

**COURT NO-2**  
**RESERVED**

**THE UTTAR PRADESH REAL ESTATE APPELLATE TRIBUNAL,**

**AT**

**LUCKNOW.**

**Appeal No.26/2024**

**Vijay Sharma. ....Appellant.**

**Vs**

**M/s. S.V.P. Builders India Pvt. Ltd.,  
17, Kiran Enclave, Near Samrat Hotel,  
Main Gate Road, Ghaziabad-201001 and another. ....Respondents.**

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**Hon'ble Mr. Sanjai Khare, Judicial Member.  
Hon'ble Mr. Rameshwar Singh, Administrative Member.**

1. This appeal has been filed under Section 44 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as 'the Act, 2016') by the appellant against the impugned order dated 20.11.2017, passed by the U. P. Real Estate Regulatory Authority, Lucknow (hereinafter referred to as 'the Regulatory Authority') in Complaint No.82017771 (Vijay Sharma. Vs. M/s. S.V.P. Builders India Pvt. Ltd.) by which learned Regulatory Authority has directed to promoter to pay delay interest from 24.09.2014 to 19.07.2018 at the rate of Rs.5/- per sq. ft., possession of flat till 19.07.2018, to allot flat on top floor, failing which refund the deposited amount to allottee with interest from 24.09.2014 at the rate of 18%.

2. **Brief facts of the case are:**

2.1 The Appellant along with his wife Neeru Sharma has jointly booked a flat on 27.02.2012 with M/s SVP Builders in Gulmohar Garden Phase-II, Raj Nagar Extension, Ghaziabad, U. P., which project

completion date was 24.09.2014, but the Builder failed to give possession of the Flat on such date. The flat buyer agreement was executed on 24.03.2012. The Appellant has booked the flat because the Builder has agreed to deliver the possession of the flat on 24.09.2014. The appellant has made payments on 27.02.2012, 08.05.2012, 11.06.2012, 13.03.2013 and 25.06.2013 and has paid an amount of Rs.21,79,353/- till date. The Appellant has not paid an amount of Rs. 3, 57, 143/- raised vide demand letter dated 12.11.2014, since the date of delivery the possession has already expired on such date and also the Builders were not in position to deliver the flat in near future.

- 2.2 The appellant has to take loan from the ICICI Bank through tripartite agreement dated 07.04.2012. The Appellant has taken housing loan of an amount of Rs. 27,27,675/-. The Appellant is paying an EMI of Rs.18410/-.
- 2.3 The Builder has failed to give possession of the Flat on time, instead raised demand for making further payments. The Builder has also started to construct an extra floor above the floor of the Flat booked by the Appellant. It is significant that the Appellant has intended to purchase the flat on Top Floor but now the Builder has decided to construct an extra floor, which is detrimental to the interest of the Appellant. The Builder cannot construct an extra floor as the same is in contravention with the terms and conditions of the Agreement.
- 2.4 The appellant has made payments of all the legitimate demands of the Builder, but was compelled to stop payments after the Builder failed to comply its own terms and conditions.
- 2.5 The Builder vide its letter dated 07.04.2012 has assured the ICICI Bank to refund the amount paid to it. That even after failure of the Builder to deliver the possession of the flat, the appellant is being compelled to make payments of the loan amount at his own loss, therefore the Appellant is entitle for the interest and compensation for aforementioned payments. Being aggrieved by the actions/omissions of the Builder, the appellant filed a complaint before the Learned Authority below under the provisions of the RERA Act.

2.6. By the complaint, the appellant has sought following reliefs before the learned Regulatory Authority:-

- A. Compensation for interest paid to bank for the delayed period in form of monthly EMI.
- B. Compensation for interest on principal amount paid to the builder at the rate at which the builder charges from the allottees in case of delayed payments.
- C. Compensation for the rent paid for the delayed period.
- D. Demand for top floor as the builder was G+13 floored.

2.7. Learned Authority has decided the Complaint of the Appellant vide its impugned order dated 20.11.2017 against the Builder ex parte.

2.8 The impugned order was uploaded on the portal of the RERA on 16.01.2018. The Appellate Authority has been established vide notification dated 23.1.2018 The present Appeal is being filed within limitation.

2.9 The impugned order is highly perverse and non est in the eyes of law. It is liable to be set aside outrightly.

2.10 The instant project of the Builder falls within the purview of the RERA Act. The Learned Regulatory Authority travelled beyond the scope of reliefs sought in the nature of compensation of interest paid to his Bank, interest on principal amount, compensation on losses incurred on account of payment of rents and compensation for depriving the Appellant with the Top Floor.

2.11 Learned Regulatory Authority failed to apply its mind that the Builder has violated the terms and conditions of delivering the possession of the flat on 24.09.2014 and as such the Appellant are entitled for all the reliefs sought therein.

2.12 The impugned order fails to consider and appreciate the object and purpose of the RERA Act and it's detrimental to the same.

2.13 Appellant is entitled for interest in accordance with the provisions of Section 18 of the RERA Act read with requisite Rules.

