(Reserved)
COURT NO-2

THE UTTAR PRADESH REAL ESTATE APPELLATE TRIBUNAL
AT LUCKNOW.

1. Appeal No.382 of 2024
M/s. Diograzia Realcon Pvt. Ltd.
through its representative Manish Tiwari. …Appellant.
Versus
Bhutani Group. …Respondent.

With
2. Appeal No.383 of 2024
M/s. Diograzia Realcon Pvt. Ltd.
through its representative Manish Tiwari. …Appellant.
Versus
Bhutani Group. …Respondent.

With
3. Appeal No.384 of 2024
M/s. Diograzia Realcon Pvt. Ltd.
through its representative Manish Tiwari. …Appellant.
Versus
Bhutani Group. …Respondent.

With
4. Appeal No.385 of 2024
M/s. Diograzia Realcon Pvt. Ltd.
through its representative Manish Tiwari. …Appellant.
Versus
Bhutani Group. …Respondent.

With
5. Appeal No.386 of 2024
M/s. Diograzia Realcon Pvt. Ltd.
through its representative Manish Tiwari. …Appellant.
Versus
Bhutani Group. …Respondent.

With
6. Appeal No.387 of 2024
M/s. Diograzia Realcon Pvt. Ltd.
through its representative Manish Tiwari. …Appellant.
Versus
Bhutani Group. …Respondent.

With

7. Appeal No.388 of 2024

M/s. Diograzia Realcon Pvt. Ltd.
through its representative Manish Tiwari. …Appellant.

Versus

Bhutani Group. …Respondent.

With

8. Appeal No.389 of 2024

M/s. Diograzia Realcon Pvt. Ltd.
through its representative Manish Tiwari. …Appellant.

Versus

Bhutani Group. …Respondent.

With

9. Appeal No.390 of 2024

M/s. Diograzia Realcon Pvt. Ltd.
through its representative Manish Tiwari. …Appellant.

Versus

Bhutani Group. …Respondent.

With

10. Appeal No.391 of 2024

M/s. Diograzia Realcon Pvt. Ltd.
through its representative Manish Tiwari. …Appellant.

Versus

Bhutani Group. …Respondent.

And
With

11. Appeal No.392 of 2024

M/s. Diograzia Realcon Pvt. Ltd.
through its representative Manish Tiwari. …Appellant.

Versus

Bhutani Group. …Respondent.

Hon'ble Mr. Sanjai Khare, Judicial Member.
Hon'ble Mr. Devindar Singh Chaudhry, Technical Member.

1. These appeals have been filed under Section 44 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as 'the Act, 2016) by the appellant against the two composite orders dated 12.08.2024 passed by the U.P. Real Estate Regulatory Authority, Gautam Budh Nagar (hereinafter referred to as 'the Regulatory Authority') in the following complaints respectively: -

Sr. No	Appeal No	Complaint no	BBA	Allotted Unit No	Assured date of Possession/ Completion	Total Sale Considera-tion
1	**382/2024**	NCR144/06/110501/2023	16.01.2018	2408, Block- A, 24th Floor (Super Area-532 Sq. Ft) Office Space	16.07.2021	33,99,480/-
2	**383/2024**	NCR144/07/110589/2023	20.11.2017	24(37 & 38), Block-A, 24th Floor (Super Area- 1640 Sq. Ft) Office Space	20.05.2021	1,26,49,600/-
3	**384/2024**	NCR144/07/110588/2023	20.11.2017	4(21&22), Block-A, 24th Floor (Super Area- 1640 Sq. Ft)Office Space	20.05.2021	1,15,95,080/-
4	**385/2024**	NCR144/07/110585/2023	16.01.2018	2409, Block- A, 24th Floor (Super Area- 532.00 Sq. Ft.) Office Space	16.07.2021	33,99,480/-
5	**386/2024**	NCR144/07/111109/2023	11.12.2017	226, Block- E, 22nd Floor, (Super Area- 200.00 Sq. Ft) Office Space	11.06.2021	10,78,000/-
6	**387/2024**	NCR144/07/111103/2023	11.12.2017	2225, Block- E, 22nd Floor (Super Area- 200.00 Sq. Ft.) Office Space	11.06.2021	10,78,800/-
7	**388/2024**	NCR144/07/111207/2023	11.12.2017	2227, Block- E, 22nd Floor, (Super Area- 200.00 Sq. Ft.) Office Space	11.06.2021	10,78,800/-
8	**389/2024**	NCR144/07/111208/2023	11.12.2017	2228,	11.06.2021	10,78,800/-

				Block- E, 22nd Floor, (Super Area- 200.00 Sq. Ft.) Office Space		
9	**390/2024**	NCR144/07/111210/2023	20.11.2017	23(218.22), Block-E, Floor-23rd, (Super Area- 640 Sq. Ft.) Office Space	20.05.2021	1,10,09,600/-
10	**391/2024**	NCR144/07/111209/2023	11.12.2017	2229, Block- E, 22nd Floor, (Super Area- 200.00 Sq.) Office Space	11.06.2021	10,78,000/-
11	**392/2024**	NCR144/07/111212/2023	20.11.2017	23(37&38), Block-E, Floor-23rd, (Super Area- 1640 Sq. Ft.)	20.05.2021	1,10,09,600/-

The complaints from Sl. No.1 to 4 have been decided vide a composite order dated 12.08.2024 and rest complaints from Sl. No.5 to 11 have been decided vide a composite order dated 12.08.2024 learned Regulatory Authority. The issues are common in all above mentioned complaints.

By the aforesaid impugned order dated 12.08.2024, the Regulatory Authority has directed the respondent to ensure execution of registered conveyance deeds of the respective units of the appellant allottee in accordance with the agreement and give possession in habitable condition with further direction to pay the delay interest at the rate of MCLR+1% p.a. from the date of possession of the respective units and in case the respondent has charged any rate of interest on the default in payment by the appellant allottee, the delay interest will be paid at the same rate to the appellant allottee.

2. The facts and issues involved in the aforesaid appeals are same and relate to the same project. Therefore, all the appeals are decided by the present common judgment taking the Appeal No.382 of 2024 as leading appeal.

3. By the present appeals, the appellant allottee has prayed for quashing of the impugned order with direction to respondent to handover the physical possession of the unit in question after obtaining the OC/CC with delay interest at the rate of 18% from the date as per agreement till actual handing over of the possession with assured return in terms of agreement at the rate of 18% and also pay the compensation of Rs.10,00,000/- (ten lakhs) as mental agony and harassment.

4. Since all 11 appeals involve the same issues, therefore, these appeals are being decided by a common judgment and order taking the brief facts of the leading Appeal No.382 of 2024.

4.1 The appellant submitted that the respondent launched a project in the year 2017 in the name and style known as “Alphanthum” situated at Plot No.1, Sector-90, Expressway, NOIDA.

