RESERVED JUDGMENT
BENCH NO. 2

THE UTTAR PRADESH REAL ESTATE APPELLATE TRIBUNAL
AT
LUCKNOW

Appeal No. 473 of 2020

Raj Bahadur Yadav .....Appellant

Vs.

U.P. Awas Evam Vikas Parishad ..….Respondent

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

1. Present appeal has been filed by appellant/allottee, assailing the order dated 03.07.2020 passed by UP Real Estate Regulatory Authority at Lucknow in Complaint No. LKO162/10/1005/2019 (Raj Bahadur Yadav Vs. U.P. Awas Evam Vikas Parishad, Lucknow), whereby the Regulatory Authority issued direction to the respondent to hand over possession of the flat in question before 25.09.2020. Further, to pay interest to the complainant-appellant at MCLR+1% on deposited amount w.e.f. 01.09.2016 till date of offer of physical possession of the flat. The complainant-appellant was also directed to pay interest on the amount due on part of appellant at the same rate of interest.

2. The facts, giving rise to the present appeal, briefly stated, are that in the year 2013, a scheme of multistoried residential apartment was floated by the U.P. Awas Evam Vikas Parishad at Awadh Vihar Yojana, Shaheed Path, Lucknow in sector 2-A, which was known as Mandakini Enclave along with another multistoried residential apartment known as Bhagirathi Enclave. Being impressed with the brochure of the Project and the amenities assured by the Respondent, the Appellant vide form no. 2047

dated 13.03.2013, applied for a 2BHK+Study flat on Ground/first floor in Mandakini Enclave, Sector-2A of Awadh Vihar Yojna. The super area of the flat was 126.46 sq. mtrs and the carpet area was 109.30 sq. mtrs. The total cost of the said flat was Rs. 37,50,000/-.

2.1 Although the Appellant had applied for allotment of flat in Mandakini Enclave, but the respondent without any prior consent of the Appellant allotted a Flat bearing no. 3/T-9-101 (2BHK+Study) in Alakanda Enclave by means of allotment letter dated 01.03.2014. The Alakanda Enclave is located in Sector-3 of Awadh Vihar Yojana.

2.2 As per allotment letter dated 01.03.2014, the Appellant had initially deposited an amount of Rs.1,80,000/- as registration amount/booking amount and after which he had to pay Rs. 3,70,000/- within a period of 30 days from the date of allotment, and remaining balance amount of Rs. 32,00,000/-in eight quarterly instalments of Rs. 4,00,000/-, and the promised super area of the flat was 126.46 square meters. The Appellant has already made the entire payment of Rs. 37,50,000/- in pursuance of allotment letter dated 01.03.2014 and the same is evident from the letter of the respondent dated 18.04.2016. The respondent promised the appellant to provide a Flat (2BHK+Study) with super area of 126.46 sq. mtr., but now he is being provided a Flat (2BHK+Study) with super area of 123.19 square meters. That too on the basic price which is Rs.4,32,168/- higher than the originally promised basic sale consideration. As per clause 9.1 of the Builders Agreement/brochure the date of Completion of flat was 30 months from the date of issuance of demand letter i.e. 01.09.2016, but till date the Appellant has not received the possession of the flat in question, as such there is a delay of more than 3 years in handing over the possession of the flat.

2.3 It is further stated that on 12.03.2018 the appellant made representation before the respondent, seeking adjustment, stating that it has come in his notice from different sources that there are some flats still available in Mandakini Enclave and he may be allotted one as he had opted for the same and has paid the entire amount as per the Brochure/Builders Agreement, but appellant didn't receive any reply from the Respondent. Knowing the availability of the flats in Mandakini Enclave and wanting to

shift to Mandakini, the appellant again made several representations, including representations dated 29.05.2018 and 30.08.2019 to the Housing Commissioner, U.P. Awas Evam Vikas Parishad vide Courier, representation dated 13/08/2019 to Property Manager of U.P. Awas Evam Vikas Parishad, stating the availability of the flats of the same type as desired and applied by the appellant in the first place. But, till date no reply has been given to appellant.

2.4 The respondent did not have the completion certificate or occupancy certificate (OC/CC) for the project and even the project was not complete, despite that on 06.07.2019, the respondent vide it's letter bearing no. 2850 had sent a notice titled as 2nd notice to the appellant, stating that the appellant has defaulted in payments and if he will not complete the remaining payment or come in person, for reasons for such delay, by 31.07.2019, his allotment will be cancelled. It is stated that prior to receiving the aforesaid 2nd notice, the appellant did not receive any demand letter so as to know the exact amount which was payable by the appellant for execution of sale deed. The respondent did not have the completion certificate on the date of alleged offer of possession as such the aforesaid alleged offer of possession is of no significance in the eyes of law.

2.5 It is submitted that after receiving the aforesaid 2nd notice, the appellant contacted concerned officials of U.P. Awas Evam Vikas Parishad on 13.08.2018. It was only then the appellant was informed that some offer letter dated 02/04/2018 was sent to the appellant on his erstwhile address, however, the copy of the same was not provided to the appellant and it was assured that same will be sent again on the correct address.

2.6 On 13.08.2018, the appellant preferred a representation, wherein, it was mentioned that continuously the complainant is preferring representations after representations. The appellant also requested the respondent to allot the vacant flat in Mandakini Enclave. When the respondent did not pay any heed to the repeated requests of the appellant, having no other option, the appellant filed Complaint No. LKO162/10/1005/2019 (Raj Bahadur yadav vs U.P. Awas Evam Vikas Parishad) before learned Uttar Pradesh Real Estate Regulatory Authority. In the aforesaid complaint, a reply was

filed by the respondent on 18/11/2019, wherein, a copy of the completion/occupancy certificate dated 18/03/2019 was brought on record along with the final allotment letter dated 01/11/2019. After filing of complaint, the appellant has received amended offer letter dated 01/11/2019, which is full of discrepancies and illegal demands.

2.7 It is further submitted that the offer of possession letters issued prior to 01/11/2019 were actually issued without there being the completion certificate as such same issued contrary to the provisions of the RERA Act as well as own byelaws of the respondent as such same are non est in the eyes of law. As such no liability of payment arises upon the appellant on the basis of the aforesaid demand letters. In the aforesaid amended demand letter, the date of lottery and allotment etc. was wrongly mentioned other than that illegal additional interest was imposed upon the appellant at Rs. 9,306/- for the delay of 8 days in deposit of one instalment and further the super area of the flat was reduced from 126.46 square meter to 123.19 square meter, however, no adjustment of cost towards the reduced area was made. On the contrary, the cost of the flat has been increased from Rs. 37,50,000/- to Rs. 41,82,168/-.

