AFR
Sl. No. 36

UTTAR PRADESH REAL ESTATE APPELLATE TRIBUNAL
AT LUCKNOW

Appeal No. 582 Of 2021

Ram Pratap Singh Sengar ..... **Appellant**

Versus

Kanpur Development Authority .....**Respondent**

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

Order on application for Recall of order dated 19.03.2026

1. Heard learned counsel for parties on aforesaid recall application.

2. Learned counsel for respondent has filed an application on 10.04.2026 to recall the order dated 19.03.2026, wherein, cost at Rs. 5,000/- came to be imposed on the respondent for seeking unnecessary adjournment.

3. Learned counsel for appellant has no objection in allowing the recall application filed by the respondent.

4. Reasons assigned by the respondent to recall the order dated 19.03.2026 appears to be reasonable and sufficient. Application is, accordingly, **allowed.** Order dated 19.03.2026 is hereby recalled.

Order on Amendment Application to the Memo of Appeal

5. Heard learned counsel for the parties.

6. The learned counsel appearing for respondent promoter, at the outset submits that the order dated 25.02.2026, came to be passed behind the back of the respondent's counsel allowing the amendment application of the appellant. It is urged that the objections against the said amendment application was filed on 01.09.2025, wherein, in paragraph 4, it was categorically stated that in the amendment application, the particulars of case number and complaint number has been wrongly mentioned. It is urged that learned counsel for appellant deliberately did not point out the

objections and failed to file any fresh application amending the facts, in particular, the case number.

7. Perused the order dated 25.02.2026.

8. Case was taken up in the revised call. Learned counsel for the respondent did not appear and in his absence the amendment application came to be allowed.

9. Learned counsel for appellant submits that the appellant is claiming interest for the period of delay in handing over possession of the unit in terms of Section 18 (1) of 'Real Estate (Regulation and Development) Act, 2016' (for short Act 2016). In the prayer clause of the memo of appeal, the period for the delay interest, had been wrongly mentioned, however, the said period is of no relevance as the onus is upon the respondent promoter to compute and pay the interest for the delayed period, irrespective, of the claim of the appellant allottee. It is further urged that learned counsel for respondent does not dispute that possession of the unit, in terms of the agreement, was to be handed over on or before 08.12.2018. Further, Occupancy/Completion Certificate (OC/CC) of the project came to be issued on 12.01.2021, thereafter, conveyance deed was executed and possession of the unit was handed over to the appellant allottee on 17.02.2021. It is, therefore, urged that in view of the admitted facts and the case setup by the respondent, appellant would be entitled to interest in terms of Section 18 (1) of Act, 2016 w.e.f. 09.12.2018 to 12.01.2021. In this backdrop, learned counsel for the appellant submits that amendment application is not of much relevance, therefore, be **dismissed** as not pressed.

10. Order accordingly.

Order on Appeal :

11. Heard and perused the record.

12. The appellant/allottee by the instant appeal is raising challenge to the judgment and order dated 24.02.2021, passed in the Regulatory Authority at Lucknow, arising from Complaint No. LKO157/11/65779/2020, whereby, complaint of the appellant for interest under proviso to Section 18(1) of Real Estate (Regulation and Development) Act, 2016 (for short 'Act, 2016'), for

the delayed period came to be allowed, however, period of 10 months was deducted on the ground of force majeure.

13. Learned counsel for appellant submits that a project came to be launched in 2016, in the name and style "KDA Signature Green Scheme". A flat, No. S-402 (Unit) came to be allotted on 08.12.2016. The sale consideration of unit was at Rs.46,65,000/-, appellant deposited Rs. 50,20,331/- till the date of possession. As per the terms and conditions of allotment, the project was to be completed within 24 months i.e. on or before 08.12.2018, however, the project got delayed and possession of the unit was given on 17.02.2021. The Occupancy/Completion certificate (OC/CC) came to be issued by the competent authority on 12.01.2021**.** In this backdrop it is submitted that appellant/allottee is entitled to delay interest w.e.f. 09.12.2018 to 17.02.2021 i.e. the date of possession.

14. The following questions fall for consideration :

    (i) whether appellant allottee is entitled to interest in terms of proviso to Section 18 (1) of the Act 2016 for the delayed period, w.e.f. 09.12.2018 to 17.02.2021 i.e. till the date offer of possession of the unit, or, handing over possession of the unit.