4.2 The respondent got registered under the Real Estate Regulatory Authority according to which the commencement of the project in question was 01.06.2016 and the completion date was 01.12.2019.

4.3 The appellant had booked the office space unit in the project on 10.10.2017 and paid a sum of Rs.14,27,633/- as booking amount. The agreement to sale was executed on 16.01.2018 between the respondent and the appellant. The appellant was allotted Unit No.2408, Block-A, 24th Floor, admeasuring area 532 sq. ft. The total sale consideration of the unit was Rs.33,99,480/-+4,07,938/- amounting total Rs.38,07,418/- and the appellant has paid total sum of Rs.28,55,265.- against the unit. As per the agreement the appellant has to pay the amount firstly at the time of booking, thereafter on 20th floor, thirdly on super structure and fourthly at the time of offer of possession. The appellant has submitted that as per Clause 2.2 of the agreement, he opted for assured return plan.

4.4 The appellant submitted that as per Clause 3.1 of the agreement, the respondent was supposed to hand over the possession of the unit in question within 36 months from the date of signing of the agreement. In other words, the respondent should have handed over the possession of the unit on or before 15.01.2021.

4.5 Since the appellant has paid the booking amount, but the respondent has failed to issue the receipt therefore on 29.01.2019 the appellant vide a letter requested the respondent to issue the receipt against the booking amount paid by the appellant.

4.6 The appellant submitted that on 22.07.2019 the appellant received an email from respondent wherein it was mentioned that the adjustment of the sum of Rs. 10,54,489/- has been done and car parking will be allotted at the time of offer of possession, in response the appellant informed that the amount of Rs. 24,369/- still has to be adjusted and the parking location was promised to be allotted on upper basement near the lift at the time of agreement, but nothing has been mentioned by the respondent accordingly in the agreement. The respondent in pursuance of the same promised to consider the request of the appellant at the time of offer of possession.

4.7 The appellant submitted that on 13.12.2021 the respondent issued final demand letter to the appellant. After receiving the final demand along with the offer of possession the appellant asked the respondent about the status of OC/CC but the respondent did not respond to it. The appellant again and again requested for the OC/CC of the project but the appellant did not receive any response from the respondent.

4.8 The appellant submitted that instead of giving response to the appellant about status of the OC/CC, the respondent issued demand letter on 18.01.2022 and 19.01.2022.

4.9 The appellant submitted that on 13.12.2021 the appellant requested the respondent to share the OC/CC on the basis the demand was raised and further asked the respondent to issue the demand as per

the agreement since as per the agreement the sale consideration was Rs. 33,99,480/- + GST Rs. 4,07,938/- totalling Rs. 38,07,418/- whereas the demand raised by the respondent was to the tune Rs.38,58,884/-.

4.10 The appellant submitted that on 18.01.2022 in pursuance of the email mentioned above the respondent informed that all the Towers are interconnected and they have received the OC for Tower B and C and due to Covid19 and other challenges the OC for Tower A was delayed. On 21.01.2022 the appellant, vide an email has apprised the respondent that they wish to take the possession of the unit in question as soon as the respondent shares the OC/CC for Tower. The respondent on 30.01.2022 issued an illegal reminder demand letter.

4.11 The appellant further submitted that on 17.02.2022 and 22.02.2022 the appellant received an email from the respondent wherein the respondent has threatened the appellant for imposing the penalty of 18% for delayed payment if the appellant does not pay the pending dues. It is pertinent to mention here that despite of the several requests to show the OC/CC papers the respondent has failed to respond/reply on the same.

4.12 The appellant submitted that on 23.02.2022 the appellant sent an email to the respondent whereby requesting to pay the assured returns till the respondent does not obtain the OC/CC, since till then the appellant is eligible to get the assured payment as per the terms of the agreement. Thereafter, the appellant received an email dated 15.06.2022 whereby the respondent informed that they have applied for OC/CC before the NOIDA Authority vide application dated 26.11.2021.

4.13 On 06.09.2022, the appellant submitted the photographs and videos to the respondent showing that the buildings is incomplete and the work was still going on but to no avail and instead of providing the assurance of showing that the project is completed as they have offered possession rather the respondent sent a "Booking cancellation notice on 10.10.2022.

4.14 The appellant on 30.03.2023 through its counsel sent the legal notice to the respondent whereby asking the respondent to apprise the appellant in regard with the status of OC/CC before raising the final demand, adjusting the delay interest in handing over the possession and further to cease the illegal demand by imposing the penalty of 18% on appellant in the name of delay interest and further to pay the assured return as per the agreement. Thereafter, on 24.05.2023 the respondent issued a reminder letter wherein the respondent raised the demand of Rs. 7,40,402/-.

4.15 The appellant further submitted that on 26.06.2023 the respondent gave the reply to the legal notice sent to the respondent on 30.03.2023. It is pertinent to mention here that in its reply the respondent has mentioned that they have received all the requisite approvals for the possession from the competent authorities and application for the completion were submitted to the Uttar Pradesh Real Estate Regulatory Authority on 26.02.2022 and further it was mentioned that since the project comes under the purview of NOIDA authority the respondent can execute the agreement to sell and no separate approval/permission for occupancy/completion is required for such project. Thus, from their reply to the legal notice, it is clear that the respondent has failed to mention that whether they have applied for OC/CC before the competent authority or not, since RERA is not the competent authority to issue OC/CC.

4.16 The appellant further submitted that in view of aforesaid facts and circumstances and the respondent has failed to give offer of possession, appellant has filed complaint before learned Regulatory Authority on 30.06.2023 i.e., Complaint No.NCR144/06/110501/2023 (M/s. Diograzia Realcon Pvt. Ltd. Through its Director, Mr. Narayan Datt Ramanlal Dave. Vs. Bhutani Group) praying for the relief of possession along with delay interest after the respondent obtained the OC/CC and further direction to the respondent not to impose penalty of 18% against the appellant and directing the respondent for the payment of assured monthly returns as per the agreement.

4.17 The appellant further submitted that he has also filed a complaint on Jansunwai-Samadhan, which got registered as IGRS Dairy No.2829 on 14.07.2023 and, in the aforesaid complaint IGRS Diary No. 2829 an order dated 26.07.2023 was issued wherein it was informed that the grievance of the appellant could be resolved before the learned Regulatory Authority and further it was mentioned that making an offer of possession without obtaining the Occupancy Certificate is against the rules and regulations of New Okhla Industrial Development Authority (hereinafter referred in short NOIDA Authority).

4.18 The appellant further submitted that in the aforesaid complaint after exchange of objections, rejoinder affidavit and after hearing the parties, learned Regulatory Authority has passed the impugned order dated 12.08.2024 which is under challenge in this bunch of appeals. In the impugned order dated 12.08.2024 passed by the learned Regulatory Authority, following directions were issued:-

(a) Firstly, to offer the possession after completing the unit as per the agreement on the bases of deemed OC/CC and take the requisite pending dues from the appellant and thereafter handover the possession and execute the sale deed.