2.8 The learned Regulatory Authority, ultimately disposed of the complaint vide impugned judgement and order dated 03/07/2020, with the direction to the respondent to hand over possession of flat in question before 25/09/2020. Further to pay interest to the complainant at the prescribed rate of MCLR+ 1% on deposited amount with effect from 01/09/2016 till date of offering physical possession of the unit in question. The appellant is partly aggrieved by the aforesaid impugned judgement and order dated 03/07/2020 passed by the Regulatory Authority, to the extent that the Learned Authority has awarded lesser rate of interest to the Appellant than the rate of interest which was charged by the respondent and further the Learned Authority has failed to take into consideration that the respondent could not have increased the price of the flat particularly when the super area of the flat has been reduced. The appellant is further aggrieved by the direction of the Learned Authority, whereby, appellant has been directed to pay interest on the amount due on part of appellant at the rate MCLR+1%.

2.9 It is submitted that after the aforesaid impugned judgement and order dated 03/07/2020, the appellant received a revised offer of possession letter date 03/09/2020 on 17/09/2020, whereby, an amount of Rs.17,78,577/- towards the interest and other charges and an amount of Rs.75/- per day with effect from 01/07/2018 till deposit of total amount has been illegally demanded apart from the stamp duty of Rs.3,22,000/- has also been demanded. Although the direction of Learned Authority is absolutely clear that the alleged amount payable by the appellant was to be adjusted. In the aforesaid revised offer of possession letter date 03/09/2020 also the respondent has charged the interest at the rate of 13.5% per annum. It is further submitted that the aforesaid amount, as demanded by the respondent, is absolutely arbitrary and Illegal as such is not payable by the appellant, therefore, as per aforesaid revised offer of possession letter date 03/09/2020, the appellant cannot be legally bound to pay the amount and interest thereon. As such, as an interim measure, the aforesaid demand raised by the respondent deserves to be stayed during pendency of the present appeal.

2.10 Apart from the above, since the prayer of the appellant before Learned Authority was for adjustment of the presently allotted flat into available flat at Mandakini Enclave, as such by means of letter dated 24/08/2020 flat no. 2A/T 9-101 was offered and the consent of the appellant was sought. The appellant gave his consent for change of the flat by means of his letter dated 04/09/2020, without prejudice to the directions issued by impugned judgement and order dated 03/07/2020.

3. The appellant has sought the following reliefs:-

(i) To set aside the impugned Judgment and order dated 03/07/2020 to the extent that appellant has been directed to pay interest on the amount due on part of appellant at the rate MCLR + 1% in the interest of Justice.

(ii) To modify the impugned judgment and order dated 03/07/2020 to the extent that the respondent be directed to pay interest to the Appellant at the rate of 13.5% per annum from the date of deposit of the aforesaid amount till the actual payment of the same, in the interest of Justice.

(iii) To quash the revised offer of possession letter date 03/09/2020, in the interest of Justice.

(iv) To direct the respondent to issue fresh offer of possession in accordance with law after adjusting the cost of reduced super area by 3.27 sq. mts and without charging any interest or penal charges from the appellant, in the interest of Justice.

(v) To direct the respondent to execute the sale deed of flat no. 2A/T9-101 Mandakini Enclave and handover the physical possession of the same to the Appellant in the interest of Justice.

4. The respondent has filed objections against the appeal and stated that the Self-Financing Housing Scheme of U.P. Avas Evam Vikas Parishad, Avadh Vihar Yojna, Lucknow, the registration for allotment of flat in Mandakini, Bhagirathi and Alaknanda Enclave had been open in the year 2013 and the Registration Booklet had been issued. Clause 2.1 of the Registration Booklet provides that the cost mentioned in the brochure is the estimated cost and the proposed period of completion of construction is 30 months. Further on the completion of the construction of the flat and after final costing of the flat the final cost would be payable.

4.1 Clause 2.2 provides that in the super area and lay out design some partial modification may be done. Clause 2.3 provides that for the allottees of First, Second and Third floor the additional Location charges would be payable. Clause 2.4 provides that the additional car parking charges would be payable. Clause 2.5 provides that the free hold charge would be payable by the allottee. Clause 2.7 provides that the maintenance charge would be payable by the allottee. Clause 2.11 provides that the service tax, VAT and GST etc. would be payable by the allottee. Clause 4.4 of Registration Booklet provides the refund of registration amount on the submission of refund voucher before the eligibility draw. Further the clause 4.5 of Registration Booklet provides the refund without interest after deduction of 20% of registration amount upto 3 months and 50 % deduction after 3 months of issue of demand letter. Further clause 4.6 of the Registration Booklet provides that due to delay if the appellant could not be allotted the flat upto or after six months of payment of last installment, on the demand of allottee, the amount would be refunded along with interest at the rate payable on the saving account by the Nationalized Bank. The provisions are applicable only when the refund is claimed due to non-allotment of flat upto or after six months of payment of last installment. Further clause 9.2 of Registration Booklet provides that the delivery of possession would be made after full payment of the cost of the flat

payable after final costing and after execution of sale deed in favour of allottee. Further clause 11.7 provides that the cost upto 20% may be increased. After accepting the terms and condition of the Registration Booklet the appellant had applied for allotment of 2 BHK plus study flat by depositing the registration amount of Rs. 1,80,000/- .

4.2 Thereafter in the eligibility draw held on 12-02-2014, the complainant had been declared successful for allotment of flat no. 3/T9-101 in Alaknanda Enclave. On the basis of estimated cost of Rs. 37,50,000/- the demand letter dated 01-03-2014 had been issued to the complainant. In accordance with the demand letter dated 01-03-2014 the amount of Rs. 3,70,000/- was to be deposited within 30 days of issue of demand letter and remaining amount of Rs. 32,00,000/- of estimated cost was to be deposited in 8 quarterly installments of Rs. 4,00,000/- each. The last installment was to be paid on 01-01-2016. In the demand letter dated 01-03-2014 it had been specifically mentioned that if the amount is not paid within the stipulated period, the 13.5% additional interest would be payable for the delayed period. Further after final costing of the project the final allotment letter dated 02-04-2018 had been issued to the complainant for depositing the balance cost of the flat and for completing the formalities for execution of sale deed and for taking the possession upto 30-06-2018.

