AFR
RESERVED JUDGMENT
BENCH NO.1.

THE UTTAR PRADESH REAL ESTATE APPELLATE TRIBUNAL

AT

LUCKNOW.

Appeal No.461 OF 2021

M/S Colorful Estate Private Limited **…..Appellant.**

Vs.

Manoj Bhatnagar & Anita Bhatnagar **….Respondent.**

****

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

1. Heard Ms. Aahuti Agrawal, learned counsel for the appellant, Smt. Shuchita Singh, learned counsel for the respondent no.2, Shri Amit Yadav, learned counsel for respondent no.1/2 and Shri Parth Anand, learned counsel for the respondent no.1/3.

2. The appeal was initially filed by two respondents i.e. Manoj Bhatnagar and Smt. Anita Bhatnagar. After the death of Sri Manoj Bhatnagar, respondent No.1, his mother Smt. Satyawati was substituted as Respondent No. 1/1 and after the death of Smt. Satyawati, her legal heirs, Mr. Rakesh Kumar Bhatnagar as Respondent No. 1/2, Mrs. Manju Bhatnagar as Respondent No.1/3 and Mrs. Sarita Bhatnagar as Respondent No. 1/4 were substituted.

3. The appellant/promotor is raising challenge to relief no. 2 & 3 of the judgement and order dated 02.02.2021 (rectified on 05.03.2021), passed by the U.P Real Estate Regulatory Authority at Gautama Budh Nagar (for short, 'Regulatory Authority'), in complaint no. NCR144/07/53481/2020, whereby, a direction

came to be issued to the appellant/promotor to pay delay interest for the period from 13.02.2014 to 30.04.2016 in terms of the agreement, and for the period from 01.05.2016 to 21.10.2018 (rectified vide order dated 05.03.2021) at the rate MCLR + 1%.

4. **The questions that fall for consideration are:**

i) Whether the appellant promotor is entitled to the benefit of force majeure, in view of injunction order passed by National Green Tribunal and for the delay in grant of OC/CC of the project by the competent authority.

ii) Whether in the given admitted facts the allottee/ respondent is entitled to interest for the delayed period in terms of Section 18(1) of Real Estate (Regulation and Development) Act, 2016 (for short, 'Act, 2016') or partly as per the terms of the agreement.

iii) Whether respondent allottee can claim relief for payment of interest for the entire delay period at the rate MCLR + 1% in an appeal instituted by the appellant promoter, and/or, whether respondent is required to file separate appeal.

Question no.1

5. The facts ***inter-se*** parties are not in dispute.

6. The appellant/ promotor launched a residential project, in name and style, 'Antriksh Golf View II', situated at plot no. GH-04 B, Sector-78, Noida. The plot was allotted to the appellant by Greater Noida Industrial Development Authority (GNIDA) on lease hold basis. The respondent/allottee no.1 was allotted 3BHK Flat, bearing unit no. B-1501, 15th Floor in Block B, with super area of 1585 sq.ft, vide allotment letter dated 13.02.2011. The name of the respondent no.2 was added by the appellant as co-allottee on the request of respondent no.1 on 10.11.2017. The total sale consideration of the allotted unit was at Rs.43,98,375/-

7. As per the terms and conditions of the allotment letter, possession of the unit was to be handed over to the respondent/allottee within a period of 30 months from the date of allotment, subject to grace period, plus/ minus, 6 months.

8. Admittedly, construction of the project was completed by February 2014. The appellant/promotor, thereafter, applied for the occupancy/completion certificate

(OC/CC) on 20.10.2014, which was duly received from the competent authority on 01.12.2017.

9. Learned counsel for the appellant/promoter submits that an offer of possession of the unit was duly issued to the respondent/allottee on 06.06.2016, calling upon the respondent to clear the outstanding dues and take possession of the flat. The learned counsel for the appellant draws our attention to Clause F of the allotment letter. The relevant portion is extracted:

> *"that the sub lease deed of the unit shall be executed in favour of the allottee/s by the company after the entire payment and dues in respect of the allotment are cleared by the allottee/s.*

She submits that as per the allotment letter the respondent was obligated to make payment of the balance amount within 30 days from the date of offer of possession as per terms and condition of the allotment letter.

10. Learned counsel for the respondent/allottee submits that no such offer of possession dated 06.06.2016, was ever received by the respondent, further, appellant failed to produce any document evidencing dispatch and receiving of alleged 'offer of possession'. It is further contended that respondent/allottee for the first time received an invalid offer of possession only on 13.11.2017.