(b) Secondly, the respondent will pay the delay interest at the rate of MCLR+1% from 16.07.2021 till obtainment of deemed OC/CC or offer of possession whichever is later. The period from 25.03.2020 till 25.09.2020 the respondent and appellant both are exempted to pay any delay interest.

4.19 The appellant has further submitted that the learned Regulatory Authority while dealing with the issue no.1 has failed to consider that deemed Completion Certificate will only be considered when the promoter files all the concerned documents before the competent authority and thereafter if no objections received from the competent authority then it will be considered to be a deemed CC, whereas in the instant case the respondent has failed to rectify the objections raised by the competent authority, therefore the deemed CC will not be applicable in the instant case.

4.20 The Learned Regulatory Authority while dealing with the issue No.1 has failed to consider the fact that there is no concept or the term as deemed CC has been used under the Act of 2016. It is pertinent to mention here that the agreement was executed only after the Act of 2016, came into force and therefore the concept of deemed CC mentioned under the provisions of Uttar Pradesh Urban Planning and Development Act, 1973 will not be applicable.

4.21 The appellant submits that the learned Regulatory Authority has failed to consider the written arguments filed by the appellant along with the RTI reports dated 14.05.2024 and 06.08.2024 which specifically mentioned that the respondent has not cleared the objections raised by the NOIDA Authority, further the learned Regulatory Authority has also not considered the earlier reply to the RTI dated 14.05.2024 filed along with rejoinder to the written objections of the respondent by the appellant wherein it was mentioned that the OC/CC has not been given to the respondent since the respondent has failed to upload certain documents as demanded by the NOIDA Authority.

4.22 The appellant further submits that the learned Authority while perusing the documents for passing the impugned judgment dated 12.08.2024 has failed to consider the reply dated 14.05.2024 to the RTI dated 03.05.2024 filed by the appellant along with the rejoinder to the written objections filed by the appellant and even the reply dated 06.08.2024 to the RTI dated 24.06.2024 was also brought on record by the appellant with the rejoinder to the written arguments.

4.23 The appellant submitted that the learned Regulatory Authority if so wanted to pass the impugned judgment dated 12.08.2024 in the interest of justice could have called for re-hearing of the complaint when the appellant filed the rejoinder to the written arguments on 07.08.2024 annexing the reply dated 06.08.2024 to the RTI dated 24.06.2024; as the judgment was reserved on 19.06.2024 and the same was delivered on 12.08.2024.

4.24 The appellant submitted that the burden of proof showing that no objection has been raised on the application filed by the respondent for grant of OC/CC filed before the NOIDA Authority is of the respondent and not of the appellant.

4.25 The appellant submitted that the respondent did not furnish any proof showing that no objection was ever raised by the NOIDA Authority on the application for grant of OC/CC of the respondent and the same to be considered as deemed OC/CC.

4.26 The appellant submitted that the learned Authority while dealing with the issue No.1 has failed to inspect/survey with the competent authority about the status of the Completion Certificate.

4.27 The appellant submitted that the learned Authority only on the basis of the submissions of the respondent has considered the project of the respondent as deemed completed and passed the impugned judgment in a most arbitrary and illegal manner.

4.28 The appellant submitted that the learned Authority has failed to consider the view of the Tribunal already held in the Appeal no. 286 of 2019 that a Promoter is required to offer legal and habitable possession to the allottees only after obtaining CC/OC and ask for clearing dues by raising final demand and passed the impugned order without application of mind.

4.29 The appellant submitted that the learned Authority while passing the impugned judgment has failed to frame the issue of assured return, since the respondent has breached the terms and conditions of the agreement as per which the respondent was liable to pay the monthly assured return to the appellant till the date of handing over of the possession.

4.30 The appellant submitted that the learned Authority has failed to consider the fact that the respondent has taken sale consideration by way of advance, in pursuance of the same the respondent has promised to pay certain amount by way of assured returns for certain period i.e. till the respondent hand over the physical possession of the unit in question, therefore in case the respondent

breached the terms of the agreement then in that case the appellant has right to approach the Learned Authority, but in the instant case the Learned Authority has failed to consider the same aspect.

4.31 The appellant submitted that the learned Authority has failed to consider that the respondent has concealed the fact about the objections remarks raised by NOIDA Authority, thus the respondent never appeared before the Learned Authority with clean hands.

4.32 The appellant submitted that the learned Authority as per the provisions of the Act of 2016 has the power to direct the technical team to do site inspection, but the Learned Authority has failed to exercise its power mentioned under the Act of 2016.

4.33 The appellant submitted that the learned Authority has failed to consider the fact that it is a well settled law that the allottee is liable to get the delay interest from the assured date of possession as per the agreement till actual handing of the possession.

4.34 The appellant submitted that the learned Authority has passed the impugned order without considering the documents on record and passed the said order with a premeditated mind set.

5. In view of the aforesaid facts and grounds, the appellant has prayed for the following reliefs:-

1. In the interest of justice, this Hon'ble Tribunal may be pleased to set aside the impugned order dated 12.08.2024 passed by Uttar Pradesh Real Estate Authority (Annexure No.1) to the Appeal;

2. Issue a direction to the respondent to hand over the physical possession of the unit in question after obtaining the OC/CC;

3. Issue a direction to the respondent to pay the delay interest at the rate of 18% from the date as per the agreement till actual handing of possession;

4. Issue a direction to the respondent to pay the Assured return to the appellant in terms of the agreement with interest @ 18%;

5. Issue a direction to the respondent to pay the compensation of Rs.10 lakhs towards the mental agony and harassment to the appellant;

6. Award the cost of the appeal in favour of the appellant;

7. Any other Order or Orders as may be deemed fit in the interest of justice.

6. The respondent has filed objections denying the averments of grounds of appeal. The respondent has submitted that:-

6.1 The respondent replying to the grounds of appeal, has submitted that the construction of the project in question was completed and subsequently applied for issuance of occupancy certificate before the competent authority vide letter dated 26.11.2021. It is further submitted that the respondent was in possession of all the four NOC certificates (Structural, lift, electricity and fire) at the time of making application for issuance of the completion certificate.

6.2 The respondent submitted that as per the bye laws, the competent authority either raises objections or issues the completion certificate on the application made by the promoter. Although there is no such term as 'deemed completion certificate' defined in the RERA Act, but to deal with the situation where the competent authority sits over the application for occupancy certificate without rejecting the same even after 90 days, the promoter can occupy the premises, which can be considered under the category of deemed occupancy certificate, as the aforesaid application for occupancy was never rejected. Moreover, the term 'deemed completion' has been defined in the U.P. Urban Planning and Development Act, 1973 which states that- "Section 15-A (1) Every person or body having been granted permission under sub-section (3) of section 15, shall complete the developments according to the approved plan and send a notice in writing of such completion to the [Local Development Authority or the State Authority as the case may be] and obtain a completion certificate from the [Local Development Authority or the State Authority as the case may be] in the manner prescribed or provided in the bye-laws of the Authority : Provided that if completion certificate is not granted and refusal to grant it is

not intimated within three months after receipt of the notice of completion, it shall be deemed that the completion certificate has been granted by the [Local Development Authority or the State Authority as the case may be] .”

