BEFORE THE RAJASTHAN REAL ESTATE APPELLATE TRIBUNAL, JAIPUR

Appeal No.75/2023

In : Complaint No.RAJ-RERA-C-2022-5399

Om Metals Consortium Pvt. Ltd. Plot No.A-2, Near Revenue Building, Prithviraj Road, C-Scheme, Jaipur.

......Appellant/Non-Complainant

VERSUS

Sharad Kumar Bhandari S/o Mr. Ranjeet Singh Bhandari, R/o P-7, Tilak Marg, Ashok Nagar, Jaipur.

.....Respondent/Complainant

CORAM:

Mr. Justice Madan Gopal Vyas, Hon'ble Chairperson

Mr. Yudhisthir Sharma, Hon'ble Member (Judicial)

PRESENT:

For Appellant	:	Mr. S.S. Hora, Advocate assisted by
	:	Ms. Varuni Agarwal, Advocate
For Respondent	:	Mr. Prashant Daga, Advocate assisted by
	:	Ms. Khushi Kabra, Advocate and
	:	Mr. Anuraag Sharma, Advocate

O R D E R

Reserved on 18th August, 2026

Pronounced on 25th August, 2026

Per : Justice Madan Gopal Vyas, Hon'ble Chairperson

The present appeal has been filed under Section 44 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter be referred to as the "RERA Act, 2016") arises out of the impugned order dated 23/05/2023 passed by the Rajasthan Real Estate Regulatory Authority, Jaipur (hereinafter referred to as "Regulatory Authority") in Complaint No: RAJ-RERA-C-2022-5399.

2) As per memo of appeal, the brief facts of the case are that the complainant booked a unit in Tower 'G' on 5th floor in the project "Pallacia" on Prithvi Raj Road, C-Scheme, Jaipur for a sale consideration of Rs.226.18 lakh. An Agreement for Sale was executed on 07/06/2013, according to which, a Construction Linked Payment Plan was agreed between the two and the possession of the flat was agreed to be given within 30 months from the date of execution of the Agreement i.e. by December 2015. The complainant deposited the entire sale consideration of Rs.227.11 lakh till December, 2015 making it 100% payment, as agreed to in the Agreement for Sale but the appellant-promoter failed to complete the project by the agreed date. In fact, more than six years have passed since the promised date of completion but the unit has still not been delivered. The entire payment was made only after an assurance given by the appellant-promoter that the unit would be completed by September, 2016. The project was lapsed as per the RERA website, no valid completion certificate has been obtained and no QPRs have been filed by the promoter after 2021. The complainant could not receive the offer of possession in a project. The project has not yet obtained a valid completion certificate thereby making serious violation of Sections 12 and 18 of the RERA Act, 2016 and, therefore, requested the court to direct the promoter to complete the project at the earliest and hand over the possession of the unit and interest from the promised date of possession till handing over of the actual possession of the flat. One Mr. Nirmal Nahata filed a writ petition, being S.B. Civil Writ Petition No.15241/2013, *Nirmal Nahata v. State of*

Rajasthan & Ors., before the Hon'ble Rajasthan High Court in August 2013. The Hon'ble High Court, vide order dated 27/08/2013, restrained the Appellant from carrying out any construction in the project. Thereafter, the petitioner, Mr. Nirmal Nahata, filed an SLP before the Hon'ble Supreme Court, bearing SLP Nos. 5800-5801/2014. However, the said SLP was withdrawn as the Hon'ble Apex Court declined to grant any indulgence. This time, JDA issued a notice dated 21/12/2013 to the Appellant intimating that design changes have been made in the staircase, lift and ramp and thereafter issued another letter dated 09/01/2014, stating that the constructions on site are against the approved plans. The notice stated that work should be immediately stopped. This notice and letter were challenged by Appellant before JDA Appellate Tribunal and the JDA Appellate Tribunal vide order dated 26/02/2014 directed Appellant to appear before JDA and directed JDA not to take action till decision is taken by JDA. JDA again issued notice dated 14/05/2014 to the Appellant Company that design changes made to staircase, lift column, ramp and therefore, the entire work of the project should be stopped immediately. Aggrieved by this notice, Appellant Company went to the JDA Appellate Tribunal. Again JDA issued notices dated 10/10/2014, intimating Company to stop work as period of temporary fire NOC had expired. Aggrieved by this notice, Company again went to the JDA Appellate Tribunal. That JDA issued another notice dated 07/04/2016 on the ground that Company had concealed that as per lease-deed issued by Jaipur State to the original owner in the year 1944, only a dwelling house could be made and as per existing bye-laws a building of more than 15-meter height could not be constructed. This notice was issued by JDA, even though the JDA not only had the entire record of the plot, but even the maps were approved by JDA itself. Further, even though these issues had already been decided by the Hon'ble High Court, in spite of that, present notice was issued and Company was directed to stop work immediately. Aggrieved by this notice, Company filed Appeal before the JDA Appellate Tribunal. Tribunal directed JDA to hear the Company before taking any action against the Company. JDA again issued another notice on 28/07/2016 and informed the Company that Building Plans approved on 18/05/2012 are cancelled. The Company again rushed to the JDA Appellate Tribunal.

