulatory Authority, whereby, the complaint of the respondent came to be allowed directing the appellant to provide possession of the unit and pay interest for the delayed period at MCLR+1 percent on the deposit at Rs.29,01,340/- w.e.f. 01.07.2019 till the date of occupancy/completion certificate OC/CC or the date of offer of possession, whichever is later. It was further directed that appellant would be entitled to deduct the period, therefrom, suffered due to Covid 19 pandemic i.e., w.e.f. 25.03.2020 to 25.09.2020 (six months). Learned counsel for appellant promoter, by the instant appeal seeks quashing of the impugned order being second complaint for the same cause of action.

9. It is submitted that the subsequent complaint filed before the Regulatory Authority was not maintainable, being barred by principles of *res judicata*. Further, it is submitted that the appellant promoter is entitled to deduction of two years under the *force majeure* clause, from the period computed for payment of delay interest. It is urged that project got delayed due to Covid 19 pandemic which was beyond the control of the appellant.

10. The facts *inter se* parties not in dispute.

11. The respondent allottee came to be allotted Unit No.B-2102, in the residential project launched by the appellant promoter, in the name and style, 'Ratan Pearls, Phase 1, Noida, U.P.'. The builder buyer agreement (for short, 'BBA') came to be executed between the parties on 17.10.2016. It was categorically mandated in the agreement that the possession of the unit would be handed over on or before 31.12.2018. The occupancy/completion certificate (OC/CC) of the project came to be received from the Competent Authority on 16.09.2022, thereafter, appellant offered possession of the unit to the respondent allottee vide communication dated 02.11.2022, the conveyance deed of the unit, thereafter, came to be executed on 08.02.2024.

12. In view of the aforenoted admitted facts, respondent allottee is in possession of the unit. The claim is for interest for the delayed period, in

handing over possession of the unit, which is being resisted by the appellant promotor.

The questions that arise in the present appeals are :

(i) whether the second complaint, for the same cause of action, instituted before the Regulatory Authority was barred by principles of *res judicata.*

(ii) whether the respondent allottee is entitled to interest for the delayed period w.e.f. 01.07.2019 to 02.11.2022 in terms of Section 18 (1) of Act, 2016; and/or whether promoter is entitled to 2-year moratorium, waiver due to Covid 19 pandemic *force majeure.*

(iii) whether the judgment and order under challenge can be modified/corrected at the behest of the respondent, in the appeal instituted by the appellant promoter, without the respondent having filed an appeal.

Question No.1 :

Whether the subsequent complaint for the same cause of action is barred by the principle of *res judicata.*

13. Learned counsel for appellant promoter submits that respondent had earlier preferred a complaint bearing no. ADJ/NCR144/09/100359/2022, before the Adjudicating Officer, seeking delay compensation (interest) from the appellant promoter for the delay in handing over possession of the unit. The complaint came to be allowed vide judgment and order dated 10.02.2023. Aggrieved, appellant promoter came in appeal (Appeal No.442 of 2023). It appears, on legal advice, respondent was advised to file a fresh complaint under Section 31 of Act, 2016, before the appropriate forum for interest for the delayed period in terms of Section 18(1) of Act, 2016. The respondent was conveyed on legal advice that Adjudicating Officer lacks jurisdiction to grant interest towards delay compensation, being in teeth of the decision rendered in M/s.Newtech Promoters (supra). In the circumstances, the subsequent complaint came to be filed by the respondent allottee before the competent authority/Regulatory Authority having jurisdiction in the matter for interest for the delayed period.

14. It is not being disputed by the learned counsel for the respondent that the principles of *res judicata* would apply to proceedings before *quasi judicial* authorities. However, it is also not being disputed that the forum of Adjudicating Officer, for the relief claimed by the respondent allottee was without jurisdiction, being nullity in eye of law and inexecutable. In the circumstances, it was open to the respondent to have preferred a complaint before the legally authorized statutory forum having jurisdiction on the subject matter i.e. interest for the delayed period. It was incumbent upon the Adjudicating Officer to have declined to entertain the complaint for want of jurisdiction. In the circumstances, the principle of *res judicata* would not apply in the present case as the order dated 10.02.2023, passed by the learned Adjudicating Officer was wholly without jurisdiction, patently illegal and *void ab initio* in view of M/s. Newtech Promoters (supra). In view thereof the subsequent complaint before the Regulatory Authority was maintainable and would not be barred by *res judicata.*

15. In ***M/S Faime Makers Pvt. Ltd. Vs. District Deputy Registrar (2025 INSC 423),*** Hon'ble supreme court, held and reaffirmed that the doctrine of res judicata applies equally to quasi-judicial authorities. Para 11 of the judgement is extracted:

> *"11. It has been settled by this Court that the principle of res judicata applies to and binds quasi-judicial authorities. This Court in* ***Ujjam Bai vs. State of U.P. (1962 AIR 1621)*** *has taken the view that principles of res judicata equally apply to quasi-judicial bodies."*

16. Res Judicata (latin for, ' a matter adjudged') is a legal doctrine preventing same parties from reagitating/litigating a case or issue that has already received a final judgement on its merits by a competent court. The essential element of the principle, inter alia, is that the court that decided the former suit/case must have had jurisdiction to decide the subsequent suit/case on the suit in which the issue was raised. The doctrine *res judicata* is applicable not only to suits but to any proceedings, including, quasi-judicial proceedings. If the court that rendered the original judgement was lacking jurisdiction to entertain the case/suit and on the

subject matter, in that event the order is without jurisdiction and would not have a binding effect. The order cannot be executed being void.

17. In **Vikram Bhalchandra Ghongade Vs. The State of Maharashtra *(2025 INSC 1283),*** Hon'ble Supreme Court, reaffirmed that a challenge to a decree that is a 'nullity' can be set up at any stage, including the stage of execution. Para 14 of the judgement is extracted:

> *"14. The execution proceedings herein could not have been dismissed on the ground that the decree passed by the trial Court was superseded by the decree passed by the first appellate Court and was modified. Since the decree of the first appellate Court was a nullity, the plaintiffs were entitled to execute the decree passed by the trial Court. It is well settled that if a decree is a nullity, its invalidity can be set up whenever and wherever it is sought to be enforced, even at the stage of execution as held in* ***Kiran Singh and others vs. Chaman Paswan and others (1954 INSC 45)."***

18. Therefore, the subsequent complaint for the same cause of action before the Regulatory Authority for the reliefs would not be barred by the principle of res-judicata. Question No.1 is accordingly answered.

Question No.2.

Whether respondent allottee is entitled to interest for the delayed period in terms of Section 18(1) of Act 2016, and/or, whether promoter is entitled two year moratorium due to Covid 19 pandemic *force majeure*. stage of execution

19. It is not in dispute that agreement came to be executed on 17.10.2016, wherein, the declared date for possession of the unit was 31.12.2018. The appellant promoter, on receiving OC/CC on 16.09.2022, offered possession of the unit to the respondent allottee on 02.11.2022, thereafter, the conveyance deed was executed on 08.02.2024. In the circumstances, having regard to the proviso to Section 18(1) of 2016, respondent would be entitled to interest for the delayed period w.e.f. 01.07.2019 to 02.11.2022 i.e. excluding the period of six months fit out possession in terms of the agreement. Section 18(1) of Act 2016 reads as follows :

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

20. The provision to pay interest to the allottee, by the promoter, in the event of delay in handing over possession of the unit is unambiguous, unconditional and casting a statutory obligation upon the promoter to pay interest without the allottee having to make a demand for the interest. The payment of interest to the allottee in a delayed project is by operation of law, promoter has no choice but to pay for the delayed period. The purpose of the provision is that since respondent has utilized the deposit of the allottee beyond the period of the contract, hence, liable to pay interest.

21. It is further submitted by the learned counsel for appellant/promoter that Covid 19 pandemic period in terms of the circulars issued by the UP RERA and the Government of U.P., respondent is entitled for condonation/deduction of two years for the loss suffered in completing the project. In other words, it is submitted that learned Regulatory Authority committed an error in granting only six months waiver in computing interest for the delayed period due to Covid 19 pandemic i.e. from 25.03.2020 to 25.09.2020.

22. We are not convinced with the submission of the learned counsel for appellant promoter. The Regulatory Authority committed an error in deducting six months towards delay caused by Covid-19 pandemic under the *force majeure* clause. Admittedly, construction of the unit/project was

to be completed by 31.12.2018 i.e. much before the Covid 19 pandemic. In other words, construction of the project did not suffer due to Covid 19 pandemic. The pandemic inflicted the country much later in March 2020 i.e. after the contractual period.

23. According to Black's Law Dictionary, force majeure is "an event or effect that cannot be predicted, managed, or avoided." In other words, these are typically **unpredictable/unforceable and inevitable events, whose consequences could not have been avoided or mitigated by the party.** To fall within the ambit of 'force majeure' the fault cannot be the fault or negligence of the party seeking relief. The force majeure clause in a contract, particularly, is one of length in time, and cannot be overstated so as to relieve a party from statutory obligation or obligation under the contract or suspend its obligation.

24. In **Dhanrajamal Gobindram Vs. M/s Shamji Kalidas & Company (AIR 1961 SC 1285),** it was held that, 'where reference is made to "force majeure", the intention is to save the performing party from the consequences of anything over which he has no control. This is the widest meaning that can be given to'.