6.3 The respondent has further submitted that the respondent has not received any communication regarding objections raised by the NOIDA Authority on their application for issuance of occupancy certificate. Therefore, the respondent cannot be held liable for not removing the defects, when no defects or objections were received from the Noida Authority.

6.4 The respondent submitted that the learned Regulatory Authority, after considering the fact that the application for completion has not been rejected by the competent authority within 90 days, observed that it falls under the category of deemed completion and therefore the project was considered as deemed completed with effect from 26.02.2022.

6.5 The respondent further submitted that learned Regulatory Authority framed issue no. 1 with respect to the deemed completion and held it in favour of respondent. It is important to mention that the respondent applied for the issuance of the occupancy certificate vide application dated 26.11.2021. The learned Authority, considering the date of application and provisions of Section 4(5) of the Apartment Act, 2010 along with the office order dated 16.09.2019, observed that since the application was made on 26.11.2021 and there is no evidence suggesting that any objections were raised by the competent authority on the application made by the respondent, held that the project is in the category of deemed completed.

6.6 The respondent further submitted that the amount of assured return has been paid to the appellant as per the agreement and therefore the prayer of appellant for paying the assured return is not maintainable. Also, assured return is a commercial transaction between promoter and allottee for getting additional benefits in terms of interest, which is beyond the scope of RERA Act, 2016

and the prayer for a relief which is beyond the scope of the Act is not maintainable before this Tribunal. However, as per the agreement the respondent has paid assured return to the appellant from the period between 01.04.2018 till November 2021, and is not liable to pay the assured returns further to the appellant.

6.7 The respondent further submitted that no objection has been received from the Noida Authority regarding the defects in the application made by the respondent for issuance of occupancy certificate, the fact has also been observed by the Learned Regulatory Authority while dealing with the issue No.1 in the impugned order, wherein the Learned regulatory Authority has also recorded that no evidence regarding objection raised by the competent authority have been placed on record.

6.8 The respondent further submitted that the impugned order dated 12.08.2024 has been passed by the learned Regulatory Authority after considering the application made by the respondent for issuance of occupancy certificate along with the provisions of Section 4(5) of the Apartment Act, 2010.

6.9 Replying the facts of appeal the respondent has submitted that as per the agreement dated 16.01.2018 it was stated that the company shall endeavour to complete the construction within the period of 36 months with a grace period of 6 months subject to force majeure events. Therefore, the due date of delivery of possession ended on 16.07.2021 and not on 15.01.2021 as is being alleged by the appellant.

6.10 With regard to the status of the OC/CC, the respondent further submitted that the respondent completed the construction of the project and applied for issuance of the occupancy certificate before the Noida Authority vide application dated 26.11.2021. It is important to mention that vide email dated 15.06.2022 the appellant was informed about the NOC certificates and status of the project as deemed completed. Therefore, the appellant was deemed to have known about the status of the completion certificate of the project.

6.11 The respondent further submitted that as per the agreement, the payment plan agreed was flexi payment plan. The appellant has paid only an amount to the tune of Rs. 28,55,265/- out of his own pocket whereas the total sale consideration agreed was Rs.33,99,480/- (plus taxes). It is submitted that the appellant did not pay the amount as agreed and is in default of making payment as per the schedule of the agreement. The demand for paying the balance amount of Rs. 10,87,224/- was raised by the respondent vide demand letter dated 17.11.2021 which has not been paid by the appellant.

6.12 The respondent submitted that he has again raised the fresh demand letter on dated 18.01.2022 as by adjusting the outstanding assured return of the allottee to be paid by the respondent company of period from April 2020 to November 2021 amounting to Rs.3,82,400/-. The final demand raised after adjusting the assured return was reduced from Rs. 10,87,224 to Rs. 6,21,219/- which was not been paid by the appellant and thereafter several reminder letters have been issued to the appellant for payment of outstanding dues but no payment has been done by the appellant till date.

6.13 The respondent further submitted that as per the office order dated 16.09.2019 and being in the category of deemed completion, he has issued the offer of possession and final demand dated 18.01.2022 for payment of balance amount of Rs. 6,21,219/-. Therefore, the offer of possession dated 18.01.2022 was a valid offer of possession as per the deemed completion category.

6.14 The respondent further submitted that the facts stated by the appellant in the memo of appeal regarding the RTI with respect to objections raised by the Noida Authority, it is submitted that no such objections were received by the respondent.

6.15 The respondent also raised additional pleas apart from his submissions denying the facts and grounds of appeal. He has submitted that revised sanctioned map was approved by the Noida Authority vide sanction letter dated 18.09.2017 for revised sanction on industrial plot No.1, Sector- 90, Noida. Thereafter, he

has applied for issuance of the occupancy certificate for tower A and E, vide letter dated 26.11.2021 on which no objection has been received by the respondent from the Noida Authority.

6.16 The respondent further submitted that he has got all the four Noc certificate as per office order dated 16.09.2019. The details of the said NOCs are as below:-

A. Structural certificate – 15.11.2021
B.. Lift - 16.11.2021
C. Electrical - 25.07.2019
D. Fire - 19.10.2021

Thereafter, the respondent applied for issuance of the occupancy certificate vide application dated 26.11.2021 and has issued offer of possession letter cum final demand dated 18.01.2022.

6.17 The respondent further submitted that he has requested the appellant to pay the balance amount vide demand letter dated 18.01.2022 which was not paid by the appellant, thereafter a reminder was sent by the respondent on 30.01.2023 and 24.05.2023 for the payment of the outstanding amount.

6.18 The respondent submitted that by an email dated 15.06.2022 the appellant was informed about the status of the project as deemed completed and requested the appellant to take possession of the units and further the appellant was duly informed by the respondent regarding the NOCs certificates and office order dated 16.09.2019 vide the aforesaid email dated 15.06.2022.

6.19 The respondent submitted that on account of default in payment, he sent an email dated 10.10.2022 intimating the appellant regarding cancellation of the unit with the option to shift in other project.

6.20 The respondent further submitted that he demanded the payment scheduled at offer of possession only after the project attained the category of deemed completion as per the office order dated 16.09.2019 and provisions of Section 4(5) of the Apartment Act, 2010.

6.21 The respondent further submitted that the purpose of granting delay interest as per Section 18 of the RERA Act is to compensate the allottee in the event the possession is delayed, **however, in the present case the allottee has booked the unit/space solely for the purpose of getting monetary benefits in the form of assured return and rent and not possession. Therefore, the prayer made by the appellant before this Tribunal regarding payment of delay interest till the handing over of possession is beyond the scope of Section 18 of the Rera Act, 2016 and is not maintainable.**

6.22 The respondent submitted that the reliefs sought by the appellant with respect to the payment of assured return may not be allowed as it is beyond the scope and object of the RERA Act, 2016.