- 2.14 Learned Regulatory Authority bypassed the Rules promulgated by the State Government for stipulation of interest to be granted to the allottees in case of defaults by the Builders.
- 2.15 Learned Regulatory Authority has wrongly assumed the date of delivering possession to be 19.07.2018 on assumption that the validity of sanction of map is till such date.
- 2.16 Learned Regulatory Authority has by virtue of its wrongful assumption in absence of such plea from the Builder has extended the date of delivery of possession till 19.07.2018.
- 2.17 Learned Regulatory Authority has wrongfully adjudicated the future lis and granted relief from 19.07.2018.
- 2.18 Learned Regulatory Authority has wrongfully misread the agreement between the parties so far as the Appellant has booked the top floor.
- 2.19 The impugned order passed by Learned Regulatory Authority fails to adjudicate the questions raised by the Appellant and is inconclusive.
- 2.20 Learned Regulatory Authority has committed manifest error of law in granting reliefs which were not sought by the Appellant.

3. **Grounds of Appeal:** - The appellant while assailing the impugned order, has taken various grounds which are: -

- A) Because the Appellant begs to assail the Order dated 20.11.2017 passed by the Learned RERA Authority at Lucknow in Case No. 82017771, while passing the impugned order, the Learned Authority has failed to conform with the procedures and rigors provided under the Act whereas there was no occasion for Learned Regulatory Authority to have drawn such presumption.
- B) Because impugned order has been passed with apt premeditated mind, the said order is liable to be set aside.
- C) Because the impugned order dated 20.11.2017 has been passed sans application of mind in ignorance of the detailed questions raised through the Complaint preferred by the Appellant and

above all in clear violation of the settled legal proposition and principles of natural justice.

- D) Because the Learned Regulatory Authority has exceeded its jurisdiction, which needs to be set right by this Hon'ble Appellate Tribunal.
- E) Because the impugned order is highly perverse and non est in the eyes of law. It is liable to set aside outrightly.
- F) Because the impugned order fails to consider and appreciate the object and purpose of the RERA Act and it's detrimental to the same. The object and the purpose of promulgation of the RERA Act have been frustrated.
- G) Because the Appellant along with his wife Neeru Sharma has jointly booked a flat on 27.02.2012 with M/s SVP Builders in Gulmohar Garden Phase -II, Raj Nagar Extension, Ghaziabad, UP, which project completion date was 24.09.2014, but the Builder failed to give possession of the Flat on such date.
- H) Because the Builder failed to give possession of the Flat on time, instead raised demand for making payments.
- I) Because the Builder has started constructing an extra floor above the floor of the Appellant which was not part at the time of execution of the agreement between the parties.
- J) Because the Appellant has made payments of all the legitimate demands of the Builder, but was compelled to stop payments after the Builder failed to comply its own terms and conditions.
- K) Because the instant project of the Builder falls within the purview of the RERA Act.
- L) Because the Appellant registered a Complaint No.82017771 against the illegal and unlawful act of the Appellant on 20.08.2017.
- M) Because the Learned Regulatory Authority travelled beyond the scope of reliefs sought in the nature of compensation of interest

paid to his Bank, interest on principal amount, compensation on losses incurred on account of payment of rents and compensation for depriving the Appellants with the TOP Floor.

- N) Because the Learned Regulatory Authority failed to apply its mind that the Builder has violated the terms and conditions of delivering the possession of the flat on 24.09.2014 and as such the Appellant is entitled for all the reliefs sought therein.
- O) Because the Learned Regulatory Authority failed to interpret the provisions of the Act along with the Rules thereunder while adjudicating and granting relief to the Appellant.
- P) Because the Appellant is entitled for grant of interest in accordance with the provisions of Section 18 of the RERA Act.
- Q) Because the Learned Regulatory Authority bypassed the Rules promulgated by the State Government for stipulation of interest to be granted to the allottees in case of defaults by the Builders.
- R) Because the Learned Regulatory Authority has wrongly assumed the date of delivering possession to be 19.07.2018 on assumption that the validity of sanction of map is till such date.
- S) Because the Learned Regulatory Authority has by virtue of its wrongful assumption in absence of such plea from the Builder has extended the date of delivery of possession till 19.07.2018.
- T) Because the Learned Regulatory Authority has wrongfully adjudicated the future lis and granted relief from 19.07.2018. The said directions are absolutely perverse and patently illegal.
- U) Because the Learned Regulatory Authority has wrongfully misread the agreement between the parties so far as the Appellant has booked the top floor and not penultimate.
- V) Because the impugned order passed by Learned Regulatory Authority fails to adjudicate the questions raised by the Appellant and is inconclusive.

- W) Because the legitimate rights and interests of the Appellant remains undecided.
- X) Because the observation of the Learned Regulatory Authority is futuristic.
- Y) Because the impugned judgment and order passed by Learned Regulatory Authority is cryptic, illegal and manifestly erroneous and is liable to be set aside.
- Z) Because Learned Regulatory Authority has committed manifest error of law in granting reliefs which were not sought by the Appellant.

4. **Relief(s) sought:** The appellant in view of the above facts and grounds, has sought the following reliefs:-

- (i) This Hon'ble Interim Appellate Tribunal may graciously be pleased to set aside the impugned judgement and order dated 20.11.2017 passed by learned RERA Authority at Lucknow in Complaint No. 82017771 (Vijay Sharma Vs. M/s SVP Builders India Pvt Ltd) and allow the Complaint No.82017771 (Vijay Sharma Vs. M/s. SVP Builders India Pvt. Ltd.).
- (ii) This Hon'ble Interim Appellate Tribunal may award costs in favour of appellant in the interest of justice, equity and fair play.
- (iii) Such other orders or directions as be deemed fit and proper, may also kindly be passed to meet the ends of justice.

5. **Objections to the memo of appeal:-** The respondent has filed its objections denying the averments made in the memo of appeal.