The Jaipur Development Authority accepted and acknowledged the overall delay caused in continuance and completion of the project between the period 2012 to 2017 and therefore, sought permission from Department of Urban Development & Housing to extend the time period of project. The UDH Department approved the same and accordingly, issued a letter dated 24/05/2018 to JDA and Appellant Company, whereby time period for completion of construction was extended from 30/04/2019 to 12/02/2021. By this approval, a cumulative extension of 654 days was given to the Appellant Company to complete the construction, without levying any charges or penalty. The project was completed in January, 2021 and Appellant submitted a letter dated 06/01/2021 to Jaipur Development Authority intimating about completion of work and requested for issuance of Completion Certificate. JDA issued the completion certificate on 20/07/2021, which shows that construction was completed prior to 22/03/2021, as per Inspection Committee's report. Thereafter, the Occupancy Certificate was issued on 28/04/2022. The project was duly registered with RERA with estimated finish date 17/05/2019. An extension was granted for a period of 12 months taking the end date 17/05/2020. During Covid-19, further extension was granted till 17/05/2021. Such extension was on account of *force majeure.* The last extension was thereafter granted on 12/08/2021, valid until 17/05/2022 (for reasons other than *force majeure)*. Complaint No: RAJ-RERA-C-2022-5399 was disposed of vide order dated 23/05/2023. The operative portion of the said order is reproduced hereunder:-

> *"Accordingly, we direct the respondent promoter to pay an interest for every month of delay from September, 2016 till the handing over possession of the flat on the amount paid by the complainant at the rate prescribed in the Rajasthan Real Estate (Regulation and Development) Rules, 2017 at SBI highest MCLR+2%, i.e., 8.60+2=10.60%. We also direct the respondent to hand over the possession of the allotted unit to the complainant without any further delay with the condition that any further delay of every month the interest on total amount paid by the complainant to respondent will continue to be paid by the respondent.*
>
> *The prayer of the complainant regarding additional charges has also caught our attention. The demand for additional charges in addition to the amount agreed to between the complainant and the respondent in the Agreement for Sale has been opposed by the complainant stating that this was beyond the Agreement for Sale and is being attempted to be extracted from the complainant by pressuring him unnecessarily. This has neither rebutted by the respondent nor any counter argument has been made against this. This amount is unjustified and cannot be allowed to be received by the respondent as, in any case, it is not as per the Agreement for Sale and is not allowed to be charged.*
>
> *The respondent shall make the compliance of this order within 45 days from the date of this order".*

3) Hence, this appeal with the following prayer: -

> *"In view of the facts mentioned in paragraph 5 above, Appellant prays for the following relief(s) :*

(A) *It is declared that Project "Pallacia" of the Appellant is complete and compliant of RERA requirements, as Completion Certificate and Occupancy Certificate have already been issued;*

(B) *Impugned order dated 23/05/2023 passed by the RERA Authority, Jaipur may kindly be quashed and set-aside to the extent, it imposes liability of payment of interest on Appellant Company from the year 2016.*

(C) *It be declared that Appellant is not liable to payment of interest from year 2016, as the situations were beyond its control and therefore, the interest liability be suitably calculated from the year 2020, taken to be the reasonable time of completion of project, as held by RERA Authority in the impugned-order.*

