

A.F.R.

Neutral Citation No. - 2023:AHC-LKO:76514

RESERVED

Court No. - 30

- (1) **Case :-** RERA APPEAL No. - 67 of 2023
Appellant :- U.P. Avas Evam Vikas Parishad,Lucknow Thru.
Its Executive Engineer Construction Division
Respondent :- Dhruv Kumar Chaturvedi
Counsel for Appellant :- Umesh Chandra Pandey

Connected With

- (2) **Case :-** RERA APPEAL No. - 68 of 2023
Appellant :- U.P. Avas Evam Vikas Parishad Thru. Housing
Commissioner, Lucknow
Respondent :- Arun Kumar Dwivedi
Counsel for Appellant :- Shikhar Srivastava

With

- (3) **Case :-** RERA APPEAL No. - 69 of 2023
Appellant :- U.P. Avas Evam Vikas Parishad Lko. Thru. Its
Add. Housing Commissioner/Secy. Niraj Shukla
Respondent :- Pramod Kumar
Counsel for Appellant :- Umesh Chandra Pandey

With

- (4) **Case :-** RERA APPEAL No. - 70 of 2023
Appellant :- U.P. Avas Evam Vikas Parishad,Lko. Thru. Add.
Housing Commissioner/Secy. Niraj Shukla
Respondent :- Mahendra Yadav
Counsel for Appellant :- Umesh Chandra Pandey

With

- (5) **Case :-** RERA APPEAL No. - 71 of 2023
Appellant :- U.P. Avas Evam Vikas Parishad,Lko. Thru. Its
Add. Housing Commissioner/Secy. Niraj Shukla
Respondent :- Smt. Pooja Maurya
Counsel for Appellant :- Umesh Chandra Pandey
Counsel for Respondent :- Jay Krishna Shukla

With

- (6) **Case :-** RERA APPEAL No. - 72 of 2023
Appellant :- U.P. Avas Evam Vikas Parishad,Lko. Thru. Its
Add. Housing Commissioner/Secy. Niraj Shukla

Respondent :- Dinesh Kumar Singh
Counsel for Appellant :- Umesh Chandra Pandey

With

- (7) **Case :-** RERA APPEAL No. - 73 of 2023
Appellant :- U.P. Avas Evam Vikas Parishad,Lko. Thru. Its
Addl. Housing Commissioner/Secy. Niraj Shukla
Respondent :- Ku. Anju Prajapati
Counsel for Appellant :- Umesh Chandra Pandey

With

- (8) **Case :-** RERA APPEAL No. - 74 of 2023
Appellant :- U.P. Avas Evam Vikas Parishad,Lko. Thru. Its
Addl. Housing Commissioner/Secretary
Respondent :- Ashish Kumar Verma
Counsel for Appellant :- Umesh Chandra Pandey
Counsel for Respondent :- Jay Krishna Shukla

With

- (9) **Case :-** RERA APPEAL No. - 75 of 2023
Appellant :- U.P. Avas Evam Vikas Parishad,Lko. Thru. Its
Addl. Housing Commissioner/Secretary
Respondent :- Navin Prakash Singh
Counsel for Appellant :- Umesh Chandra Pandey

With

- (10) **Case :-** RERA APPEAL No. - 76 of 2023
Appellant :- U.P. Avas Evam Vikas Parishad,Lko. Thru. Its
Addl. Housing Commissioner/Secretary
Respondent :- Mahesh Tiwari
Counsel for Appellant :- Umesh Chandra Pandey
Counsel for Respondent :- Jay Krishna Shukla

With

- (11) **Case :-** RERA APPEAL No. - 77 of 2023
Appellant :- U.P. Avas Evam Vikas Parishad,Lko. Thru. Its
Addl. Housing Commissioner/Secretary
Respondent :- Anant Kumar
Counsel for Appellant :- Umesh Chandra Pandey
Counsel for Respondent :- Jay Krishna Shukla

With

- (12) **Case :-** RERA APPEAL No. - 78 of 2023
Appellant :- U.P. Avas Evam Vikas Parishad,Lko. Thru. Its

Addl. Housing Commissioner/Secretary

Respondent :- Vivek Srivastava

Counsel for Appellant :- Umesh Chandra Pandey

With

(13) **Case :-** RERA APPEAL No. - 79 of 2023

Appellant :- U.P. Avas Evam Vikas Parishad,Lko. Thru. Its

Addl. Housing Commissioner/Secretary

Respondent :- Ajitabh Singh

Counsel for Appellant :- Umesh Chandra Pandey

With

(14) **Case :-** RERA APPEAL No. - 80 of 2023

Appellant :- U.P. Avas Evam Vikas Parishad,Lko. Thru. Its

Addl. Housing Commissioner/Secretary

Respondent :- Smt. Sunita Singh

Counsel for Appellant :- Umesh Chandra Pandey

With

(15) **Case :-** RERA APPEAL No. - 81 of 2023

Appellant :- U.P. Avas Evam Vikas Parishad,Lko. Thru. Its

Addl. Housing Commissioner/Secretary

Respondent :- Presiding Officer Real Estate Appellate
Tribunal, Lko. And 2 Others

Counsel for Appellant :- Anurag Singh,Utkarsh Kumar

With

(16) **Case :-** RERA APPEAL No. - 82 of 2023

Appellant :- U.P. Avas Evam Vikas Parishad,Lko. Thru. Its

Addl. Housing Commissioner/Secy. Niraj Shukla

Respondent :- Vinay Kumar Patel

Counsel for Appellant :- Umesh Chandra Pandey

With

(17) **Case :-** RERA APPEAL No. - 83 of 2023

Appellant :- U.P. Avas Evam Vikas Parishad, Lko. Thru. Addl.
Housing Commissioner/Secy.

Respondent :- Amit Kumar Pandey

Counsel for Appellant :- Umesh Chandra Pandey

With

(18) **Case :-** RERA APPEAL No. - 84 of 2023

Appellant :- U.P. Avas Evam Vikas Parishad,Lko. Thru. Its

Addl. Housing Commissioner/Secretary

Respondent :- Abhishek Kr. Gupta
Counsel for Appellant :- Umesh Chandra Pandey

With

- (19) **Case :-** RERA APPEAL No. - 85 of 2023
Appellant :- U.P. Avas Evam Vikas Parishad Lko. Thru. Addl. Housing Commissioner/Secy.
Respondent :- Hanumant Prasad
Counsel for Appellant :- Umesh Chandra Pandey

With

- (20) **Case :-** RERA APPEAL No. - 86 of 2023
Appellant :- U.P. Awas Evam Vikas Parishad Thru. Housing Commissioner Lko.
Respondent :- Satya Narayan Agnihotri
Counsel for Appellant :- Shikhar Srivastava
Counsel for Respondent :- Lalta Prasad Misra, Dwijendra Mishra

With

- (21) **Case :-** RERA APPEAL No. - 87 of 2023
Appellant :- U.P. Avas Evam Parishad, Lko. Thru. Addl. Housing Commissioner/ Secy.
Respondent :- Manoj Kumar Chaturvedi
Counsel for Appellant :- Umesh Chandra Pandey

With

- (22) **Case :-** RERA APPEAL No. - 88 of 2023
Appellant :- U.P. Awas Evam Vikas Parishad Lko. Thru. Authorized Signatory Pankaj Verma
Respondent :- Presiding Officer Real Estate Appellate Tribunal, Lko. And Others
Counsel for Appellant :- Anurag Singh, Utkarsh Kumar

With

- (23) **Case :-** RERA APPEAL No. - 89 of 2023
Appellant :- U.P. Awas Evam Vikas Parishad, Lko. Thru. Authorize Signatory Pankaj Verma
Respondent :- Presiding Officer Real Estate Appellate. Tribunal, Lko. And Others
Counsel for Appellant :- Anurag Singh, Utkarsh Kumar
Counsel for Respondent :- Pradeep Kumar Singh

With

- (24) **Case :-** RERA APPEAL No. - 90 of 2023
Appellant :- U.P. Awas Evam Vikas Parishad Lko. Thru. Authorize Signatory Pankaj Verma
Respondent :- Presiding Officer Real Estate Appellate Tribunal Lko. And 2 Others
Counsel for Appellant :- Anurag Singh,Utkarsh Kumar
- With**
- (25) **Case :-** RERA APPEAL No. - 91 of 2023
Appellant :- U.P. Awas Evam Vikas Parishad Lko. Thru. Auth. Signatory Pankaj Verma
Respondent :- Presiding Officer Real Estate Appellate Tribunal Lko. And 2 Others
Counsel for Appellant :- Anurag Singh,Utkarsh Kumar
- With**
- (26) **Case :-** RERA APPEAL No. - 92 of 2023
Appellant :- U.P. Awas Evam Vikas Parishad Lko. Thru. Addl. Housing Commissioner Dr. Neeraj Shukla
Respondent :- Presiding Officer Real Estate Appellate Tribunal Lko. And 3 Others
Counsel for Appellant :- Anurag Singh,Utkarsh Kumar
- With**
- (27) **Case :-** RERA APPEAL No. - 93 of 2023
Appellant :- U.P. Awas Evam Vikas Parishad Lko. Thru. Authorize Signatory Pankaj Verma
Respondent :- Presiding Officer Real Estate Appellate Tribunal Lko. And Others
Counsel for Appellant :- Anurag Singh,Utkarsh Kumar
- With**
- (28) **Case :-** RERA APPEAL No. - 94 of 2023
Appellant :- U.P. Awas Evam Vikas Parishad Lko. Thru. Dr. Neeraj Shukla Addl. Housing Commissioner
Respondent :- Presiding Officer Real Estate Appellate Tribunal Lko. And Others
Counsel for Appellant :- Anurag Singh,Utkarsh Kumar
- With**
- (29) **Case :-** RERA APPEAL No. - 95 of 2023
Appellant :- U.P. Awas Evam Vikas Parishad Lko. Thru. Dr. Neeraj Shukla, Addl. Housing Commissioner
Respondent :- Presiding Officer Real Estate Appellate

Tribunal, Lko. And Others

Counsel for Appellant :- Anurag Singh,Utkarsh Kumar

With

(30) Case :- RERA APPEAL No. - 96 of 2023

Appellant :- U.P. Awas Evam Vikas Parishad Lko. Thru. Authority, Signatory Pankaj Verma

Respondent :- Presiding Officer Real Estate Appellate Tribunal Lko. And Others

Counsel for Appellant :- Anurag Singh,Utkarsh Kumar

With

(31) Case :- RERA APPEAL No. - 97 of 2023

Appellant :- U.P. Awas Evam Vikas Parishad Lko. Thru. Authorize Signatory Pankaj Verma

Respondent :- Presiding Officer Real Estate Appellate Tribunal Lko. And Others

Counsel for Appellant :- Anurag Singh,Utkarsh Kumar

With

(32) Case :- RERA APPEAL No. - 98 of 2023

Appellant :- U.P. Awas Evam Vikas Parishad, Lko. Thru. Authorize Signatory Pankaj Verma

Respondent :- Presiding Officer Real Estate Appellate Tribunal Lko. Thru. Secy. And Others

Counsel for Appellant :- Anurag Singh,Utkarsh Kumar

With

(33) Case :- RERA APPEAL No. - 99 of 2023

Appellant :- U.P. Awas Evam Vikas Parishad Lko. Thru. Authorize Signatory Pankaj Verma

Respondent :- Presiding Officer Real Estate Appellate Tribunal, Lko. And Others

Counsel for Appellant :- Anurag Singh

With

(34) Case :- RERA APPEAL No. - 100 of 2023

Appellant :- U.P. Awas Evam Vikas Parishad, Lko. Thru. Authorize Signatory Pankaj Verma

Respondent :- Presiding Officer Real Estate Appellate Tribunal, Lko. And Others

Counsel for Appellant :- Anurag Singh,Utkarsh Kumar

With

- (35) **Case :-** RERA APPEAL No. - 101 of 2023
Appellant :- U.P. Awas Evam Vikas Parishad Lko. Thru. Authorize Signatory Pankaj Verma
Respondent :- Presiding Officer Real Estate Appellate Tribunal, Lko. And Others
Counsel for Appellant :- Anurag Singh,Utkarsh Kumar
- With**
- (36) **Case :-** RERA APPEAL No. - 102 of 2023
Appellant :- U.P. Awas Evam Vikas Parishad, Lko. Thru. Its Authorize Signatory Pankaj Verma
Respondent :- Presiding Officer Real Estate Appellate Tribunal Lko. And 2 Others
Counsel for Appellant :- Utkarsh Kumar,Anurag Singh
- With**
- (37) **Case :-** RERA APPEAL No. - 103 of 2023
Appellant :- U.P. Awas Evam Vikas Parishad, Lko. Thru. Authorize Signatory Pankaj Verma
Respondent :- Presiding Officer Real Estate Appellate Tribunal Lko. And 2 Others
Counsel for Appellant :- Anurag Singh,Utkarsh Kumar
- With**
- (38) **Case :-** RERA APPEAL No. - 104 of 2023
Appellant :- U.P. Awas Evam Vikas Parishad Lko. Thru. Authorize Signatory Pankaj Verma
Respondent :- Presiding Officer Real Estate Appellate Tribunal, Lko. And 2 Others
Counsel for Appellant :- Utkarsh Kumar,Anurag Singh
- With**
- (39) **Case :-** RERA APPEAL No. - 105 of 2023
Appellant :- U.P. Awas Evam Vikas Parishad Lko. Thru. Housing Commissioner Dr. Neeraj Shukla
Respondent :- Presiding Officer Real Estate Appellate Tribunal Lko. And Others
Counsel for Appellant :- Anurag Singh,Utkarsh Kumar
Counsel for Respondent :- Santosh Kumar Bhatt
- With**
- (40) **Case :-** RERA APPEAL No. - 106 of 2023
Appellant :- U.P. Awas Evam Vikas Parishad, Lko. Thru. Addl. Housing Commissioner Dr. Neeraj Shukla
Respondent :- Presiding Officer Real Estate Appellate

Tribunal, Lko. And Others

Counsel for Appellant :- Anurag Singh,Utkarsh Kumar

With

(41) **Case :-** RERA APPEAL No. - 107 of 2023

Appellant :- U.P. Awas Evam Vikas Parishad Lko. Thru. Addl. Housing Commissioner Dr.Neerj Shukla

Respondent :- Presiding Officer Real Estate Appellate Tribunal Lko. And 2 Others

Counsel for Appellant :- Anurag Singh,Utkarsh Kumar

With

(42) **Case :-** RERA APPEAL No. - 108 of 2023

Appellant :- U.P. Awas Evam Vikas Parishad Lko. Thru. Addl. Housing Commissioner Dr. Neeraj Shukla