11. The appellant/promoter issued a demand letter dated 23.06.2017, calling upon respondent to clear the outstanding dues. According to the learned counsel for the appellant/promotor the remaining amount payable by the respondent was at Rs.91,138/-.

12. The respondent, vide email dated 26.05.2018, stated that a sum of Rs. 55,000/- had already been paid in April 2016, therefore, requested that final computation should not reflect any outstanding interest amount. The respondent, further, sought clarification regarding the date on which they may visit the office of the appellant to take possession of the allotted unit. It is evident that appellant promotor failed to settle the accounts of the unit before offer of possession.

13. After commencement of the Real Estate (Regulation and Development) Act, 2016, (for short 'Act, 2016') the project was duly registered as an ongoing project on 01.08.2017.

14. Learned counsel for the appellant/promoter further submits that construction of the project suffered undue delay due to restrictions imposed by the National Green Tribunal (NGT). It is further contended that NGT, vide orders dated 14.08.2013, 17.09.2013, and 28.10.2013, respectively, in relation to projects situated within a 10 km radius of the Okhla Bird Sanctuary, restrained the appellant/promoter from carrying out any development activity within the said radius. It is submitted that the restraint order was further continued vide order dated 17.09.2013. Subsequently, NGT, vide order dated 28.10.2013, modified the earlier directions and prohibited the concerned authorities from issuing occupancy or completion certificates (OC/CC) in respect of projects falling within the 10 km radius of the Okhla Bird Sanctuary. It is, therefore, urged that the delay occurred on account of 'force majeure' i.e., due to injunction orders, which was beyond the control of the appellant.

15. Learned counsel for the appellant/promoter draws our attention to Clause 39 of the allotment letter and submits that the appellant cannot be penalized for the delay in completing the project, as the same was caused by circumstances beyond its control. It is emphasized that, in terms of the said clause, delays arising out of such uncontrollable factors do not attract any liability upon the appellant/promoter. Clause 39 is reproduced:

> *"That the Development of the premises is subject to force-majeure clause, which includes delay for any reason beyond the control of the Company like non- availability of any building material due to market conditions, war or enemy action or natural calamities or any Act of God. In case of delay in possession as result of any notice, order, rule, notification of the Government / Court of Law/ Public/ competent Authority or any other reason beyond the control of the company & any of the aforesaid events, the Company shall be entitled to a reasonable extension of time. In case of non-availability of materials at reasonable cost including those materials mentioned in the specification sheet, the Company will be entitled to use alternative / substitute materials without any claim from the allottee /s."*

16. Learned counsel for the respondent/allottee, in rebuttal, submits and reiterates that, as per the allotment letter dated 13.02.2011, possession of the flat was proposed to be handed over within a period of 30 months, plus/minus, 6 months

i.e, on or before 13.02.2014. However, possession of the unit, admittedly, was received by the respondent only on 21.10.2018 after appellant receiving OC/CC of the project on 01.12.2017.

17. It is further submitted by the learned counsel for the respondent/allottee that the restrictions imposed by the National Green Tribunal, vide order dated 17.09.2013, pertains only to 49 units of the project and were subsequently vacated vide order dated 18.08.2015. It is contended that appellant has failed to place on record any specific order of the NGT demonstrating that construction of the appellant's project, in its entirety, was restrained from raising construction.

18. Being aggrieved by the delay, respondent/allottee Nos. 1 and 2, on 24.07.2020, preferred a complaint before the learned Regulatory Authority, seeking interest for the delayed period from September 2013 till 21.10.2018.

19. As per the terms and conditions of the allotment letter, possession of the unit was to be handed over to the respondent/allottee within a period of 30 months from the date of allotment letter, subject to a variation of plus/minus 6 months i.e, on or before 13.02.2014.