(D) *Appropriate directions be issued to RERA Authority, Jaipur for taking action against concerned persons, for showing a completed project to have "Lapsed" on website of RERA, Jaipur".*

4) Mr. S.S. Hora, learned counsel appearing for the appellant-promoter while referring to the Agreement for Sale executed between the parties, drew the attention of the Tribunal to Clause 9 thereof, relating to possession. It was submitted that subject to the occurrence of any *force majeure* event, the developer was required to hand over peaceful possession of the apartment to the purchaser within a period of 30 months from the date of execution of the Agreement for Sale. It was submitted that the Agreement for Sale was executed on 07/06/2012 and after taking into consideration the contractual grace period of 9 months, the stipulated period for handing over possession came to an end on 06/09/2016.

It was therefore, argued that in the absence of any *force majeure* event, possession was contractually required to be handed over by 06/09/2016. Learned counsel further argued that the respondent had paid the entire sale consideration in 2015, even before the same became due in terms of the agreed payment schedule. According to learned counsel, the said payment was made on the advice of a person from the Income Tax Department and was not made in accordance with the payment plan stipulated under the Agreement for Sale. It was argued that the appellant cannot be prejudiced on account of such premature payment by the respondent.

4.1) Learned counsel drew the attention of the Tribunal to two Public Interest Litigations filed before the Hon'ble High Court by which stay order granted by the learned Single Judge on 27/08/2013 was set aside by the Division Bench by a common order both, in **D.B. Civil Special Appeal (Writ) No.895/2013 : *Om Metals Consortium Pvt. Ltd. v. Nirmal Nahata & Ors.*** and in **D.B. Civil Writ Petition No. 15241/2013, *Nirmal Nahata v. State of Rajasthan & Ors***.

4.2) Learned counsel argued that the aforesaid proceedings were thereafter carried before the Hon'ble Supreme Court. During the pendency of the matter, the Jaipur Development Authority (JDA) also intervened in the matter and raised objections regarding the legality of the project and issued various notices, thereby causing substantial obstruction in the progress of construction.

4.3) Learned counsel argued that the JDA Appellate Tribunal, vide order dated 07/10/2016, allowed the appeal preferred by the appellant. The said order was thereafter challenged by the JDA before the Hon'ble Rajasthan High Court by way filing S.B. Civil Writ Petition Nos.407/2017 & 408/2017. Vide order dated 06/07/2017, the Hon'ble High Court declined to interfere with the order dated 07/10/2016 passed by the JDA Appellate Tribunal.

It was thus argued that during the period from August 2013 to July 2017, the appellant remained embroiled in various judicial and statutory proceedings and on account thereof, construction activities were repeatedly stopped. Learned counsel submitted that every time, the construction work was resumed, further proceedings or interventions resulted in its interruption, and considerable time was consequently consumed in restarting and progressing the construction. According to learned counsel, the aforesaid circumstances were squarely covered by the *force majeure* clause contained in the Agreement for Sale.

4.4) Learned counsel further referred to a letter dated 24/05/2018 issued by the Jaipur Nagar Nigam, wherein it was stated that on account of orders passed by the JDA and the State Government, construction work remained stopped for a total period of 654 days. It was further submitted that the appellant obtained the Completion Certificate dated 06/01/2021, which was issued by the JDA on 20/07/2021 and that the Occupancy Certificate was subsequently issued on 28/04/2024.

4.5) Learned counsel also referred to the extensions granted to the appellant on account of the COVID-19 pandemic, namely, the 1st extension from 18/05/2020 to 17/05/2021 and 2nd extension from 18/05/2021 to 17/05/2022.

4.6) Learned counsel submitted that having recorded the aforesaid finding that the litigation in respect of the project came to an end only in October 2017, the learned Authority could not have simultaneously awarded delay interest with effect from September 2016. According to learned counsel, the findings recorded in the impugned order are mutually inconsistent and render the order self-contradictory.