Respondent :- Presiding Officer Real Estate Appellate Tribunal Lko. And Others

Counsel for Appellant :- Anurag Singh,Utkarsh Kumar

With

(43) **Case :-** RERA APPEAL No. - 109 of 2023

Appellant :- U.P. Awas Evam Vikas Parishad Lko. Thru. Addl. Housing Commissioner Dr. Neeraj Shukla

Respondent :- Presiding Officer Real Estate Appellate Tribunal Lko. And Others

Counsel for Appellant :- Utkarsh Kumar,Anurag Singh

With

(44) **Case :-** RERA APPEAL No. - 110 of 2023

Appellant :- U.P. Awas Evam Vikas Parishad Lko. Thru. Its Authorized Signatory Pankaj Verma

Respondent :- Presiding Officer Real Estate Appellate Tribunal Lko. And 2 Others

Counsel for Appellant :- Anurag Singh

With

(45) **Case :-** RERA APPEAL No. - 111 of 2023

Appellant :- U.P. Awas Evam Vikas Parishad Lko. Thru. Its Authorized Singnatory Pankaj Verma

Respondent :- Presiding Officer Real Estate Appellate Tribunal Lko. And 2 Others

Counsel for Appellant :- Anurag Singh

With

- (46) **Case :-** RERA APPEAL No. - 112 of 2023
Appellant :- U.P Awas Evam Vikas Paris. Lko. Thru. Its Auth. Singna. Pankaj Verma
Respondent :- Presiding Offic. Real Estate Appel. Trib. Lko. And 2 Other
Counsel for Appellant :- Anurag Singh
- With**
- (47) **Case :-** RERA APPEAL No. - 113 of 2023
Appellant :- U.P. Awas Evam Vikas Parishad Lko. Thru. Dr. Neeraj Shukla
Respondent :- Presiding Officer Real Estate Appellate Tribunal Lko. And 2 Others
Counsel for Appellant :- Anurag Singh
- With**
- (48) **Case :-** RERA APPEAL No. - 114 of 2023
Appellant :- U.P Awas Evam Vikas Parishad Lko. Thru. Its Author. Signa. Pankaj Verma
Respondent :- Presid. Offfi. Real Estate Appell. Tribu. Lko. And 2 Other
Counsel for Appellant :- Anurag Singh
- With**
- (49) **Case :-** RERA APPEAL No. - 115 of 2023
Appellant :- U.P. Awas Evam Vikas Parishad Lko. Thru. Autho. Sign. Pankaj Verma
Respondent :- Presiding Officer Real Estate Appellate Tribunal Lko. And 2 Others
Counsel for Appellant :- Anurag Singh
- With**
- (50) **Case :-** RERA APPEAL No. - 116 of 2023
Appellant :- U.P Awas Evam Vikas Parishad Lko. Thru. Its Author. Signa. Pankaj Verma
Respondent :- Presid. Offic. Real Eatate Appell. Trib. Lko. And 2 Other
Counsel for Appellant :- Anurag Singh
- With**
- (51) **Case :-** RERA APPEAL No. - 117 of 2023
Appellant :- U.P. Awas Evam Vikas Parishad Lko. Thru. Autho. Sign. Pankaj Verma
Respondent :- Presiding Officer Real Estate Appellate

Tribunallko. And 2 Others

Counsel for Appellant :- Anurag Singh

Hon'ble Om Prakash Shukla, J.

(1) At the outset, this Court deem it apt to divide the judgment into sections to facilitate analysis, which are as follows :-

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A. Introduction

- (2) Heard Shri Anurag Singh, Shri Umesh Chandra Pandey and Shri Shikhar Srivastava, learned Counsel representing the appellant and Shri Pradeep Kumar Singh and Shri Santosh Kumar Bhatt, learned Counsel representing the respondent.
- (3) The above-captioned appeals have been filed by the appellant- “U.P Avas Evam Vikas Parishad” under Section 58 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as “**RERA Act, 2016**”), wherein by virtue of the impugned order, the learned U.P. Real Estate Appellate Tribunal, Lucknow (hereinafter referred to as the ‘**Tribunal**’) has dismissed appeals filed by the appellant and it has been directed that the amount deposited in terms of Section 43 (5) of the RERA Act, 2016 by the appellant to be transferred to the concerned account of the Regulatory Authority for disposal as per the provisions of the Act.

(4) Due to reasons recorded by this Court in its earlier order dated 28.1.2023, the delay in filing of these appeals has already been condoned and as such these bunch of appeals were heard together for their disposal on merits.

B. RERA Appeal Nos. 67, 69, 70, 72, 73, 74, 75, 76, 77, 78, 79, 80, 82, 83, 84, 85, 87 of 2023

(5) These appeals arise out of the common judgment/order dated 25.11.2022 passed by the learned Appellate Tribunal.

(6) Since common question of law has been raised by the appellant in all these appeals, it would be in the interest of justice that all these appeals are consolidated and taken together for hearing and disposal. However, before this Court deals with the question of law raised in these appeals, the brief facts culminating into these appeals be narrated to appreciate the law in its proper perspective. In this regard, the facts of the lead matter being RERA Appeal No. 67 of 2023 (*complainant-Dhruv Kr. Chaturvedi*) is taken into consideration.

Factual Matrix

(7) It has been submitted that the appellant is a public institution constituted under the provisions of U.P Avas Evam Vikas Adhiniyam, 1973 (hereinafter referred to as ‘**Adhiniyam, 1973**’) and is an instrumentality of State which works on ‘no profit and no loss’ basis. The appellant had been constituted for the welfare of the public and is engaged in providing planned

development of the city and answering to the residential needs of the public at large in a regularised manner.

- (8) It is claimed that the appellant has acquired the land for development of housing projects under the provisions of U.P. Awas Evam Vikas Adhinyam and the provisions of Land Acquisition Act, 1894 as provided under law. It is the case of the appellant that a Scheme was launched in Vrindavan Yojna and after delivery of possession made by the Land Acquisition in the year 2011 and during the project was to be in progress, a new Act, namely, “The Right of Fair Compensation & Rehabilitation Act, 2013” came into force, which caused various hindrances in meaningful acquisition of the land and as such some delay has occurred in the said project, which was beyond the control of the appellant.
- (9) It appears that registration for allotments of flats were opened by the appellant for Vrindavan Yojna, Nilgiri Enclave under self-finance scheme for a housing colony of 640 flats in March, 2013 and, as such, on an application by the respondent (complainant before the authority), the appellant allotted a Flat to the respondent on 31.08.2013 for an estimated sale consideration of Rs. 20,88,000/-. As per the respondent, the said amount of sale consideration was payable in installments and the possession was to be given by the appellant within 24 months. However, the appellant failed to offer for possession to

the respondent within the said stipulated time period, which resulted in increase in the Flat price and additional burden of GST was made applicable to him. It was the case of the respondent before the Authority that although he had regularly paid all the installments, however. as per the registration booklet, no windows in the Flat, no car parking, no sewage and no other facilities were made available to him and most importantly the possession was delayed.

(10) Admittedly, the sale deed for the said Flat was executed on 08.12.2017 and possession was given on 27.01.2018 and the complaint was filed almost after one year of taking possession by the respondent on various grounds including delay of delivering possession of the flats, no windows in flats, parking issue etc.

(11) On the other hand, the appellant took a ground before the authority that the price of the flat was not fixed and was merely tentative and similarly 24 months of possession was a tentative date. According to them, construction was delayed because of pendency of litigation in the High Court being Writ Petition No. 110 of 11 and 3869 of 11. Further delay was because of *dharna pradarshan* of farmer's union, for which a report/complaint was also filed by the appellant. According to the appellant, the registration booklet also mentions that in case the respondent/allottee pays the last installment and still is not

given the possession of the flat, he was well within his right to demand for refund of money, which in this case has not been done by the respondent/allottee, meaning thereby that they have volunteered to waive off their right to award of any compensation. The appellant also stated before the authority that the claim for compensation for delay under Section 12, 14, 18 and 19 of the Adhiniyam, 1973 was not maintainable. According to them, window has been provided and car parking has also been given.

- (12) An objection was raised by the appellant before the Authority as to the maintainability of the complaint, wherein the Authority transferred the said complaint to the Adjudicating Officer under Section 71 of the Act, 1973 for determination of compensation for delay and other issues etc.
- (13) The Adjudicating Authority, after discussing the contention of both the parties in great detail, returned a finding dated 11.02.2021 that there had been a delay in giving the possession of flat by the appellant. Thus, the authority, while accepting the complaint of the respondent, directed the appellant to pay interest as compensation on the amount of Flat i.e Rs. 20,88,000/- for the period of delay between 31.08.2015 to 18.08.2017 at the rate of MCLR+1% per annum within 45 days of the passing of orders. Further direction was that in case the said amount of compensation in the form of Interest is not paid

within the said 45 days, the respondent would be entitled for interest at the same rate till the receipt of actual amount from appellant.

- (14) The appellant being aggrieved by the aforesaid order of the Adjudicating Authority filed an appeal under Section 44 of the RERA Act, 2016 before the Appellate Tribunal.
- (15) The said appeal was taken for hearing along with 22 other appeals, lead matter being Appeal No. 245 of 2020 (*U.P Avas Evam Vikas Parishad V/s Sangeeta Singh*), wherein the Appellate Tribunal painstakingly prepared a tabular chart of the pending 23 appeals, giving brief description of the flat allotted, date of allotment, total price paid, date of impugned order, date of filing of appeal and the relief sought in each appeal.
- (16) The Appellate Tribunal having recorded the facts of each appeal in a tabular form, went on to narrate the brief facts of the lead appeal and the grounds preferred by the appellant along with the relief sought. Further, the objection against the appeal by the respondent was also noted by the Appellate Tribunal along with the relevant judgments. Apparently, the Appellate Tribunal after discussing the various issues raised by the appellant as well as the respondent, rejected the appeal vide the common impugned order dated 25.11.2022 along with almost 22 other appeals on the same issue. It is this order which is subject matter of challenge in these appeals.

Contention of the parties

(17) The learned Counsel for the appellant has strenuously argued that the impugned order has been passed without considering the fact that any claim under the RERA Act can be raised or compensation can be granted only on the basis of contract existing between the parties. According to him, after execution of the sale deed, the prior contract of year 2013 having been extinguished, the complaint itself was not maintainable and as such he has argued that the impugned order has been passed without any jurisdiction. The learned Counsel as an extension of his argument has cited judgments of the National Consumer Disputes Redressal Commission (NCDRC) to suggest that the complaint before the RERA was not maintainable of the respondent/allottee, in case he had taken possession with an open eye and without raising any objection. Further, grounds were agitated relating to non-applicability of Section 18 of the RERA Act, 2016 relating to grant of interest or compensation as there existed no privity of contract between the parties. Further thrust of the argument of the learned Counsel for the appellant were on the issue that when the allotment was made at a tentative rate subject to calculation of final cost, there could not had been any question about revised higher rates.

(18) Thus, the learned Counsel has attacked the impugned order from all four corners and has also buttressed to frame almost six

substantial question of law, as could also be found in the memo of appeals.

- (19) Per contra, the learned Counsel for the respondent/allotee has supported the impugned judgment. According to him, there is no substantial question of law involved in the present appeal and as such he has prayed for dismissal of the present appeal.

Discussion & Findings

- (20) Before this Court embarks on to the onerous path of deciding the present bunch of appeals, it would be apt to consider the scope and purport of the provision of law under which these appeals have been sought to be preferred by the appellant. Admittedly, these appeals have been filed under section 58 of the RERA Act, 2016, which inter-alia states :-

"58. Appeal to High Court-(1) Any person aggrieved by any decision or order of the Appellate Tribunal, may, file an appeal to the High Court, within a period of sixty days from the date of communication of the decision or order of the Appellate Tribunal, to him, on any one or more of the grounds specified in Section 100 of the Code of Civil Procedure, 1908:

Provided that the High Court may entertain the appeal after the expiry of the said period of sixty days, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal in time.

Explanation-The expression "High Court" means the High Court of a State or Union territory where the real estate project is situated.

(2) No appeal shall lie against any decision or order made by the Appellate Tribunal with the consent of the parties."

(21) A plain reading of the aforesaid provision although sufficiently provides for an appeal against the decision or order of the Appellate Tribunal on any one and more grounds specified in Section 100 of the Code of Civil Procedure, however, the word "Second Appeal" is missing from the aforesaid Section 58 of the Act. In any case, the very mention of the availability of grounds as specified in Section 100 of CPC makes the said provision of the CPC relevant for consideration of any appeal under Section 58 of the RERA Act, especially when technically it is an appeal against an Appellate Tribunal's decision or order and in that sense is virtually a second appeal. It would be profitable at this stage to quote Section 100 C.P.C, which reads as under:

"100.Second appeal-(1) Save as otherwise expressly provided in the body of this Code or by any other law for the time being in force, an appeal shall lie to the High Court from every decree passed in appeal by any Court subordinate to the High Court, if the High Court is satisfied that the case involves a substantial question of law.

(2) An appeal may lie under this section from an appellate decree passed ex parte.

(3) In an appeal under this section, the memorandum of appeal shall precisely state the substantial question of law involved in the appeal.

(4) Where the High Court is satisfied that a substantial question of law is involved in any case, it shall formulate that question.

(5) The appeal shall be heard on the question so formulated and the respondent shall, at the hearing of the appeal, be allowed to argue that the case does not involve such question:

Provided that nothing in this sub-section shall be deemed to take away or abridge the power of the Court to hear, for reasons to be recorded, the appeal on any other substantial question of law, not formulated by it, if it is satisfied that the case involves such question.]”

(22) There is no gainsaying that a right to appeal is always conferred by the statute and any party does not have an inherent right to appeal. In the present case, it has been mentioned that an appeal under Section 58 of the RERA Act can be preferred on one or more grounds specified in Section 100 CPC. Apparently, Section 100 CPC provides for an appeal to the High Court, if it is satisfied that the case involves a substantial question of law. Thus, it can be safely deduced that the existence of substantial question of law is *sine quo non* for the exercise of jurisdiction under Section 100 of the CPC as well as Section 58 of the RERA Act.

(23) The principles for deciding when a question of law becomes a substantial question of law, have been enunciated by a Constitution Bench of the Apex Court in **Sir Chunilal v. Mehta & Sons Ltd. v. Century Spg. & Mfg. Co. Ltd** : AIR 1962 SC 1314 wherein it was held :-

“The proper test for determining whether a question of law raised in the case is substantial would, in our opinion, be whether it is of general public importance or whether it directly and substantially affects the rights of the parties and if so whether it is either an open question in the sense that it is not finally settled by this Court or by the Privy Council or by the Federal Court or is not free from difficulty or calls for discussion of alternative views. If the question is settled by the highest court or the general principles to be applied in determining the question are well settled and there is a mere question of applying those principles or that the plea raised is palpably absurd the question would not be a substantial question of law.”