5.1 Appellant has filed the above noted appeal by concealing material facts, which are relevant for proper adjudication of the said appeal. The appellants by distorting and twisting the true facts of the case is trying to misguide and has not come before this Tribunal with clean hands. It is settled principle of law that a person should provide all material facts which are necessary for proper adjudication of the case in hand and should approach the court of law with clear conscience and bona fide claim. The appellant has filed the above noted appeal in violation of the aforesaid legal principle due to which said appeal is liable to be dismissed on this ground only.

- 5.2 Impugned judgement/order dated 20.11.2017 has been passed by the Ld. Regulatory Authority very much exceeding the jurisdiction conferred upon it in accordance with the RERA Act, while deciding the compensation for delay in possession and the instant appeal is liable to be dismissed on this ground alone.
- 5.3 Appellant in complaint no. 82017771 has sought compensation for delay in possession from the Ld. Regulatory Authority as well as from this Ld. Appellate tribunal in the present appeal, whereas the sole power under the Act to adjudge compensation is with the Adjudicating officer by filing an application for adjudging compensation i.e. in the case where the allottee wishes to withdraw from the project as per section 18 and 71 of the RERA Act and in the case where an allottee does not intend to withdraw from the project, the only remedy available is to sought interest and there is no provision for compensation in this regard as per proviso of section 18.
- 5.4 Powers vested with the Ld. Regulatory Authority includes granting of penalty and interest but the authority has no power to grant compensation.
- 5.5 That the Ld. Regulatory Authority is not vested with the powers to grant compensation for delay in possession u/s 18 and the same has been determined and upheld by the Hon'ble Supreme Court in the case of **Newtech Promoters & Developers Pvt. Ltd. Versus State of U.P. (Civil Appeal No.6745-6749 of 2021)** thus, settling the jurisdiction of the Regulatory Authority and the Adjudicating officer respectively.
- 5.6 The complaint filed before the Ld. Regulatory Authority as well as the instant Appeal are not maintainable having sought compensation for alleged delay in handing over of possession; which is firstly not addressed to the appropriate forum, secondly no provision for grant of compensation has been made under the Real Estate Regulation and Development Act, 2016 in case of delay in offering possession hence, the appeal is liable to be dismissed.

- 5.7 Present Appeal is devoid of merits and is not maintainable under the provisions of the RERA Act, 2016. Hence, it requires to be dismissed outrightly.
- 5.8 The project "Gulmohur Garden Phase- II" is registered project vide RERA.
- 5.9 The respondent denies every point of allegations levelled upon the respondent unless or until any of the part of the appeal is specifically admitted.
- 5.10 The respondent, with letters dated 13.03.2018 and 29.03.2018 in compliance with the impugned order of the Regulatory Authority in complaint No.82017771 shifted the flat of the appellant to the top floor as per the order and subsequently allotted flat no. Gokul-1-1401 instead of flat no. Gokul-1-1301.
- 5.11 The respondent with the letter dated 18.05.2018 issued a fresh offer of possession for residential unit no. GOKUL-1-1401 offering to take possession within 90 days from the date of the letter, along with the demand letter dated 18.05.2018 with a total due of Rs. 7,37,517/- but the appellant failed to takeover possession as well as failed to clear the dues.
- 5.12 The respondent issued a reminder for taking of possession dated 18.08.2018 stating that non-payment of the outstanding amount is attracting delayed interest but no heed was paid to the continuous reminders of the respondent.
- 5.13 The respondent again with letter dated 27.11.2019 had to issue a request for payment of outstanding dues towards flat/unit no. G-1-1401 in reference to the impugned order dated 20.11.2017 but the appellant is deliberately not taking over the possession of the flat/unit.
- 5.14 The appellant is a defaulter and has never paid the amount as per demanded by the respondent, which is evident from the statement of account of the respondent.
- 5.15 That the flat/unit no. G-1-1401 is still unsold and the respondent has been sending continuous reminders to the appellant but the appellant,

deliberately not taking over the possession and purposely delaying the process of clearing dues and taking over the possession.

- 5.16 Complaint No.82017771 was not maintainable and so is the present appeal as the reliefs sought by the respondent was in terms of compensation and the sole authority to grant compensation is conferred upon the Ld. Adjudicating officer and not to the Ld. Regulatory Authority, hence the order/judgment passed by the Ld. Regulatory Authority granting compensation is barred by jurisdiction.
- 5.17 Since the demand letter dated 12.11.2014, the Appellant has been refraining from clearing the balance amount moreover the unit/flat is complete in all aspects and has deliberately not taken the possession of the unit till date.
- 5.18 The respondent has already shifted the flat /unit of the appellant to the top floor i.e. Gokul-1-1401 instead of Gokul-1-1301 and has also offered the possession of the upgraded flat/unit with letter dated 18.05.2018 as per immediate compliance to the impugned order dated 20.11.2017.
- 5.19 Letter was issued to the bank for the permission of mortgage on the unit booked by the appellant and that no such assurance of refund has ever been given by the respondent to the bank.
- 5.20 The impugned order passed by the Ld. Regulatory Authority is barred by jurisdiction till the extent of granting compensation for delay in possession.
- 5.21 The appellant is only entitled to interest under provisions of section 18 of the RERA Act which is within the powers vested to the Ld. Regulatory Authority but the appellant has sought compensation as relief from the Regulatory Authority which is the sole power of the Adjudicating officer hence the Authority has exceeded its jurisdiction as it is only powered to grant interest or impose penalties.
- 5.22 Appeal preferred by the appellants has no merits and deserves to be rejected with cost, in the interest of justice.