4.3 It has been submitted that complainant neither deposited the amount nor completed the formalities for execution of sale deed nor taken the possession of the flat for which the complainant himself responsible. Further in the allotment letter dated 02-04-2018 due to clerical mistake the figure of the amount of installments deposited by the appellant had been wrongly calculated and as such the corrected allotment letter dated 01-11-2019 had been issued to the complainant. In the said corrected allotment letter dated 01-11-2019 it had been specifically mentioned that all the terms and condition of the allotment letter dated 02-04-2018 would be applicable. Despite the issue of corrected allotment letter dated 01-11-2019 the complainant neither deposited the balance cost of the flat nor completed the formalities for execution of sale deed nor taken the possession of the flat and as such in accordance with the terms and condition of the allotment letter dated 02-04-2018 and 01-11-2019 the complainant is liable to pay the additional interest and delayed charges.

4.4 It has been further submitted that in the demand letter dated 01-03-2014 the super area had been shown as 126.46 Sq. Meter and constructed area has been shown as 109.30 Sq. Meter and in the allotment letter dated 02-04-2018 the Constructed area has been shown as 111.26 Sq. Meter and the Super area has been shown as 123.19 Sq. Meter and as such from perusal of allotment letter dated 02-04-2018 and 01-11-2019, it is clear that the constructed area has been increased and the super area has been decreased. It is further submitted that the complainant had deposited the only estimated cost of the flat and the complainant had not deposited the final cost of the flat. It is further submitted that in the demand letter dated 01-03-2014 only the estimated cost of Rs. 37,50,000/- was shown and the said amount was not the basic sale price. Further the demand letter was issued subject to final determination of price of the flat after final costing of the flat. After final costing of the flat final allotment letter had been issued to the complainant/ appellant.

4.5 It has been submitted that in the clause 9.1 the proposed period of construction has been shown and the clause 2.1 and 9.1 of Registration Booklet does not provide the period of 30 months for handing over the possession of the flat. It is submitted that no such representation is received in the office of Estate Manager Office, Vrindavan Yojna, Lucknow. Further after issuing the demand letter and after accepting the allotment of flat in the Alaknanda enclave by the complainant and after depositing the amount of estimated cost of the allotted flat the complainant cannot claim for allotment of flat in the Mandakini Enclave without applying for conversion of flat in accordance with the rules. Further the flat in the Mandakini enclave is not available for allotment.

4.6 It has been submitted that after enforcement of RERA Act, 2016 the project of respondent had been registered by the Regulatory authority in which the period of completion had been mentioned upto 31-03-2019. During the said period the respondent had completed the project and the Completion Certificate had been issued on 18-03-2019 by the Competent Authority. It is further submitted that on the address provided by the complainant the demand letter dated 01-03-2014 and allotment letter dated 02-04-2018 had been sent by the respondent and in his letter dated 13-08-2019 the complainant had shown his address 11/66, Vrindavan Yojna-2, Lucknow and thereafter the corrected allotment letter dated 01-11-2019 had been issued on the said

address of appellant but the complainant had not deposited the balance cost of the flat despite notice dated 06-07-2019 issued by the respondent and as such the appellant violated the terms and conditions of the allotment letters and is liable to pay the delayed interest and delayed charges.

4.7 The respondent further submitted that appellant has stated that prior to receiving the notice dated 06-07-2019, the appellant did not receive any demand letter. Further the appellant stated that the appellant contacted to the concerned officials of the respondent on 13-08-2018 and the appellant was informed that the allotment letter dated 02-04-2018 had been issued to him and, as such, it is clear that the appellant was fully aware about the allotment letter dated 02-04-2018 much before issuance of notice dated 06-07-2019, but the appellant has not deposited the balance cost of the flat deliberately and as such the appellant is fully responsible to pay the balance cost of the flat along with interest and delayed charges. It is submitted that only in order to save himself from the liability of delayed interest and delayed charges the appellant had filed the complaint case on 21-10-2019 before the Regulatory Authority seeking the relief of possession and delay penalty.

4.8 It has been submitted that after final costing of the flat, the final allotment letter dated 02-04-2018 was issued to the appellant in which the figure of deposited amount was wrongly shown as Rs.39,70,000/- whereas, the appellant had deposited the amount of Rs,35,70,000/- and as such the said mistake had been rectified and corrected allotment letter dated 01-11-2019 had been issued to the appellant. In the said corrected allotment letter dated 01-11-2019, it had been mentioned that all the terms and condition of allotment letter dated 02-04-2018 would be effective upon the appellant. It is submitted that the corrected allotment letter dated 01-11-2019 had been correctly issued to the appellant in accordance with the terms and conditions of Registration Booklet and demand letter dated 01-03-2014. The appellant deliberately not deposited the amount and as such he is liable to pay the additional interest for the delay period and the delay charges. It is submitted that the appellant himself admitted that he had deposited the one installment with 8 days delay and as such the additional interest had been correctly charged in terms and conditions of demand letter dated 01-03-2014. It is further submitted that as the constructed area had been increased and as such the question of adjustment of cost of reduced super area does not arise. Further

it is settled law that where the allotment is at a tentative rate, subject to calculation of final cost which is higher than the tentative cost, it will not be considered as charging a revised higher rate and as such the contention of appellant that the cost had been increased is totally wrong. Further the contention of appellant that the super area had been reduced but the said amount had not been adjusted is totally wrong as the constructed area had been increased and no additional cost increased area had been charged from the appellant. In compliance of judgment passed by the RERA Authority, the respondent had issued letters dated 03-09-2020 and 17-09-2020 for payment of balance cost of the flat along with additional interest and delay charges.

4.9 It has been further submitted that against the judgment and order dated 03-07-2020 passed by the RERA Authority, the respondent had filed the Appeal No. 455/2020 before this Hon'ble Tribunal challenging the order upto the extent of awarding the MCLR+1 per cent interest on the deposited amount of appellant. It is further submitted that in compliance of section 43(5) of the RERA Act the respondent had deposited the Bank Draft of Rs. 5,48,140/- i.e. 100% of decretal amount before this Hon'ble Tribunal and as such the question of adjusting the said amount in the balance cost of the flat does not arise. It is further submitted that the respondent had correctly directed the appellant to deposit the Misc. Charges and submit the stamp paper of Rs. 3,22,000/- for execution of sale deed and the appellant is fully responsible to pay the balance cost of the flat along with additional interest and delay charges and submit the stamp paper for execution of sale deed.