20. Admittedly, as per the appellant promotor the construction of the project stood completed in 2014, appellant/promoter, thereafter, applied for the occupancy/completion certificate (OC/CC) on 20.10.2014, which was duly received on 01.12.2017. In other words, it is urged that the project was not affected by the NGT orders. The project came to be completed during the alleged injunction period. It is further, contended by the learned counsel for the appellant that delay in obtaining the OC/CC, and consequently, delay in handing over possession of the unit, was due to objections and demands raised by the competent authority. The objections raised by the competent authority in granting OC/CC arose due to defaults made by the appellant. The respondent allottee, in the circumstances, cannot be made to suffer or penalized for delays occasioned by such defaults. It was incumbent upon the promoter to strictly comply with regulatory requirements and ensure timely payment of requisite fees as prescribed by the competent authority. The respondent allottee had no role in the default of the promotor. It is also an admitted fact that the possession of the unit was handed over to the respondent allottee belatedly on 21.10.2018. The respondent would be entitled to interest for the delayed period in terms of Section 18(1) of Act, 2016.

21. Learned counsel for the appellant promotor further submits that appellant would be entitled to extension of the completion date of the project due to force majeure in terms of Clause 39 of the allotment letter. She contends that the injunction orders passed by the NGT were circumstances **beyond the control of the company,** therefore, would fall within the force majeure clause. She argues that the clause covering "**reasons beyond the control of the company,"** read with, '***result of any notice, order, rule, notification of the Government / Court of Law/ Public/ competent Authority'*,** includes, the orders passed by the NGT. The delay caused by the injunction order, according to the learned counsel for the appellant, was beyond the control of the appellant/promoter, hence, entitled to waiver from the consequences for the delay.

22. The due date for handing over the possession of the unit to the respondent allottee was on or before 13.02.2014. The project, admittedly, got inordinately delayed. The issuance of the allotment letter by the promoter, duly accepted and signed by the allottee, constitutes a binding contract between the parties. Under the contract, promoter is obligated to deliver possession by the stipulated date. In the present case, promoter was contractually bound to hand over possession of the unit on or before 13.02.2014; however, possession was actually delivered only on 21.10.2018, though, the project came to be completed much earlier on 21.10.2014 i.e., during the alleged injunction period. It is noted that an injunction order passed by the NGT in 2013 remained in force until it was vacated on 18.08.2015. In other words, the construction of the project continued and was not affected by the NGT orders. Even if the appellant's contention is accepted, the promoter ought to have delivered possession soon after the vacation of the said order i.e, in 2015. However, promoter failed to do so and withheld possession without any satisfactory reasons. The plea that application for OC/CC of the project was pending with the competent authority until 2017, would not fall within the force majeure clause so as to extent the contract period for completion of the project. The legal obligation is upon the promotor to obtain OC/CC after completion of the project, thereafter, handover possession of the unit. Furthermore, it was only on 13.11.2017 that the respondent/allottee received an invalid offer of possession, without having obtained OC/CC (Refer Section 11(b) and 17(2)). The sequence of events clearly demonstrates failure on the part of the promoter to fulfil its contractual and statutory obligations within a reasonable time stipulated as per the agreement.

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. It is absolutely clear, as per the case setup, by the appellant that NGT orders had not affected the construction of the project, further, delay in receiving the OC/CC from the competent authority is not attributable to the allottee. The completion of the project and thereafter obtain OC/CC is between the promotor and the competent authority.

26. The appellant/promotor, therefore, would not be entitled to deduct the alleged period lost due to NGT orders and delay in obtaining OC/CC of the project being in default. **Question no.1 is accordingly answered.**

Question no.2

27. Section 18 of the Act, 2016, falls under Chapter III pertaining to 'functions and duties' of promoter. In other words, Section 18 cannot be read independently but is dependent on satisfying the functions/duties and obligations cast by the Legislature upon the promoter under Act 2016.

28. **Section 18 of Act, 2016 is extracted-**

Section 18:

> *"(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. Under sub-Section (1) of Section 18, the timeline for the allottee to raise a demand/withdrawal from the project is incorporated under the provision itself. It is mandated that in case the promoter 'fails to complete' or 'is unable to give possession' of an apartment, plot or building, as the case may be, the promoter shall be liable on demand of the allottee, in case the allottee wishes to withdraw from the project, 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 the Act. In the event completion of the project or possession of the unit, being offered to the allottee by the promoter belatedly, proviso to Section 18(1) would become operative i.e. such an allottee, who has continued in the delayed project, would be entitled to interest on his deposit for the period of delay till handing over possession of the unit.

30. Proviso to Section 18(1) of the Act, 2016 mandates that the allottee, who does not intend to withdraw from the project, ***'shall be paid, by the promoter, interest for every month delay, till handing over possession'***. The consent/ agreement, if any, entered into between the promoter and the allottee, in so far as, the terms and conditions of any agreement imposed by the promoter on the allottee, being in conflict with proviso to Section 18(1) would not bind the allottee, being against the statutory provision. [Section 28 of the Indian Contract Act, 1872].