6. **Reply to Objections of respondent:** The appellant has filed his reply to the objections of the respondent and submitted in his reply as under:-

6.1 The Appellant denies all the averments made by the Respondent to the extent that they are contrary and inconsistent with the actual facts and circumstances of the instant case as narrated in the Memo of Appeal.

6.2 The Respondent was directed by the impugned order to pay interest for delay from 24.09.2014 (Proposed Completion Date) to 19.07.2018 (date till which the sanctioned map of the Respondent's Project was valid) (in compliance of their obligation) at the rate of Rs. 5 per sq. ft. and was further directed to allot the top floor Flat / Unit on the 14th Floor (as the originally booked Flat / Unit was on the 13th Floor, which was supposed to be the top floor in the original plan) (subject to availability) to the Appellant. In the event that the Respondent was unable to allot the top floor Flat / Unit to the Appellant and / or not offer the complete and habitable possession by 19.07.2018, a direction to refund the entire amount along with 18% penal interest was also laid down.

6.3 The Appellant is mainly aggrieved from the amount of delay interest (in compliance of their obligation) that was decided and more so, for the reason that in the event of delayed payments, the Respondent was charging a delay interest @ 18% per annum and more specifically for the reason that the impugned order dated 20.11.2017 failed to consider various other prayers such as compensation for the interest paid to the bank during the delay period resulting from the loss of rent (which ideally would have accrued to the Appellant, if not for the delayed possession of the Flat / Unit) and compensation for rent paid during the delay period as well as for the mental agony caused due to the deprivation of top floor apartment, as originally booked by the Appellant.

6.4 Initially, the present appeal was filed on 04.04.2018 with delay condonation application. Delay condonation application was rejected by this Tribunal vide order dated 23.07.2018. Appellant challenged the order dated 23.07.2018 by filing RERA Appeal No.291 of 2019

before Hon'ble High Court. Hon'ble High Court allowed the RERA Appeal No.291 of 2019, vide order dated 12.07.2023 condoning the delay in filing the appeal.

- 6.5 During the pendency of the above RERA Appeal, the Respondent under a purported compliance of the impugned order dated 20.11.2017 passed by the Ld. Regulatory Authority, started issuing faulty/ invalid / illegal letters such as the letter dated 29.03.2018 stating that "**the possession of your tower/flat has already been offered**" and surprisingly, also shifting the Appellant's allotment from Gokul-1- 1301 to Gokul-1-1401 and did not even give any clarification whether the Respondent has got the Occupancy Certificate (OC) for the Project or not. The above letter was issued by the Respondent with the sole intent of showing purported compliance of the directions while actually evading its contractual obligation of handing over habitable possession of the Flat / Unit to the Appellant.
- 6.6 The Respondent issued a letter dated 18.05.2018 with the subject "Demand / Information Letter" (annexed as Annexure No. 2 in the Objections dated 03.10.2024) wherein it was stated "we are in a position to offer you a letter of possession in respect of your Flat No. GOKUL-1-1401..." and went on to raise a frivolous demand of Rs.42,525/- (Rupees Forty Two Thousand Five Hundred Twenty Five Only) along with GST@18% under the garb of metro cess, labour cess, elevated road cess, etc., without mentioning the fact of completion of project.
- 6.7 "Letter of Offer of Possession" dated 18.05.2018 was revoked by the Respondent themselves by issuing a "Revised Letter of Possession" dated 16.07.2018. It would also be noteworthy that the timing of the letter dated 16.07.2018 was highly convenient because only three days after, the Respondent would have even surpassed the 19.07.2018 (date of map sanction expiring) and would have been required to return the entire deposited amount along with compensation computed @ Rs.5/- per sq. ft. while also having to pay 18% interest upon such an amount as per the condition imposed by the Ld. Authority in the impugned order dated 20.11.2017. While the letter dated 16.07.2018 apparently

stated that the Respondent has obtained the Completion Certificate (CC), no details of the same was provided so as to actually exhibit that the Project was indeed complete in all respects.

- 6.8 In response to the above-mentioned letter dated 16.07.2018, the Appellant issued a letter dated 04.09.2018 cautioning the Respondent that any offer of possession without necessary Government certification and completion of Project in all aspects, is illegal.
- 6.9 The Respondent issued a letter dated 27.11.2019 again issuing a bogus demand letter and further threatening to initiate cancellation of Flat / Unit in the event of non-payment. The Appellant in reply to the same, issued a letter dated 02.12.2019, apprising the Respondent of the pending RERA Appeal No. 291 of 2019 before the Hon'ble High Court and further cautioned the Respondent to not initiate any action until the controversy is settled finally.
- 6.10 It would also not be out of place to mention here that in the year 2019, several issues started emerging in the Project of the Respondent wherein several home buyers / allottees who were deceptively handed over faulty / illegal possession by the Respondent started raising concerns over the incomplete aspects of the Project (lack of requisite CC / OC) as well as the system of hydraulic parking introduced in the Project when as a matter of fact, the Respondent had charged for open parking space from all the allottees / homebuyers (including the Appellant and the same is evident from the booking related documents already on record of the instant Appeal). Such creation of hydraulic parking spaces not only obstructed the common areas and the access to the towers / buildings but also created individual rights over the common areas which is in stark contravention to the settled position of law.
- 6.11 The illegal/unauthorized constructions (more specifically the additional construction of 14th floor on the preapproved G+13 Floor which deprived the Appellant of the top floor flat as well as installation of hydraulic parking) was taken note of by the Ghaziabad Development Authority (GDA) and by way of its letter dated

04.02.2017, the GDA had even ordered for sealing of the Project site as the Respondent failed to deposit the penalty imposed by the GDA.