4.10 It has been submitted that in the demand letter dated 01-03-2014 it had been specifically mentioned that on the assurance of the parishad the most of the purchasers had been adjusted in the Alaknanda Enclave, the flat no. 3/T9-101 had been allotted to the appellant in the Alaknanda Enclave and the said allotment had been accepted by the appellant and deposited the installments of estimated cost of the flat and after final costing of the flat the final allotment letter had been issued to the appellant. Further after issuing the demand letter dated 01-03-2014 the appellant never raised any objections regarding allotment of flat in the Alaknanda Enclave upto 13-08-2019. After final costing of the flat and after issuing the final allotment letter dated 02-04-2018 the appellant had not deposited the balance cost of the flat and not completed the formalities for execution of sale deed and in terms of allotment letter the

additional interest and delay charges had been imposed upon the appellant. Only in order to save himself from the liability of additional interest and delay charges the appellant moved applications for changing of his flat in the Mandakini Enclave. It is further submitted that from perusal of prayer clause it is clear that the appellant had not made any prayer for allotment of flat in the Mandakini Enclave and as such the appellant cannot raise the said issue in the present appeal.

4.11 It has been submitted that the appellant had failed to show the perversity in the order passed by the RERA Authority. The appellant is not entitled to get any relief claimed in the appeal and the appeal of appellant is liable to be dismissed with cost.

5. Heard Shri Abhinav Singh, learned counsel for the appellant and Shri N.N. Pandey, learned counsel for the respondent on appeal and objections.

6. On the basis of above pleadings and submissions, we frame following issues:

(i) Whether the project is delayed?

(ii) What rate of interest is required to be paid by the allottee to promoter for delay in payment of installments and by promoter to allottee interest for delayed possession?

(iii) Whether allottee is entitled to stop payment of rest installment if project is delayed?

(iv) Whether appellant-allottee is entitled to the execution of sale deed and possession of Flat No. 2A/T9-101, Mandakini Enclave in his favour by the respondent-promoter?

(v) Whether respondent-promoter has charged Rs. 4,32,168/- as increase in cost while super area has been decreased from 126.46 sq. mtr. to 123.19 sq. mtr.?

(vi) Whether the promoter is required to issue fresh offer of possession?

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

7. **Issue no. (i)** requires us to examine as to whether the project of the respondent-promoter is delayed.

7.1 The appellant applied for allotment of 2BHK+Study flat in Mandakini enclave, by depositing the registration/booking amount of Rs. 1,80,000/- in pursuance to the Scheme launched by the appellant/promoter in the year 2013. Respondent allotted a Flat No. 3/T-9-101 (2BHK+Study) in Alaknanda Enclave by means of allotment letter dated 01.03.2014 at the estimated cost of Rs. 37,50,000/-. A demand letter dated 01.09.2016 was issued to the appellant. As per clause 2.1 of the Registration Booklet, the proposed period of completion of construction was 30 months from the date of issuance of demand letter.

7.2 Obviously, the possession of the flat in question ought to have been delivered within assured time period of 30 months i.e. on or before 01.09.2016. Although the period specified as 30 months is only an estimated time and there will always be some variation in the actual time, but an allottee cannot be made to wait indefinitely for handing over of the possession merely on the ground that the time specified is an estimated period. We are of the view that the possession ought to have been given within 30 months.

7.3 The Hon'ble Supreme Court has time and again held that where the buyer has to suffer on account of delay beyond a reasonable time then he/she has to be compensated either by way of interest or penalty and in this connection ***Hon'ble Supreme Court in M/s. Fortune Infrastructure Vs. Trevor Dlima & Ors (2018) 5SCC 442*** observed as follows –

> *"……..Moreover, a person cannot be made to wait indefinitely for the possession of the flats allotted to them and they are entitled to seek the refund of the amount paid by them, along with compensation. Although we are aware of the fact that when there was no delivery period stipulated in the agreement, a reasonable time has to be taken into consideration……"*

7.4 Hon'ble Supreme Court in ***Civil Case No. 3182 of 2019 Kolkata West International City Pvt. Ltd. Vs. Devashish Rudra , 2019(6) SCALE 462*** has observed that :-

> *"…… it would be unreasonable to require a buyer to wait indefinitely for the possession ……"*

7.5 The appellant received a revised offer of possession letter on 17.09.2020, whereby, an amount of Rs. 17,78,577 towards the interest and other charges and an amount of Rs. 75/- per day w.e.f. 01.07.2018 till deposit of total amount

has been demanded apart from stamp duty of Rs.3,22,000/-. The appellant feeling aggrieved against the action of the respondent-promoter sought direction for possession along with amenities as per the Brochure and the interest for the delay period. On examination, we found that neither in the final demand letter nor in the corrected letter anything has been mentioned about the receipt of the OC/CC from the competent authority by the promoter/respondent. It is admitted fact that respondent-promoter received the OC/CC regarding project in question on 18.03.2019.

7.6 We are of the considered view that respondent/promoter failed to give possession of the booked unit within the time prescribed in the Registration Booklet within 30 months i.e. on or before 01.09.2016. Hence, we hold that the project of the respondent/promoter was delayed. Appellant has opted to remain in the project. Therefore, as per Section 18(1) of RERA Act, 2016, Appellant allottee is entitled for delay interest from the date of assured possession i.e. from 01.09.2016 till the actual date of delivery of possession at the prescribed rate of interest @ MCLR+1% to be paid by the respondent promoter. Further, it is clarified that respondent promoter is not entitled for any relaxation of any covid period as force majeure because the mentioned period does not fall within the period of completion/delivery of possession. Such relaxation cannot be allowed for the default period of promoter. The **issued no. (i) is decided** accordingly.

8. **Issue no. (ii)** requires us to examine as to what rate of interest is required to be paid by the allottee to promoter for delay in payment of installments and by promoter to allottee interest for delayed possession?