6.23 The respondent submitted that the learned Regulatory Authority do not have jurisdiction to grant compensation in Form M and therefore the relief sought by the appellant for compensation in the present appeal is not maintainable and may not be allowed by this Tribunal.

7. The appellant has denied the contentions of the respondent raised in the objections and has filed his rejoinder affidavit in reply to the objections/counter affidavit of the respondent.

7.1 The appellant has denied the averments made in the objections to the facts and grounds of the appeal. He has submitted that he admits the averments of the respondent to the extent that the respondent had submitted an application for the issuance of Occupancy Certificate (OC) and/or Completion Certificate (CC) in respect of the subject project, vide its letter dated 26.11.2021. Save for this limited admission, all other contentions and statements made in the said paragraph are categorically denied as false, misleading, and bereft of merit.

7.2 The appellant submitted that the Respondent, in a calculated and disingenuous manner, has implicitly conceded that no valid OC/CC has ever been issued in its favour for the project in

question. The Respondent's assertion that it was in possession of the requisite OC/CC at the time of application is not only factually incorrect but also constitutes a deliberate attempt to mislead this Tribunal. The so called NOCs referred to by the Respondent pertain to M/s CBS International Pvt. Ltd., and not to the Respondent herein. This critical fact has never been clarified or disclosed by the Respondent in any of its pleadings filed either before this Tribunal or before the Learned Authority below.

7.3 The appellant further submitted that it is an admitted position that no valid OC/CC has been issued to the Respondent in respect of its project to date. The New Okhla Industrial Development Authority (NOIDA) has consistently and categorically raised objections to the Respondent's application for OC/CC, as evidenced by its communications dated 08.12.2021, 20.10.2022, 04.08.2023, and 13.08.2023, annexed as Annexure No. 28 to the Memorandum of Appeal. In light of the above, the doctrine of 'Deemed OC/CC' is wholly inapplicable to the facts of the present case, as the Respondent has demonstrably failed to secure a valid OC/CC and has further failed to cure the objections raised by the statutory authority.

7.4 The appellant further submitted that the Respondent's continued failure to explain the relevance, applicability, or legal effect of the NOCs issued in favour of M/s CBS International Pvt. Ltd., and its attempt to pass off such documents as pertaining to its own project, amounts to a gross abuse of the process of law. The Respondent is, therefore, liable to be penalized for attempting to mislead this Tribunal with irrelevant and misleading documentation, and for deliberately suppressing material facts in its pleadings both before this Hon'ble Tribunal and the Learned Authority below.

7.5 The appellant submitted that the averments of the respondent in the objections are admitted only to the limited extent that the Respondent itself unequivocally concedes that there exists no legal concept or provision recognising a "Deemed Occupancy Certificate" or "Deemed Completion Certificate." This categorical

admission by the Respondent demolishes the very foundation and rationale of the Impugned Order, which sought to extend the benefit of such a non-existent concept in favour of the Respondent. Accordingly, and at the very threshold, the present Appeal deserves to be allowed solely on this ground, as the Impugned Order stands vitiated by an erroneous presumption of a legal principle which the Respondent now admits has no existence in law. Except for the aforementioned limited admission, all other contentions, assertions, and submissions made in the said paragraph are vehemently denied as being misconceived, incorrect, and legally unsustainable.

7.6 The appellant has submitted that the averments of the respondents in the objections are denied being factually incorrect, misleading, and devoid of any merit. By way of further response, it is respectfully submitted that the Respondent cannot absolve itself of its statutory and contractual obligations, particularly in light of the fact that the Respondent had submitted an application for the grant of Occupancy Certificate (OC)/Completion Certificate (CC) to the New Okhla Industrial Development Authority through the prescribed online mechanism. It is a matter of record that the said Authority had raised objections to the application through the same online platform. Consequently, it was incumbent upon the Respondent to regularly monitor the said portal and take necessary steps to rectify any deficiencies so indicated. The assertion that the Respondent never received any response to its application for grant of OC/CC is not only vague and misconceived, but is also a deliberate attempt to mislead this Tribunal with a view to evade its liabilities. Such a contention is untenable in law and deserves to be outrightly rejected.

7.7 Respondent has categorically admitted that there exists no legal provision recognising the concept of 'Deemed Occupancy Certificate' or 'Deemed Completion Certificate'. However, in stark contradiction to its own admission, the Respondent now seeks to claim that the project in question falls under the category of 'Deemed OC/CC'. Such inconsistent and self-contradictory

averments render the Respondent's pleadings unreliable and liable to be rejected in toto. Without prejudice to the above, and assuming for the sake of argument (though not admitting) that the project, were to fall under the category of 'Deemed OC/CC', the Respondent's contention that no objections were raised by the New Okhla Industrial Development Authority (NOIDA) within the prescribed period of 90 days from the date of application is factually incorrect and misleading. It is submitted that the first objection by NOIDA was raised on 08.12.2021, in response to the Respondent's application dated 26.11.2021 for issuance of OC/CC, well within the 90 day statutory period. Therefore, the claim of the Respondent that the project attained the status of 'Deemed OC/CC' due to inaction on the part of NOIDA is wholly baseless and stands belied by the record itself.

7.8 The appellant has submitted that the demand letters issued by the Respondent are wholly illegal and untenable in law, inasmuch as the Respondent has, till date, failed to obtain a valid Occupancy Certificate (OC) and/or Completion Certificate (CC) in respect of the subject project. In the absence of a valid OC/CC, the Respondent is not entitled in law to raise any monetary demand from the Appellant or other allottees, and any such demand made is without authority and contrary to established legal principles. Consequently, the demand letters issued by the Respondent are illegal, null, and void, and are accordingly liable to be set aside in their entirety. He submitted that the Respondent is till date liable to give the assured returns in as much as the same cannot be adjusted with the demand raised by the Respondent as the said demands are illegal and smacks arbitrariness and is liable to be set aside.

7.9 The appellant has submitted that the Respondent has made false and misleading statements on record by claiming to have received an Occupancy Certificate (OC) and/or Completion Certificate (CC) vide its email dated 18.01.2022. This assertion is wholly incorrect and devoid of factual basis, as the Respondent has not received any valid OC/CC till date and, therefore, is legally incompetent to offer or deliver possession of the subject unit to the appellant.

7.10 The appellant further submitted that the Respondent is acting in an arbitrary and high-handed manner, as is manifest from its reply dated 26.06.2023 (annexed as Annexure No.19 to the Memorandum of Appeal) issued in response to the legal notice served by the Appellant. In the said reply, the Respondent has audaciously claimed that it is under no obligation to obtain an OC/CC from any development authority, purportedly on the ground that an application for completion has been submitted before the Learned Uttar Pradesh Real Estate Regulatory Authority (UP-RERA). Such a contention is not only legally untenable but also indicative of the Respondent's disregard for statutory compliance, and a blatant attempt to evade its mandatory obligations under applicable laws.