- 6.12 The letters issued by the Respondent, apparently offering possession to the Appellant, were nothing but bogus and farce, issued solely with the intent to evade its own contractual obligations / responsibilities towards the Appellant of handing over possession of a habitable and complete Flat /Unit in all respects.
- 6.13 The Respondent has only levelled a baseless, bogus and frivolous allegation upon the Appellant of concealing material facts.
- 6.14 The Respondent has not challenged the impugned order dated 20.11.2017 passed by the Ld. Authority, till date.
- 6.15 It appears that the Respondent, in an attempt to evade its obligations, is fixating upon a semantic technicality of the word "compensation" when as a matter of fact, and even otherwise, from a bare perusal of the impugned order dated 20.11.2017 passed by the Ld. Regulatory Authority, it is absolutely clear that the relief granted by the Ld. Regulatory Authority were in essence and spirit not compensatory in nature; rather they have dealt solely with the aspect of delay interest and the exchange of top-floor Flat / Unit.
- 6.16 It is submitted that the complaint filed before the Ld. Regulatory Authority as well as the instant Appeal are against the various grievances of the Appellant that have not been addressed and the same deserves to be adjudicated for a just and fair disposal of the instant matter.
- 6.17 It is submitted that the Appellant had evidently through each and every correspondence, had not only sought status of OC / CC of the Project but also cautioned the Respondent against issuing faulty / bogus offers of possession and to further not initiate any adverse action against the Flat / Unit allotted to the Appellant.
- 6.18 The Appellant had always ensured all timely payments to the Respondent towards all legitimate demands raised and the same is even amply evident from the loan account statement (sanctioning

regular disbursals to the Respondent as per the status of the Project). It was only when the Respondent started to inordinately delay the Project and wantonly disobeying the directions of the Ld. Regulatory Authority that the further illegal demands raised by the Respondent were not acceded to by the Appellant and the same was even communicated to the Respondent via e-mails / letters. The Respondent with such bald and baseless allegations of non-payment of dues is solely attempting to shrug off its obligations towards the Appellant and should be put to strict proof thereof.

- 6.19 The Respondent has never offered proper possession of the Flat / Unit with complete information with regard to the OC/CC certification and has continued to raise frivolous demand(s) upon the Appellant along with threatening the Appellant to arbitrarily revoke the Appellant's allotment and has continuously failed to deliver upon its contractual obligations. As such, it is incorrect to state that the Appellant is in an attempt to seek "unjust enrichment by purposely delaying the process of clearing dues...".
- 6.20 It is stated that the 'pending amount' as stated was not cleared because of the Respondent's failure to fulfil its own contractual obligations of timely handing over habitable possession and the same has not been made good upon till date by the Respondent.
- 6.21 The Respondent has till this date not provided the status of OC / CC to the Appellant with regard to the Project even when the same has been specifically sought by the Appellant through various emails and correspondences. The revision of the Appellant's Flat /Unit from Gokul-1-1301 to Gokul-1-1401 was only done after the directions of the Ld. Authority.
- 6.22 It is stated that the condition for refund in case of failure to deliver timely possession is not only a part of the undertaking given by the Respondent to the Bank but also a part of the Tripartite Agreement executed between the parties. Further, it is absolutely incorrect and false to say that the Appellant has "purposefully not chosen to take possession" when in the correct factual position of the matter, the

Appellant has never ever received any intimation with regard to the completion of the Project in all aspects.

- 6.23 Various aspects of the matter such as loss of rent and compensation for the mental agony caused were not dealt with by the Ld. Regulatory Authority and the same are of utmost importance to be adjudicated by this Tribunal.
- 6.24 It is false to state that the Respondent has "offered the possession of the upgraded flat/unit" when under the garb of faulty / bogus offers of possession, the Respondent has solely evaded completion of the Project in all respects and has concealed details and true progress of the same not only from the Appellant but this Tribunal as well.
- 6.25 It is further submitted that the grounds for the instant Appeal are well-founded and for all the reasons and circumstances as stated hereinabove, as well as the Appeal, deserve to be allowed in the favour of the Appellant which is well within the jurisdiction to be adjudicated by this Tribunal.

7. Heard Sri Vaibhav Tiwari, learned counsel for the appellant and Dr. Azhar Ikram, learned counsel for the respondent on appeal, objections and reply to the objections.

**8. Issues:**

After hearing learned counsel for the parties, on the basis of pleadings and submissions, the following issues are framed for analysis by this Tribunal:

- (i) Whether project is delayed?
- (ii) Whether offer of possession issued by promoter to appellant allottee is valid without OC/CC?
- (iii) Whether appellant allottee is entitled for delay interest as per Section 18 (1) of RERA Act, 2016?
- (iv) Whether appellant allottee is defaulter in payment of consideration amount to promoter?
- (v) Whether appellant allottee is entitled for compensation on interest paid to Bank for EMI and computation for rent paid during delay period?

- (vi) Whether appellant allottee is entitled for allotment of flat on top floor?
- (vii) Whether impugned order suffers from any illegality and perversity?