4.7) Learned counsel further argued that under the Agreement executed on 07/06/2013, which was a Construction-Linked Agreement, his right to receive payment arose progressively as each floor of the building was constructed. By *force majeure* event, the Developer will hand over peaceful possession of the said Apartment to the Purchaser within a period of 30 months from the date of execution of the Agreement of the Apartment, excluding a grace period of 9 months or such further time period as may be agreed between the parties or except in cases where physical delivery has been withheld by the Developer on ground stated elsewhere in this Agreement, subject to the Purchaser making timely payments of the instalments towards the Total Sale Price for the ultimate sale of the said Apartment, as mentioned herein above and the Purchaser duly observing all the terms and conditions contained herein. Provided that the Developer shall be entitled to reasonable extension of time for giving delivery of said Apartment on the aforesaid date, if the completion of Building in which the said Apartment are situated is delayed on account of:- **(i)** war, civil commotion, slowdown or strikes of workmen or labourers or other persons or agencies employed to be employed by the Developer, transport strike, riots, terrorist attack or an act of God, irresistible force or reasons beyond the control of or unforeseen by the Developer and/or **(ii)** any legislation of Union Parliament or State Legislature, notice, order, rule, circular, notification of Union or State Government and/or other public or other competent authority or court or injunction or stay or prohibitory orders or directions passed by any court, tribunal body or authority and/or **(iii)** other *force majeure* and vis major circumstances or conditions including but not limited to the liability of process of general shortage of energy, labour equipment, facilities, materials or supplies failure of transportation and action of labour unions or other causes beyond the control of or unforeseen by the Developer or the agents. In law, regulations, rules or orders issued by any court or government authorities or any acts, events, restrictions beyond the reasonable control.

4.8) Appellant-Om Metals Consortium Pvt. Ltd., vide its letter No.119/6/1/21 dated 06/01/2021, requested JDA regarding the issuance of the Completion Certificate and thereafter, JDA issued the Completion Certificate dated 20/07/2021. It is certified that essential facilities as mentioned in Rule No.17.1 of Model Rajasthan (Urban Area) Building Regulation, 2020, has been found on site thus the building is complete for Occupancy Certificate. Hence, the Occupancy Certificate is issued under my signature on 28/04/2022. Certificate for Extension of Registration of the Project issued by the Rajasthan Real Estate Regulatory Authority, Jaipur. The registration is extended by a period of 12 months commencing from 18/05/2021and shall be valid up to 17/05/2022 unless further extended by the Regulatory Authority in accordance with Section 6 of the Act read with Rule 7 of the Rajasthan Real Estate (Regulation & Development) Rules, 2017 or in accordance with Section 6 read with Section 7, 8 and 37 of the Act. Learned counsel therefore, prayed for allowing appeal setting aside the impugned-order.

In support of arguments, learned counsel for the appellant has placed reliance upon the judgments of the Hon'ble Supreme Court in the matters of ***Navin Raheja Vs. Shilpa Jain : 2020 SCC OnLine NCLAT 46, Dhanrajamal Gobindram Vs. Shamji Kalidas and Co. : 1961 SCC OnLine SC 28, In re: Cognisance for extension of Limitation : (2022) 3 SCC 117, Prakash Corporates Vs. Dee Vee Projects Limited : (2022) 5 SCC 112*** and ***P.V. Nidhish Vs. Sivaprakash : 2024 SCC OnLine Ker 4893.***

5) *Per contra*, Mr. Prashant Daga, learned counsel for respondent has argued that the controversy ought not to be examined merely from the perspective of whether the promoter was in default, but whether the allottee was himself in default, so as to disentitle him from claiming interest under Section 18 of the RERA Act, 2016. In support of his submissions, learned counsel placed reliance upon paragraph 25 of the judgment of the Hon'ble Supreme Court in ***Newtech Promoters and Developers Pvt. Ltd. v. State of Uttar Pradesh & Ors***.

5.1) Learned counsel argued that the date of payment of the sale consideration and the stipulated date for handing over possession are admitted facts between the parties and are not in dispute. It was further submitted that, till date, no valid offer of possession has been made to the respondent. Consequently, according to learned counsel, once the stipulated period for handing over possession had expired, the consequence contemplated under Section 18 of the RERA Act followed automatically and the respondent became entitled to interest for the period of delay.