    (ii) whether respondent is entitled to the benefit of force majeure in view of injunction order passed by National Green Tribunal, and/or, Covid pandemic.

    (iii) whether appellant allottee looses its right to interest for the delayed period on executing the conveyance deed.

Question (i) and (ii) are being decided together;

15. The facts, inter se, parties are not in dispute.

16. It is admitted by the learned counsel for respondent that the project came to be launched by the respondent promoter in 2016. The appellant/allottee came to be allotted a unit on 08.12.20216; the date of completion of the project was two years i.e. 08.12.2018, however, consequent to execution of sale deed on 08.02.2021, possession of the unit came to be handed over on 17.02.2021. On specific query, learned counsel for respondent does not

dispute that the Occupancy/Completion certificate (OC/CC) of the project was received on 12.01.2021.

17. It is further submitted that the National Green Tribunal, New Delhi (for short NGT), vide order dated 06.11.2017, passed in Original Application No.182 of 2017, on the statement made by the respondent promoter , herein, that since the environmental clearance certificate is pending consideration of the competent authority and that the respondent would not raise any constructions/execute the project without having obtained the environmental certificate, the injunction order came to be passed. The relevant portion of the NGT order is extracted herein below :

> *"The learned counsel appearing for respondent No.4 & 5 submit that they would not raise any construction or carry on any other activity in the buildings which are under construction without first obtaining Environmental Clearance now. He further states that Application for obtaining Environmental Clearance has been filed and the same is pending. We direct Ministry of Environment, Forest & Climate Change/SEIAA to consider the said Application but definitely take into consideration the illegalities committed in the constructions already raised and how they propose to protect the environment concerned.*
>
> *The Environmental Clearance, if granted, would be subject to approval by Tribunal.*
>
> *With the above direction, Original Application No.182 of 2017 stands disposed of without any order as to cost."*

18. It is further submitted that the injunction order came to be vacated on 14.09.2018 on the respondent promoter receiving the environmental clearance for the project. In other words, construction of the project came to a stand still w.e.f. 16.11.2017 to 14.09.2018.

19. We have carefully perused the order passed by the NGT, wherein, it has been noted that a statement came to be made by the respondent promoter that they would not raise any construction or carry on any other activity in the project which was under construction without first obtaining environmental

clearance. In other words, the injunction order came to be passed for the reason that the respondent did not have the necessary environmental clearance on the date of execution of the project in 2016. On specific query, learned counsel for respondent submits that an application for environmental clearance came to be filed on 15.07.2016, which was pending and got delayed for one reason or the other, and finally, the clearance came to be granted in the year 2018. It is thereafter the injunction order passed by NGT came to be vacated.

20. In the given facts and circumstances, it is evident that the project came to be launched/executed by the respondent without having the necessary clearance/no objection certificate, in particular, environmental clearance. In other words, respondent was at default in executing the project without the necessary clearance which was pre-requisite for commencement of the project. In view thereof, respondent cannot take advantage of their own default to non-suit the appellant allottee for his/her entitlement to interest for the delayed period.

21. Section 6 of Act 2016 is extracted :

> *"6.* ***Extension of registration****.-- The registration granted under Section 5, may be extended by the Authority, on an application made by the promoter due to force majeure, in such form and on payment of such fee, as may be specified by regulations made by the Authority:*
>
> ***Provided that, the Authority may in reasonable circumstances, without default on the part of the promoter, based on the facts of each case, and for reasons to be recorded in writing, extend the registration granted to a project for such time as it considers necessary, which shall, in aggregate, not exceed a period of one year:***
>
> *Provided further that, no application for extension of registration shall be rejected unless, the applicant has been given an opportunity of being heard in the matter.*
>
> ***Explanation.--*** *For the purpose of this Section, the expression "force majeure" shall mean a case of war, flood, drought, fire, cyclone,*

earthquake or any other calamity caused by nature, affecting the regular development of the real estate project."