- (24) Although, under Section 58 of the RERA Act, the jurisdiction of this Court is confined to substantial question of law, which as a corollary means that a finding of fact is not open to challenge in this proceeding, even if the appreciation of evidence is palpably erroneous and the finding of fact is incorrect as has been held by the Apex Court in **Ramchandra Vs. Ramalingam**: AIR 1963 SC 302, however the same is always to the exceptions that (i) the conclusions drawn by the court below do not have a basis in the evidence led or (ii) the appreciation of evidence “suffers from material irregularity”.
- (25) Recently, the Apex Court in the case of **Nazir Mohamed V/s J. Kamala and Ors.** : (2020) 19 SCC 57 at paragraph 37 formulated the principles relating to Section 100 CPC as to how and in what circumstances the substantial question of law can be framed in the following words :-

“37. The principles relating to Section 100 CPC relevant for this case may be summarised thus:

An inference of fact from the recitals or contents of a document is a question of fact, but the legal effect of the terms of a document is a question of law. Construction of a document, involving the application of any principle of law, is also a question of law. Therefore, when there is misconstruction of a document or wrong application of a principle of law in construing a document, it gives rise to a question of law.

The High Court should be satisfied that the case involves a substantial question of law, and not a mere question of law. A question of law having a material bearing on the decision of the case (that is, a question, answer to which affects the rights of parties to the suit) will be a substantial question of law, if it is not covered by any specific provisions of law or settled legal principle emerging from binding precedents, and, involves a debatable legal issue.

A substantial question of law will also arise in a contrary situation, where the legal position is clear, either on account of express provisions of law or binding precedents, but the Court below has decided the matter, either ignoring or acting contrary to such legal principle. In the second type of cases, the substantial question of law arises not because the law is still debatable, but because the decision rendered on a material question, violates the settled position of law.

The general rule is, that High Court will not interfere with the concurrent findings of the Courts below. But it is not an absolute rule. Some of the well-recognised exceptions are where (i) the courts below have ignored material evidence or acted on no evidence; (ii) the courts have drawn wrong inferences from proved facts by applying the law erroneously; or (iii) the courts have wrongly cast the burden of proof. A decision based

on no evidence, does not refer only to cases where there is a total dearth of evidence, but also refers to case, where the evidence, taken as a whole, is not reasonably capable of supporting the finding.”

(26) Having traced the scope and power of interference by this Court under Section 58 of the RERA Act, 2016 to an order passed by the Appellate Tribunal, this Court finds it profitable to quote the various question of law as mentioned by the appellant in the memo of appeal, so as to examine its relevance keeping in view the limited scope of provisions of Section 58 of the RERA Act, 2016. The question of law framed by the appellant are thus :-

“(a) Whether the order and judgment impugned suffers from illegality on account of improper consideration of material and law as well as exercising the jurisdiction not vested in it?

(b) Whether the order of the tribunal upholding the order of adjudicating officer can be just, legal and proper ignoring that the complaint itself was not maintainable as was filed much before to the RERA Act came into force and was not an ongoing project in view to rule 2(h)?

(c) Whether the impugned judgment and order about awarding the interest of compensation for delayed period, ignoring that it was not due to fault of the appellant can be just and liable to be set aside in view of principles of force majeure?

(d) Whether after dismissal of complaint by authority vide order dated 19.10.2019 the compensation or interest can be awarded in view to section 12, 14 & 18 of the Act and the order be held to be just and proper.

(e) Whether in deciding all 18 appeals by common order without considering the fact

of each cases or appreciating the points involved and argument made, the finding can be held to be a speaking order and not in violation to principles of natural Justice?

(f) Whether the finding of the impugned judgment and order specially awarding interest on delayed possession is being contrary to the law laid down by Apex Court is totally illegal arbitrary and is otherwise not valid in the eyes of law hence liable to be set-aside.”

(27) The aforesaid issues framed by the appellant apparently seems to have been already decided by the Appellate Tribunal, wherein the issues framed by the Tribunal subsumes the question of law framed by the appellant in the present petitions. Apparently, the Appellate Tribunal applauding the main aim of the RERA Act is to protect the home buyers and also to make sure that the investments in the field of the real estate industry get uplifted with time had proceeded to answer these questions, keeping in view that the RERA Act was brought in the scenario to see to the fact that the sale to a Home buyer whether it be an apartment or a plot transparently takes place between the promoter/developer and the allottee/Home buyers.

(28) Now the Court proceeds to see whether the six "substantial questions of law", as have been framed by the appellants, are invoked "substantially' or not, so as to invoke the jurisdiction of this Court. A three Bench Judge of the Apex Court some more than a decade ago in **Santosh Hazari Vs. Purushottam Tiwari**: (2001) 3 SCC 179, which was also reiterated and

followed in **Chandrabhan v. Saraswati** : 2022 SCC Online SC 1273 and **Government of Kerala Vs Joseph** : 2023 SCC Online SC 961 had held that to constitute a substantial question of law, (i) the issue should not be previously settled by law of land or a binding precedent, (ii) the said issue should have material bearing on the decision of the case and (iii) the issue raised should not be a fresh point raised for the first time before the High Court, unless it goes to the root of the matter.

- (29) Although, this Court exercising its Jurisdiction under Section 58 of the RERA Act is not enthroned as a Second Appellate body, however, a fiction has been created by the Section itself, which cast a duty and somewhat provide an embargo on the appellant to file an appeal under the said section on any one or more of the grounds specified in Section 100 of the Code of Civil Procedure, 1908. Thus, a restriction has been cast upon the appellant to prefer the appeal on a limited ground of “substantial question of law” and in that sense this Court could be held to have exercising its power of Second Appeal under Section 58 of the RERA as envisioned under Section 100 of the Civil Procedure Code. Pertinently, no such restriction is attributable to this Court of considering the present appeal only on the point of substantial question of law.

- (30) From perusal of the bunch of appeals being decided by this common order, it comes out that the respondents in each of the

cases have booked a flat with the U.P. Awas Evam Vikas Parishad and paid a booking amount in terms of scheme floated by the Parishad. Apparently, the respondents were allotted a flat in Neelgiri Enclave (Vrindavan Yojna) during the period 2013-2014. The Parishad, thereafter, demanded certain amount towards allotted flats. The respondent claims to have submitted the aforesaid amount as and when the demands were raised by the Parishad. It is admitted that the possession of the flat was supposed to be given within 30 months from the date of allotment as per Clause 9.1 of the brochure. However, it was only in 2017, that the respondents were asked to deposit the final amount, so that the sale deed can be registered of the Flats and it was subsequently only that the possession of these Flats were given to the respondents. It is after having received the possession and after registration of the sale deed, the respondents filed a Complaint Case before the U.P. Real Estate Regulatory Authority (hereinafter referred to as "Authority") claiming refund of certain excess amount, refund of interest, compensation for delayed possession and other ancillary non-compliance of the RERA provisions relating to construction and parking. Apparently, the complaint was allowed by the Authority, wherein the Parishad was directed to pay interest on the total amount of sale consideration paid till the date of possession of the apartment at the rate of MCLR + 1% as compensation. Subsequently, the Parishad filed various appeals

before the Appellate Tribunal, which came to be decided by the impugned common order dated 25.11.2022, by virtue of which the order of the Authority was upheld and hence the present second appeals.

- (31) This Court has gone through the appeals filed by the Parishad with assistance of the learned Counsel appearing for the appellant and the alleged substantial questions of law.
- (32) Having traced the principles of law for consideration of the present appeal under Section 58 of the RERA Act, it is apparent that none of the "substantial" questions of law" as have been framed by the appellant fall within the ambit of being "substantial" questions of law. The reason for the same is that the "substantial" questions of law as have been framed by the appellant are specifically covered by the specific provisions of law as per the interpretation given to them and do not involve any debatable legal issue as has been also held in **Nazir Mohamed Vs J. Kamala and Ors.:** (2020) 19 SCC 57 at paragraph 32, which *inter-alia* observes :-

“32. To be “substantial”, a question of law must be debatable, not previously settled by the law of the land or any binding precedent, and must have a material bearing on the decision of the case and/or the rights of the parties before it, if answered either way.”

(33) The learned Counsel for the appellant has during the course of his argument emphatically stressed on a recent order of the learned RERA Appellate Tribunal passed in Appeal No. 70 of 2023 (*GNIDA Vs. Ranjan Mishra*) and two other connected matters to argue that the RERA Tribunal has itself vide the said judgment dated 20.04.2023 has held that the Adjudicating Officer does not have the jurisdiction to grant interest in the form of compensation under section 18(1) of the RERA Act and that according to the learned Counsel, the Appellate Tribunal has itself recorded in the said order that the competence and jurisdiction of the Adjudicating Officer was being examined by the Appellate Tribunal for the first time in the said case. While the order of an Appellate Tribunal is not binding on this Court, which has been designated as a Court of Second Appeal under the scheme of RERA Act and even the judicial proprietary does not permit this Court to consider the said order for adjudication of these appeals, however, as is being discussed hereinafter, the issue raised and decided in both the cases are at stark differences.

(34) This Court on the specific query having put to the learned Counsel for the appellant as to whether any ground had been taken by him before the RERA Appellate Tribunal or before this Hon'ble Court relating to the competence or jurisdiction of the Adjudicating Authority for grant of interest as compensation under Section 18(1) of the RERA Act, learned Counsel has

neither admitted nor denied the said query and has instead relied on the following judgments to buttress his submission that a pure question of law, not dependent upon any question of facts can be allowed to be raised for the first time even before the Appellate Court.

(I) **Chittoori Subbanna Vs Kudappa Subbanna**, AIR 1965 SC 1325,

(II) **State of Punjab Vs Dr. R.N. Bhatnagar & Ors.** (1999) 2 SCC 330,

(III) **T.C. Appanda Mudaliar Vs State of Madras**, (1976) 4 SCC 821,

(IV) **Dr. Jagmittar Sain Bhagat Vs Dir. of Health Services**, (2013) 10 SCC 136,

(V) **Saroj Rani Vs Sudarshan Kr. Chadha** (1984) 4 SCC 90,

(VI) **State of Uttar Pradesh & others Vs Dr. Anupam Gupta & Ors.** (1993) Suppl(1) SCC 594,

(VII) **Lakshmi Shankar Mehrotra & Ors. Vs S.M. Sengupta & Ors.** (1995) Suppl(4) SCC 40.

(35) There could not be any doubt about the aforesaid legal precedent, however, as held in various judgment that a decision is an authority for the questions of law determined by it and while applying the ratio, the Court may not pick out a word or a sentence from the judgment divorced from the context in which the said question arose for consideration. Thus Court finds that there is no quarrel about the proposition of law argued by the

learned Counsel for the appellant, however, the fact of the matter remains that jurisdiction is an issue, which ought to have been decided at a preliminary stage itself.

(36) At this juncture, it would be apt to quote the question of determination formulated by the learned RERA Appellate Tribunal, which inter-alia enumerates as follows:

I. Whether the complaint filed before the Adjudicating officer is maintainable as cause of action arose in year, 2013 before RERA Act, 2016 came into force as pleaded by appellant- UP Avas evam Vikas Parishad, Lucknow in its Appeal ? .

II. Whether the project in question of the appellant- UP Avas evam Vikas Parishad, Lucknow is delayed ?

III. Whether the judgment and order dated 13.03.2020 passed by the Adjudicating Officer awarding the interest in terms of compensation to the respondent/ complainant for delayed period from 30.07.2016 to 24.09.2019 is liable to be set aside for the reasons mentioned in appeal?"

(37) Thus, apparently the issue of competence and jurisdiction was neither raised by the appellant before the Appellate Tribunal, nor the same has been raised in the present memo of appeals filed in this Court.

(38) Moreover, there is another aspect of the matter. This Court *de hors* the aforesaid belated challenge to the Jurisdiction by the

appellant would have entertained the said challenge even at this stage, however, a plain reading of the facts of the present case leads one to the conclusion that both the matters are distinguishable on facts.

(39) Apparently, it is available from the impugned order of the Adjudicating Officer that the allottee had filed a complaint seeking compensation for various reasons, including (i) relating to delay in possession, (ii) there being no windows in the flat and (iii) non-providing of parking area etc., wherein the RERA Authority vide an order dated 19.10.2019 marked the said case for adjudication to the said Adjudicating Officer because Section 18 of the Act related to grant of interest as well as compensation. The learned Adjudicating Officer after hearing the parties and recording the findings came to a conclusion that there had been a delay in providing possession to the allottee during the period from 31.08.2015 to 18.08.2017 and as such for that period granted compensation to be calculated as an interest at the rate of SBI Home loan rate MCLR+ 1% calculated annually. The Adjudicating Officer held that interest amount would be the compensation granted.

(40) Thus, this Court finds that the Adjudicating Officer has awarded compensation in the form of interest, which in this case is “SBI Home loan rate MCLR+ 1% calculated annually”. This Court needs not burden this judgement any further in explaining the meaning of compensation, which may be both monetary as well

as non-monetary, direct or indirect etc. In the present case, apparently, it seems that the appellant is so engrossed with the word “Interest” that it is not able to visualize interest and compensation separately. Needless to say, interest is a sub-set of compensation and not vice-versa. Further, a Division bench of the Bombay High Court in the case of **Neelkamal Realtors Suburban Pvt. Ltd. And others Vs. Union of India** : AIR 2018 (NOC) 398 (BOM.), while deciding the constitutionality of various provisions of RERA, observed as follows :-

“Section 18(1)(b) lays down that if the promoter fails to complete or is unable to give possession of an apartment due to discontinuance of his business as a developer on account of suspension or revocation of the registration under the Act or for any other reason, he is 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 with interest at such rate as may be prescribed in this behalf including compensation. If the allottee does not intend to withdraw from the project he shall be paid by the promoter interest for every month's delay till handing over of the possession. The requirement to pay interest is not a penalty as the payment of interest is compensatory in nature in the light of the delay suffered by the allottee who has paid for his apartment but has not received possession of it. The obligation imposed on the promoter to pay interest till such time as the apartment is handed over to him is not unreasonable. **The interest is merely compensation for use of money.**”

- (41) In any case, the point being raised by the learned Counsel for the appellant in challenging the jurisdiction of the Adjudicating Authority vis-à-vis the RERA Authority for grant of interest for

an allottee who wishes to remain invested with the project and eventually takes the possession, is not under challenge, as proviso to Section 18(1) clearly mandates 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. Therefore, by raising the point of jurisdiction, the learned Counsel has waived to certain extent the grant of interest, as the resurrected challenge is as to who can grant interest, whether the Authority or the Adjudicating Officer. This Court finds that the aforesaid challenge has been already answered by the Apex Court at paragraph 86 of the judgment reported as **M/s Newtech Promoters and Developers Pvt. Ltd. Vs. State of U.P** (Civil Appeal No. 6745-6749 of 2021) decided on 11.11.2021, which inter-alia states;

“86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like ‘refund’, ‘interest’, ‘penalty’ and ‘compensation’, a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory authority which has the power to examine and determine the outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer

exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act. If the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and functions of the adjudicating officer under Section 71 and that would be against the mandate of the Act 2016.”