8.1 Section 18 (1) of the Act clearly provides that if an Allottee wishes to withdraw from the Project on the ground that the Promoter is unable to give possession in accordance with the Agreement for Sale within the date specified therein, then the Promoter shall return the amount received from the Allottee in respect of that property with interest and compensation on Allottees' demand. The right of exercising the option of either staying in the Project or for withdrawing from it lies only with the Allottee under the provisions of Section 18 (1) of the Act. Further, Section 19(4) of the Act 2016 gives right to the allottees to claim refund along with interest and/or

compensation in case the Promoter fails to give possession of the apartment in accordance with the terms and conditions of Agreement for sale.

8.2 The Hon'ble Bombay High Court in the case of ***Neelkamal Realtors Suburban Pvt. Ltd. And others Vs. Union of India (supra)*** observed that the requirement to pay interest in pursuance to the provisions of Section 81(1)(b) of the Act 2016 is not a penalty as the payment of interest is compensatory in nature in the light of the delay suffered by the allottee who has paid for his apartment but has not received possession of it. The obligation imposed on the promoter to pay interest till such time as the apartment is handed over to him is not unreasonable. The interest is merely compensation for use of money.

8.3 Recently, the Hon'ble Supreme Court, while dealing with the provisions of Section 18 of the Act, 2016, in the case of ***M/s Imperia Structures Ltd. Vs. Anil Patni and another***, Civil Appeal Nos. 3581-3590 of 2020, decided on 02.11.2020, vide para 23, was pleased to observe that the right so given to the allottee is unqualified and if availed, the money deposited by the allottee has to be refunded with interest at such rate as may be prescribed and the proviso to Section 18(1) contemplates a situation where the allottee does not intend to withdraw from the Project. In that case he is entitled to and must be paid interest for every month of delay till the handing over of the possession. It is upto the allottee to proceed either under Section 18(1) or under proviso to Section 18(1).

8.4 U.P. Government framed "Uttar Pradesh Real Estate (Regulation and Development) (Agreement for Sale/Lease) Rules, 2018" (hereinafter referred to as Rules, 2018), wherein under 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. These Rules are extracted below :-

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.

Rule 9.3

The Allottee shall be considered under a condition of Default, on the occurrence of the following events :

Rule 9.3(i)

In case the Allottee fails to make payments for 2(two) consecutive demands made by the Promoter as per the Payment Plan annexed hereto, despite having been issued notice in that regard the Allottee shall be liable to pay interest to the promoter on the unpaid amount 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. The Promoter must not be in default to take this benefit.

8.5 On examination, we find that these Rules-2018 notified by U.P. Government are in consonance with the definition of interest as provided in Section 2(za) of the Act, in as much as that the interest chargeable from the allottee by the promoter, in case of default in payment as per demand, is equal to the rate of interest which the promoter is liable to pay to the allottee, in case of default/delayed possession on the part of promoter.

8.6 Further the allottee deposit amount under the hope and trust that they will get the flats within the time schedule advertised at the initial stage. There may be certain cases where allottee might be residing in rented houses and they might have managed their financial position in such a manner that after deposit of amount, they will get flats of their own and thereafter they will be free from payment of rent as then they will shift from rented houses to allotted flats but on account of inordinate delay in delivery of possession of allotted flats, their financial calculations and legitimate expectations stand frustrated causing various types of financial losses to them. On

the other hand once the promoter/builder made offers and same are accepted by the allottees with legitimate expectation, the obligation cast upon the promoter/builder is to complete the same within the time schedule mentioned in the offer and if they fail to discharge the same the affected allottees are entitled to the interest for delayed delivery of possession, as the allottees have parted with money which was earning interest. To that extent for the delayed period, the allottees are entitled to interest, which in our considered view will be in accordance with the principles of equity.

8.7 It is our considered view that drawing light from the Rules of 2018, and the fact that often an allottee/buyer has to supplement his savings by taking loan at the MCLR percent interest (compound), the simple rate of interest at MCLR+1 percent balances the equities and is in line with the word and spirit of the Act 2016 and can be taken as "interest at such rate as may be prescribed" as mentioned in Sections 12,18 and 19 of the Act, till the rate of interest for the purpose is notified by the State Government.

8.8 Provision of Section 2(za) is an exception to the general rule of prescribed rate of interest MCLR+1% payable by promoter to allottee either a delay interest for delayed possession or in case of refund of amount under Section 18(1) of RERA Act 2016. Section 2(za) of Act, 2016 is extracted:

"2*(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.*

Explanation.- *For the purpose of this clause-*

(i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;

(ii) the interest payable by the promoter to the allottee shall be from the date, the promoter received the amount or any part thereof, till the date, the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid"

If promoter has charged more interest than MCLR+1% from the allottee for any delayed payment regarding consideration, then promoter will be charged with the same rate of interest in terms of Section 18(1) of RERA Act, 2016.

8.9 The appellant has submitted that respondent-promoter charged total Rs.9306/- as delay interest from the appellant-allottee for two delayed payment of instalments. Promoter has admitted in written submission filed before Regulatory Authority that Rs.9306/- has been charged as delay interest from the allottee for delayed payment of instalment due on 31.03.2014 paid on 11.04.2014 (11 days delay) and due on 30.09.2015 paid on 08.10.2015 (8 days delay). Deduction of Rs. 9306/- as delay interest has been mentioned in the revised offer of possession dated 03.09.2020 issued by respondent promoter. It is also admitted fact that this delay interest has been charged @ 13.5%, which is certainly more than prescribed rate of interest MCLR+1%.

8.10 It is also admitted fact that respondent promoter also filed a cross Appeal No. 455/2020 (U.P. Awas Evam Vikas Parishad Vs. Raj Bahadur Yadav), challenging order of Regulatory Authority dated 03.07.2020, seeking relief for quashing of order for payment of delay interest @ MCLR+1% from 01.09.2016 till offer of possession. Appeal No. 455/2020 has been decided by the Bench No. 1 of this Tribunal vide oder dated 24.03.2022, by which appeal no. 455/2020 has been dismissed, confirming the order of Regulatory Authority. It has been observed by the Tribunal in answering to issue no. 4 in the order/judgment dated 24.03.2022 that rate of interest for delay @ MCLR+1% balances the equities and in consonance with the word and spirit of the Act. Thus, Tribunal has upheld the findings of Regulatory Authority regarding payment of delay interest @ MCLR+1% from promoter to allottee for delayed period. Therefore, as per the effect of Section 2(za) of RERA Act, 2016, promoter can also not charge the interest more than MCLR+1% for the delayed payment of instalment.