22. Having due regard to the facts and circumstances, since the execution of the project came to be commenced by the respondent promoter without having the requisite necessary clearance, including, environmental clearance, the case of the respondent would not fall under the first proviso to Section 6 as the respondent was in default. The project was launched in violation of the building bylaws i.e. not having the necessary clearance from the environment authority, consequently, injunction came to be passed on the statement/admission of the respondent, accepting their default. The respondent promoter not having the required clearances could not have issued permit for construction of the project. The building byelaws, framed under the U.P. Urban Development and Planning Act, 1973, would equally apply to the respondent promoter. The legal lapse on part of the respondent would not constitute force majeure so as to extend the period of the contract due to order of the NGT.

23. It is further submitted by the learned counsel for respondent that pursuant to office orders issued by UP RERA, granting additional extension of registration period to eligible projects to mitigate the impediments caused in the development of projects due to dislocations caused by Covid-19 pandemic. In view thereof, it is submitted that the respondent is entitled to further moratorium for delay in completing the project. Further, it is urged that respondent had since handed over possession of the unit to the appellant and executed the sale deed on 17.02.2021 i.e. during covid pandemic.

24. The submission lacks merit. The appellant cannot be made to suffer loss of interest beyond the period of contract i.e. 18.12.2018. The possession of the unit was to be handed over by the respondent to the appellant, as per the agreed date i.e. 18.12.2018. The respondent would have been entitled to extension of the contract period, in the event of force majeure incident, which was beyond the control of the respondent and unforseeable, had happened during the period of contract. The Covid 19 pandemic inflicted the nation much later in March, 2020 i.e. after the contract period. The respondent, in the circumstances, would be liable for the consequence of the delay under Section 18 (1) of Act, 2016. The Regulatory Authority

committed an error in granting exemption to the respondent. The appellant/allottee, accordingly, will be entitled to interest on deposit w.e.f. 09.12.2018 to 17.02.2021 without deduction towards force majeure.

25. It is further submitted that the respondent authority vide office order dated 18.01.2021, on the recommendation of a committee had resolved to offer rebate on the escalated cost of the unit of the project being delayed in view of NGT order. The respondent had resolved to offer rebate at Rs. 1,00,000/- for 2 BHK category flats and at Rs.1,25,000/- for 3 BHK category flats, in the event the allotment was made on or before 01.04.2019. The office order further mandates that in the event sale deeds have been executed, in that event the allottees of their respective units can make an application and take refund of the rebates on 2BHK/3BHK units as the case may be.

26. In the aforenoted background, learned counsel for respondent submits that since the unit of the appellant came to be registered on 12.02.2021, it is always open to the appellant to make an application pursuant to office order dated 18.01.2021 and take the rebate. It is, therefore, urged that the appellant is not entitled to any additional interest for delay of the project in terms of Section 18 (1), as the allottees have been duly compensated.

27. The submission being made by the learned counsel for the respondent, taken on face value, appears to be attractive, however, on close scrutiny lacks merit. The rebate towards cost of unit and interest for breach of contract is an entirely different.

28. Section 18 of Act 2016, provides for return of amount and compensation if the promoter fails to complete or is unable to give possession of the apartment/unit, inter alia, in accordance with the terms of the agreement for sale, duly completed by the date specified therein. The promoter shall be liable on the demand of the allottee, in case the allottee wishes to withdraw from the project, to return the amount, received by him with interest at such rate as may be prescribed. However, where the allottee does not intend to withdraw from the project, he shall be paid by the promoter, interest for every month delay till handing over the possession, at such rate as may be prescribed. The allottee is not required to demand interest for the delay period, rather, a statutory obligation has been imposed by the legislature

upon the promoter to pay the interest to such an allottee, read with, Section 11(4). The legislature explicitly has created a statutory right in favour of the allottee to interest for the delay period and imposed a mandatory statutory obligation on the promoter to honour its obligation to such an allottee who has not withdrawn from the project by paying interest.

29. Section 18 (1) is extracted:

> *"(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."***

29.1 The proviso to Section 18(1) is an exception to the main provision. Proviso is a clause in a statute by which a condition is introduced or a stipulation or condition. The function of a proviso is to carve out an exception or exclusion to the main provision which otherwise would have been in the main Section. As such, the function of a proviso is to qualify something or to exclude, something from what is provided in the enactment which, but for the proviso, would be within the purview of the enactment. **[Refer : S. Sundaram Pillai Vs. V. R. Pattabiraman (1985) 1 SCC 591].**

30. Section 18(1) of Act 2016, has imposed a mandatory obligation upon the promoter to pay interest for delay in handing over possession of the unit to the allottee who has continued in the project, without the allottee having to raise a demand. Proviso to Section 18(1) explicitly creates an unconditional statutory right in favour of the allottee to receive interest on deposit in a delayed project, and at the same time obligates the promoter to pay the interest. The appellant, therefore, would be entitled to interest at the prescribed rate for the delayed period.