5.2) Learned counsel further referred to letters issued by the appellant in the years 2015 and 2017, wherein the appellant had represented that the construction work was progressing at full pace and that the project was being carried forward expeditiously. Reference was also made to an email dated 13/01/2018 sent by the appellant, wherein it was stated that the construction was in full swing and that the project was moving towards the finishing stage. It was submitted that the appellant had also offered interest on the additional amount paid by the respondent. Learned counsel submitted that the respondent was not satisfied merely with such representations or payment of interest on the additional amount and sought adjudication of his statutory rights, particularly his entitlement to delay interest for the entire period of delay. It was specifically argued that there was neither any formal offer of possession nor actual physical possession handed over to the respondent.

5.3) Learned counsel also placed reliance upon the judgment/order of the Maharashtra Real Estate Appellate Tribunal in ***Mr. Nimesh B. Desai v. Rare Township Private Limited in Appeal No.235101/2024***, in support of the proposition that where the contractual date for possession had already expired prior to the outbreak of the COVID-19 pandemic, the benefit of the COVID-19 period could not automatically be claimed as a *force majeure* event. Learned counsel further relied upon the decision of this Tribunal in **Appeal No.98/2024 : *Om Real Developers v. Adjudicating Officer & Anr.***, wherein, according to learned counsel, a similar issue was considered and the period of COVID-19 was not treated as a Force Majeure period since the stipulated date of possession had already expired prior to the pandemic.

It was, therefore, argued that the findings recorded in the impugned order dated 25/05/2023 do not suffer from any illegality or infirmity. Learned counsel contended that even assuming, for the sake of argument, that the litigation relied upon by the appellant constituted a *force majeure* circumstance, the appellant had failed to establish that such circumstances continued to prevent completion of the project beyond the permissible period. Accordingly, the appellant had failed to substantiate its claim of *force majeure* so as to avoid its liability to pay delay interest under Section 18 of the RERA Act.

5.4) Learned counsel further argued that even if the *force majeure* conditions claimed by the respondent in terms of litigations, is considered for a moment, there is no reason why the respondent should not or could not have completed the project by 2020.

5.5) Learned counsel referring to the Gmail letter as Annexure-5, argued that this mail relates to your subsequent full payment of the total consideration against your unit G 52, booked in project "Pallacia". A tentative interest amounting to Rs.22,93.447/- has been calculated against the overpaid amount till 31/12/2017.

In support of his arguments, learned counsel for the complainant-respondent has placed reliance upon the judgments of the Hon'ble Supreme Court in ***Newtech Promoters and Developers Pvt. Ltd Vs. State of UP & Ors. etc.*** and ***Utpal Trehan Vs. DLF Home Developers Ltd in Civil Appeal No.4690 of 2022,*** Hon'ble High Court of Judicature at Allahabad, Lucknow Bench in ***Ratan Buildtech Private Limited Vs. Anil Kumar : RERA Appeal No.72/2025*** *with other connected appeals dated 04/08/2025 and judgment dated 23/01/2024 of Bombay High Court in* ***Second Appeal No.688/2023 : M/s. Pragatej Builders and Developers Pvt.Ltd. Vs. Mr. Abhishek Anuj Sukhadia & Anr.*** and judgment dated 26/06/2024 of this Tribunal in ***Vishal Mittal Vs. M/s.R-Tech Housing Pvt.Ltd.*** in ***Appeal No.57/2021.***

6) We have heard learned counsel for the parties and perused the material available on record including the case law cited by the learned counsel for the respective party on the subject.

7) On the basis of pleadings of the parties, the following questions arise for consideration of this Tribunal:-

(1) Whether the impugned-order dated 23/05/2023 is required to be quashed and set-aside, to the extent, it imposes liability of payment of interest on appellant and/or appellant is not liable to make payment of interest for the period of force majeure when the project was delayed due to notices issued by the JDA, Courts/Tribunals

proceedings and stay orders from 2013 to 2017 and Covid-19 Pandemic from March 2020 to March 2022?

(2) Whether the appellant is entitled for declaration that the project Palasia stands completed in the light of the Completion Certificate dated 20/07/2021 and Occupancy Certificate dated 28/04/2022?