(42) It is no gain saying that both RERA Authority and Adjudicating Authority operates in different hemisphere, inasmuch as RERA Authority is empowered to grant interest whereas Adjudicating Authority is empowered to adjudge compensation and interest and thus the jurisdiction of grant of Interest in the form of compensation by the Adjudicating Authority for and in place of the RERA Authority cannot be faulted with.

(43) Further, there is another aspect of the matter. An examination of Section 71 of the Act reveals that an Adjudicating Officer is to be appointed by the Regulatory Authority in consultation with the Government. The Adjudicating Officer alone has the power to deal with the application for adjudging compensation under Section 71 read with Sections 12, 14, 18 and 19 of the Act as could be well deduced on a simple reading of section 71(1) and 71(2) of the Act. However, Section 71(3) of the Act provides that the Adjudicating Officer has powers to direct to pay such compensation or interest, as the case may be, if he is satisfied that the person has failed to comply with the provisions of any

of the section as provided in subsection (1) i.e section 12, 14, 18 & 19 of the Act. as the case may, as much as subsection (3) of section 18 of the Act, 2016 signifies that if the promoter fails to discharge any other obligations imposed on him under this Act or the rules or regulations, made thereunder or in accordance with the terms and conditions of the agreement for sale, he shall be liable to pay such compensation to the allottee, in the manner as provided under the Act, 2016. Moreover, section 71 relating to factors to be taken into account by adjudicating officer signifies various factors which are to be taken into consideration by the Adjudicating Officer, while adjudging the quantum of compensation or Interest as the case may be under section 71 of the Act. Thus, the provisions of RERA are wide enough to empower the adjudicating Officer to adjudicate the quantum of compensation and grant the same in the form of Interest as has been done in the present case.

- (44)** According to this Court, the challenge to the competence and jurisdiction of the Adjudicating officer in the present set of facts is wholly misplaced as the Adjudicating Officer has awarded compensation in the form of interest and not interest *simplicitor* as is being construed by the appellant, which according to him is the prerogative of the RERA Authority. This Court also finds that the Apex Court in the aforesaid **M/s Newtech Promoters and Developers Pvt. Ltd.** (supra) has nowhere discussed the form of compensation to be awarded to the allottee. Therefore,

in the present case, in case the Adjudicating Officer has awarded compensation in the form of Interest, nothing illegal or infirmity could be found in the competence or Jurisdiction of the Adjudicating Officer. The said finding also is being given keeping in view the beneficial legislation for which RERA Act was enacted by the legislation for safeguarding the interest of Home Buyers by ensuring fair practice, providing timely information and resolving disputes between an allottee and the Developers.

(45) Having perused the records, this Court is of the view that no substantial question of law arises in these petitions. In any case, a perusal of the impugned judgment would reveal that the Appellate Tribunal has not missed the woods of the tree and has dealt all the issues which are being raised herein by the Appellant in a very elaborate manner by following the provisions of the Act 2016 and the various judgment of the Apex Court in the said subject.

(46) Notwithstanding the above, as the memo of appeal has been preferred and since the counsel for the appellant has strenuously urged this Court to decide on the substantial question of law framed by him in the appeal, this Court finds its bounden duty to deal with these question (which has been termed by the Appellant as substantial question of law) as has been enumerated in the memo of appeal.

(47) Having regard to the question No. 1 i.e. “ *(a) Whether the order and judgment impugned suffers from illegality on account of improper consideration of material and law as well as exercising the jurisdiction not vested in it?*, learned counsel for the appellant is unable to show from records as to how the impugned judgment suffers from any illegality and as to which specific material or law has been improperly considered by the Appellate Tribunal. Learned Counsel has drawn attention of this Court to the provisions of Section 44 of the RERA Act in general which bestows the jurisdiction of appeal to the Appellate Tribunal and specifically Section 44(6) of the Act, which inter-alia gives sweeping power of jurisdiction vested in it as it says as under:-

“(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.”

(48) This Court finds that the Appellate Tribunal after narrating the facts and grounds of the contesting parties, went on to formulate the following points for determination:

“(I) whether the complaint filed before the Adjudicating Officer is maintainable as cause of action arose in year, 2013 before RERA Act, 2016 came into force as pleaded by appellant- U.P Avas evam Vikas Parishad, Lukcknow in its Appeal?

(II) Whether the project in question of the Appellant- U.P Avas evam Vikas Parishad, Lukcknow is delayed?

(III) Whether the judgment and order dated 13.03.2020 passed by the Adjudicating Officer awarding the interest in terms of compensation to the respondent/ complainant for delayed period from 30.07.2016 to 24.09.2019 is liable to be set aside for the reasons mentioned in appeal?"

(49) As far as the first issue is concerned, the Appellate Tribunal extensively recorded the facts and returned a finding that although the scheme was floated by the appellant in 2013 and the respondent booked a flat in the same year and the RERA Act, 2016 came into force on 1st May, 2016, however the project being an "Ongoing project" before 24.09.2019 i.e the date when *Antim Pradeshana Patra* was issued by the Appellant for delivery of possession by them to the Respondent, the provisions of RERA were applicable to the project in view of Rule 2(h) of the U.P Real Estate (Regulation & Development) Rules, 2016.

(50) This Court finds that the Appellate Tribunal has returned the aforesaid finding, after examining the expression and meaning of "ongoing project" as is to be found in Rule 2(h) of U.P Real Estate (Regulation & Development) Rules, 2016, Completion certificate as is defined in section 2(q) of the RERA Act, 2016, section 4(5) of the U.P Apartment (promotion of construction, Ownership and Maintenance) Act, 2010 relating to the

requirement of “Completion Certificate” and “Occupancy certificate” as defined in section 2(zf) of the RERA Act, 2016.

- (51) Further, as far as the second issue relating to the delay in the project, the Appellate Tribunal examined the provisions of clause 2.1 of the Registration Booklet relating to the date of possession proposed by the Appellant and the actual date of possession and after referring to the judgment of the Hon’ble Supreme Court in **M/s Fortune(now known as HICON Infrastructure) and Anr. V/s Trevor D’lima & Ors. : (2018) 5 SCC 442**, wherein it was held that a person cannot be made to wait indefinitely, concluded that the project of the Appellant was delayed.
- (52) The Appellate Tribunal, while deciding the third point for determination, cited the provisions of Clauses 2.1 and 9.1 of the Registration Booklet along with Clauses 4.5 and 4.6 of the Registration Booklet. Apparently, the Appellate Tribunal after examining the various judgment including **Lucknow Development Authority Vs M.K. Gupta**, 1994 (91) SCC 243, **Ghaziabad Development Authority V/s Balbir Singh**, 2004 (5) SCC 65, **Haryana Development Authority V/s Darsh Kumar**, 2005 (9) SCC 449 and also **Ghaziabad Development Authority V/s Union of India**, 2000 (6) SCC 113 along with **Bangalore Development Authority V/s Syndicate Bank** reported in II (2007) CPJ 17 (SC) arrived at a conclusion that

the tentative period or proposed period for construction of the flat does not mean a “unreasonable period”. The Appellate Tribunal also recording that the possession of the flat was not given as per the proposed timeline of possession as mentioned in the Registration Booklet and the possession came to be given by the appellant much later. Thus, the Appellate Tribunal upheld the finding of the Adjudicating Authority by holding that the Authority had adopted a moderate view and has considered the delay from the proposed expiry of the date of possession to the date of issuance of *Antim pradeshan patra* by the Appellant and not the execution of the sale deed, which ought to have been the actual date of delivery of possession and as such held the calculation for delay in possession by the Authority to be not for an unreasonable period.

- (53)** As far as the other issues relating to failure of the appellant to rectify the structural defects and common facilities, in violation of Section 14 of the RERA Act, 2016 and the entitlement of compensation by the respondent in addition to the delay in possession as contended by the Respondent, the Appellant argued that in case of delay in giving possession of the flat, within prescribed period, the option was open to the allottee/respondent to claim refund of the deposited amount at the prescribed rate of interest and if despite the delay the allottee preferred for possession of the flat rather than refund of the deposited amount, the allottee’s right to claim

interest/compensation did not exist, especially when after execution of sale deed in favour of the allottee/respondent, the question of any structural defect does not arise.

(54) This Court finds that the Appellate Tribunal has extensively dealt with the aforesaid issue in the impugned order and while referring to Chapter III of the RERA Act, 2016 comprising of Sections 12 to 18 dealing with functions and duties of promoters has recorded a finding that Section 71 of the Act entails that in contravention of the provisions of section 12, 14, 18 and 19(4) by the promoter, the allottee is well within his rights to get refund of his/her entire deposited amount along interest “as such rate as may be prescribed” and “compensation in the manner provided under the Act”.

(55) The Appellate Tribunal also upheld the findings of the Adjudicating Authority to the effect that if the amount of interest was not paid within a period of 45 days, the respondent was entitled to get interest at the same rate till the date of actual payment, to be a means of check upon the appellant to honour the time-line within which the awarded amount of interest had been directed to be paid to the respondent/allottee. Even the last submission of the appellant related to financial crisis and running of the project on “*no loss and no profit basis*” to justify that the interest was not payable for delayed period was rejected on the ground that the same was immaterial and the award of

interest in the case of delayed possession was as per the provision of the RERA Act.

- (56) Thus, a well-reasoned and detailed judgment was passed by the Appellate Tribunal, wherein all the Appeals filed by the Appellant was dismissed.
- (57) The Appellate Tribunal examined the evidence on record at length, and arrived at a reasoned conclusion, that there was a delay in handing over of the possession of the project to the respondent. This finding is based on cogent and binding documents of Registration Document, occupation certificate, including the registered sale deeds by which the respective allottees have taken possession of the flats. There was no erroneous inference from any proved fact.
- (58) The learned Counsel was not able to produce any judgment to espouse its cause of challenging the jurisdiction allegedly not having been vested with the Appellate Tribunal.
- (59) In view thereof, this Court is of the view that the order and judgment impugned does not suffers from any illegality or infirmity. There is no alleged improper consideration of material and law nor the Tribunal has exercised its jurisdiction not specifically vested by the provisions of RERA Act.
- (60) As far as Question No.2 i.e. “(b) *Whether the order of the tribunal upholding the order of adjudicating officer can be just,*

legal and proper ignoring that the complaint itself was not maintainable as was filed much before to the RERA Act came into force and was not an ongoing project in view to rule 2(h)?

is concerned, this Court finds that admittedly, the completion certificate has been issued to the Project after the commencement of the RERA Act, 2016 and the sale deed and possession has been granted in the year 2017-2018. Besides the fact that the said issue has been extensively dealt with and decided by the Appellate Tribunal as issue No.1, this court finds that the said issue has already been settled by the Apex Court in various judgments including in the case of **M/s. Newtech Promoters and Developers Pvt. Ltd. Vs. State of UP & Ors. (supra)**. The Apex Court, while deciding the issue as to whether the RERA Act has retroactive or retrospective effect, held that the Act is not retrospective in nature because it affects the existing rights of the persons mentioned in the Act like promoters, allottees etc. and the intent of the legislature was to bring all "ongoing projects"² which commenced prior to the Act and for which the completion certificate had not been issued, under the ambit of the Act. The relevant observation could be found at paragraph 34 to 40, which are being curled out for ready reference :-

“34. The term “ongoing project” has not been so defined under the Act while the expression “real estate project” is defined under Section 2 (zn) of the Act which reads as under:

“2(zn) “real estate project” means the development of a building or a building consisting of apartments, or converting an existing building or a part thereof into apartments, or the development of land into plots or apartments, as the case may be, for the purpose of selling all or some of the said apartments or plots or building, as the case may be, and includes the common areas, the development works, all improvements and structures thereon, and all easement, rights and appurtenances belonging thereto;”

35. The Act is intended to comply even to the ongoing real estate project. The expression “ongoing project” has been defined under Rule 2(h) of the Uttar Pradesh Real Estate (Regulation and Development) Rules, 2016 which reads as under:-

“2(h) “Ongoing project” means a project where development is going on and for which completion certificate has not been issued but excludes such projects which fulfil any of the following criteria on the date of notification of these rules:

(i) Where services have been handed over to the Local Authority for maintenance.

(ii) where common areas and facilities have been handed over to the Association for the Residents' Welfare Association for maintenance.

(iii) where all development work have been completed and sale/lease deeds of sixty percent of the apartment/houses/plots have been executed.

(iv) where all development works have been completed and application has been filed with the competent authority for issue of completion certificate.”

36. The expression “completion certification” has been defined under Section 2(q) and “occupancy certificate”

under Section 2(zf) of the Act which reads as under :-

“2(q) “completion certificate” means the completion certificate, or such other certificate, by whatever name called, issued by the competent authority certifying that the real estate project has been developed according to the sanctioned plan, layout plan and specifications, as approved by the competent authority under the local laws;

2(zf). “occupancy certificate” means the occupancy certificate, or such other certificate, by whatever name called, issued by the competent authority permitting occupation of any building, as provided under local laws, which has provision for civic infrastructure such as water, sanitation and electricity;”

37. Looking to the scheme of Act 2016 and Section 3 in particular of which a detailed discussion has been made, all “ongoing projects” that commence prior to the Act and in respect to which completion certificate has not been issued are covered under the Act. It manifests that the legislative intent is to make the Act applicable not only to the projects which were yet to commence after the Act became operational but also to bring under its fold the ongoing projects and to protect from its inception the inter se rights of the stake holders, including allottees/home buyers, promoters and real estate agents while imposing certain duties and responsibilities on each of them and to regulate, administer and supervise the unregulated real estate sector within the fold of the real estate authority.

38. The emphasis of Mr. Kapil Sibal, learned senior counsel for the appellant is that the agreement of sale was executed in the year 2010/11, i.e. much before the coming into force of the Act and the present Act has retrospective application and registration of ongoing project under the Act would be in contravention to the contractual rights established between the

promoter and allottee under the agreement for sale executed which is impermissible in law and further submits that Sections 13, 18(1), 19(4) of the Act 2016 to the extent of their retrospective application is in violation of Articles 14, 19(1)(g) of the Constitution of India.