31. The office order dated 18.01.2021, merely acknowledges the default of the respondent for not having the environmental clearance certificate before commencing the project. The NGT passed injunction order, as it was admitted by the respondent, that they are awaiting environment clearance for the project. In these circumstances, the respondent had reduced/given rebate, to the allottees, towards price escalation/cost of the project/unit. The rebate granted is towards cost of the units and not interest on the deposit for the delayed period in terms of Section 18. The interest component on deposit for a delayed project is entirely different from the cost of the unit. The cost of the unit is determined by the promoter of his project. The appellant herein would be entitled to interest on his/her deposit for default of the promoter on utilising the money of the allottee beyond the contract period.

32. The appellant allottee shall be entitled to interest from 09.12.2018 to 17.02.2021, without any deductions. The respondent promoter would not be entitled to deduct the period lost due to NGT order or due to force majeure Covid 19 pandemic being in default. Question Nos.(i) and (ii) are answered accordingly.

Question No. (iii)

32.1 We are required to examine as to whether the right of the appellant to interest under proviso to Section 18(1), on executing the sale deed of the unit would stand extinguished/waived.

32.2 As per long title of Act 2016, the Act was enacted to establish RERA for regulation and promotion of the real estate sector and, inter alia, to protect the interest of consumers in the real estate sector. The Act 2016,

came to be notified on 14.05.2016 and Section Nos 3 to 19 came to be notified subsequently on 01.05.2017.

32.3 Section 3 of Act 2016, mandates registration of real estate project with the RERA, before inviting persons to purchase in any manner a plot, apartment or building, as the case may be, in the project. It further provided that a project that is ongoing on the date of commencement of the Act 2016, promoter shall make an application to the Regulatory Authority for the registration of its project within a period of three months from the date of commencement of the Act.

32.4 It is not in dispute that the project floated by the appellant organisation being an ongoing project had applied for registration which was duly accorded in terms of Section 4 and Section 5 of Act 2016. Section 11, inter alia, provides for regularly monitoring the day-to-day status of the project.

32.5 Section 11 (4) provides that promoter is responsible for all obligations, and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per agreement for sale till the conveyance of all the apartments to the allottees is executed.

32.6 In the given facts, appellant herein had not withdrawn from the project and continued with the project which admittedly was delayed, therefore, in terms of proviso to Section 18 (1) of Act 2016, promoter was liable to pay interest for delay till handing over possession of the unit. Section 18 (1), inter alia, confers an absolute right on the allottee to delay interest. The right of an allottee to interest cannot be curtailed/taken away by the promoter by entering into an agreement or settlement. The expression employed by the legislature in proviso to Section 18 is ‘shall be paid by the promoter’, thereby, making it mandatory. The submission of the learned counsel for the respondent that the appellant by executing the sale deed of the unit, without protest, forfeited its right to interest, cannot be accepted for the reason that the promoter would in that event insist and impose conditions viz, waiver of interest, as a condition precedent for handing over possession of the unit. In the event any such condition is imposed by the promoter by way of settlement/agreement/

possession/sale deed, to waive its obligation to pay interest to an allottee, such conditions would not bind the allottee or take away his right to interest. The right to delay interest in view of proviso to Section 18 (1) is a statutory right conferred upon the allottee which cannot be waived or extinguished by the promoter. The reason behind the provision is that the promoter utilised the deposit of the allottee for the period beyond the contract period.

32.7 The Act 2016, on being notified, the terms and conditions of the brochure/agreement, entered into between the promoter and the allottee which is in teeth of the statutory provisions would not bind the allottee. The Order/Rules/Procedure of the respondent, wherein, it mandates that in the event of delay of the project, allottee would not be entitled to any interest. The one sided, clause of such Order/Rules/Procedure would not bind the respondent allottee who has not withdrawn from the project in view of proviso to Section 18, which confers an absolute right upon an allottee to receive interest in a delayed project at the rate prescribed. The execution of the sale deed by the appellant without raising protest would have no bearing to his/her entitlement to interest under Section 18(1).