8.11 On the basis of above discussion and analysis, we are of the view that respondent promoter has wrongly charged delay interest from allottee @ 13.5%. Respondent promoter should have charged delay interest @ MCLR+1%. Charging of interest @ 13.5% is in violation of Section 2(za) of RERA Act, 2016, as per above discussion.

8.12 On the basis of aforesaid analysis the **issue no. (ii) is decided** accordingly.

9. **Issue no. (iii)** requires us to examine as to whether allottee is entitled to stop payment of rest installments if project is delayed.

9.1 On deeply examining the provisions of Chapters II, III and IV, it is evident that the allottee is entitled to know the time period at the time of booking/issuance of allotment letter regarding sanctioned plans, layout plans along with specifications approved by the competent authority and such other information as provided under the Act, Rules and Regulations made thereunder or the agreement for sale signed

with the promoter, like water supply, electricity and obtaining of OC or CC or both. The allottee is also entitled to know stage-wise time schedule of completion of the project including other amenities and services as agreed to between the promoter and the allottee in accordance with terms and conditions of the agreement for sale. The allottee is also entitled to claim the possession of apartment, plot or building. The allottee shall be entitled to claim refund of amount paid along with interest at such rate as may be prescribed and compensation as provided under the Act from the promoter, if the promoter fails to comply or is unable to give possession of the apartment, plot or building in accordance with the terms of agreement for sale or due to discontinuance of his business as a developer on account of suspension or revocation of registration under the provisions of the Act. The allottee is also entitled to have necessary documents and plans after handing over the physical possession of the apartment or plot or building by the promoter. For the purpose of registration of project the promoter is also required under Section 4(ℓ)(D) to submit a declaration supported by an affidavit to the effect that seventy percent of the amounts realized for the real estate project from the allottees, from time to time, shall be deposited in a separate account to be maintained in a scheduled bank to cover the cost of construction and the land cost and shall be used only for that purpose provided that the promoter shall withdraw the amounts from the separate account , to cover the cost of the project, in proportion to the percentage of completion of the project and the promoter shall get his accounts audited within six months after the end of every financial year by a chartered accountant in practice.

9.2 If any promoter is not informing the progress of the project to its allottees and promoter has failed to deliver the possession of the unit on or before the date of assured possession as per agreement due to delay in project, then an allottee can always stop payment to the promoter till the milestones disclosed by the promoter have not been achieved and he cannot be said to be a defaulter in such situation.

9.3 It is relevant to mention here that no Promoter can compel an allottee to settle and make payment towards any demand in the name of final settlement without obtaining OC/CC from the competent authority. If an allottee does not fulfill the said demand to make payment in pursuance of the final demand in the absence of OC/CC, cannot be said to be a defaulter and no interest can be claimed/charged by a promoter on the said amount.

9.4 It is admitted fact that respondent had to complete the project on or before 01.09.2016. It is also admitted fact that respondent promoter received OC/CC regarding the project dated 18.03.2019. Rules 9.1(i), 9.2(i) of RERA Rules 2018 deals with the issue of delayed project, promoter's default and right of allottee:-

> ***9.1(i)*** *Promoter fails to provide ready to move in possession of the [Apartment/Plot] to the Allottee within the time period specified in Para 7.1 or fails to complete the Project within the stipulated time disclosed at the time of registration of the Project with the Authority. For the purpose of this Para, 'ready to move in possession' shall mean that the apartment shall be in a habitable condition which is complete in all respects including the provision of all specifications, amenities and facilities, as agreed to between the parties, and for which occupation certificate and completion certificate, as the case may be, has been issued by the competent authority;*
>
> ***9.2(i)*** *Stop making further payments to Promoter as demanded by the Promoter. If the Allottee stops making payments, the Promoter shall correct the situation by completing the construction milestones and only thereafter the Allottee be required to make the next payment without any interest;*

Above rules clarify that if project is delayed & promoter is in default, in such condition, the allottee can stop the payment and promoter can ask next payment, without any interest, only after completing the project and receiving OC/CC.

9.5 On the basis of the aforesaid analysis we are of the considered view that an allottee cannot be said to be a defaulter, if he stops making payment of installments to promoter in a delayed project till the promoter completes project/receives OC/CC. **Issue no (iii) is decided** accordingly.

10. **Issue no. (iv)** requires us to examine as to whether appellant-allottee is entitled to the execution of sale deed and possession of Flat No. 2A/T9-101, Mandakini Enclave in his favour by the respondent-promoter.

10.1 Appellant-allottee has submitted that he applied for the allotment of a 2BHK+Study flat in Mandakini Enclave for which he submitted duly filled form along with Demand Draft dated 11.03.2013 as initial booking amount of Rs.1,80,000/-.

Respondent-promoter has submitted that eligibility draw for allotment of flat held on 12.02.2014 and the appellant allottee declared successful for the allotment of flat no. 3/T9-101, Alaknanda Enclave. On the basis of estimated cost of Rs.37,50,000/-, the demand letter dated 01.03.2014 was issued in which period of instalments were mentioned. The last instalment was to be paid on 01.01.2016. Demand letter dated 01.03.2014 issued by the respondent promoter, mentioning the allotment of flat no. 3/T9-101 in Alaknanda Enclave after adjustment. Letter dated 18.04.2011 reveals that appellant-allottee has deposited different sum of amount on 11.04.2014, 04.08.2014, 08.10.2014, 06.01.2015, 08.06.2015, 08.10.2015 and 02.01.2016 in compliance of demand letter regarding Flat No. 3/T9-101 of Alaknanda Enclave without any protest.

10.2 The allottee has filed copy of letters regarding the allotment/change of flat in Mandakini Enclave. Copy of first letter dated 12.03.2018 has been filed. No copy of letter has been filed by the appellant-allottee regarding the allotment/change of flat in Mandakini Enclave before 12.03.2018. Appellant-allottee has deposited instalments till 02.01.2016 regarding allotment of Flat No. 3/T9-101 of Alaknanda Enclave. Perusal of complaint filed before the Regulatory Authority also reveals that allottee has not sought any relief regarding the allotment of flat in Mandakini Enclave. Further, all instalments have been deposited by the appellant-allottee in compliance of demand letter issued regarding allotment of Flat No. 3/T9-101 in Alaknanda Apartment. It is also pertinent to mention that an endeavour was made by respondent promoter by offering Flat No. 2A/t9-101 of Mandakini Enclave vide letter dated 24.08.2020. Appellant-allottee replied vide letter dated 04.09.2020, but later on change of flat from Alaknanda to Mandakini Enclave could not be materialized between parties.