39. *Mr. Tushar Mehta, learned Solicitor General, on the other hand, submits that a bare perusal of the object and reasons manifest that the Act does not take away the substantive jurisdiction, rather it protects the interest of homebuyers where project/possession is delayed and further submits that the scheme of the Act has retroactive application, which is permissible under the law. The provisions make it clear that it operates in future, however, its operation is based upon the character and status which have been done earlier and the presumption against retrospectively in this case is ex-facie rebuttable. The literal interpretation of the statute manifest that it has not made any distinction between the “existing” real estate projects and “new” real estate projects as has been defined under Section 2(zn) of the Act.*

40. *Learned counsel further submits that the key word, i.e., “ongoing on the date of the commencement of this Act” by necessary implication, ex-facie and without any ambiguity, means and includes those projects which were ongoing and in cases where only issuance of completion certificate remained pending, legislature intended that even those projects have to be registered under the Act. Therefore, the ambit of Act is to bring all projects under its fold, provided that completion certificate has not been issued. The case of the appellant is based on “occupancy certificate” and not of “completion certificate”. In this context, learned counsel submits that the said proviso ought to be read with Section 3(2)(b), which specifically excludes projects where completion certificate has been received prior to the commencement of the Act. Thus, those projects under Section 3(2) need not be registered under the Act and, therefore, the intent of the Act hinges on whether or not a project has received a completion*

certificate on the date of commencement of the Act.”

- (61) Since the Authority and the Appellate Authority have returned a finding of fact that the completion certificate was issued on 20.12.2018, i.e much later than the date of commencement of the RERA Act, 2016 and there is no contrary argument by the learned Counsel for the appellant, the Appellate Tribunal was right in holding that the present project was an “ongoing project” and the complaint filed by the respondent was maintainable. Thus, no substantial question of law arises as neither the issue raised is debatable nor the same has not been decided by a binding principle of the Hon’ble Apex Court.
- (62) As far as the Question No.3 raised by the appellant is concerned, which inter-alia states that “(c) *Whether the impugned judgment and order about awarding the interest of compensation for delayed period, ignoring that it was not due to fault of the appellant can be just and liable to be set aside in view of principles of force majeure?*”, this Court finds that the aforesaid is essentially a question of fact and there are two concurrent findings against the appellant. The Appellate Authority have elaborately dealt with the said aspect and while deciding issue No.2 has returned a finding that the project was delayed. Further, this court finds that the factum of farmer agitation to be construed as force majeure was also considered

by the Appellate Tribunal in *extenso* and has also discussed the principles of force majeure.

- (63) The Tribunal also discussed the issue as to whether farmers agitation would be termed as “Force Majeure” or not and while citing the explanation appended to section 6 of the RERA Act, 2016 and discussing the expression “ Act of God” or “Vis Major” and the Judgment of **Ramalinga Nadar V/s Narayan Reddiar**, AIR 1971 Kerala 197 which dealt with the term “Vis-Major”, returned a finding that the case at hand and situation narrated by the Appellant could not be covered under the meaning of “Force majeure”
- (64) This court also does not find any reason to interfere with the findings arrived by the Appellate Tribunal, which are based on precedent and sound legal principles. Thus, the present question does not give rise to any debatable point nor the issue being raised is in the nature of substantial question of law.
- (65) Having regard to question No. 4 raised by the Appellant i.e. (d) *whether after dismissal of complaint by authority vide order dated 19.10.2019 the compensation or interest can be awarded in view to section 12, 14 & 18 of the Act and the order be held to be just and proper*, this court finds that the aforesaid issue is a misconceived perception of the Appellant. Apparently, the respondent had filed a cumulative complaint relating to delay in possession, no window in flat and no parking having been

provided to him and as such has sought for compensation. The authority vide order dated 19.10.2019 has partially rejected the contention of the respondent relating to car parking and window not having been provided in the Flat taking cognizance of section 12 and 14 of RERA Act, however the Authority finding a delay in giving of possession to the respondent had referred the complaint for award of compensation & disposal under section 71 of the RERA Act to the Adjudicating Authority.

(66) The Appellate Tribunal has rightly observed that section 12 to 18 deals with “Functions and Duties of Promoter” and invariably relates to duties which have been imposed upon the promoter. Further, section 71 of the Act clearly says that in contravention of the provisions of section 12, 14, 18 and 19(4) by the promoter, the allottee is well within his right to get refund of his/her entire deposited amount along with interest “at such rate as may be prescribed” and “compensation in the manner provided under the Act”. It goes without saying that Section 18(1) of the Act provides as under :-

“18(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.”

(67) Thus, the said Section consists of two parts. Here this Court is concerned with the second part, which invariably gives an indefeasible right to the allottee in the case he does not intent to withdraw from the project. The second part in clear and loud terms say that the allottee in such a situation would be entitled for interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed. Further, this court finds that in order to determine the point of compensation the power has been bestowed upon the adjudicating officer in terms of section 71 & 72 of the RERA Act read with rule 34(1) of the U.P RERA Rules, 2016. Thus, this also being a loosely connection of fact and law does not qualify to be termed as substantial question of law and as such needs no further interference from this court.

(68) As far as question No. 5 i.e. *(e) Whether in deciding all 18 appeals by common order without considering the fact of each cases or appreciating the points involved and argument made,*

the finding can be held to be a speaking order and not in violation to principles of natural Justice?, is concerned, this Court finds that the Appellate Tribunal has painstakingly recorded the facts of each case in a tabular chart at paragraph No1 and has briefly given details of all the cases in the said chart. Further, this court finds that although the facts relating to flat no, sale consideration, project, allotment letter, final letter, date of sale deed or date of possession might have been different, but it is not the case of the Appellant that the completion certificate in any of the case was not 20.12.2018 or for that matter prior to the coming of force of the RERA Act. It is also not the case of the Appellant that the duration of completion of project was not 24/30 months but something more or that the possession was given by them during the said duration as provided in the registration booklet or that the possession was not delayed. Apparently, the appellant has taken a common defence in all the complaints filed by the respondent and as such this court does not find any error of the Appellate Tribunal in deciding these cases vide the present common impugned order. In any case, this also does not qualify to be a substantial question of law as has been projected by the Appellant.

- (69)** The last question No. 6 as framed by the appellant i.e. (f) whether the finding of the impugned judgment and order specially awarding interest on delayed possession is being

contrary to the law laid down by Apex Court is totally illegal arbitrary and is otherwise not valid in the eyes of law hence liable to be set-aside.” is concerned, a perusal of the order passed by the Authority as well as the Tribunal would sufficiently indicate that they have proceeded to grant compensation in terms of provisions contained in Section 71 read with Section 72 of the RERA Act 2016.

- (70) The learned Appellate Tribunal has also recorded in the impugned order that the Adjudicating Officer has passed the impugned order by exercising his power under section 71 and 71 of the Act read along with Rule 34(1) of the Rules, 2016. Thus, the Tribunal while referring to the case reported as **M/s Imperia Structures Ltd. V/s Anil Patni and Another**, Civil Appeal Nos. 3581-3590 of 2020 decided on 02.11.2020 relating to the choice available to an allottee to seek for refund along with interest in terms of section 18(1) in case he chooses to not withdraw from the project and alternative remedy to seek interest for every month of delay till handing over of the possession in terms of proviso to section 18(1) of the RERA Act, 2016, in case he chooses to not to withdraw from the project. The judgment of **LIC of India and Anr. V/s Consumer Education & Research Centre & Ors.** : (1995) 5 SCC 482 was cited to hold that the terms & conditions of the agreement must be reasonable. Further, Judgment passed in **Pioneer urban land and Infrastructure Ltd. V/s Govindan**

Raghavan, II (2019) CPJ 34(SC) was cited to refer that the Hon'ble Apex court did not accept the plea of the builder that it should not be directed to pay interest at the rate of 10.7% as the agreement provided for 6% interest. Moreover, the judgment of **Wg. Cdr. Arifur Rahman Khan & Others V/s DLF Southern Homes Pvt. Ltd.** (2020) SCC Online 667 was cited to hold that given the one-sided nature of the Apartment Buyer's Agreement, the consumer for a had the Jurisdiction to award just and reasonable compensation as an incident of the power to direct removal of deficiency in service.

- (71) The contention of the appellant before the Appellate Tribunal that as per clause 4.5 and clause 4.6 of the registration booklet/ Brochure there is no mention of any specific date of possession or that as to whether any interest being payable, in case the project is delayed or what amount of interest would be payable by the Appellant, was held to be an omission against the provisions of section 4(2) (b) of the U.P Apartment Act, 2010. The Tribunal also recorded the judgment of **HUDA and another V/s Shakuntala Devi**, (2017) 2 SCC 301 to hold that even in cases, where the delivery of possession had been directed there would be compensation for harassment/loss in a consumer protection case and thus concluded that sicne the possession of the allotted flat was delayed, the respondent was entitled for interest/compensation as per the legal norms. The Tribunal cited the judgment of **M/s Newtech Promoters and**

Developers Pvt. Ltd. V/s State of U.P (supra) to ratify the proposition that contractual terms do not have overriding effect over the provisions of the Act.

(72) This Court does not find any reasons as to how the awarding of interest on delayed possession by the Appellate Tribunal is in any manner contrary to law as laid down by Apex Court. The Learned Counsel for the appellant could not place nor refer to any judgment of the Apex court to show any contrary view as has been deduced by the Appellate Tribunal in arriving at the impugned conclusion. In any case, the findings returned by the Appellate Tribunal is based on sound principles of law & precedents and as such, this Court does not find any substantial question of law involved for the present question framed by the Appellant.

(73) As a sequel to above, this Court does not find any merit in RERA Appeal Nos. 67, 69, 70, 72, 73, 74, 75, 76, 77, 78, 79, 80, 82, 83, 84, 85, 87 of 2023 and the same are hereby **dismissed**.

C. RERA Appeal No. 68 of 2023 (U.P Ewas Evam Vikas Parishad Vs. Arun Kumar Dwivedi)

(74) It is seen from the records that the aforesaid appeal has been filed by the appellant- “U.P Avas Evam Vikas Parishad” under Section 58 of the RERA Act, 2016, against an order dated 05.09.2022 passed by the UP Real Estate Appellate Tribunal at

Lucknow. Apparently, by virtue of the impugned order, the learned Appellate Tribunal with the consent of the parties has directed the Parishad to pay interest from (30.10.2015 to 11.02.2000) instead of interest for the period from (30.06.2015 to 11.02.2000) as directed by the Adjudicating Authority. The Appellate Authority has also directed both the parties to move release Application regarding withdrawal of amount deposited under Section 43(5) of the Act.

- (75) This appeal has been filed under Section 58 of the RERA, 2016, which inter-alia states :-

"58. Appeal to High Court-(1) Any person aggrieved by any decision or order of the Appellate Tribunal, may, file an appeal to the High Court, within a period of sixty days from the date of communication of the decision or order of the Appellate Tribunal, to him, on any one or more of the grounds specified in Section 100 of the Code of Civil Procedure, 1908:

Provided that the High Court may entertain the appeal after the expiry of the said period of sixty days, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal in time.

Explanation-The expression "High Court" means the High Court of a State or Union territory where the real estate project is situated.

(2) No appeal shall lie against any decision or order made by the Appellate Tribunal with the consent of the parties."

(76) The learned Counsel for the appellant was requested to refer section 58(2) of the RERA Act, 2016, which bars any appeal against any decision or order made by the Appellate Tribunal with the consent of the parties. The learned Counsel was asked to address his arguments on the said point.

(77) The learned Counsel for the appellant raised the point of competence & Jurisdiction of the Adjudicating officer in deciding the matter and further raised the competence of Appellate Tribunal to decide the issue. However, no arguments were addressed on the point of maintainability of the present Appeal on the point of section 58(2) of the RERA Act. Also there was no argument denying or disputing the consensual order passed by the Appellate tribunal vide the impugned order dated 05.09.2022.

(78) Accordingly, this Court is of the opinion that in view of the findings returned in the aforesaid appeals lead being “RERA Appeal No. 67 of 2023 (*Complainant- Dhruv Kr. Chaturvedi*), no substantial question of law arises in RERA APPEAL No. 68 of 2023 and as such the same is **dismissed**.

D. RERA Appeal No. 81 of 2023 (U.P Avas Evam Vikas Parishad Vs U.P Real Estate Appellate Tribunal and others).

(79) This appeal has been filed by the appellant against the impugned order dated 13.08.2021 relating to relief of interest in the form of compensation granted to the allottee- Somyata

Zaidi. The complainant in that case, i.e Somyata Zaidi was allotted flat in Vrindvan Yojna, Part-4, sector-17, Niligiri Enclave, wherein the sale deed was executed on 12.10.2017 and the possession was granted on 17.10.2017. It was the case of the complainant/ allottee therein that the possession was delayed and he was entitled for compensation. Accordingly, compensation was awarded by the adjudicating officer vide order dated 20.09.2019 in the form of Interest.

(80) On perusal of the impugned judgment dated 13.08.2021, this court finds that the Appellate Tribunal has framed three question for determination as has been done by the Appellate Tribunal in similar other matters, which were decided by this court in the lead matter “RERA Appeal No. 67 of 2023 (*Complainant- Dhruv Kr. Chaturvedi*).

(81) Thus, this Court does not find any new point agitated or any new issue raised in the present Appeal by the learned counsel for the appellant and as such RERA Appeal No. 81 of 2023 is also decided in terms of the finding of the lead matter- “RERA Appeal No. 67 of 2023 (*Complainant- Dhruv Kr. Chaturvedi*). Accordingly, RERA Appeal No. 81 of 2023 (U.P Avas Evam Vikas Parishad Vs U.P Real Estate Appellate Tribunal and others) is **dismissed**.

E. RERA Appeal No. 86 of 2023 (U.P Avas Evam Vikas Parishad V/s Satya Narain Agnihotri)

(82) This appeal has been filed by the Appellant against the impugned order dated 30.06.2022 relating to relief of interest in the form of compensation granted to the allottee- Satya Narain Agnihotri at the rate of MCLR + 1% per annum for the delay period from 30.03.2016 to 13.10.2017. The complainant in that case, i.e Satya Narain Agnihotri was initially allotted a 3BHK flat in Bhagirathi Enclave on 13.09.2013. However, the Appellant failed to deliver possession of the allotted flat within the stipulated date i. 30.03.2016 as mentioned in the Brochure and demand letter dated 30.09.2013. The complainant being in acute need of the flat as early as possible as he was to superannuate on 29.04.2018, approached the promotor for delivering the possession of the allotted flat so that he may shift prior to demitting his office. The officials of the Appellant in the month of October 2017 informed the complainant that he may get his flat changed from 3 BHK to 3 BHK + Servant and then the Appellant would be in a position to deliver the flat at the time. The complainant, having no option except to agree with oral offer of the promoter gave consent for 3 BHK + Servant flat for which an extra payment of Rs. 11,50,000/- was further required. Thereafter the complainant was allotted flat no. 2B/T-1/306 vide letter dated 13.10.2017 at an additional amount of Rs. 11,86,127/- along with the miscellaneous expenses of Rs. 1,53,885/- by the appellant. The complainant

deposited the said amount under protest and got the sale deed executed on 25.11.2017 in respect of Flat No. 2B/T-1/306. There has been considerable delay of 20 months' delivery of possession of the flat as mentioned in the Brochure issued in the year 2013. However, the Adjudicating officer awarded interest for delay in delivery of possession for the period from 30.03.2016 to 13.10.2017 at the rate of MCLR +1% per annum. Accordingly, compensation was awarded by the adjudicating officer vide order dated 20.11.2020 in the form of Interest.