31. The promoter, in the event of default in completing the project by the due declared date of completion, cannot escape the positive statutory mandate of paying interest for the delay period to the allottee, who continued in the delayed project. The obligation cast upon the promoter is unqualified and mandated by law. The promoter is required to compute and pay/adjust the interest at the time of handing over possession of the unit/settlement of accounts and not later.

32. In the present case, the due date for handing over the possession of the unit to the respondent allottee was on or before 13.02.2014. Admittedly, the project got inordinately delayed. It was only on 21.10.2018 the possession of the unit was received by the respondent allottee after promotor obtaining OC/CC on 20.10.2017. The contentions made by the learned counsel for the appellant, stating that the delay was caused due to late procurement of the occupancy/completion certificate (OC/CC) or due to NGT injunction orders, cannot be accepted as valid reasons to deny the right enshrined under Section 18(1) of the Act, 2016 (question No. 1). Further, it is not the case of the appellant that allottee was in default.

33. It is an admitted fact that after the commencement of the Act, 2016 the appellant's project got duly registered with RERA as an ongoing project on 01.08.2017. By virtue of such registration, the provisions of the Act, 2016 are squarely applicable to the promoter. The Act, 2016, being retroactive in operation, extends to all projects in respect of which the Occupancy /Completion Certificate (OC/CC) has not been obtained as on the date of its coming into force, and does not apply to projects that have already been completed or in respect of which a OC/CC has been duly granted. The appellant promotor received OC/CC from the competent authority on 01.12.2017, i.e., subsequent to the commencement of the Act, 2016. Therefore, the project squarely falls within the ambit of the Act, 2016, and the appellant promoter is bound by all the provisions,

obligations, and liabilities prescribed thereunder. The adverse terms and conditions of the agreement to the extent being in conflict with the statutory provision would cease to be enforceable. The statutory provision to prevail over the rate of interest mandated under the agreement, being not in conformity with the statutorily prescribed interest, would not prevail. [Section 2(g)/28 of the Indian Contract Act,1872].

34. The Hon'ble Supreme Court in ***M/S Newtech Promoters & Developers Pvt. Ltd. Vs. State of U.P. & others***, ***2021 SCC Online SC, 1044*** decided on **11.11.2021** framed a question in order to examine as to whether the Act 2016 is retrospective or retroactive in its operation and what will be its legal consequence if tested on the anvil of the Constitution of India. After thorough scrutiny Hon'ble Supreme Court was pleased to observe that the intention of the legislature by necessary implication and without ambiguity is to include those projects which were ongoing and in cases where completion certificate has not been issued within fold of the Act. The provisions of the Act 2016 will apply after getting the on-going projects and future projects registered under Section 3 to prospectively follow the mandate of Act 2016. Para-54 of the judgment is extracted:

> *" 54.* ***From the scheme of the Act 2016, its application is retroactive in character and it can safely be observed that the projects already completed or to which the completion certificate has been granted are not under its fold and therefore, vested or accrued rights, if any, in no manner are affected. At the same time, it will apply after getting the on-going projects and future projects registered under Section 3 to prospectively follow the mandate of the Act 2016."***

35. Once a project is registered under the Act, 2016, such registration is not a mere procedural formality but a statutory acknowledgement bringing the project within the regulatory framework of the Act. The legislature has consciously provided for such a framework to ensure accountability, transparency, and protection of the interests of allottees in the real estate sector. Registration creates a legal obligation upon the promotor to comply with all provisions of the Act, the rules, and regulations framed thereunder. The said obligations, *inter alia*, include the payment of interest **at such rate as may be prescribed** for each month of delay caused by the promoter in handing over possession of the allotted unit to the allottee, in accordance with Section 18(1) of the Act, 2016.

36. A plain reading of Section 18 (1) proviso makes it abundantly clear that where an allottee does not intend to withdraw from the project, he shall be paid, by the promotor, interest for every month of delay, till the handing over of the possession, **at such rate as may be prescribed.** To ascertain 'such rate' U.P. Government framed "Uttar Pradesh Real Estate (Regulation and Development) (Agreement for Sale/Lease) Rules, 2018" (hereinafter referred to as 'Rules, 2018'), wherein, 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.