9 **Issue No.(i):-** This issue is related with the fact whether the project is delayed.

9.1 It is admitted fact that the appellant allottee Sri Vijay Sharma along with his wife Smt. Neeru Sharma jointly booked a flat in a project of the respondent promoter in Gulmohar Garden Phase-II, Raj Nagar Extension, Ghaziabad, U.P. on 27.02.2012. Agreement was executed between the promoter and allottee on 24.03.2012. The appellant allottee applied for loan to ICICI Bank. A tripartite agreement for the housing loan of Rs.25,00,000/- (rupees twenty five lakhs) was executed on 07.04.2012 between the appellant allottee, respondent promoter and ICICI Bank regarding Flat No.Gokul-1-1301 on the top floor. The appellant allottee has submitted that in the tripartite agreement in the clause 3 (f) the respondent promoter assured that construction was to be completed within a period of 30 months from the date of allotment and hand over the possession of the said allotted flat to the appellant allottee. While it has been submitted on behalf of the respondent promoter referring clause 59 of the agreement that completion of construction of allotted flat was assured within 36 months and further reasonable delay of 90 days from the date of offer of possession. Clause-59 of agreement as mentioned by the respondent promoter, is against the provisions of law. Section 4 sub-clause (5) of the U.P. Apartment Act, 2010 specifically lays down the provision as under:-

**“4. General liabilities of promoter.—(5) An apartment may be transferred by the promoter to any person only after obtaining the completion certificate from the prescribed sanctioning authority concerned as per building bye-laws. The completion certificate shall be obtained by promoter from prescribed authority [within the period specified for completion of the project in the development permit or the building permit as the case may be]; Provided that if the construction work is not completed within the stipulated period, with the permission of the prescribed authority;**

Provided further that if the completion certificate is not issued by the prescribed sanctioning authority within three months of submission of the application by the promoter complete with all certificates and other documents required, the same shall be deemed to have been issued after the expiry of three months.

*Explanation:* For the purposes of this sub- section completion means the completion of the construction works of a building as a whole or the completion of an independent block of such building, as the case may be.”

9.2 Above mentioned Section 4 (5) of U.P. Apartment Act, 2010 provides a clear provision that an apartment can be transferred by the promoter to any person only after obtaining the completion certificate from the prescribed authority. The completion certificate shall be obtained by the promoter from the prescribed authority within the period specified for completion of the project in the development permit or the building permit as the case may be, as a whole of the project or the completion of an independent block of such building as the case may be. The respondent promoter has uploaded the partial completion certificate dated 06.07.2018 issued by the Ghaziabad Development Authority. Therefore, as per Section 4 sub-clause (5) of U.P. Apartment Act, 2010, the promoter has to obtain completion certificate within the assured completion period. Therefore, clause 59 of the agreement is clearly against the provision of Section 4 (5) of the U.P. Apartment Act, 2010 while period of 30 months mentioned in the clause 3 (f) of the tripartite agreement is in consonance with the above legal provision. Therefore, the period of 30 months is assured period of completion of the project. Hence assured date of possession is 24.09.2014. The project was not completed within the assured completion period of 30 months till 24.09.2014. Further, partial completion certificate dated 06.07.2018 also substantiates the fact that the project was not completed within the assured period of completion. The respondent promoter has registered the project with U.P. Regulatory Authority under the provisions of RERA Act, 2016 which also clarifies that project was on going when the provisions of RERA Act, 2016 came into force. On the basis of the above analysis, we are of the considered view that the project of the respondent promoter was delayed when the complaint was filed by the allottee

before the Regulatory Authority. The issue No.(i) is decided accordingly.

10. **Issue No.(ii):-** This issue is related with the interpretation regarding validity of offer of possession issued by the respondent promoter to the appellant allottee.
  - 10.1 It is admitted fact that first offer of possession was issued on 18.05.2018. It is also admitted fact that completion certificate was not issued by the prescribed authority regarding the project before 18.05.2018. Respondent promoter has submitted that first offer of possession was issued on the basis of deemed OC/CC. Learned counsel for the respondent has submitted that the respondent promoter has applied for OC/CC on 19.04.2018 and when OC/CC was not issued within the period of next three months, then as per the provisions of Section 4 sub-clause (5) proviso, the OC/CC was deemed to have been issued but this fact has not been mentioned in the first offer of possession dated 18.05.2018. The respondent promoter issued second offer of possession dated 16.07.2018 regarding Flat No.G-1-1301 mentioning the fact that the promoter has obtained completion certificate. Partial completion certificate dated 06.07.2018 has been filed by the respondent promoter. Learned counsel for the appellant allottee has submitted that the appellant has opted for top floor of the building and at the time of execution of agreement, top floor was 13<sup>th</sup> floor and on the payment of preferential location charges, Flat No.G-1-1301 was allotted. Later on, when the respondent promoter constructed 14<sup>th</sup> floor, then appellant allottee was entitled for the allotment of a flat on 14<sup>th</sup> top floor of the building in place of Flat No.G-1-1301. Therefore, offer of possession dated 16.07.2018 was also not valid offer of possession because this offer was not for the flat of top floor (14<sup>th</sup> floor) of the building. The respondent promoter has finally issued offer of possession dated 27.11.2019 regarding the Flat No.G-1-1401, flat of top floor (14<sup>th</sup> floor) in place of earlier allotted Flat No.G-1-1301 of 13<sup>th</sup> floor. The Issue No.(ii) is decided accordingly.