Finding on Question No.1:-

8) It is admitted fact between the parties that the complainant-respondent booked a unit in Tower-G at 5th Floor for the total sale consideration of Rs.2.26 Crores and an Agreement for Sale was also executed between the parties on 07/06/2013 and as per terms of Agreement, possession of the flat was agreed to be given within 30 months with 9 months grace period i.e. 06/09/2016 as per clause 9 of the Agreement for Sale. It is not disputed that the entire sale consideration was paid by the respondent in advance when only 35% of the agreed consideration was required to be deposited as per agreed Construction Linked Plan for which, the appellant-promoter sent an email to the complainant-respondent for interest of Rs.22,93,447/- for the amount of over pay till 31/12/2017. It is also not disputed that the project was not completed within the stipulated time and the Completion Certificate was obtained by the appellant-promoter on 20/07/2021 and, thereafter, the Occupancy Certificate was obtained on 28/04/2022 from the empaneled architect.

9) In the above admitted factual matrix of the matter, the learned Regulatory Authority vide impugned-order dated 23/05/2023 directed the promoter to handover the possession of the unit and grant delay interest from September, 2016 (agreed date of possession) till handing over of possession at the rate of interest prescribed under the RERA Rules, 2017. The respondent-allottee does not intend to withdraw from the project. The appellant-promoter is ready to give possession of the allotted unit and one whatsapp chat dated 17/12/2021 was filed by the appellant as Anx.18 regarding offer of possession. The contention of the appellant that project was delayed firstly on the ground that multiple orders were passed by the various courts and notices issued by the JDA staying the construction work of project. The details of litigations and orders passed by the courts/Tribunals are annexed as Anx.3 to 11, which may be summarised, as under:-

Firstly, one DBCWP No.15241/2013 : Nirmal Nahata Vs. State & Ors. was filed in August 2013 challenging the order dated 27/08/2013 passed by the learned Single Judge restraining the appellant from carrying out any construction in the project. Appellant-Om Metals Consortium Pvt.Ltd. filed appeal bearing DBSAW No.895/2013 challenging the same impugned order dated 27/08/2013. Hon'ble Rajasthan High Court vide common order decided both, the DBCWP No.15241/2013 and DBSAW No.895/2013 by a common judgment dated 26/11/2013 **(Anx.3)** thereby, the ex-parte interim-order dated 27/08/2013 was set-aside. Nirmal Nahata challenged the order dated 26/11/2013 (Anx.3) before Hon'ble Supreme Court in SLP but the same was withdrawn and respondents No.1 and 2 i.e. State and JDA were permitted to take a fresh decision in accordance with law vide order dated 19/03/2015 **(Anx.4)**.

Secondly, one Mr. Bhagwat Gaur instituted a criminal case for offence punishable under Sections 120B, 420, 467 and 477 IPC against the appellant's company Directors before the civil court. The complaint was dismissed vide order dated 14/11/2014 **(Anx.5).** Complaint Bhagwat Gaur filed a revision against the order of dismissal and this revision was also dismissed on 19/07/2017.

Thirdly, simultaneously the JDA issued notice dated 21/12/2013 regarding change in design in the staircase, lift and ramp and another letter dated 09/01/2014 was issued stating the construction on site is against the approved plans and work should be immediately stopped. Hence, these notices were challenged by the appellant before the JDA Appellate Tribunal and the Tribunal vide order dated 26/02/2014 **(Anx.6)** directed the appellant to appear before JDA and JDA was directed not to take any action till decision is taken by the JDA.

Fourthly, the JDA issued notice on 14/05/2014. Appellant again challenged this notice before the JDA Appellate Tribunal, which was set-aside by the Tribunal vide order dated 03/06/2014 **(Anx.7)** and it ordered that the JDA has given notice on the basis of presumption and if violation of building plan is found at the time of issuing of completion certificate, the JDA shall be free to take action against the appellant.

Fifthly, one notice dated 10/10/2014 issued by the JDA on the ground that period of temporary fire NOC had expired, was challenged before the JDA Appellate Tribunal, which set-aside the said notice dated 10/10/2014 vide order dated 17/11/2014 **(Anx.8)**. One another notice dated 07/04/2016 issued by the JDA was challenged before the JDA Appellate Tribunal and the Tribunal vide order dated 20/05/2016 **(Anx.9)** remanded the matter back.