25. Even if a force majeure clause covers the relevant supervening event, the party unable to perform will not have benefit of the clause where performance merely becomes (i) more difficult (ii) more expensive, and/or, (iii) less profitable. In other words, the force majeure clause would be construed strictly against the promoter and the clause cannot be stretched to include delay in giving the possession of the unit on the promised date. A force majeure clause cannot act as a blanket override, and it must operate within the statutory framework without undermining legislative intent. Section 18(1) of Act 2016, is unconditional and mandatory.

26. The appellant promoter cannot take advantage of its own default by extending the construction period beyond the promised date i.e. 31.12.2018. The consequence of interest for the delayed period would commence w.e.f. 01.01.2019 i.e. the date of completion of the project/ contract period. The allottee cannot be made to suffer for default of the promoter. In the circumstances, Regulatory Authority committed an error

in waiving the said period while granting interest for the delayed period w.e.f. 01.07.2019 to 02.11.2022. The claim of the appellant seeking 24 months waiver i.e. for the entire Covid period is unsustainable. The respondent would be entitled to interest for the entire delay period w.e.f. 01.07.2019 without any deduction towards *force majeure*. Question No.2 is answered accordingly.

Question No.3.

Whether the impugned order can be modified/corrected in the appeal instituted by the promoter without the allotee having filed a separate appeal

27. The learned counsel for the appellant/promoter submits that, since respondent/allottee has not assailed the impugned order by filing an appeal, the respondent allottee, therefore, cannot raise any objection with regard to the waiver, in computing interest for the delayed period, granted to appellant promotor due to Covid-19 pandemic, w.e.f. 25.03.2020 to 25.09.2020. In other words, it is urged by the learned counsel for the appellant that respondent/allottee is not entitled to seek or obtain relief, and/or, modification of the decree in the present appeal preferred by the promoter, without having separately filed an appeal for the relief.

28. From the facts and for the reasons recorded hereinabove (question no. 2), it is evident that the project got inordinately delayed. The due declared date for possession of the unit was 31.12.2018, whereas, the offer of possession of the unit was given to respondent allottee on 02.11.2022. In such circumstances, Section 18 (1) of the Act, 2016, squarely applies. The promoter is statutorily obligated to pay interest for every month of delay until possession of the unit is duly handed over. In the present appeal, admittedly, the construction of the unit/project was to be completed by 31.12.2018 i.e., much before the Covid-19 pandemic. The Covid-19 pandemic hit the nation in March, 2020 i.e. much after the contract period. Any factors arising after expiry of the contractual period ‘delaying the handing over possession of the unit’, are irrelevant and shall not affect the allottee’s right to claim interest for the delayed period as provided as per proviso to Section 18 (1) of the Act, 2016. The Regulatory Authority committed an error in deducting Covid-19

pandemic period for six months. Any order or decree that is contrary to the express mandate of the statute is unsustainable in the eyes of law.

29. This Tribunal is empowered under Section 44 of the Act, 2016, to adjudicate both 'applications' for the settlement of disputes and 'appeals' filed before it. Section 44(6) specifically empowers the Tribunal to examine the legality, propriety, or correctness of any order or decision of the Regulatory Authority or the Adjudicating Officer as the case may be. For this purpose, Tribunal may, on its own motion or otherwise, call for the relevant records and pass such orders as it deems fit, ensuring that such orders are in alignment with the objectives of the Act and in conformity with the statutory provisions. The same principle is enshrined in Order 41, rule 22, read with, rule 33 of Code of Civil Procedure, 1908 (CPC) to avoid multiplicity of litigation between the parties for the same cause of action. The rule embodies the principle of natural justice.

Section 44 of Act, 2016 is extracted-

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

44. (1) The appropriate Government or the competent authority or any person aggrieved by any direction or order or decision of the Authority or the adjudicating officer may prefer an appeal to the Appellate Tribunal.

(2) Every appeal made under sub-section (1) shall be preferred within a period of sixty days from the date on which a copy of the direction or order or decision made by the Authority or the adjudicating officer is received by the appropriate Government or the competent authority or the aggrieved person and it shall be in such form and accompanied by such fee, as may be prescribed:

Provided that the Appellate Tribunal may entertain any appeal after the expiry of sixty days if it is satisfied that there was sufficient cause for not filling it within that period.

(3) On receipt of an appeal under sub-section (1), the Appellate Tribunal may after giving the parties an opportunity of being

heard, pass such orders, including interim orders, as it thinks fit.

(4) …….

(5) …….

(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.