(83) This Court finds that both the complainant Satya Narain Agnihotri and the appellant (Avas Evam Vikas Parishad) filed cross-Appeals, which was eventually decided by the impugned order. On perusal of the impugned judgment dated 30.06.2022, this court finds that the Appellate Tribunal has framed almost Nine question for determination. The Appellate Tribunal in deciding these issues arrived at a decision that the Act of 2016 provided a mechanism for determination of interest and/or compensation for the delay in handing over possession of the unto to the allottee, if the allottee wishes to stay with the project. The Tribunal also held that in view the *Newtech Promoter's case*, the promoter cannot shirk from the responsibilities/ liabilities under the Act and the contractual terms do not have an overriding effect to the retrospective applicability of the authority under the provisions of the Act. In the facts of the case, the Tribunal held that there was delay of

more than 18 months in delivery of possession by the Appellant to the complainant. The Tribunal also held that a home buyer does not lose his/her right to claim compensation for the delay in possession even after execution of the conveyance deed and taking of possession of the unit/Apartment/Fat booked by him. The Appellate Tribunal while deciding the 5th point of determination concluded that the rate of interest i.e MCLR + 1% granted by the Adjudication officer, as compensation for delayed possession, is fair, just and reasonable as it balances the equities between the parties and the Adjudicating Officer's action is in accordance with the provisions of the Act. The learned Appellate Tribunal also held that as per the provisions of the U.P Apartments (Promotion of construction, ownership and Maintenance Act, 2010 read with the provisions of the Act, 2016 a promoter is required to offer legal and habitable possession to the allottees only after obtaining C.C/O.C and ask for clearing dues by raising the final demand. The Tribunal also affirmatively held that the amenities, facilities and services advertised by the appellant in its Brochure are required to be fulfilled and provided to the allottees of the project. The Appellate authority after examining the facts in great detail and considering the various Judgements, held that there was no illegality or perversity in the impugned order of the Adjudicating officer of the regulatory authority in awarding

interest as compensation to the allottee/complainant for delay in possession of the flat by the appellant.

(84) This Court finds that the appellant has primarily challenged the aforesaid impugned order of the Appellate Tribunal primarily on the ground, which has been a subject matter of challenge in similar other matters, which were decided by this court in the lead matter- “RERA Appeal No. 67 of 2023 (*Complainant- Dhruv Kr. Chaturvedi*).

(85) Thus, this court does not find any new point agitated or any new issue raised in the present Appeal by the learned counsel for the appellant and as such the present Appeal is also decided in terms of the finding of the lead matter- “RERA Appeal No. 67 of 2023 (*Complainant- Dhruv Kr. Chaturvedi*).

(86) Accordingly, RERA Appeal No. 86 of 2023 (U.P Avas Evam Vikas Parishad V/s Satya Narain Agnihotri) is **dismissed**.

F. RERA Appeals No. 88, 89, 90, 91, 93, 96, 97, 98, 99, 100, 101, 102, 103, 104 of 2023

(87) These appeals have been filed against the impugned common order dated 21.01.2022 passed by the learned UP Real Estate Appellate Tribunal at Lucknow.

(88) Since, common question of law has been raised by the Appellant in all these appeals, which are all directed towards a common order dated 21.01.2022, it would be in the interest of

justice that all these appeals are consolidated and taken together for hearing and disposal. However, before this court deals with the question of law raised in these appeals, the brief facts culminating into these appeals be narrated to appreciate the law in its proper perspective. In this regard, the facts of the lead mater being RERA Appeal No. 88 of 2023 (*Complainant-Kunwar Bahadur Singh*) is taken into consideration.

- (89) Succinctly, it is available from records that the complainant (Kunwar Bahadur Singh) filed a complaint for compensation in delay in offering possession, no window in the flat offered and no parking allotted by the Appellant/ Promoter. The said complaint was marked/referred to the Adjudicating Officer vide order dated 25.11.2019 of the Authority. As per the complaint, the complainant was allotted a flat in Vrindavan Yojna in Nillgiri Enclave on 30.08.2013 for an amount of Rs. 20,88,000/-. The possession of the said flat was to be given in 24 months, however the same was not offered by the Promoter, which resulted in increase in the price of the flat, levy of GST etc. It was the case of the complainant that although he had regularly paid the instalments, however the promoter failed to provide window in the flat as well as the parking as promised in Brochure. However, the appellant defended the said complaint by stating that the price of the flat was never fixed, nor the date of possession had been fixed and the same were only proposed. They also took ground of certain litigation relating to

acquisition of land pending before this court for the delay. They also submitted that the complaint was not maintainable for compensation under section 12, 14, 18 and 19 of the Act.

(90) This Court finds that the Adjudicating Officer after recording the submission of the parties and dealing with the provisions of the RERA Act gave a detailed Judgment vide order dated 13/08/2020, thereby returning a finding that the complainant inspite of taking the possession of the flat is entitled for compensation for delay in offering of possession and as such the Adjudicating Officer awarded compensation in the form of interest @ MCLR+ 1% on the total amount of consideration for the period of delay between 30.08.2015 to 18.08.2017.

(91) This Court finds that the aforesaid order of the Adjudicating officer was a subject matter of challenge by the Appellant before the Appellate Tribunal in terms of section-44 of the RERA Act. The said Appeal filed by the Appellant was decided along with 25 other matters vide the impugned common order dated 22.01.2022. On a perusal of the impugned judgment of the Appellate Tribunal it is seen that the Tribunal has painstakingly recorded details of facts of each Appeal in a tabular chart and framed the following questions for determination:

“ i. Whether the Adjudicating officer ought to have examined the complaint of the respondent only on the basis of agreed terms and conditions mentioned in the Registration Booklet, read with allotment letter.

ii. Whether there is any delay in handing over of the possession to the allottee, and if yes, on whose account?

iii. Whether an allottee is entitled for claiming compensation/ interest for the delayed possession of the flat and agreed to pay the final cost of the flat?"

(92) This Court finds that the Appellate tribunal has exhaustively dealt with each of the aforesaid issue and after recording various precedents, arrived at a decision that as far as the first issue is concerned, in terms of the *Newtech Promoter's case*, the promoter cannot shirk from the responsibilities/ liabilities under the Act and the contractual terms do not have an overriding effect to the retrospective applicability of the authority under the provisions of the Act. On the facts, the Appellate Tribunal returned a finding that the project was delayed by 2 years and 4 months in giving of the possession and that the Appellant/ Promoter was solely responsible for the said delay. Further, as far as the third issue is concerned, the Tribunal after considering various judgements including that of W. Cdr. Arifur Rahman Khan and Aleya Sultan and others V/s DLF Southern Homes Pvt. Ltd, held that a home buyer does not lose his/her right to claim compensation for the delay in possession even after execution of the conveyance deed and taking possession of the unit/ Apartment/ flat booked by him. Thus, the Appellate Tribunal did not find any illegality or infirmity in the impugned

order of the Adjudicating Officer and as such dismissed all the Appeals.

(93) This Court finds that the appellant has filed an Appeal against the aforesaid impugned order dated 22.01.2022, which are largely premised on the same grounds and question of law as has been decided by this court in “RERA Appeal No. 67 of 2023 (*Complainant- Dhruv Kr. Chaturvedi*). The fulcrum of the Appeal hinges on the determination of question as to whether the adjudicating officer appointed under Section 72 of the RERA Act can grant compensation in form of interest in case where allottee does not exit the project under Section 18 of the RERA Act.

(94) This Court finds that the aforesaid ground has been a subject matter of challenge in similar other matters, which were decided by this court in the lead matter- “RERA Appeal No. 67/2023 (*Complainant- Dhruv Kr. Chaturvedi*), wherein this court held that compensation in the form of interest can be awarded by the Adjudicating Officer and as such has rejected the said contention and dismissed the appeal of the Parishad.

(95) Thus, this Court does not find any new issue being raised in the present bunch of Appeals by the Ld. counsel for the Appellant, which requires any separate considerations either on facts or on law and as such the present bunch of appeals are also decided in

terms of the finding of the lead matter- “RERA Appeal No. 67 of 2023 (*Complainant- Dhruv Kr. Chaturvedi*).

(96) Accordingly, RERA Appeal No. 88 of 2023, RERA Appeal No. 89 of 2023, RERA Appeal No. 90 of 2023, RERA Appeal No. 91 of 2023, RERA Appeal No. 93 of 2023, RERA Appeal No. 96 of 2023, RERA Appeal No. 97 of 2023, RERA Appeal No. 98 of 2023, RERA Appeal No. 99 of 2023, RERA Appeal No. 100 of 2023, RERA Appeal No. 101 of 2023, RERA Appeal No. 102 of 2023, RERA Appeal No. 103 of 2023 and RERA Appeal No. 104 of 2023 are also **dismissed**.

G. **RERA Appeal No. 92 of 2023 (U.P Avas Evam Vikas Parishad Vs U.P Real Estate Appellate Tribunal and others)**.

(97) This appeal has been filed by the appellant against the impugned order dated 07.07.2022 relating to relief of interest in the form of compensation granted to the allottee- Abhai Verma & Anju Verma. The complainant in that case, i.e Abhai Verma & Anju Verma was allotted flat in Himalaya Enclave, Vrindavan Yojna, Part-4, Sector-17, Nilgiri Enclave, wherein the sale deed was executed on 12.10.2017 and the possession was granted on 02.04.2019. It was the case of the complainant/allottee therein that the possession was delayed and he was entitled for compensation for delayed possession and other issues. The regulatory authority vide an order dated 10.05.2019 after holding that the project was delayed and the delay period was fixed as 25.08.2014 to 30.04.2018, marked the case to the

Adjudicating Officer for determination of entitlement of compensation. Accordingly, the Adjudicating Officer, vide order dated 29.08.2019 allowed the complaint and directed the promoter to pay interest as compensation at the rate of SBI MCLR +1% per annum on the deposited amount for the delayed period within 45 days of the order.

(98) The complainant filed an Appeal before the Appellate Tribunal limited to the extent of granting of interest as provided under section 2(za)(i) of the RERA Act. As per the said provisions, the complainant claimed interest at the rate of 13.05% per annum and sought parity with another case passed by the Tribunal in *Upasana Duggal Vs LDA*.

(99) The Tribunal vide the impugned order dated 07.07.2022, which has been interdicted in the present proceedings before this court, has directed the Parishad/promoter for payment of interest at the rate of SBI MCLR+1% per annum along with other reliefs to the complainant. It is this directions, which the Appellant is herein aggrieved with. On perusal of the impugned judgment dated 07.07.2022, this court finds that interestingly, there is no Appeal u/s 44 of the Act by the Appellant against the order dated 29.08.2019 of the Adjudicating Officer. It is only the order of the Appellate Tribunal, which has reduced the interest rate and other reliefs that the Appellant are aggrieved and as such has filed the present Appeal before this court. A

glimpse of the impugned order of the Appellate Tribunal would reveal that the Appellate Tribunal has recorded the Appeal, reply and rejoinder filed by the parties exhaustively in the said impugned order and has framed the following three questions for determination:

“ (i) Whether appellants are entitled to get interest @ 13.5% per annum for the delayed period i.e from 24.08.2014 to the actual date of realization ?

(ii) Whether respondent- U.P Avas Evam Vikas Parishad is liable to pay Rs. 5 Lakhs as compensation for mental harassment and agony and Rs. 7,61,052/- for house rent allowances to appellants.?

(iii) whether appellants are entitled to get Rs. 50,000/- as cost of litigation.?”

(100) The Appellate Tribunal after formulating the aforesaid points of determination, while deciding the 1st issue held that the delay was to be fixed for a period from 25.08.2014 to 28.02.2019 and not to be kept open. Further, as far as the rate of interest, the Appellate Tribunal keeping in view Rule 9.2(ii) & 9.3(1) of the “Uttar Pradesh Real Estate (Regulations and Development) Rules, 2018, which came into effect from 17.10.2018 awarded compensation in the form of interest at the rate of SBI MCLR+1% to balance the equities and in line of the spirit of the Act, which uses the phrase “interest at such rate as may be prescribed” in section 12, 18 and 19(4) of the Act. The Appellate Tribunal as far as the second issue formulated held that the observation of the Adjudicating officer had legal backing and did not interfere in the payment of compensation to

the complainant. Similarly, as far as the third issue is concerned, the Appellate Tribunal reduced the cost of litigation from Rs. 50,000/- to Rs. 40,000/-.

(101) The Appellant have taken a plethora of grounds in the appeal filed against the aforesaid impugned order of the Tribunal, however a closer look would reveal that almost all the grounds are related to facts and the hinge of the Appeal filed by the Appellant lies on the issue, which were decided by this court in the lead matter- “RERA Appeal No. 67 of 2023 (*Complainant- Dhruv Kr. Chaturvedi*).

(102) Thus, this Court does not find any new point agitated or any new issue raised in the present Appeal by the learned counsel for the Appellant and as such the present Appeal is also decided in terms of the finding of the lead matter- “RERA Appeal No. 67 of 2023 (*Complainant- Dhruv Kr. Chaturvedi*).

(103) Accordingly, RERA Appeal No. 92 of 2023 (U.P Avas Evam Vikas Parishad V/s U.P Real Estate Appellate Tribunal and others) is **dismissed**.

H. RERA Appeal No. 94 of 2023 (U.P Avas Evam Vikas Parishad Vs Presiding Officer, U.P Real Estate Appellate Tribunal and others).

