THE U. P. REAL ESTATE APPELLATE TRIBUNAL, LUCKNOW

Division Bench Court No.1

Sl. No.29—Appeal D No.340 of 2024

Uttar Pradesh Awas Vikas Parishad, Lucknow. …Appellant.

Vs.

1. **Real Estate Regulatory Authority Lucknow.**
2. **Adjudicating Officer, Uttar Pradesh Real Estate Regulatory Authority Lucknow.**
3. **Rajendra Kumar Vikal, Nehru Nagar, Tanda, Tanda, Ambedkar Nagar.**

...Respondents.

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

1. Heard learned counsel for the appellant, learned counsel for the respondents and perused the record.

2. Present appeal has been filed by the appellant/promoter assailing the judgment and order dated 02.08.2023, passed by the learned Adjudicating Officer, Uttar Pradesh, Real Estate Regulatory Authority, Lucknow in Complaint No.ADJ/LKO162/02/105533/2023 (Rajendra Kumar Vikal. Vs. U.P. Awas Evam Vikas Parishad.).

3. Main question involved in this appeal is whether the impugned order dated 02.08.2023, passed by the learned Adjudicating Officer, Lucknow, is without jurisdiction and whether in the given admitted facts allottee/respondent is entitled for delay interest.

4. 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 interest of a delayed project. He further submits that the forum for seeking the relief was before the Regulatory Authority.

5. Learned counsel for the appellant further submits that since allottee has taken possession without protest, therefore, appellant promoter is not liable for paying delay interest in terms of proviso to Section 18 (1) of the Real Estate (Regulation & Development) Act, 2016 (Act 2016).

6. Looking on the proposition of law, it is not in dispute that the impugned order is without jurisdiction. It is also not being disputed by the appellant that the project was inordinately delayed beyond the promised date. Accordingly, the respondent allottee would be entitled to delay interest on the deposited amount in terms of proviso to Section 18(1) of the Act, 2016.

7. In this backdrop, it is urged by the counsel for the respondent allottee that this Tribunal may deem it proper to 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. In any case the delay interest was to be computed by the appellant promoter and paid to the respondent allottee without raising demand. The mandatory obligation imposed upon the promoter under proviso to Section 18 and the right of the allottee to receive the interest cannot be denied by the promoter by insisting the respondent allottee to file a complaint in the first instance.

8. The appellant had launched a scheme in the name and style, "Neelgiri Enclave", at Sector-17, Vrindawan Yojna, Lucknow, in the year 2012. A unit bearing Flat No.17-AH/72/F-06, came to be allotted to the respondent allottee, vide allotment letter dated 08/08/2013. The sale consideration was paid as per terms and conditions of the agreement/brochure.

9. Learned counsel for appellant does not dispute that the due declared date for completion of the project was within 24 months i.e., 27.08.2015, whereas, the offer of possession of the Flat (Unit) was made on 31.08.2017 and physical possession was delivered on 27.10.2018.

10. Section 18 of Act, 2016 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."

11. In the given facts, the respondent-allottee had not withdrawn from the project and continued with the project, which admittedly, was delayed. In terms of proviso to Section 18(1) of the Act 2016, promoter was liable to pay interest for delay till handing over possession of the unit. Legislature has imposed an obligation upon the promoter to pay the delay interest without the allottee having to raise a demand to that effect. The proviso to Section 18(1), inter alia, confers an absolute right on an allottee to receive delay interest from the promoter, the right cannot be curtailed/taken away by the promoter, nor, the promoter can insist that the allottee should in the first instance file a complaint for delay interest. The allottee on taking possession of the unit would not waive the obligation of the appellant promoter to pay interest to the allottee. The argument of the learned counsel for the appellant, if accepted, then in that event every promoter would insist on possession of the unit before honouring his obligation to pay the interest. The expression 'shall' makes the proviso to Section 18(1) mandatory. In the circumstances, the allottee cannot be relegated to claim interest till handing over possession of the unit on the plea that the appellant-promoter denies to commit itself to fulfil its obligation to pay interest which is not being disputed.

12. 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…"**

13. It is informed by the learned counsel for the parties that similar matters came to be challenged before the Hon'ble High Court in appeal. The Hon'ble High Court in **RERA Appeal No. 72 of 2025 (Ratan Buildtech Private Limited Vs. Anil Kumar)** and other connected appeals, came to be decided on 04.08.2025. One of the questions before the Hon'ble High Court was, "whether an appeal would lie against the grant of interest under Section 18(1) of the RERA Act, granted on the basis of admission in between the parties" (Issue No. III), and the related issue, "whether grant of interest requires any adjudication or can be granted automatically as per Section 18(1) of the RERA Act".

14. The Hon'ble High Court in Para-37, observed that statutory interest payable under Section 18, is essentially a mathematical exercise. The Court while answering Issue No. III in Para-42 of the report held as follows:-

> *"Even if the submission of the Counsel for the appellant that the appellate court was wrong in recording that there was admission with regard to delay in delivery of possession and the admission was confined only to that effect that apartment could not be delivered to the allottee and there was no admission to liability to pay interest, would not alter the final out come as it is already held that the statutory interest is essentially a mathematical exercise and does not require any adjudicatory exercise".*

15. Accordingly, the question is answered.

16. The appeal is being **disposed of** on admitted facts inter-se parties by passing the following orders:

(i) The impugned order dated 02.08.2023, passed by the learned Adjudicating Officer, U. P. Real Estate Regulatory Authority, Lucknow in Complaint No.ADJ/LKO162/02/105533/2023 (Rajendra Kumar Vikal. Vs. U.P. Awas Evam Vikas Parishad.) is **set aside** and **quashed**.

(ii) The respondent/allottee is entitled to delay interest w.e.f. 27.08.2015 to 31.08.2017 on the deposited amount at the rate MCLR+1% for every month delay to be paid by the appellant

promoter within 45 days from the date order is uploaded on the portal.

(iii) The amount deposited by the appellant promoter in compliance of Section 43(5) of the Act towards the delay interest shall be released in favour of the respondent allottee after ascertaining from the Regulatory Authority that the impugned order dated 02.08.2023, has not yet been executed.

(iv) It will be the liability of beneficiary to pay the income tax, if any, on the interest accrued, if any, on the amount deposited in compliance of Section 43 (5) of Act 2016.

(Rameshwar Singh) **(Suneet Kumar)**

Date: 06/05/2026
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