32.8 As per the provisions of Act 2016, a mandatory obligation has been cast upon the promoter to handover possession of the unit to the allottee within three months on receiving the OC/CC [Section 17(2)] and thereafter, execute the conveyance deed of the unit. In other words, the allottee has to satisfy all the dues admissible to the promoter on receiving the offer of possession, along with, demand notice of the unit. Thereafter, promoter shall execute the conveyance deed. It, therefore, follows, that the demand notice, of the outstanding dues, if any, issued by the promoter to the allottee would have to necessarily state the quantum of money towards interest for the delay in handing over possession, which is admissible to the allottee. The amount3 so computed by the promoter for the delay period would have to be adjusted against the outstanding dues, if any, to be paid by the allottee, at the stage of offer of possession. If nothing is outstanding against the allottee, the amount towards interest for the delay has to be paid by the promoter to the allottee. In the event of failure to comply/honour its obligation mandated under proviso to

Section 18(1), the promoter exposes itself to penal consequence under Chapter VIII of Act 2016.

32.9 In the circumstances, complaint of the respondent allottee before learned Regulatory Authority was maintainable as the respondent allottee was seeking interest for delay in handing over possession of the apartment/unit in terms of Section 18 (1). The obligation to pay the interest fell on the promoter on the date of offer of possession/handing over possession of the unit, as the case may be, which would not stand waived due to execution of the sale deed/settlement. The computation of delay interest and its adjustment/payment precedes the execution of the conveyance deed. The respondent failing to comply its statutory obligation under Section18 (1), thereafter, seeking waiver on the plea of the appellant having executed the conveyance deed would tantamount to travesty of justice and unjust enrichment of the promoter at the expense of the allottee. Any agreement/settlement or conveyance deed imposed upon the appellant allottee by the respondent promoter against a statute would be nullity to that extent (**Refer: Section 28 of Indian Contract Act, 1872**).

33. ***In Lucknow Development Authority Lko. Thru. Signatory Rohit Singh Vs. Sushma Shukla (RERA Appeal Defective No.-125 of 2025) decided on 21.01.2026,*** Hon'ble High Court, while considering the question as to whether a private settlement/agreement between the parties can have an overriding effect over statutory provisions of law, has categorically held that such private arrangements cannot override or defeat the mandate of statutory provisions. Para 34 of the judgement is extracted:

> ***"34. In view thereof, the promoter cannot shirk/resile from the responsibility/liabilities under the RERA Act, 2016 as the contractual terms cannot override the mandatory statutory obligations/rights created by the Act in favour of the allottee. The promoter in the given facts, cannot take shelter behind the one sided settlement imposed upon the allottee to waive its obligations mandated and imposed upon the allottee under the proviso to Section 18 (1) of the Act, 2016. The settlement of such a nature cannot be made a condition precedent by the promoter to handover possession of the unit to the allottee. The settlement is void ab initio".***

34. In view thereof, the allottee does not loose his right, on the strength of an agreement/settlement or conveyance deed, to claim interest for the delayed period of the project. The right to interest accrues to the allottee much prior to the stage of agreement/settlement or execution of conveyance deed. The execution of one sided agreement/settlement or conveyance deed cannot be imposed by the promoter upon the allottee, as a condition precedent for handing over possession of the unit. The argument if accepted would tantamount to unfair fraudulent practice and unjust enrichment of the promoter. The question no. (iii) is accordingly answered.

35. Accordingly, the appeal succeeds and is **allowed** by passing the following orders :

(i) The impugned order dated 24.02.2021, passed by the Regulatory Authority in Complaint No. LKO157/11/65779/2020, is set aside and quashed.

(ii) The appellant allottee shall be entitled to interest w.e.f. 09.12.2018 to 17.02.2021, at MCLR+1 percent. The amount to be computed and paid within 45 days from the date order is uploaded, failing which, appellant shall be entitled to interest at same rate on the quantified amount of money till the date of payment.

(iii) No orders as to cost.

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

Dated:10.04.2026

Ranjeet/-