(104) This appeal has been filed by the appellant against the impugned order dated 08.09.2022 relating to relief of interest in the form of compensation granted to the allottee- Shobit Chaturvedi. The complainant in that case, i.e Shobit Chaturvedi

was allotted flat in Neelgiri Enclave, a project of the appellant located at Sector-17, Vrindavan Yojna, Lucknow. The conveyance deed was executed on 08.03.2018 and the physical possession was handed over to the complainant on 05.06.2018. It was the case of the complainant/ allottee therein that the possession was delayed and he was entitled for compensation for delayed possession and other issues like not providing window as per the registration booklet, car parking etc. were also raised in the said complaint. The regulatory authority vide an order dated 16.09.2020 marked the case to the Adjudicating Officer for determination of entitlement of compensation. Accordingly, the Adjudicating Officer, vide order dated 18.12.2020 allowed the complaint and directed the promoter to pay interest as compensation at the rate of SBI MCLR +1% per annum on the deposited amount for the delayed period of 30.08.2015 to 21.07.2017, within 45 days of the order.

(105) The appellant was obviously not happy with the said order of the Adjudicating officer and as such interdicted the said order of the adjudicating officer in Appeal u/s 44 of the Act, before the Appellate Tribunal.

(106) The Tribunal vide the impugned order dated 08.09.2022, has dismissed the Appeal of the Parishad/ promoter and has upheld the direction of the Adjudicating officer for payment of interest at the rate of SBI MCLR+1% per annum along with other

reliefs to the complainant. It is this directions, which the Appellant is herein aggrieved with. On perusal of the impugned judgment dated 08.09.2022, this court finds that the Appellate Tribunal has recorded in detail the various contention of the parties and discussed the case laws cited by them exhaustively in the said impugned order and has framed the following three question for determination:

“ (i) Whether the Adjudicating Officer ought to have examined the complaint of the respondent only on the basis of the agreed terms and conditions mentioned in the Registration Booklet, read with allotment letter.

(ii) Whether there is any delay in handing over of the possession to the allottee, and if yes, on whose account?

(iii) Whether an allottee is entitled for claiming compensation/ interest for the delayed possession, even if the allottee has already taken possession of the flat and sale deed has been executed after the allottees agreed to pay the final cost of the flat.?

(iv) Whether there is any illegality or perversity in the impugned order dated 16.07.2021 of the Adjudicating officer in granting interest as compensation to the respondent for delay in providing possession of the flat by the Appellant?”

(107) The Appellate Tribunal after formulating the aforesaid point of determination, while deciding the 1st issue held that in view of the observation of the Apex Court in Newtech’s case regarding the terms of the contract to the effect that promoter cannot shirk from the responsibilities/ liabilities under the act and the contractual terms do not have an overriding effect to the

retrospective applicability of the authority under the provisions of the Act. The Appellate Tribunal in answer to issue No.2 returned a finding of fact that the project was delayed by 1 year and 11 months in offering of possession to the complainant and that the Appellant was solely responsible for the same. As regards the third issue, the Appellate Tribunal held that a home buyer does not lose his/her right to claim compensation for the delay in possession even after execution of the conveyance deed and taking possession of the unit/ Apartment/ Flat booked by him. The Appellate Tribunal after enumerating the various provisions of RERA as well as the binding precedents concluded that there was no illegality or perversity in the order of the Adjudicating officer in awarding interest as compensation to the complainant for delay in possession of the flat.

(108) The appellant have taken a plethora of grounds in the Appeal filed against the aforesaid impugned order of the Tribunal, however a closer look would reveal that almost all the grounds are related to facts and the hinge of the Appeal is premised on the issue, which were decided by this court in the lead matter- “RERA Appeal No. 67/2023 (*Complainant- Dhruv Kr. Chaturvedi*).

(109) Thus, this Court does not find any reasons to differ with the findings, which stands already decided in the aforesaid matter. Thus, the present Appeal, as such, is also decided in terms of

the finding of the lead matter- “RERA Appeal No. 67 of 2023
(Complainant- Dhruv Kr. Chaturvedi).

(110) Accordingly, for all the reasons as mentioned herein above,
RERA Appeal No. 94 of 2023 is also **dismissed**.

I. RERA Appeal No. 95 of 2023 (U.P Avas Evam Vikas Parishad V/s Presiding Officer, U.P Real Estate Appellate Tribunal and others).

(111) This appeal has been filed by the appellant against the impugned order dated 28.09.2022 relating to relief of interest in the form of compensation granted to the allottee- Atul Kumar. The complainant in that case, i.e Atul Kumar was allotted flat in Neelgiri Enclave, a project of the Appellant located at Sector-17, Vrindavan Yojna, Lucknow. The sale deed was executed on 08.03.2018 and the physical possession was handed over to the complainant on 05.06.2018. It was the case of the complainant/allottee therein that the possession was delayed and he was entitled for compensation for delayed possession as well as for other issues like not providing window as per the registration booklet, car parking etc. The regulatory authority vide an order dated 19.10.2019 marked the case to the Adjudicating Officer for determination of entitlement of compensation. Accordingly, the Adjudicating Officer, vide order dated 11.02.2021 allowed the complaint and directed the promoter to pay interest as compensation at the rate of SBI MCLR +1% per annum on the deposited amount for the delayed period of 30.08.2015 to 01.11.2017, within 45 days of the order.

(112) The appellant was obviously not happy with the said order of the Adjudicating officer and as such interdicted the said order of the adjudicating officer in appeal under Section 44 of the Act, before the Appellate Tribunal.

(113) The Tribunal vide the impugned order dated 08.09.2022, has dismissed the appeal of the Parishad/promoter and has upheld the direction of the Adjudicating officer for payment of interest at the rate of SBI MCLR+1% per annum along with other reliefs to the complainant. It is this directions, which the Appellant is herein aggrieved with. On perusal of the impugned judgment dated 08.09.2022, this court finds that the Appellate Tribunal has recorded in detail the various contention of the parties and discussed the case laws cited by them exhaustively in the said impugned order and has framed the following four question for determination:

“ (i) Whether the Adjudicating Officer ought to have examined the complaint of the respondent only on the basis of the agreed terms and conditions mentioned in the Registration Booklet, read with allotment letter.

(ii) Whether there is any delay in handing over of the possession to the allottee, and if yes, on whose account?

(iii) Whether an allottee is entitled for claiming compensation/ interest for the delayed possession, even if the allottee has already taken possession of the flat and sale deed has been executed after the allottees agreed to pay the final cost of the flat.?

(iv) Whether there is any illegality or perversity in the impugned order dated 11.02.2021 of the Adjudicating officer in granting interest as compensation to the respondent for delay in providing possession of the flat by the Appellant?"

(114) The Appellate Tribunal after formulating the aforesaid point of determination, while deciding the 1st issue held that in view of the observation of the Apex Court in Newtech's case regarding the terms of the contract to the effect that promoter cannot shirk from the responsibilities/ liabilities under the act and the contractual terms do not have an overriding effect to the retrospective applicability of the authority under the provisions of the Act. The Appellate Tribunal in answer to issue No.2 returned a finding of fact that the project was delayed by 1 year and 5 months in offering of possession to the complainant and that the Appellant was solely responsible for the same. As regards the third issue, the Appellate Tribunal held that a home buyer does not lose his/her right to claim compensation for the delay in possession even after execution of the conveyance deed and taking possession of the unit/ Apartment/ Flat booked by him. The Appellate Tribunal after enumerating the various provisions of RERA as well as the binding precedents concluded that there was no illegality or perversity in the order of the Adjudicating officer in awarding interest as compensation to the complainant for delay in possession of the flat.

(115) The appellant have taken a plethora of grounds in the Appeal filed against the aforesaid impugned order of the Tribunal, however a closer look would reveal that almost all the grounds are related to facts and the hinge of the Appeal is premised on the issue, which were decided by this court in the lead matter- “RERA Appeal No. 67 of 2023 (*Complainant- Dhruv Kr. Chaturvedi*).

(116) Thus, this Court does not find any reasons to differ with the findings, which stands already decided in the aforesaid matter. Thus, the present Appeal, as such, is also decided in terms of the finding of the lead matter- “RERA Appeal No. 67 of 2023 (*Complainant- Dhruv Kr. Chaturvedi*).

(117) Accordingly, for all the reasons as mentioned herein above, RERA Appeal No. 95 of 2023 is also **dismissed**.

J. RERA Appeal No. 105 of 2023 (U.P Avas Evam Vikas Parishad Vs. Presiding Officer, U.P Real Estate Appellate Tribunal and others).

(118) This appeal has been filed by the appellant against the impugned order dated 24.05.2022 relating to relief of interest in the form of compensation granted to the allottee. The allottee/complainant in that case, i.e Jitendera Kumar Madheshiya was allotted flat in Himalaya Enclave, a project of the Appellant. The sale deed was executed on 08.03.2018 and the physical possession was handed over to the complainant on 05.06.2018. It was the case of the complainant/ allottee therein

that the possession was delayed and he was entitled for compensation for delayed possession. The Adjudicating Officer, vide order dated 04.08.2021 allowed the complaint and directed the promoter to pay interest as compensation at the rate of SBI MCLR +1% per annum on the deposited amount for the delayed period of 31.12.2014 to 30.08.2018, within 45 days of the order.

(119) The appellant was obviously not happy with the said order of the Adjudicating officer and as such interdicted the said order of the adjudicating officer in Appeal u/s 44 of the Act, before the Appellate Tribunal.

(120) However, at the time of hearing, the appellant at the outset stated that though in the relief clause he had challenged the entire impugned order dated 04.08.2021 of the Adjudicating Officer, whereby the adjudicating authority directed the opposite party/appellant to pay interest @ MCLR+ 1% as compensation to the complainant/respondent for the delay period from 31.12.2014 to 30.08.2018, but he confined his prayer only to the correction of amount from Rs. 16,60,000/- to Rs. 15,75,000/- and the date of starting interest from 31.12.2014 to 28.02.2015. The Tribunal vide the impugned order dated 04.08.2021, has recorded the no objection of the complainant/respondent and on the basis of the said statement of the parties, the the Appeal of the Parishad/ promoter was

disposed of by holding that the appellant/promoter shall be liable to pay interest at the rate of SBI MCLR+1% per annum as compensation on the amount of Rs. 15,75,000 (deposited in the year 2012) for delayed period from 01.03.2015 to 30.08.2018”.

(121) The present Appeal has been filed under section 58 of the RERA, 2016. However, section 58(2) of the said Act, inter-alia states:

“58 (2) No appeal shall lie against any decision or order made by the Appellate Tribunal with the consent of the parties.”

(122) The learned Counsel for the appellant was requested to refer section 58(2) of the RERA Act, 2016, which bars any appeal against any decision or order made by the Appellate Tribunal with the consent of the parties. The learned Counsel was asked to address his arguments on the said point.

(123) The learned Counsel for the Appellant raised the point of competence & Jurisdiction of the Adjudicating officer in deciding the matter and further raised the competence of Appellate Tribunal to decide the issue. However, no arguments were addressed on the point of maintainability of the present Appeal on the point of section 58(2) of the RERA Act. Also there was no argument denying or disputing the consensual order passed by the Appellate tribunal vide the impugned order dated 24.05.2022. According, this court in view of the findings

returned in the aforesaid Appeals lead being “RERA Appeal No. 67 of 2023 (*Complainant- Dhruv Kr. Chaturvedi*) does not find any substantial question of law raised in the present Appeal and as such RERA Appeal No. 105 of 2023 (U.P Avas Evam Vikas Parishad V/s Presiding Officer, U.P Real Estate Appellate Tribunal and others is **dismissed**.

K. RERA Appeal No. 106 of 2023 (U.P Avas Evam Vikas Parishad V/s Presiding Officer, U.P Real Estate Appellate Tribunal and others).

(124) This appeal has been filed by the Appellant against the impugned order dated 28.03.2022 relating to relief of interest in the form of compensation granted to the allottee. The allottee/complainant in that case, i.e Charan Singh was allotted flat in Brahmaputra Enclave, a project of the Appellant. On the date of filing of the complaint, neither the sale deed was executed in his favour nor the physical possession was handed over to the complainant and as such a cumulative complaint was filed for execution of sale deed, giving of possession and delay compensation against the Appellant. The Adjudicating Officer, vide order dated 22/01/2020 allowed the complaint with various reliefs including a direction to the promoter to (i) give possession along with all facilities till 29.02.2020, (ii) pay interest as compensation at the rate of SBI MCLR +1% per annum on the deposited amount for the delayed period of 31.01.2018 till the date of possession.

(125) The appellant was obviously not happy with the said order of the Adjudicating officer and as such interdicted the said order of the adjudicating officer in Appeal u/s 44 of the Act, before the Appellate Tribunal.

(126) During the course of hearing, the Appellate Tribunal recorded that the completion certificate was obtained by the Appellant on 31.12.2018 and the possession was offered to the complainant on 06.12.2018 and in fact the physical possession was granted to the complainant/respondent on 24.02.2020. Although the Appellant tried to urge a point that the delay in possession was due to non-submission of certain papers by the complainant/respondent, which was opposed by the respondent, however, the Appellate Tribunal noting that there had been a delay in giving of possession by the appellant, without considering other point, upheld order dated 22/01/2020 of the Adjudicating Officer, whereby the adjudicating authority directed the opposite party/appellant to pay interest @ MCLR+ 1% as compensation to the complainant/respondent for the delay period from 01.01.2018 to 31.12.2018.

(127) The learned Counsel for the appellant interdicting the impugned order of the Appellate Tribunal has raised the point of competence & Jurisdiction of the Adjudicating officer in deciding the matter and further raised the competence of Appellate Tribunal to decide the issue. However, no arguments

were addressed on the point of decision of the Appellate Tribunal on merits. However, this court took that pain to go through the memo of Appeal filed by the Appellant and as such is of the considered view that the findings returned in the aforesaid Appeals lead being “RERA Appeal No. 67 of 2023 (*Complainant- Dhruv Kr. Chaturvedi*) is squarely applicable to the present case. Thus, this court does not find any substantial question of law raised in the present Appeal and as such RERA Appeal No. 106 of 2023 (U.P Avas Evam Vikas Parishad V/s Presiding Officer, U.P Real Estate Appellate Tribunal and others) is **dismissed**.

L. RERA Appeal No. 107 of 2023 (U.P Avas Evam Vikas Parishad V/s Presiding Officer, U.P Real Estate Appellate Tribunal and others).

(128) This appeal has been filed by the appellant against the impugned order dated 23.06.2022 relating to relief of interest in the form of compensation granted to the allottee- Vandana Sharma. The complainant in that case, i.e Vandana Sharma was allotted flat in Ganga, Yamuna & Hindon Enclave, a project of the Appellant. On the date of filing of the complaint, neither the sale deed was executed in his favour nor the physical possession was handed over to the complainant and as such a cumulative complaint was filed for execution of sale deed, giving of possession and delay compensation against the Appellant. The Adjudicating Officer, vide order dated 29/09/2020 allowed the complaint with various reliefs including

a direction to the promoter to (i) give possession along with all facilities till 31.10.2020 (ii) pay interest as compensation at the rate of SBI MCLR +1% per annum on the deposited amount for the delayed period of 17.04.2018 to 28.02.2019.