Lastly, vide notice dated 28/07/2016 the JDA cancelled the building plan approved on 18/05/2012 and the JDA Appellate Tribunal by a detailed order dated 07/10/2016 **(Anx.10)** set-aside the notice dated 28/07/2016. This order was challenged by the JDA before the Hon'ble Rajasthan High Court by filing SBCWP No.407/2017, which was dismissed by the Hon'ble Rajasthan High Court vide order dated 06/07/2017 **(Anx.11).**

10) It is revealed from the record that several notices were issued by the JDA on different counts and every administrative action taken by the JDA was turned down by the appellate forum and the last detailed order passed by the JDA Appellate Tribunal dated 07/10/2016 was upheld by the Hon'ble Rajasthan High Court on 06/07/2017. It is not appropriate to comment on the administrative notices issued by the JDA on whims, which were not sustained before higher forum but looking to the nature of litigation, we may conclude that the construction of project was adversely effected during August 2013 to July 2017.

11) Learned counsel for the appellant has prayed for exclusion of this period because of competent authorities'/courts' stay orders on construction. Learned counsel has placed reliance upon the judgment of the Hon'ble Supreme Court in the matter of ***Dhanrajamal Gobindram*** *(supra),* wherein the meaning of *"force majeure"* was defined. It is noted that this judgment was not related to the RERA Act, 2016. The judgment was prior to the enactment of the Act of 2016. The definition of word *"force majeure"* defined under *Explanation* to Section 6 of the Act of 2016 may be reproduced, as under:-

> *"Explanation.-* For the purpose of this section, the expression "force majeure" shall mean a case of war, flood, drought, fire, cyclone, earthquake or any other calamity caused by nature affecting the regular development of the real estate project".

It is crystal clear from the above text of *Explanation* to Section 6 of the RERA Act, 2016 that only calamity caused by nature affecting the regular development of the real estate project is included in the expression "*force majeure"* but if the project is delayed due to some litigation or stay order passed by the competent authority, cannot be treated as a "*force majeure"* to exclude the period while computing the delay interest. It is further clarified by the Hon'ble Apex Court in the matter of ***Newtech Promoters and Developers Pvt. Ltd.*** supra, in para No.25, as under:-

> *"The unqualified right of the allottee to seek refund referred under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottee, if the promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the allottee/home buyer…"*

It is evidently clear from the verdict of the Hon'ble Supreme Court that on the basis of unforeseen events or stay orders of the court/Tribunal, the period cannot be excluded if the delay is not attributed to the allottee/homebuyer. The only litmus test to exclude the period is that if the delay attributed by the conduct of an allottee but if the delay is in either way not attributable to the allottee/homebuyer then, the promoter is under an obligation to refund the amount on demand with interest whether the promoter is defaulter or not during litigation process. The basis behind it that complainant-allottee should not be suffered for the litigation between the competent authorities and promoter without any fault on the part of allottees. Therefore, this period from 2013 to 2017 does not qualify for exclusion.

So far as Covid-19 Pandemic situated is concerned, admittedly, it is natural disaster fall under the definition of "*force majeure*" as provided under Explanation to Section 6 of the RERA Act, 2016 and the Regulatory Authority issued one circular on 13/05/2020, which is issued under Section 6 of the said Act read with proviso to Rule 7 of the RERA Rules, 2017 and Section 37 of the Act. The relevant provisions may be reproduced, as under:-

"Extension of estimated finish date and validity of registration

1. *An in-principle, across-the-board approval is hereby granted to extend by 12 months the estimated finish date and the period of validity of registration shown in registration certificate of all real estate projects that were registered and not already completed, lapsed or revoked as on 19.03.2020. This extension will also be available for real estate projects that have been registered after 19.03.2020 upto the date of issue of this order".*

Further, The Authority clarified in Point No.6, as under:-

"Moratorium on interest and compensation

6. Owing to force majeure, no interest or compensation will be payable under section 12 or section 18 of the Act for the period covered by the aforesaid extension in estimated finish date of the project".

Meaning thereby, if the project is not completed on 19/03/2020 or even lapsed or revoked then also, no interest or compensation will be payable under Section 12 or Section 18 of the Act for the period of 12 months.