10.3 On the basis of above discussions and analysis, we are of the view that plea of change of flat from Alaknanda to Mandakini Enclave is not tenable because-

(i) Appellant-allottee has sought this relief for the first time in this appeal

(ii) Appellant-allottee deposited major part of consideration in compliance of demand letter issued by the respondent-promoter regarding allotted unit of Alaknanda Enclave, which means appellant-allottee himself acquiesced to the allotment of unit in Alaknanda Enclave.

10.4 The **issue no. (iv) is answered** accordingly.

11. **Issue no. (v)** requires us to examine as to whether respondent-promoter has wrongly charged Rs. 4,32,168/- as increase in cost due to increase of 1.98 sq. mtr. in constructed area from 109.30 sq. mtr. (mentioned in allotment/first demand letter dated 01.03.2014) to 111.26 sq. mtr. (mentioned in demand letter dated 01.11.2019) without adjusting the decrease in cost due to the decrease of 3.27 sq. mtr. in super area from 126.46 sq. mtr. (mentioned in letter dated 01.03.2014) to 123.19 sq. mtr. (mentioned in letter dated 01.11.2019).

11.1 Perusal of demand letter dated 01.11.2019 reveals that increased cost of construction has been mentioned as Rs.41,82,168/- while approximate cost Rs. 37.50 lakh was mentioned in allotment/first demand letter dated 01.03.2014. Actual increased cost of construction has been mentioned in letter dated 01.11.2019 at Rs.4,32,168/- (for the increased 1.96 sq. mtr. constructed area), but there is no mention in the letter dated 01.11.2019 about the cost decreased due to decrease in super area around 3.27 sq. mtr.

11.2 Provisions of RERA Act, 2016, RERA Rules, 2016, RERA Rules, 2018, provisions of Apartment Act,2010, use the term, 'carpet area' and 'common area' for mentioning the measurement of any apartment/plot. Office order of U.P. Real Estate Regulatory Authority dated 06.12.2023 mentions at the time of sale of any flat/apartment, the term, 'super area', is being used for the measurement of area while no concept of super area has been recognized by the RERA Act, 2016. Clause 1.7 of the proforma of agreement to sell prescribed in RERA Rules, 2018, is extracted below:-

> *"1.7 The Promoter shall confirm to the final carpet area that has been allotted to the Allottee after the construction of the Building is complete and the completion certificate/occupancy certificate (as applicable) is granted by the competent authority, by furnishing details of the changes, if any, in the carpet area. The total price payable for the carpet area shall be recalculated upon confirmation by the Promoter. If there is reduction in the carpet area then the Promoter shall refund the excess money paid by Allottee within forty-five days with annual interest at the rate prescribed in the Rules, from the date when such an excess amount was paid by the Allottee. If there is any increase in the carpet area, which is not more than three percent of the carpet area of the apartment, allotted to Allottee, the Promoter may demand that from the Allottee as per the next milestone of the Payment Plan as provided in Schedule*

C. All these monetary adjustments shall be made at the same rate per square meter/square foot as agreed in para 1.2 of this Agreement."

11.3 Clause 1.2 (ii), (iv) and Clause 1.8 (i) to (iii) provides the similar provisions which are extracted as below:-

"1.2 (ii) The Total Price above includes Taxes (consisting of tax paid or payable by the Promoter by way of GST and other taxes which may be levied, in connection with the construction of the Project payable by the Promoter, by whatever name called) up to the date of handing over the possession of the apartment/plot to the Allottee and the Project to the association of Allottees or the competent authority, as the case may be, after obtaining the completion certificate:

Provided that in case there is any change / modification in the taxes, the subsequent amount payable by the Allottee to the Promoter shall be increased/reduced based on such change / modification:

Provided further that if there is any increase in the taxes after the expiry of the scheduled date of completion of the Project as per registration with the Authority, which shall include the extension of registration, if any, granted to the said Project by the Authority, as per the Act, the same shall not be charged from the Allottee;

(iv) The Total Price of [Apartment/Plot] includes recovery of price of land, construction of [not only the Apartment but also] the Common Areas, internal development charges, external development charges, taxes, cost of providing electric wiring, electrical connectivity to the apartment, lift, water line and plumbing, finishing with paint, marbles, tiles, doors, windows, fire detection and fire fighting equipment in the Common Areas, maintenance charges as per Para 11 etc. and includes cost for providing all other facilities, amenities and specifications to be provided within the [Apartment/Plot] and the Project.

1.8 (i) The Allottee shall have exclusive ownership of the [Apartment/Plot];

(ii) The Allottee shall also have undivided proportionate share in the Common Areas. Since the share/interest of Allottee in the Common Areas is undivided and cannot be divided or separated, the Allottee shall use the Common Areas along with other occupants, maintenance staff etc., without causing any inconvenience or hindrance to them. It is clarified that the Promoter shall hand over the Common Areas to the association of Allottees after duly obtaining the completion certificate from the competent authority as provided in the Act;

(iii) That the computation of the price of the [Apartment/Plot] includes recovery of price of land, construction of [not only the Apartment but also] the Common Areas, internal development charges, external development charges, taxes, cost of providing electric wiring, electrical connectivity to the apartment, lift, water line and plumbing, finishing with paint, marbles, tiles, doors, windows, fire detection and firefighting equipment in the Common Areas, maintenance charges (as per Para 11 etc.) and includes cost for providing all other facilities, amenities and

specifications to be provided within the [Apartment/Plot] and the Project;"

11.4 Clause 1.2 (iv) and Clause 1.8 (iii) clarify that the computation of price of the apartment includes price of land, construction of apartment, common areas, internal and external development charges, taxes etc.

11.5 Combined perusal of above provisions clarify that the term, 'super area', which is generally used by the promoter/builder, in allotment letter as well as agreement, is nothing but carpet area + common area. Therefore, when a measurement of a saleable apartment/plot is mentioned and consideration is mentioned in allotment/agreement/conveyance deed, it includes carpet area as well as common area. Carpet area + common area is called super area in the language mentioned in the allotment/agreement/conveyance deed.