(129) The appellant was obviously not happy with the said order of the Adjudicating officer and as such interdicted the said order of the adjudicating officer in Appeal under Section 44 of the Act, before the Appellate Tribunal.

(130) The Tribunal vide the impugned order dated 30.06.2022, has dismissed the Appeal of the Parishad/ promoter and has upheld the direction of the Adjudicating officer for payment of interest at the rate of SBI MCLR+1% per annum along with other reliefs to the complainant. It is this directions, which the Appellant is herein aggrieved with. On perusal of the impugned judgment dated 30.06.2022, this court finds that the Appellate Tribunal has recorded in detail the various contention of the parties and discussed the case laws cited by them exhaustively in the said impugned order and has framed the following five question for determination:

“ (i) Whether under the scheme of the Act, 2016 and rules 2016 any mechanism has been provided for determination of the interest or the compensation for delay in handing over possession of the flat/apartment/ plot to the allottee and/or refund with interest, if allottee does nto want to continue/wish to withdraw from the project?

(ii) Whether the Regulatory Authority ought to have examined the complaint of the respondent only on the basis of agreed terms and conditions mentioned in the registration Booklet read with allotment letter.

(iii) Whether the project of the appellant/promoter is delayed?

(iv) Whether an allottee is entitled for interest for the delay in completion of the project under the scheme of Act, 2016 if yes, what rate of interest is required to be paid by the promoter to the allottee?

(v) Whether it is necessary and mandatory for the promoter to have first completion certificate (CC) and occupation certificate (OC) under the provisions of the Act 2016 and Rules of 2016 read with the UP Apartment (promotion of construction, ownership and maintenance) Act, 2010 before offering possession as well as asking the allottee to settle the account and satisfy the final demand?.”

(131) The learned Appellate Tribunal after formulating the aforesaid point of determination, while deciding the 1st issue held that the Act, 2016 provides a mechanism for determination of interest and/or compensation for the delay in handing over possession of the unit to the allottee, if the allottee wishes to stay with the project and/or refund with interest, if allottee wants to withdraw from the project. As far as the aforesaid second issue is concerned, the Appellate Tribunal in view of the observation of the Apex Court in Newtech’s case regarding the terms of the contract to the effect that promoter cannot shirk from the responsibilities/ liabilities under the act and the contractual terms do not have an overriding effect to the retrospective applicability of the authority under the provisions of the Act

and held that the regulatory authority is required to examine a complaint as per the provisions of the Act, rules and regulations and not merely on the basis of the terms and conditions of the registration booklet or as provided in the demand letter only. The Appellate Tribunal in answer to issue No.3 returned a finding of fact that the project was delayed by 11 months in offering of possession to the complainant and that the Appellant was solely responsible for the same. As regards the fourth issue relating to entitlement of interest on account of delay in completion of the project, the Appellate Tribunal returned a finding in affirmative. As far as the last issue is concerned, the Tribunal held that a promoter is required to offer legal and habitable possession to the allottees only after obtaining CC/OC and ask for clearing dues by raising a final demand. The Appellate Tribunal after enumerating the various provisions of RERA as well as the binding precedents concluded that there was no illegality or perversity in the order of the Adjudicating officer in awarding interest as compensation to the complainant for delay in possession of the flat.

(132) The appellant have taken a plethora of grounds in the Appeal filed against the aforesaid impugned order of the Tribunal, however a closer look would reveal that almost all the grounds are related to facts and the hinge of the Appeal is premised on the issue, which were decided by this court in the lead matter-

“RERA Appeal No. 67 of 2023 (*Complainant- Dhruv Kr. Chaturvedi*).

(133) Thus, this Court does not find any irresistible reasons to differ with the findings, which stands already decided in the aforesaid matter. Thus, the present Appeal, as such, is also decided in terms of the finding of the lead matter- “RERA Appeal No. 67 of 2023 (*Complainant- Dhruv Kr. Chaturvedi*).

(134) Accordingly, for all the reasons as mentioned herein above, the present Appeal being RERA Appeal No. 107 of 2023 (U.P Avas Evam Vikas Parishad V/s U.P Real Estate Appellate Tribunal and others) is also **dismissed**.

M. RERA Appeals No. 108, 109 of 2023

(135) These appeals have been filed by the appellant against the impugned common order dated 30.12.2022 relating to relief of interest in the form of compensation granted to the allottees, Indranath Agnihotri & Rajesh Kumar Singh. Both the original complaints had been filed by the aforesaid complainant for (i) Giving of possession, (ii) interest for delayed compensation and (iii) mental harassment etc. It was the case of the complainant/ allottee therein that the possession was delayed and he was entitled for compensation for delayed possession as well as for other issues like not providing of possession, mental harassment etc. The Adjudicating Officer, vide order dated 26.11.2019 allowed the complaint and directed the promoter to pay interest

as compensation at the rate of SBI MCLR +1% per annum on the deposited amount for the delayed period of 01.05.2018 to 19.08.2019, within 45 days of the order.

(136) The appellant was obviously not happy with the said order of the Adjudicating officer and as such interdicted the said order of the adjudicating officer in Appeal u/s 44 of the Act, before the Appellate Tribunal.

(137) The Tribunal vide the impugned order dated 30.12.2022, has dismissed the Appeal of the Parishad/ promoter and has upheld the direction of the Adjudicating officer for payment of interest at the rate of SBI MCLR+1% per annum along with other reliefs to the complainant. It is this directions, which the Appellant is herein aggrieved with. On perusal of the impugned judgment dated 30.12.2022, this court finds that the Appellate Tribunal has recorded in detail the various contention of the parties and discussed the case laws cited by them exhaustively in the said impugned order and has framed the following four question for determination:

“ (i) Whether the Regulatory Authority has jurisdiction to pass the impugned order dated 26.11.2019 directing the appellant-U.P Avas Evam Vikas Parishad, Lucknow to handover possession of the flat to the complainant within 45 days from the date of order after taking the legal charges from the complainant and the opposite party is also directed to pay interest at the rate of MCLR+1% per annum to the complainant for the delayed period from 31.08.2018 till date of offer of possession i.e 09.09.2019,

... as the matter is covered under sections 12, 14, 18 and 19 of the Act.

(ii) Whether the project of the appellant-UP Avas Evma Vikas parishad, Lucknow is delayed as stated by respondent in reply to the Appeal.

(iii) Whether respondent/complainant is entitled to get interest for the delayed period, if so on what rate?

(iv) Whether the impugned judgment and order dated 26.11.2019 is liable to set aside?.”

(138) The Appellate Tribunal after formulating the aforesaid point of determination, while deciding the 1st issue held that when it comes to a question of seeking the relief of adjudging compensation and interest thereon under section 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of section 71 read with section 72 of the Act. If the adjudication under sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the adjudicating officer, it may intend to expand the ambit and scope of the powers and function of the adjudicating officer under section 71 and that would be against the mandate of the Act, 2016. The Appellate Tribunal in answer to issue No.2 returned a finding of fact that the project was delayed from 31.08.2015 to 09.09.2019. As regards the third issue, the Appellate Tribunal held that in view of “Uttar Pradesh Real Estate (Regulation and development) Rules, 2018, it would be just to award rate of interest MCLR + 1% per annum as directed by the Authority. As far as the last issue is

concerned, the Appellate Tribunal decided to not interfere with the Adjudicating officer order and as such confirmed the same. The Appellate Tribunal after enumerating the various provisions of RERA as well as the binding precedents concluded that there was no illegality or perversity in the order of the Adjudicating officer in awarding interest as compensation to the complainant for delay in possession of the flat.

(139) The appellant have taken a plethora of grounds in the Appeal filed against the aforesaid impugned order of the Tribunal, however a closer look would reveal that almost all the grounds are related to facts and the hinge of the Appeal is premised on the issue, which were decided by this court in the lead matter- “RERA Appeal No. 67/2023 (*Complainant- Dhruv Kr. Chaturvedi*).

(140) Thus, this court does not find any reasons to differ with the findings, which stands already decided in the aforesaid matter. Thus, the present Appeal, as such, is also decided in terms of the analogy & discussion in the lead matter- “RERA Appeal No. 67 of 2023 (*Complainant- Dhruv Kr. Chaturvedi*).

(141) Accordingly, for all the reasons as mentioned herein above, RERA Appeal Nos. 108 of 2023 and 109 of 2023 are also **dismissed**.

N. RERA Appeals No. 110, 111, 112, 113, 114, 115, 116, 117 of 2023

(142) These appeals have been filed against the impugned common order dated 14.03.2022 passed by the learned UP Real Estate Appellate Tribunal at Lucknow.

(143) Since, common question of law has been raised by the appellant in all these appeals, which are all directed towards a common order dated 14.03.2022, it would be in the interest of justice that all these appeals are consolidated and taken together for hearing and disposal. However, before this court deals with the question of law raised in these Appeals, the brief facts culminating into the present Appeal be narrated to appreciate the law in its proper perspective. In this regard, the facts of the lead matter being RERA Appeal No. 110 of 2023 (*Complainant- Ms. Arifa Khatoon*) is taken into consideration.

(144) Succinctly, it is available from records that the complainant (Ms. Arifa Khatoon) filed a complaint for compensation in delay in offering possession, no window in the flat offered and no parking allotted by the Appellant/ Promoter. The said complaint was marked/referred to the Adjudicating Officer vide order dated 25.11.2019 of the Authority. As per the complaint, the complainant was allotted a flat in Vrindavan Yojna in Nillgiri Enclave on 31.08.2013 for an amount of Rs. 20,88,000/-. The possession of the said flat was to be given in

24 months, however the same was not offered by the Promoter, which resulted in increase in the price of the flat, levy of GST etc. It was the case of the complainant that although she had regularly paid the instalments, however the promoter failed to provide window in the flat as well as the parking as promised in Brochure. However, the appellant defended the said complaint by stating that the price of the flat was never fixed, nor the date of possession had been fixed and the same were only proposed. They also took ground of certain litigation relating to acquisition of land pending before this court for the delay. They also submitted that the complaint was not maintainable for compensation under section 12, 14, 18 and 19 of the Act.

(145) This court finds that the Adjudicating Officer after recording the submission of the parties and dealing with the provisions of the RERA Act gave a detailed Judgment vide order dated 26/06/2020, thereby returning a finding that the complainant inspite of taking the possession of the flat is entitled for compensation for delay in offering of possession and as such the Adjudicating Officer awarded compensation in the form of interest @ MCLR+ 1% on the total amount of consideration for the period of delay between 31.08.2015 to 25.07.2017.

(146) This Court finds that the aforesaid order of the Adjudicating officer was a subject matter of challenge by the Appellant before the Appellate Tribunal in terms of section-44 of the RERA Act. The said Appeal filed by the Appellant was decided

along with 9 other matters vide the impugned common order dated 14.03.2022. On a perusal of the impugned judgment of the Appellate Tribunal it is seen that the Tribunal has painstakingly recorded details of facts of each Appeal in a tabular chart and framed the following questions for determination:

“ i. Whether the Adjudicating officer ought to have examined the complaint of the respondent only on the basis of agreed terms and conditions mentioned in the Registration Booklet, read with allotment letter.

ii. Whether there is any delay in handing over of the possession to the allottee, and if yes, on whose account?

iii. Whether an allottee is entitled for claiming compensation/ interest for the delayed possession of the flat and sale deed has been executed after the allottees agreed to pay the final cost of the flat?

iv. Whether the respondent is entitled for interest and/or compensation on account of delayed possession under the scheme of the Act, 2016 and whether the rate of interest granted by the Adjudicating officer is in accordance with the provisions of the Act, 2016, Rules 2016?”

(147) This Court finds that the Appellate Tribunal has exhaustively dealt with each of the aforesaid issue and after recording various precedents, arrived at a decision that as far as the first issue is concerned, in terms of the *Newtech Promoter's case*, the promoter cannot shirk from the responsibilities/ liabilities under the Act and the contractual terms do not have an overriding effect to the retrospective applicability of the authority under the provisions of the Act. On the facts, the Appellate Tribunal

returned a finding that the project was delayed by 2 years and 4 months in giving of the possession and that the Appellant/Promoter was solely responsible for the said delay. Further, as far as the third issue is concerned, the Tribunal after considering various judgments including that of W. Cdr. Arifur Rahman Khan and Aleya Sultan and others Vs. DLF Southern Homes Pvt. Ltd, held that a home buyer does not lose his/her right to claim compensation for the delay in possession even after execution of the conveyance deed and taking possession of the unit/ Apartment/ flat booked by him. The Appellate Tribunal also returned a finding that the complainant was entitled for interest on account of delayed possession and that the rate of interest awarded i.e MCLR + 1% by the regulatory authority was fair, just and reasonable. Thus, the Appellate Tribunal did not find any illegality or infirmity in the impugned order of the Adjudicating Officer and as such dismissed all the Appeals.

(148) This Court finds that the Appellant has filed an Appeal against the aforesaid impugned order dated 14.03.2022, which are largely premised on the same grounds and question of law as has been decided by this court in “RERA Appeal (Defective) No. 67 of 2023 (*Complainant- Dhruv Kr. Chaturvedi*). The fulcrum of the Appeal hinges on the determination of question as to whether the adjudicating officer appointed under the RERA section 72 can grant compensation in form of interest in

case where allottee does not exit the project under section 18 of the RERA Act.

(149) This Court finds that the aforesaid ground has been a subject matter of challenge in similar other matters, which were decided by this court in the lead matter- “RERA Appeal No. 67 of 2023 (*Complainant- Dhruv Kr. Chaturvedi*), wherein this court held that compensation in the form of interest can be awarded by the Adjudicating Officer and as such has rejected the said contention and dismissed the appeal of the Parishad.

(150) Thus, this Court does not find any new issue being raised in the present bunch of appeals by the learned counsel for the Appellant, which requires any separate considerations either on facts or on law and as such the present bunch of Appeals are also decided in terms of the finding of the lead matter- “RERA Appeal (Defective) No. 67 of 2023 (*Complainant- Dhruv Kr. Chaturvedi*).

(151) Accordingly, RERA Appeal No. 110 of 2023, RERA Appeal No. 111 of 2023, RERA Appeal No. 112 of 2023, RERA Appeal No. 113 of 2023, RERA Appeal No. 114 of 2023, RERA Appeal No. 115 of 2023, RERA Appeal No. 116 of 2023 & RERA Appeal No. 117 of 2023 are also **dismissed**.

(152) As a priori, all these appeals are **dismissed** and interim orders, if any, stands vacated.

(153) Office is directed to place a copy of this order in each of the above-captioned appeals.

(154) There shall be no order as to cost.

(Om Prakash Shukla, J.)

Order Date : 18th November, 2023
Ajit/-