It is noted that registration of the project was extended on that ground for the period of 12 months from 18/05/2019 to 17/05/2020. It is revealed from the record that from 2013 to 2017, the promoter was unable to continue with the construction work of the project due to administrative notices and litigations although this period cannot be excluded but after 2017, construction work was adversely affected by Covid-19 Pandemic. In such circumstances, the order of Maharashtra REAT in Appeal No.235101/2024 and of this Tribunal in Appeal No.98/2024 supra cannot be made applicable in the present matter. Therefore, in the light of above circular dated 13/05/2020, registration of project was extended without any stipulation then, looking to the totality of the facts and circumstances of the matter, promoter is entitled for exclusion of 12 months due to Covid-19 Pandemic.

Learned counsel for the appellant has also placed reliance upon the judgment of the Hon'ble Supreme Court by which, 2 years limitation period was provided due to Covid-19 Pandemic but the Hon'ble Supreme Court only extended the period of limitation for fling of petitions but appellant is not entitled to get exclusion of 2 years.

In the light of above discussion, the judgment referred to in the matter of ***Navin Raheja*** supra passed by the National Company Law Appellate Tribunal cannot be made applicable in the present matter in the light of pronouncement of the Hon'ble Apex Court in the matter of ***M/s.Newtech Developers and Promoters Pvt.Ltd.*** supra.

The Promoter failed to handover the possession of the unit within the stipulated time. Therefore, the respondent-complainant is entitled for delay interest at the rate prescribed under the RERA Rules of 2017. The complainant is not intended to withdraw from the project and appellant-promoter is ready and willing to give possession of the unit and some whatsapp chats are also available on record but admittedly, in compliance of the impugned-order, no letter offering valid offer of possession was issued by the appellant-promoter but since the delay interest granted by the Authority vide impugned-order dated 23/05/2023 has been deposited by the appellant-promoter under Section 43(5) of the RERA Act, 2016 till filing of this appeal i.e. 06/07/2023, which is preserved by this Tribunal in Fixed Deposit, therefore, it is appropriate to grant delay interest to the respondent-allottee from September, 2016 till filing of this appeal i.e. 06/07/2023 excluding moratorium period of 12 months due to Covid-19 Pandemic. The impugned-order dated 23/05/2023 is, therefore, required to be modified to this extent.

Question No.1 is answered accordingly.

Finding on Question No.2:-

So far as declaration about completion certificate and occupancy certificate are concerned, both the certificates available on records and the completion certificate was obtained on 20/07/2021 and, thereafter, occupancy certificate was obtained on 28/04/2022. It is settled proposition of law that the validity and legality of the certificates cannot be adjudicated by this Tribunal. Further, the relief of declaration not prayed for by the appellant-promoter by way of counter claim in his reply before the Regulatory Authority then, the independent claim or relief cannot be prayed for at this appellate stage. However, the appellant is at liberty to pray before Regulatory Authority to upload the same on the web portal of the Regulatory Authority, as per law if not uploaded or accepted by the Regulatory Authority.

Question No.2 is answered accordingly.

12) In the result, the appeal is allowed in part. The impugned-order dated 23/05/2023 is modified. The appellant-promoter is, therefore, directed to pay to the complainant-respondent the delay interest for every month of delay on the amount deposited by the complainant from September, 2016 till the filing of this appeal on 06/07/2023 at the rate prescribed under the RERA Rules of 2017 i.e. at SBI highest MCLR + 2%, i.e. 8.70 + 2 = 10.70% excluding 12 months moratorium period within a period of 45 days from the date of receipt of certified copy of this order. Rest part of the impugned-order dated 23/05/2023 is upheld.

13) The Registry is directed to transmit the amount of pre-deposit deposited by the appellant-promoter in mandatory compliance of Section 43(5) of the RERA Act, 2016 into the bank account of complainant-respondent, after expiry of limitation period of appeal, as per above order of this Tribunal.

14) The interim order or any other misc.application, if any, shall stand vacated.

15) There is no order as to costs.

16) A copy of this order be transmitted to the learned counsel for the parties and Raj-RERA, Jaipur.

File be consigned to record.

Yudhishthir Sharma,
Member (Judicial)

(Madan Gopal Vyas), J.
Chairperson

Anil Goyal-PS/Suppl.1