7.11 The appellant further submitted that the learned Regulatory Authority has erred in law and in fact by passing the Impugned Order, wherein it has directed the Appellant to accept possession of the unit on the basis of a so-called 'Deemed OC/CC'. At the same time, the Learned Authority has also directed the Respondent to complete the construction of the project in accordance with the terms and conditions of the agreement entered into between the parties. These directions are mutually contradictory and legally irreconcilable. The foundation of the Impugned Order is therefore vitiated by inconsistency, and a misapplication of settled legal principles.

8. We have heard learned counsel for the appellant Ms. Pushpila Bisht and learned counsel for the respondent Sri Abhishek Shukla.

9. Perusal of agreement executed between the parties reveals that appellant allottee has applied for allotment of IT/ITES office space in the project Alphathum of the respondent promoter. The respondent promoter has allotted the IT/ITES office space mentioning unit number in each agreement. Further Annexure-1B to the agreement specifically mentions the office space as unlockable space. It has been admitted by both the parties during argument that office space/unlockable space has been allotted to

the appellant allottee. It has been argued on behalf of the respondent that complaint regarding unlockable/virtual space is not maintainable and would not fall within the scope and ambit of Real Estate (Regulation and Development Act, 2016 (for short, the 'Act, 2016').

10. Respondent promoter has mentioned specific plea in his objection regarding the maintainability of the complaints of allottees alleging that allottees have booked unit/space solely for the purpose of getting monetary benefits in the form of assured returns, rent and not for possession. Respondent has also taken plea that claim for the assured returns is also not maintainable under the provisions of RERA Act, 2016.

11. We frame the following issues:-

(i) Whether the complaint of the appellant allottee is maintainable for possession and delay interest regarding IT/ITES office space (unlockable/virtual space) in a commercial project, and/or, whether sale and purchase of virtual space in a commercial building would fall within the scope and ambit of the RERA Act, 2016?

(ii) Whether allotee's claim for payment of assured return as per agreement from the promoter is maintainable under the provisions of RERA Act, 2016?

(iii) Whether the impugned order suffers from any perversity and illegality?

Answer to Issue No.(i):-

12. It is admitted fact to the parties that a non-lockable unit/office space bearing No.2408, Block-A, 24th Floor, (super area 532 sq. ft.) has been allotted to the appellant allottee of this leading Appeal No.382 of 2024, for total sale consideration of Rs.33,99,480/-. The assured completion period mentioned in the agreement was 36+6 months which is 16.07.2021. An agreement dated 16.01.2018 was executed between the parties.

12.1 Office space/non-lockable/unlockable unit means an undemarcated and unidentified unit forming part of a larger unit, which cannot be used separately. In other words, appellant was allotted an

undemarcated and unidentified space forming part of unit in the real estate project. It is, therefore, clear that specific possession of the allotted unit (virtual space) cannot be handed over to the allottee. Such office space/unlockable space/virtual space can only be mentioned in the agreement, as well as, conveyance deed. Annexure-1B attached to the main agreement also clarifies as below:-

> "The Allottee(s) (for Un-lockable space only) do hereby expressly and unconditionally authorize the Company to let out/lease/rent out his space/area along with the other space(s)/area(s) of the floor/building to any prospective tenant(s). Each of the Allottee(s), in the event of letting by the Company for Said Premises taken by tenant collectively/individually, shall be entitled to receive the rent from the tenant in proportion to his/her Said Premises. The lease time will be of 9 years with the lock in of first lease of 3 years, and the Allottee(s) has been given minimum lease guarantee of 42 per sq.ft. for the period of 3 years since the offer of possession. However, the leasing rights remain with the developer. The company shall take 3 months to start the lease guarantee from the time allottee has cleared all his dues and no dues certificated is issued by the company. Whoever will pay the furnishing charges of the area (Allottee/Developer/Third part) shall enjoy the benefit of rent increased. And in case lease amount is more than minimum lease guarantee, the amount exceeding the minimum lease guarantee shall be shared equally between Company and Allottee(s) in the ratio of 50:50.".

12.2 The above extracted condition stipulated in Annexure-1B of agreement clarifies that allotted space/area shall be let out for rent by the company (respondent promoter) to any prospective tenant and allottee shall be entitled to receive rent in proportion to his/her allotted premises, leasing rights will remain with the developer. The Annexure-1B also makes it clear that allotted office space/unlockable space/virtual space will remain in actual possession of the respondent promoter and appellant allottee will get only the benefit of rent in proportion to the area/space allotted to the appellant allottee.

12.3 On the above discussion and analysis and careful reading of the provision of agreement, it explicitly provides that allottee has not been allotted any physical unit for his occupation and use, rather, appellant allottee has invested in an office space/virtual

space/unlockable space, in a building shared with other allottee/s. In return, the allottee is entitled to proportionate lease rent after deduction of expenses etc., meaning thereby, particulars/boundaries of the allotted space, has neither been demarcated, nor, identifiable within the physical unit (building).

12.4 In this backdrop, we are required to examine the provisions of Act, 2016, to ascertain as to whether the Act is applicable to sale/purchase of virtual space/unlockable/office space within a building.

12.5 The virtual/cybernated/automated/unlockable/office space means an investment in a non-lockable area or space in a real estate project. Virtual space is as good as another commercial property, though, intangible. The difference being that investor/allottee is given possession for the lockable (tangible) office space, whereas, the virtual property is the space that gets registered in the name of the investors' but does not get physical ownership/possession of the space allotted. In other words, virtual space is a share in a large commercial physical space which is divided and sold into number of small spaces/parts to the buyers, therefore, independent physical possession cannot be given to any specific buyer. It is somewhat similar to a company offering shares through 'Initial Public Offer' (IPO). Similarly, an investor is free to sell/transfer virtual space at any point of time just like any other property. Generally, commercial projects offer mixed use development comprising of retail, offices, dining restaurants, food courts, business centres/gymnasium/spa services apartments. The floor area space is virtually sold to multiple persons, proportionate to their investment. Having regard to the provisions of the Act, virtual space is not considered to be covered under the Act, 2016, which primarily regulates sale and purchase of physical real estate units in a building, and does not explicitly address intangible digital property like virtual space. The property law principles, such as, exclusivity, transferability and enforceability still struggle to apply to virtual property because of their intangible nature. As per the terms and conditions of the agreement, the allottee of a virtual

space is promised a proportionate share of lease rent payable in future which is not akin to handing over/taking possession of a unit earmarked by boundaries for which the buyer/allottee has paid an amount to the promoter. It is, therefore, not within the purview of the Act, 2016. The dispute, is of a civil nature pertaining to investment, whereas, Act 2016 deals with builder-buyer relationship with regard to delivery of physical possession of the unit to the allottee or with withdrawal from the delayed project as per provisions of Section 18 of Act, 2016. The allottee can take remedy for breach of the terms of the agreement before an appropriate forum in accordance with law.

