

(Reserved)
COURT NO-2

**THE UTTAR PRADESH REAL ESTATE APPELLATE TRIBUNAL
AT LUCKNOW.**

Appeal No.358 of 2023

U.P. Awas Evam Vikas Parishad.

...Appellant.

Versus

Amit Kant Awasthi

...Respondent.

Hon'ble Sanjai Khare, Judicial Member.

Hon'ble Devindar Singh Chaudhry, Technical Member.

1. Heard Sri Anurag Singh, learned counsel for appellant and Dr. Azhar Ikram, learned counsel for respondent.
2. The present appeal has been filed assailing the order dated 26.08.2022, passed by the Adjudicating Officer, U.P.Real Estate Regulatory Authority, Lucknow, in Complaint No.ADJ/LKO162/04/93743/2022, granting delay interest by way of compensation.
3. Learned counsel for appellant promoter, at the outset, submits that in view of the decision rendered by the Hon'ble Supreme Court in the case of **M/s Newtech Promoters and Developers Pvt.Ltd. Vs. State of U.P. and others, 2021 SCC Online SC, 1044**, the Adjudicating Officer would lack inherent jurisdiction in granting delay interest of a delayed project. He further submits that the forum for seeking the relief was before the Regulatory Authority.
4. Main question involved in this appeal is whether the impugned order dated 26.08.2022, passed by the learned Adjudicating Officer, Lucknow, is without jurisdiction, and/or, whether in the given facts allottee/respondent is entitled for delay interest.
5. Learned counsel for respondent, on being confronted with the proposition of law does not dispute that the impugned order is without jurisdiction. He, however, submits that it is not being disputed by the appellant that the project was inordinately delayed beyond the promised date, accordingly, the respondent would be entitled to delay interest on the deposit in terms of

Section 18(1) of the RERA Act. He, therefore, submits that this Tribunal should settle the lis, inter se, parties in respect of the delay interest on admitted facts instead of remanding the parties to adjudicate the matter afresh.

6. The appellant had launched a scheme in Vrindavan Yojna Part-4, Sector 17, Nilgiri Enclave Housing Colony for 640 flats. The appellant was duly allotted the Unit Flat No.17-AH/20/S10, and the sale consideration was paid as per terms and conditions of the agreement/brochure.
7. Learned counsel for appellant does not dispute that the due declared date for completion of the project was 30.08.2015, whereas, the offer of possession of the Flat (Unit) was made on 18.08.2017.
8. Since the period of delay in completing the project and offer of possession of the Unit is not under dispute, accordingly, no purpose would be served in relegating the parties to the appropriate forum for delay interest for the very same period in view of Sub section (6) of Section 44 read with Sub section (1) of Section 53 of RERA Act. The relevant provisions are extracted :

“Section 44. Application for settlement of disputes and appeals to Appellate Tribunal.

(1) to (5) x x x

(6) The Appellate Tribunal may, for the purpose of examining the legality or propriety or correctness of any order or decision of the Authority or the adjudicating officer, on its own motion or otherwise, call for the records relevant **to deposing of such appeal and make such orders as it thinks fit.”**

“Section 53 – Powers of Tribunal.—(1) The Appellate Tribunal shall not be bound by the procedure laid by the Code of Civil Procedure, 1908 (5 of 1908) but shall be guided by the principles of natural justice...”

9. The Hon’ble High Court in *Ratan Buildtech Private Limited Vs. Anil Kumar (RERA Appeal No. 72 of 2025), decided on 04.09.2025 (corrected vide order dated 09.09.2025)*, considered the scope and ambit of Section 44 of Act 2016 while answering question no. (i). The Court held that the Section has two parts, the first prescribing for an appeal and second part [Section 44(6)] is primarily a revisional power vested in the Tribunal for examining the legality or propriety or correctness of any order or decision of the Authority or the Adjudicating Officer, on its own motion or otherwise. It was held that Tribunal is vested with the appellate, as well as, revisional powers simultaneously. Para-31 of the judgement is extracted:

*“31. The question no. (i) is with regard to the scope of powers of the Tribunal in granting the interest directly in exercise of its appellate powers prescribed under Section 43. Heading of Section 44 of the RERA Act describes application for settlement of disputes and appeals to appellate tribunal, thus, the said Section has two parts, firstly prescribing for an appeal against an order of an Adjudicating Officer, which can be entertained and decided within the time prescribed and in the manner as prescribed, and the second power conferred on the Tribunal as mentioned in Section 44(6) which is basically revisional powers vested in the Appellate Tribunal for examining the legality and propriety and correctness of any order or direction of the Authority or the Adjudicating Officer on its own motion or otherwise, thus, the **Tribunal is vested with appellate as well as revisional powers. Although not mentioned in strict sense, it is clearly well settled that the Appellate Authority, wherever prescribed, is entitled to exercise the powers of the authority, against whose order, the appeal has been preferred at the appellate stage, more so, when no appreciation of evidence is required and only a mechanical exercise is to be performed by the Regulatory Authority. The said analogy also flows from the mandate of Order XLI Rule 24 of C.P.C., although not applicable in stricto sensu, however, the principles can be applied to hold that the authority has the power to pronounce judgment based upon the material on record, which according to the appellate court is sufficient to pronounce the judgment or finally determine the lis in the present case being award of interest.**”*

10. Accordingly, the question is answered. The appeal is being disposed of on admitted facts between the parties by passing the following orders :

- (i) The impugned order passed by the learned Adjudicating Officer dated 26.08.2022 is set aside and quashed.
- (ii) The respondent/allottee is entitled to delay interest w.e.f. 30.08.2015 to 18.08.2017 at MCLR + 1 percent per annum on the deposited amount.
- (iii) The amount deposited in compliance of Section 43(5) of RERA Act towards the delay interest shall be released in favour of the respondent after verifying from the Regulatory Authority as to whether the execution proceeding is pending. In the event the execution proceeding is pending, the amount so deposited shall be remitted to the Regulatory Authority.

(Devindar Singh Chaudhry)

(Sanjai Khare)

Date:- 11.08.2026

RajneeshPS/ Bhavesh)