BENCH NO.1.

THE UTTAR PRADESH REAL ESTATE APPELLATE TRIBUNAL

AT

LUCKNOW.

Appeal No.274 OF 2023

Naresh Chandra Shastri ……. Appellant.

Vs.

Avadh Infraland Ltd. ……. Respondent.

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

1. Heard Sri Shailendra Kumar Singh, learned counsel for appellant. The case proceeded *ex parte* against all the respondents.

2. The appellant/allottee by the present appeal is raising challenge to the judgment and order dated 10.08.2022, passed by the UP Real Estate Regulatory Authority, at Lucknow (for short, Regulatory Authority), in Complaint No. LKO162/01/87429/2022, whereby, the relief for refund came to be allowed, however, interest thereon was not directed to be paid in terms of Section 18(1) of Real Estate (Development and Regulation) Act, 2016 (for short, Act 2016).

3. The short question that arises for consideration is whether appellant was entitled to interest at the prescribed rate on his deposit, upon refund due to default of the promoter in completing the project.

4. The facts, *inter se,* parties are not in dispute.

5. The appellant booked a Unit (flat) on 24.01.2014, in the project, launched by the first respondent in the name and style, Awadh Avenue project, Amar Shaheed Path, Lucknow. The appellant deposited Rs.10,00,000/- towards the booking amount. The sale consideration of the unit was approximately at Rs.40,00,000/-. It is submitted that the respondent had assured the appellant that the unit would be handed over to him within 36 months but

not later than 06.05.2018. It appears that the project got inordinately delayed, rather, it was not executed on the ground. Aggrieved, appellant was constrained to institute a complaint under Section 31 of Act 2016, before the Regulatory Authority, seeking refund of his deposit along with interest thereon. The first respondent appeared and filed his objections. Further, the first respondent assured the Regulatory Authority that the deposit shall be refunded and interest thereon shall be paid, which came to be duly recorded in the order dated 16.10.2024. It appears thereafter that the first respondent did not appear in the proceedings, the complaint came to be allowed by the impugned order directing refund of the amount, however, it appears that inadvertently the payment of interest on the quantum of deposit was not transcribed. It is informed that several orders in respect of other allottees of the same project came to be passed by the Regulatory Authority, wherein, directions came to be issued for refund of deposit along with interest thereon. The orders have been placed on record by the appellant along with the rejoinder affidavit.

6. The appellant has instituted the present appeal, seeking possession of the unit, as it appears that the first respondent had assured that the unit would be made available. The appellant, accordingly amended the appeal, which came to be allowed by order dated 28.07.2025 by bringing on record second and third respondent. It is submitted that the second respondent had subsequently taken over the project and third respondent is the land owner. In view thereof, relief of possession of the unit was being sought by the appellant against all the respondents jointly and severally.

7. It appears thereafter the construction of the project was not being executed on the ground. Consequently, appellant filed other amendment application seeking refund of his deposit and interest thereon. The amendment application came to be allowed vide order dated 09.12.2025. In this backdrop, at this stage learned counsel for appellant submits that the appeal is confined to refund and interest thereon, accordingly, it is urged that the appellant would be satisfied in the event the impugned order dated 10.08.2022 directing refund of deposit is accordingly modified.

8. In the given facts it is not in dispute that the project till date remains incomplete, in terms of Section 18(1) of RERA Act, 2016, appellant

allottee has an unqualified and unconditional right to withdraw from the delayed project and seek refund of his amount and interest thereon, including, compensation.

9. Section 18 (1) of Act, 2016 is extracted

Section 18(1):

> ***"(1) If the promoter fails to complete or is unable to give possession of an apartment, plot or building,—***
>
> *(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or*
>
> *(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,*
>
> ***he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:***
>
> *Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed.*

10. Under sub-Section (1) of Section 18, the timeline for the allottee to raise a demand/withdrawal from the project is incorporated under the provision itself. It is mandated that in case the promoter 'fails to complete' or 'is unable to give possession' of an apartment, plot or building, as the case may be, the promoter shall be liable on demand of the allottee, in case the allottee wishes to withdraw from the project, to **return** the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf, including, compensation in the manner as provided under the Act. In the event completion of the project or possession of the unit, being offered to the

allottee by the promoter belatedly, proviso to Section 18(1) would become operative i.e. such an allottee, who has continued in the delayed project, would be entitled to interest on his deposit for the period of delay till handing over possession of the unit. The expression '**shall**' makes the proviso to Section 18(1) mandatory. Therefore, appellant allottee would be entitled to refund of his deposited amount along with interest, as he seeks to withdraw from the incomplete and belated project. The question is accordingly answered.

11. Having regard to the facts of the case and for the reasons assigned herein above, the appeal is **disposed of,** by passing the following orders :

(i) The appellant shall be entitled to refund of his deposited amount at Rs.10,00,000/- along with interest thereon at MCLR+1 percent in terms of Section 18(1) of RERA Act, 2016, till the date of payment to be made by the respondent within 45 days from the date this order is uploaded on the portal of the Tribunal.

(ii) The impugned order dated 10.08.2022 in Complaint No. LKO162/01/87429/2022, shall stand modified to the extent herein above.

(iii) No order as to costs.

Dated : 12.05.2026
Irfan

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