30. The Hon'ble High Court in ***Ratan Buildtech Private Limited Vs. Anil Kumar (RERA Appeal No. 72 of 2025), decided on 04.09.2025 (corrected vide order dated 09.09.2025),*** considered the scope and ambit of Section 44 of Act 2016 while answering question no. (i). The Court held that the Section has two parts, the first prescribing for an appeal and second part [Section 44(6)] is primarily a revisional power vested in the Tribunal for 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. It was held that Tribunal is vested with the appellate, as well as, revisional powers simultaneously. Para-31 of the report is extracted:

"31. The question no. (i) is with regard to the scope of powers of the Tribunal in granting the interest directly in exercise of its appellate powers prescribed under Section 43. Heading of Section 44 of the RERA Act describes application for settlement of disputes and appeals to appellate tribunal, thus, the said Section has two parts, firstly prescribing for an appeal against an order of an Adjudicating Officer, which can be entertained and decided within the time prescribed and in the manner as prescribed, and the second power conferred on the Tribunal as mentioned in Section 44(6) which is basically revisional powers vested in the Appellate Tribunal for examining the legality and propriety and

correctness of any order or direction of the Authority or the Adjudicating Officer on its own motion or otherwise, thus, the ***Tribunal is vested with appellate as well as revisional powers. Although not mentioned in strict sense, it is clearly well settled that the Appellate Authority, wherever prescribed, is entitled to exercise the powers of the authority, against whose order, the appeal has been preferred at the appellate stage, more so, when no appreciation of evidence is required and only a mechanical exercise is to be performed by the Regulatory Authority. The said analogy also flows from the mandate of Order XLI Rule 24 of C.P.C., although not applicable in stricto sensu, however, the principles can be applied to hold that the authority has the power to pronounce judgment based upon the material on record, which according to the appellate court is sufficient to pronounce the judgment or finally determine the lis in the present case being award of interest."***

31. In view thereof, Court was of the opinion, though the procedural rigours of C.P.C. is not applicable to proceedings before the Tribunal, the principles of natural justice enshrined therein, which meets the ends of justice and fair trial, would apply. The respondent, though may not have filed an appeal for any part of the decree, may not only support the decree but may also urge that the findings recorded against him by the authority/court below in respect of any issue ought to have been in his favour; the respondent may also take cross objection to the decree, which could have taken by way of an appeal, provided, he has filed such objection in the appellate court. (**Ref: Mahant Dhangir and Ors v. Madan Mohan (1987) Supp SCC 528; K Mutuswami Gounder Vs. Palaniappa Gounder (1998) SCC 327).**

32. In view of Section 44, read with, sub-clause (6), Tribunal has power to pass any decree and order, which ought to have been passed or made and to pass such further decree or order, as the case may be. The power may be exercised in favour of all or any of the respondents or parties, although such respondent or party may not have filed any appeal.

33. We are not persuaded by the submission made by the appellant/promotor for the reason that under Section 18 (1) of the Act, 2016, allottee is vested with an unqualified statutory right, which accrues instantly upon delay of the project and is not contingent upon any claim. The appellant shall be entitled to interest for the delayed period till handing over possession of the unit. Default on part of the appellant promoter in handing over possession of the unit on the declared due date shall not prevent the allottee from claiming interest for the entire period of delay. The decree passed being in teeth of the statutory mandate of Section 18(1) would have to be modified/corrected to be sustainable. The Tribunal is vested with power and authority to modify/correct the judgment and decree. The respondent is not required to file a separate appeal. **Question no.3 is accordingly answered.**

34. Having due regard to the facts and circumstances of the case and for the reasons stated herein above, both the appeals are being **disposed of** by passing the following orders :

(i) Appeal No.442 of 2023 is **allowed.** The impugned order dated 10.02.2023, as well as, the complaint bearing no. ADJ/NCR144/09/100359/2022, filed before the Adjudicating Officer is set aside and quashed being without jurisdiction.

(ii) The respondent allottee shall be entitled to interest for the delayed period w.e.f. 01.07.2019 to 02.11.2022 to be paid by the appellant to the respondent within 45 days from the date the order is uploaded.

(iii) The impugned order dated 09.10.2024, passed by the Regulatory Authority arising from complaint no.NCR144/06/109689/2022, challenged in Appeal No. D97 of 2025, is modified to the extent herein above (ii).

(iv) Registry is directed to refund the amount deposited by the appellant promoter under Section 43(5), in Appeal No.442 of 2023 to the appellant promoter.

(v) Registry is further directed to remit the amount deposited by the appellant promoter under Section 43(5), in Appeal No.D97 of 2025 to UP

RERA for disbursement to the respondent allottee in accordance with law.

(vi) No order as to cost.

Dated : 09.04.2026
Irfan/Sanya

(Rameshwar Singh) **(Sanjai Khare)** **(Suneet Kumar)**