11. **Issue No.(iii):-** This issue is related with the analysis of fact regarding the entitlement of allottee for delay interest as per Section 18 (1) of RERA Act, 2016.

11.1 The allottee filed complaint before the Regulatory Authority seeking following reliefs:-

- (i) Compensation for interest paid to Bank for the delayed period in form of monthly EMI;
- (ii) Compensation for interest on principal amount paid to the Builder at the rate at which the Builder charges from the allottee in case of delayed payment;
- (iii) Compensation for the rent paid for the delayed period; and
- (iv) Compensation for depriving the allottee from the allotment of top floor by constructing another floor above the allotted flat.

11.2 Above four reliefs claimed in complaint filed before the Regulatory Authority clarify that the allottee did not seek any relief of refund of deposited amount with interest due to delay in project. All four reliefs of the complainant make it clear that the allottee is seeking all the reliefs while remaining in the project. He has not shown any intention/wish to withdraw from the delayed project.

11.3 For reference, Section 18 (1) of the RERA Act, 2016 is extracted hereunder:-

**“Section 18. Return of amount and compensation.**

- (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.**

11.4 As per the provisions of Section 18 (1) of the RERA Act, 2016, the allottee is entitled for deposited amount with the interest including compensation if allottee wishes to withdraw from the delayed project. If the allottee does not withdraw from the project and remains in the delayed project, then the allottee is entitled for delay interest for the delayed period at the prescribed rate of interest. Therefore, only mentioning the word, “compensation” in complaint reveals that the allottee is seeking relief of delay interest as per the provisions of proviso to Section 18 (1) of RERA Act, 2016. Only mentioning of word, “compensation” on this count, will not make any difference regarding the fact or law when the allottee is not withdrawing from the project. Answer to Issue No.(i) clarifies that assured date of possession was 24.09.2014. Respondent had admittedly got the completion certificate on 06.07.2018 and after that the respondent promoter has issued revised offer of possession on 16.07.2018 for the Flat No.G-1-1301. First offer of possession was issued on 18.05.2018 mentioning flat No.G-1-1401 without OC/CC. Second offer of possession was issued on 16.07.2018 after obtaining OC/CC dated 06.07.2018. Offer of possession dated 16.07.2018 issued regarding Flat No.Gokul-1-1301. When the allottee applied for the allotment of flat in the project, allottee preferred flat of top floor i.e., 13<sup>th</sup> floor, Flat No.1301 for which he paid separate preferential location charges also. Later on, the respondent promoter constructed 14<sup>th</sup> floor over it. Therefore, the allottee was deprived of the top floor flat. When the allottee had paid separate preferential location charges for top floor, then after the construction of 14<sup>th</sup> floor, the respondent promoter ought to have issued fresh offer of possession after allotting the top floor flat on 14<sup>th</sup> floor to the appellant allottee in place of previously allotted Flat No.1301. Letter dated 18.08.2018 is a mere letter of reminder, not an offer of possession. The respondent promoter has finally issued offer of possession dated 27.11.2019 regarding the Flat No.G-1-1401 of top floor. Therefore, we are of the considered view

that the appellant allottee is entitled for delay interest from 25.09.2014 to 27.11.2019 on the deposited amount. It is now settled law that delay interest shall be paid at the rate of MCLR+1% on the deposited amount for the entire delay period. The Issue No.(iii) is decided accordingly.

12. **Issue No.(vi):-** This issue is related with the fact that whether the appellant allottee is entitled for allotment of flat on the top floor.

12.1 It is admitted fact that on the date of execution of agreement dated 24.03.2012, Annexure-A, the payment schedule to the agreement reveals that the preferential location charges Rs.60,750/- has been paid by the appellant allottee. It is well known that such preferential location charges are paid by an allottee for opting/choosing any flat of specific floor or direction. This fact fortifies the submission of appellant allottee that he opted and was allotted top flat at the 13<sup>th</sup> top floor i.e., Flat No.G-1-1301 and when the respondent promoter constructed 14<sup>th</sup> floor, then the appellant allottee was entitled for a flat on 14<sup>th</sup> floor as he has already paid preferential location charges for the allotment of flat on top floor. The respondent promoter has allotted flat No.G-1-1401 on the top floor to the allottee and issued offer of possession dated 27.11.2019 mentioning the Flat No.G-1-1401 in place of Flat No.G-1-1301. Now the respondent promoter has allotted Flat No.G-1-1401 to the allottee on the top floor of the building. The Issue No.(vi) is decided accordingly.

13. **Issue No.(iv):-** This issue is related with the fact that whether the appellant allottee is defaulter in payment of consideration amount to the promoter.

13.1 The appellant allottee has submitted that he paid on the demand of the respondent promoter, vide letter dated 27.02.2012, 11.06.2012, 13.03.2013 and 25.06.2013, total amount of Rs.21,79,353/- The appellant allottee has submitted that he stopped the payment of instalment to the respondent promoter when respondent promoter failed to comply the terms and conditions to complete the construction on or before 24.09.2014. The appellant allottee has submitted that he did not pay the amount of Rs.3,57,143/- mentioned in the demand

letter dated 12.11.2014 because the respondent promoter failed to deliver the possession on due assured date of completion and further the respondent promoter was not in a position to deliver the flat in near future.

13.2 The Rule 9.2 of U.P. Real Estate (Regulation and Development) (Agreement for Sale/Lease) Rules, 2018 is extracted hereunder:-

“9.2 In case of Default by Promoter under the conditions listed above a non defaulting Allottee is entitled to the following:

- (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; or
- (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.”