37. **Rule 9.2 (ii) of Uttar Pradesh Real Estate (Regulation and Development) (Agreement for Sale/Lease) Rules, 2018 is extracted-**

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.*

38. The respondent in terms of Section 18(1) of Act, 2016 would be entitled to interest at MCLR+1 percent for the delayed period w.e.f 13.02.2014 till the date of handing over possession of the unit i.e 21.10.2018. **Question no.2 is accordingly answered.**

<u>Question no.3</u>

39. The learned counsel for the appellant/ promotor submits that, since the respondent/allottee has not assailed the order passed by the Regulatory

Authority, the delay interest, granted to the respondent by the impugned order must be in terms of the agreement for the period from 13.02.2014 to 30.04.2016 i.e. before promulgation and enforcement of Act, 2016 and at the rate of MCLR+ 1 percent w.e.f 01.05.2016 to 13.11.2017 thereafter, it is, therefore, urged by the learned counsel for the appellant that the 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 the appeal setup relief of interest at the prescribed rate for the entire period of delay.

40. From the facts and for the reasons recorded hereinabove (question no.1 and 2), it is evident that the project was inordinately delayed on account of the default of the appellant-promoter, who, in consequence thereof, has withheld possession of the unit. In such circumstances, Section 18(1) of the Act, 2016 squarely applies. The promoter is, therefore, statutorily obligated to pay interest for every month of delay '**at the prescribed rate'** until possession of the unit is duly handed over to the allottee.

41. It is apposite to observe that Act, 2016 provides for a uniform rate of interest which is payable to the allottee when the delay is caused by the promotor. It is intended to ensure certainty, uniformity and fairness in its application. The bifurcation of interest for different periods i.e., partly as per contractual rate and partly as per statutory rate appears to be against the legislative intent. Once, the statue prescribes a specific rate of interest, the same overrides any contractual stipulated rate of interest agreed between the parties. Any agreement/settlement circumventing the statutory provision (proviso to Section 18 (1) of the Act, 2016), cannot contradict or circumvent the statutory requirements and the mandatory legal obligations that govern to protect the interest of the allottee. The Regulatory Authority committed an error in awarding interest at different rates for different period. Any order or decree that is contrary to the law or rules prescribed by the legislature is unsustainable in the eyes of law. The respondent allottee shall be entitled to delay interest at the rate MCLR+1 percent for the entire delayed period.

42. ***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".***

43. 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.***

44. 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."***

45. 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 between the parties 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.

46. 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 and 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.

47. We are not persuaded by the submissions made by the appellant/promotor for the reason that it is an admitted position that the project got registered as an ongoing project under the Act, 2016. Once a project is so registered, it falls within the ambit of the Act and the rules framed thereunder. Under Section 18 (1) of the Act, 2016, an allottee is vested with an unqualified statutory right, which accrues instantly upon delay on the part of the promoter. Under the section, promoter is obligated to pay interest to the allottee for the delay, **at the prescribed rate**, which is mandated under the *Uttar Pradesh Real Estate (Regulation and Development) (Agreement for Sale/Lease) Rules, 2018*. In view thereof, the promotor is bound to adhere with the law and rules prescribed thereunder. The enforcement of an obligation of the promoter/right of the allottee must be strictly in accordance with the provisions mandated under Act, 2016/Rules and not in terms of the agreement. The agreement enforceable in law is a contract and not otherwise. The decree passed being in teeth of the statutory mandate of Section 18(1), read with, Rule 9.2 (ii) of Uttar Pradesh Real Estate (Regulation and Development) (Agreement for Sale/Lease) Rules, 2018 would have to be modified/corrected to be sustainable and enforceable. The Tribunal is vested with power and authority to modify/correct the judgment and decree. The respondent allottee is not required to file a separate appeal. **Question no. 3 is accordingly answered.**

48. The appeal is **disposed of** by passing the following orders:

(i) The appellant-promotor shall pay interest at MCLR+1 percent to the respondent w.e.f. 13.02.2014 till the date of handling over possession of the unit i.e. 21.10.2018, to be paid within 45 days from the date order is uploaded.

(ii) The impugned order dated 02.02.2021 (rectified on 05.03.2021) shall stand modified to the extent herein above.

(iii) No order as to costs.

49. It is clarified no other point or ground was pressed by either of the parties.

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

Dated: 17.04.2026
Tanveer/Sanya/