11.6 Clause 1.7 (supra) clearly mentions that if there is reduction in the carpet area, then the promoter shall refund the excess money to the allottee vice versa. If there is any increase in the carpet area, not more than 3% of carpet area, the promoter may demand that from the allottee. If this clause 1.7 is read and analysed with clause 1.2 (iv)/1.8 (iii), then it is clear that the valuation of an apartment, though, it is mentioned as valuation of carpet area but certainly such valuation of apartment includes carpet area + common area. In such condition, the promoter can ask for further amount if area is increased, vice versa if area either of carpet area or common area is decreased, then the promoter has to refund the amount proportionate to the area decreased.

11.7 Above analysis and discussion clarify that it is necessary at the time of final costing of flat/apartment/plot, increased or decreased in either carpet area or common area, relative cost of increased or/and decreased cost should be calculated respectively and final costing should be done after adjusting the cost of the deliverable carpet area as well as common area. Final demand letter should be issued to the allottee by the promoter for final payment of rest consideration amount after adjusting increased or decreased area in the value of carpet area or common area.

11.8 The final demand letter issued by the promoter to the allottee in the present matter dated 01.11.2019, has only mentioned increase of cost of constructed area. It is admitted to the promoter that common area has been decreased. Neither calculation of cost regarding decrease in common area has been mentioned in the demand letter dated 01.11.2019, nor any amount has been shown to be adjusted against the

increase in the cost due to the increase in constructed area because, the promoter has only charged Rs.4,32,168/- as increase in cost of construction due to the increase in constructed area from 109.30 sq. m. to 111.26 sq. m. (increase of 1.96 sq. m.), while it has been clearly mentioned by the promoter in the letter dated 01.03.2014 that super area was 126.46 sq.m., while super area has been mentioned as 123.19 sq. m. in the letter dated 01.11.2019 but no calculation has been given regarding decreased cost of super area for the decreased super area around 3.27 sq.m. The decrease in the common area (super area) certainly affects the final measurement of the saleable apartment. Any final demand letter issued by the promoter without adjusting the cost of the decreased common area is not a valid offer of possession. Therefore, we are of the view that the demand letter dated 01.11.2019 (amended) is not a valid demand letter/offer of possession. The **Issue No.(v) is answered** accordingly.

Answer to Issue No.(vi):-

This issue involves the discussion and analysis regarding the fact whether the promoter is required to issue fresh offer of possession to the allottee.

12. Answer to Issue No.(v) clarifies that the respondent promoter has issued an invalid offer of possession dated 01.11.2019 without adjusting the cost of the decreased common area with the increased cost of the constructed area. Final demand letter dated 01.11.2019 is not a valid demand letter. Therefore, the respondent promoter is under obligation to issue a fresh offer of possession after adjusting the cost of increased constructed area in relation to the cost of the decreased total area of carpet area + common area (supra). **Issue No.(vi) is answered** accordingly.

Answer to Issue No.(vii):-

13. The answer to issue no. (i) clarifies that the project is delayed and appellant-allottee is entitled for delay interest from 01.09.2016 till actual delivery of possession @ MCLR+1%. Answer to issue no. (ii) clarifies that respondent-promoter has wrongly charged delay interest from the allottee @ 13.5%. The respondent-promoter should have charged delay interest on delay payment of installment @ MCLR+1%. Answer to issue no. (iii) clarifies that appellant allottee has rightly stopped the payment of installments due to delay in project. Answer to issue no. (iv) clarifies that appellant allottee is not entitled to the execution of sale-deed and possession of flat of Mandakni Enclave. Appellant-allottee is entitled for the

execution of sale-deed and possession of allotted unit/flat 3/T-9-101 (2BHK + study) in Alaknanda Enclave. Answer to issue no. (v) clarifies that if respondent promoter has charged for the increased constructed area at Rs. 4,32,168/- as increased cost due to increase in constructed area, then respondent promoter should have also been evaluated and adjusted the cost of decreased common area with the increased cost of constructed area in the final offer of possession. Therefore, mentioning only increased cost of the constructed area due to increase in constructed area is not valid offer of possession because it has not mentioned the decreased cost of common area due to decrease in common area (super area).

13.1 The answer to issue no. (vi) clarifies that due to the above-mentioned infirmity and invalidity in the offer of possession, respondent promoter is required to issue fresh demand letter, mentioning the above-mentioned calculations due to the decrease and increase in cost due to decrease and increase in common and constructed area respectively. The learned Regulatory Authority has wrongly excluded Covid period. The learned Regulatory Authority has failed to adjudicate the adjustment of increase and decrease in the cost of constructed and common area (super area). Consequently, respondent promoter should have been ordered to issue fresh demand letter/offer of possession to the appellant allottee accordingly. Therefore, impugned order dated 03.07.2020 suffers from illegality and perversity.

13.2 The **issued no. (vii) is answered** accordingly.

14. On the basis of above discussions and analysis, **we allow the present appeal** by passing following orders: -

(i) The impugned order dated 03.07.2020 passed by UP Real Estate Regulatory Authority in Complaint No. LKO162/10/1005/2019 (Raj Bahadur Yadav Vs. U.P. Awas Evam Vikas Parishad, Lucknow) is set aside and quashed.

(ii) The respondent promoter is directed to pay delay interest to appellant allottee on the deposited amount @ MCLR+1% from 01.09.2016 till actual delivery of possession in terms of Section 18(1) of the RERA Act, 2016.

(iii) The respondent promoter is directed to compute the cost of the decreased common/super area and off set it with increased constructed/carpet area of the unit at the rate per sq. mtr., charged from the appellant, thereafter, issue fresh demand notice/offer of possession.

(iv) The respondent promoter is directed to execute the conveyance deed in favour of appellant allottee after receiving stamp fee, registration charges etc. for execution of registered conveyance deed and deliver possession of the unit to the appellant allottee in accordance with law.

(v) The respondent promoter is directed to comply the above orders within 45 days from the uploading date of this order.

(vi) The cost of litigation is assessed at Rs. 10,000/- to be paid by the respondent to the appellant-allottee.

Dated: 19.05.2026
Tanveer/- **(Devindar Singh Chaudhry)** **(Sanjai Khare)**