12.6 The long title of Act 2016 provides to establish a Real Estate Regulatory Authority (RERA) for regulation and promotion of real estate sector and to ensure sale of plot, apartment or building, as the case may be, or sale of real estate project, in an efficient and transparent manner and to protect the interest of consumers in the real estate sector and to establish an adjudicating mechanism for speedy disposal of the cases.

12.7 Section 2 (d) defines an 'allottee' which in relation to real estate project, means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter. Section 2 (d) of Act, 2016 is extracted:

> "allottee" in relation to a real estate project, means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent;"

12.8 Section 2 (e) of Act, 2016 defines, 'apartment' which includes, block, chamber, dwelling unit, flat, office, showroom, shop, godown, premises, suit, tenement, unit or by any other name, which means a separate and self-contained part of any immovable property. Any plot of land, used for any residential or commercial

properties, such as residence, office, shop, showroom or godown or for carrying on any business, occupation, profession or trade. Section 2 (e) is extracted:

"apartment" which includes block, chamber, dwelling unit, flat, office, showroom, shop, godown, premises, suit, tenement, unit or by any other name, means a separate and self-contained part of any immovable property, including one or more rooms or enclosed spaces, located on one or more floors or any part thereof, in a building or on a plot of land, used or intended to be used for any residential or commercial use such as residence, office, shop, showroom or godown or for carrying on any business, occupation, profession or trade, or for any other type of use ancillary to the purpose specified;"

12.9 Section 2 (j) of Act, 2016 defines, 'building', which is intended to be used for residential, commercial or for the purpose of any business, profession, trade or any other related purpose. Section 2 (j) is extracted:

"building" includes any structure or erection or part of a structure or erection which is intended to be used for residential, commercial or for the purpose of any business, occupation, profession or trade, or for any other related purposes;"

12.10 Section 2 (k) of Act, 2016 defines, 'carpet area' which means a net usable area in the apartment, covered by external walls. Section 2 (k) is extracted:

"carpet area" means the net usable floor area of an apartment, excluding the area covered by the external walls, areas under services shafts, exclusive balcony or verandah area and exclusive open terrace area, but includes the area covered by the internal partition walls of the apartment."

12.11 Section 2 (zf) of Act, 2016 defines, 'occupancy certificate' which means a certificate, issued by the Competent Authority for occupation of any building.

12.12 Section 2 (zn) of Act, 2016 defines the, 'real estate project', which inter-alia means development of a building or a building consisting of apartments for the purpose of selling all or some of the said apartments, as the case may be. Section 2 (zn) is extracted:

"real estate project" means the development of a building or a building consisting of apartments, or converting an existing building or a part thereof into apartments, or the development

> of land into plots or apartment, as the case may be, for the purpose of selling all or some of the said apartments or plots or building, as the case may be, and includes the common areas, the development works, all improvements and structures thereon, and all easement, rights and appurtenances belonging thereto;"

12.13 Section 11 of Act 2016 provides functions and duties of the promoter which inter-alia includes execution of registered conveyance deed by the promoter, in respect of plot or building as the case may be, in favour of allottee [Section 11 (f)].

12.14 Section 13 (1) of Act, 2016 provides that promoter shall not accept a sum more than ten percent of the cost of the apartment, plot or building, as the case may be, without entering into a registered agreement for sale.

12.15 Section 19 of Act, 2016 provides for rights and duties of allottees which, inter alia, mandates that allottee shall be entitled to claim possession of the apartment/plot, or the building, as the case may be. [Section 19 (3)]. Further, allottee shall take physical possession of the apartment/plot/building, as the case may be within a period of two months of the occupancy certificate, issued by the Competent Authority for the apartment/plot/building, as the case may be. [Section 19 (10)].

12.16 Having due regard to the provisions of the Act, 2016, it is crystal clear that Act, would not apply to sale and purchase of virtual/un-lockable/non-lockable/office space. At the most, it can be safely inferred that appellant allottee had made an investment in a commercial venture to earn lease rent for his investment. The investment was not made for a physical space identifiable and demarcated in the real estate project.

12.17 As per terms and conditions of the agreement, appellant is not entitled to physical possession of the virtual space allotted to him by the promoter. The only right that accrues to the appellant allottee in terms of the agreement for sale is towards receiving rent/fees/income for the space after deducting expenses. The premises (unit)/ real estate project in which the virtual space is

located would be employed for its utilization by any person/entity, association/company/persons of the unit (physical space) other than the allottees/purchasers of virtual space within the unit.

12.18 In view, thereof, we are of the firm view that the complaint filed by the appellant for possession of the virtual space and delay interest regarding office space/unlockable space, would not be maintainable before the Regulatory Authority. Issue No.(i) is answered accordingly.

Answer to Issue No.(ii):-

13. This issue involves the analysis and discussion of the fact whether allottee's claim for payment of assured return as per agreement from the promoter is maintainable under the provisions of RERA Act, 2016.

13.1 It is submitted that as per clause 2.2 of Agreement, the appellant opted for assured return plan. The appellant submitted that the respondent promoter has agreed to pay assured return till the obtaining the OC/CC, therefore, as per agreement, the appellant claims the payment of assured return. The respondent has submitted that relief of payment of assured return is beyond the scope and object of RERA Act, 2016.

13.2 From the examination of the provisions of entire scheme of RERA Act, 2016, RERA Rules, 2016 and 2018, it is evident that agreement for sale is required to be entered into between the promoter and allottee and both are under obligation to perform their duties/obligations as per the provisions of the RERA Act, 2016 and the Rules framed thereunder. The entire RERA Act, 2016 and the Rules framed thereunder do not provide about entering into the memorandum of understanding with respect to pre-EMIs/any assured return till the possession etc.

13.3 In our considered view, the assured return or committed charges, promised by the promoter to the buyer etc. are independent commercial arrangements between the parties, which at times the promoter/developer offer, in order to attract buyers/investors, or

users who may invest either in under construction or pre-launched/new launched projects. These independent commercial arrangements between the promoter and buyer, generally involve transactions having profit motive as their main aim. Piecing the threads together, therefore, so long as money is 'raised' under a real estate agreement, with sole motive of profit, such an agreement between the developer and home buyer are "commercial" in nature, both parties have "commercial" interest on the investment and return thereon. The real estate developer seeking to make a profit on the sale of the apartment, and the flat/apartment purchaser profiting by the sale of the apartment. Whereas the object of promulgation of the Real Estate (Regulation and Development) Act 2016 aims to create and ensure sale of immovable property in efficient and transparent manner and to protect the interest of the consumers in the real estate sector and not to use the forum for profit purposes/unjust enrichment.