13.3 The above Rule 9.2 (i) provides clear provision that in case of default by promoter, allottee is entitled to stop making further payments to promoter as demanded by the promoter. If allottee stops making payment, the promoter shall first correct the situation by completing the construction milestones and only thereafter, the allottee will be required to make next payment without any interest.

13.4 The respondent promoter defaulted on two counts: (i) he could not complete the construction and deliver the possession of the allotted flat to the appellant allottee within assured period and, (ii) after taking preferential location charges regarding allotment of Flat No.G-1-1301 on the floor top of the building at the time of allotment, the respondent promoter constructed another 14<sup>th</sup> floor and deprived the appellant regarding his preference of top floor allotment. Therefore, the

appellant allottee has rightly stopped further payment of instalment as per the demand letter issued after passing of assured period of delivery of possession. Further, offer of possession or demand letters were issued by the respondent promoter when the present appeal of RERA Appeal No.291 of 2019 was pending. Appellant waited for the final adjudication of this appeal. Therefore, the appellant allottee is not defaulter in making payment of consideration amount to the promoter. The respondent promoter cannot charge any penalty or interest from the appellant allottee for the further/final payment of consideration before execution for sale deed/delivery of possession. The Issue No.(iv) is decided accordingly.

14. **Issue No.(v):-** This issue is related with the interpretation of entitlement of allottee for compensation on interest paid to the Bank for EMI and compensation for the rent paid during the delay period. Answer to Issue No.(i) makes it clear that the project is delayed. Answer to Issue No.(ii) makes it clear that the appellant allottee did not opt to withdraw from the delayed project. Therefore, as per the proviso to Section 18 (1) of RERA Act, 2016, the appellant allottee is entitled for interest on the deposited amount at the prescribed rate of interest for the delayed period. Section 18 sub-clause (1) provides compensation in delayed project only when the allottee opts to withdraw from the delayed project. Therefore, the appellant allottee is not entitled for any compensation for the interest paid to the Bank for EMI as well as any compensation for the rent paid during the delayed period. The Issue No.(v) is decided accordingly.
15. **Issue No.(vii):-** This issue involves the interpretation of the fact whether impugned order of Regulatory Authority suffers from any illegality and perversity.

- 15.1 Learned Regulatory Authority has granted delay interest from 25.09.2014 to 19.07.2018 @ Rs.5 Sq./ft per month and if promoter fails to deliver the possession of allotted flat till 19.07.2018 then @ 18% on the deposited amount and calculated amount @ Rs.5 Sq./ft per month. Answer to the Issue no. (iii) makes it clear that, as per the proviso to the section 18(1) of RERA Act, 2016, allottee shall be paid

interest for every month of delay at such rate as may be prescribed. Answer to the Issue no. (iii) makes it clear that delay period is from 25.09.2014 to 27.11.2019 and rate of interest for the entire delay period shall be calculated at the rate of MCLR+1%. Learned Regulatory Authority has taken the date 19 July 2010 on the basis of approval of map. Section 18(1) of RERA Act, 2016 clearly mentions that delay period will extend up to the possession and process for delivery of possession starts from serving valid offer of possession by promoter to allottee. Therefore, we are of the considered view that impugned order of Regulatory Authority suffers from illegality and perversity. Ld. Counsel for respondent promoter has submitted that flat no G-1-1401 on the top floor of the building has been allotted to the appellant allottee which has been mentioned in the third offer of possession dated 27.11.2019. Regulatory Authority has no jurisdiction to grant compensation on any ground. As per the judgement of Hon'ble Supreme Court in the case of **Newtech Promoters & Developers Pvt. Ltd. Versus State of U.P (Civil Appeal No.6745-6749 of 2021) (Para 16)**, law has been settled on this point that jurisdiction to grant delay interest and penalty lies with Regulatory Authority and jurisdiction to grant compensation under RERA Act, 2016 lies with Adjudicating Officer. The Issue No.(vii) is answered accordingly.

16 On the basis of above analysis and discussion, we are of the considered view that impugned order of Regulatory Authority dated 20.11.2017 suffers from illegality and perversity. Hence appeal is liable to be allowed and impugned order is liable to be set aside by passing the following directions:

- (i) Appeal No. 26/2024 is allowed and order dated 20.11.2017 passed by Regulatory Authority in Complaint No.82017771 (Vijay Sharma. Vs. M/s. S.V.P. Builders India Pvt. Ltd.), is set aside and quashed.
- (ii) Respondent Promoter is directed to pay delay interest @ MCLR+1% on the deposited amount of the appellant allottee from 25.09.2014 to 27.11.2019 within 45 days.
- (iii) Respondent promoter is directed to issue fresh statement of account mentioning the rest consideration amount without any penal interest to be paid by the appellant allottee to the

respondent promoter and delay interest to be paid by the respondent promoter to the allottee.

(iv) The respondent promoter is directed to execute conveyance deed and deliver possession of the allotted Flat No.Gokul-1-1401, Gulmohar Garden, Phase-II, Ghaziabad in favour of appellant allottee after receiving the rest consideration amount and legal charges/stamp duty after adjusting the amount of delay interest payable by the respondent promoter to the allottee, within 45 days.

17. No order as to cost.

**(Rameshwar Singh) (Sanjai Khare)**

**Order Date:12.12.2025**

**RajneeshPS)**