13.4 On the basis of the above discussions, we are of the considered view that there is no provision under the Scheme of Act 2016 for examining and deciding the issues relating to the provisions of assured return/committed charges or payment of Pre-EMI by promoter for a fixed period or till possession etc. We are of the considered view that the claim of the appellant is not sustainable in the eyes of law in view of the provisions of Act, 2016 and Rules, 2018. The issue No.(ii) is answered accordingly.

Answer to Issue No.(iii):-

14. This issue involves the analysis and discussion on the question whether the impugned order suffers from any perversity and illegality.

14.1 Learned Regulatory Authority has directed for executing the sale deed and delivery of possession after receiving the balance sale consideration on the basis of deemed OC/CC and also directed to pay delay interest to the allottees at the rate of MCLR+1% from 20.05.2021 to deemed OC/CC/offer of possession whichever is

later after excluding the force majeure period of 25.03.2020 to 25.09.2020.

14.2 Admittedly, allotted unit is a non-lockable/virtual/office space, the possession thereof cannot be handed over to the allottee in view of the terms and conditions of the agreement.

14.3 Larger Bench of this Tribunal has decided this issue, vide judgment and order dated 21.03.2025 passed in Appeal No.762 of 2022 (Achal Garg. Vs. WTC Noida Development Company Pvt. Ltd.) observing that complaint with regard to unlockable space/virtual space, is not maintainable before the learned Regulatory Authority, which was followed by this Tribunal in another judgment and order dated 15.07.2025 passed in Appeal No.697 of 2022 (Bhim Kaur. Vs. Imperia Structures Ltd.) and the judgment and order dated 22.08.2025 passed in Appeal No.33 of 2022 (Anuj Singla. Vs. WTC Noida Development Company Pvt. Ltd.).

14.4 This Tribunal has decided that claim for assured return is not maintainable under the provisions of RERA Act, 2016/Rules framed therein, vide judgment and order passed in Appeal No.698 of 2021 (Faisal Anis vs M/s La Residentia Developers Pvt. Ltd.) decided on 29.05.2023; Appeal No.509 of 2020 (Arvind Kumar Gautam. Vs. UP REAL Estate Regulatory Authority & Anr.) decided on 29.05.2023; Appeal No.116 of 2021 (Gaurav Upadhayay. Vs Golf Green Infra Pvt. Ltd.) decided on 29.05.2023; and Appeal No.4 of 2021 (Narendra Verma. Vs Panchsheel Buildtech Pvt. Ltd.) decided on 17.07.2023.

14.5 The law is settled on the point that a complaint of an aggrieved person under Section 31 of the RERA Act, 2016 can be entertained only when it is maintainable under the provisions of RERA Act, 2016. Answer to Issue No.(i) confirms and clarifies that allotment of office space/virtual space/unlockable space is not covered under the provisions of RERA Act, 2016. Provisions of Section 18 of RERA Act, 2016 will be applicable only in case the complaint is maintainable under the provisions of RERA Act, 2016. Answer to

Issue No.(i) makes it clear that allotment of office space/unlockable space/virtual space does not fall within the purview of RERA Act, 2016. Answer to Issue No.(ii) clarifies that learned Regulatory Authority lacks jurisdiction and authority to entertain complaint seeking relief for the payment of assured return as per agreement under RERA Act, 2016 and Rules framed thereunder. Therefore, learned Regulatory Authority lacks inherent jurisdiction to entertain such complaints for the reliefs sought under the provisions of RERA Act, 2016. Learned Regulatory Authority ought to have primarily examined the maintainability of the complaints being a legal issue which has a bearing on the jurisdiction of the learned Regulatory Authority on the subject matter. The issue of jurisdiction/maintainability, whether raised or not, by either of the parties, the learned Regulatory Authority, at the first instance, prima facie, is required to adjudicate upon the issue of maintainability of the complaint. Learned Regulatory Authority has not looked into the issue of maintainability of the complaints. Therefore, learned Regulatory Authority has exercised jurisdiction which was not vested in it. Learned Regulatory Authority failed to interpret the non-maintainability of the complaints, therefore, we are of the considered view that neither the complaints (filed before the learned Regulatory Authority), nor the present appeals arising therefrom are maintainable under the provisions of U.P. RERA Act, 2016. The impugned order dated 12.08.2024, passed by the Regulatory Authority in all 11 complaints are without jurisdiction. The Issue No.(iii) is answered accordingly.

15. Accordingly, **Appeal No**.382 of 2024; **Appeal No**.383 of 2024; **Appeal No**.384 of 2024; **Appeal No**.385 of 2024; **Appeal No**.386 of 2024; **Appeal No.**387 of 2024; **Appeal No**.388 of 2024; **Appeal No**.389 of 2024; **Appeal No.**390 of 2024; **Appeal No**.391 of 2024 and **Appeal No**.392 of 2024 are **dismissed** being not maintainable by passing the following orders: -

(i) Impugned order dated 12.08.2024 passed by learned Regulatory Authority in **Complaint No**.NCR144/07/110585/2023 (M/s

Diograzia Real Con Pvt. Ltd. vs Bhutani Group); **Complaint No**.NCR144/07/110588/2023 (M/s Diograzia Real Con Pvt. Ltd. vs Bhutani Group); **Complaint No**.NCR144/06/110501/2023 (M/s Diograzia Real Con Pvt. Ltd. vs Bhutani Group); **Complaint No**.NCR144/07/110589/2023 (M/s Diograzia Real Con Pvt. Ltd. vs Bhutani Group); **Complaint No**.NCR144/07/111210/2023 (M/s Diograzia Real Con Pvt. Ltd. vs Bhutani Group); **Complaint No**.NCR144/07/111212/2023 (M/s Diograzia Real Con Pvt. Ltd. vs Bhutani Group); **Complaint No**.NCR144/07/111207/2023 (M/s Diograzia Real Con Pvt. Ltd. vs Bhutani Group); **Complaint No**.NCR144/07/111209/2023 (M/s Diograzia Real Con Pvt. Ltd. vs Bhutani Group); **Complaint No**.NCR144/07/111208/2023 (M/s Diograzia Real Con Pvt. Ltd. vs Bhutani Group); **Complaint No**.NCR144/07/111103/2023 (M/s Diograzia Real Con Pvt. Ltd. vs Bhutani Group); and **Complaint No**.NCR144/07/111109/2023 (M/s Diograzia Real Con Pvt. Ltd. vs Bhutani Group), are set aside and quashed being without jurisdiction.

(ii) Consequently, all abovementioned 11 complaints are also rejected being not cognizable and maintainable under the provisions of RERA Act, 2016.

(iii) Dismissal of appeals and rejection of complaints shall not prevent the appellants from taking remedy before any other appropriate forum, as per law, if so advised.

(iv) No order as to costs.

(Devindar Singh Chaudhry) (Sanjai Khare)

Date:- 19.05.2026
RajneeshPS)