

RESERVED JUDGEMENT

BENCH NO. 1

**THE U.P. REAL ESTATE APPELLATE TRIBUNAL
AT
LUCKNOW**

Appeal No : 197/2023

Central Government Employees Welfare Housing OrganisationAppellant

Versus

Rajender Mohan Saxena.....Respondent

RERA Complaint No: NCR144/02/89825/2022

Impugned Order Dated : 09.01.2023

Hon'ble Mr. Justice Suneet Kumar, Chairman

Hon'ble Mr. Sanjai Khare, Judicial Member

Hon'ble Mr. Rameshwar Singh, Administrative Member

1. The appellant is a society, in the name and style, Central Government Employees Welfare Housing Organisation (CGEWHO) (*hereinafter referred to as 'appellant or 'appellant promoter' or 'CGEWHO'*). By instant appeal the appellant promoter is raising challenge to the order dated 09.01.2023, passed learned Regulatory Authority at Gautam Budh Nagar, arising from complaint No. NCR144/02/89825/2022, directing the appellant promoter to pay interest for delay in handing over possession of the unit from 18.11.2020 to 29.03.2022.
2. The brief facts giving rise to the appeal, briefly stated, is that appellant promoter is an autonomous welfare organisation registered under the Societies Registration Act, 1860, headed by a senior Central Government official for facilitating cost effective, reasonable and reliable housing projects, totally dedicated to the Central Government employees.

- 2.1. The appellant promoter floated a Central Government Employees Welfare Housing Greater Noida, Phase-1 Housing Scheme (for short – ‘Housing Scheme’). The respondent had applied for 4 BHK Type ‘D’ Flat which was duly allotted by the appellant promoter in 2014. However, subsequently on an application, made by the respondent allottee, the allotment came to be cancelled and in lieu thereof, registration No. GNC4253 for 3 BHK Type ‘C’ Flat was made. The consideration value of 3 BHK Flat was at Rs 54,66,930/-. The appellant, vide, communication dated 22.06.2021 informed the respondent that Flat No. 401, Block-4, 4th Floor in the Housing Scheme was duly allotted to the respondent.
- 2.2. As per terms and conditions of the Scheme Brochure, it was mentioned that the construction at the project site would commence after sanction of map and approval of the plans being duly obtained from the Development Authority. It was further provided in paragraph 9 of the Scheme Brochure that the project work would tentatively be completed within 48 months after the last date of second installment to be deposited by the allottee.
- 2.3. The respondent paid the second installment on 07.12.2016 as per the revised schedule. It is, therefore, submitted that computation of delay interest, if any, would commence after due completion date i.e. 08.12.2020 (48 months), whereas, learned Regulatory Authority has erroneously recorded the commencement of second installment date from 18.11.2016 instead from 07.12.2016. It is to be noted that the building plan was duly sanctioned by Greater Noida Industrial Development Authority (GNIDA) on 25.01.2016. After commencement of the Real Estate (Regulation & Development) Act, 2016, (for short, Act 2016) effective from 01.05.2017. The appellant promoter applied and got registered the project with U.P. Real Estate Regulatory Authority (for short RERA) on 08.08.2017. As per the final sanction plan, promoter was to construct 1794 dwelling units in 28 towers of the project.
- 2.4. On 21.12.2021, an inspection of the project site was undertaken by RERA. On the report of the Engineer, the appellant promoter applied for

Completion Certificate (CC) on 29.12.2021 and received '**deemed**' approval of CC on 06.01.2022 i.e. almost thirteen months from the due completion date.

- 2.5. Aggrieved by delay of the project, respondent filed a complaint before learned Regulatory Authority on 11.02.2022, seeking possession of the allotted unit and interest for delay in handing over possession of the unit.
 - 2.6. On 22.02.2022, the appellant issued a demand letter reminding the respondent to pay the final/sixth installment, on or before, 11.04.2022, which came to be deposited by the respondent on 18.04.2022. After the delay of more than 6 months, registration of the project came to be extended by RERA on 27.05.2022. The appellant vide communication dated 20.12.2022, sent offer of possession-cum-occupation letter to the respondent.
 - 2.7. The complaint came to be allowed directing the respondent to pay interest for delay in handing over possession of the unit.
3. In the above noted factual backdrop, learned counsel for appellant made three fold submissions:
 - (i) That the promoter organisation is a 'No profit' – 'No loss', Society formed under the Ministry of Housing and Urban Poverty Alleviation, subsequently, amalgamated into Ministry of Housing and Urban Affairs, being a welfare organisation would not fall within the definition of 'promoter' (Section 2 (zk)).
 - (ii) Alternatively, it is submitted that even if technically, the appellant organisation falls within the scope and ambit of the definition 'promoter', even then Section 18 of Act 2016, would not apply being a welfare/'No profit' – 'No loss' organisation .
 - (iii) That learned Regulatory Authority while computing the period for delay interest has not considered that the project of the appellant organisation is situated in National Capital Region (NCR), therefore, is entitled to 'zero' period of 15 months, pursuant to Office Order dated 18.08.2021, issued by RERA to compensate *force majeure* loss caused due to Covid-19 pandemic. It has been submitted that learned Regulatory

Authority has granted six months zero period which is against their own Office Order, whereas, it should be fifteen months.

4. The questions that arise for consideration are as follows:
 - (i) Whether appellant organisation, being a welfare/‘No profit’ – ‘No loss’ organisation would fall within definition ‘promoter’ under Section 2 (zk) of Act, 2016;
 - (ii) Whether proviso to Section 18 would apply to the appellant organisation i.e. payment of delay interest till handing over of possession of the unit being a welfare/‘No profit’ – ‘No loss’ Government organisation.
 - (iii) Whether the appellant organisation is entitled to 15 months’ zero period with effect from 25.03.2020 to 24.06.2021 as per Office Order dated 18.08.202, suffered due to Covid-19 pandemic.

Question (i)

5. We have to examine as to whether the appellant organisation, being a welfare/‘No profit’ – ‘No loss’ organisation would fall within the definition ‘promoter’ under Section 2 (zk) of Act, 2016.

5.1. The appellant organisation is a society, registered under the Society Registration Act, having its registered office at New Delhi. As per the Memorandum of Association of the society, (for short ‘MoA’), inter alia, it was established to look into social welfare scheme at ‘No Profit – No Loss’ basis for the Central Government Employees, (serving/retired), inter alia, promoting the construction of houses for them. MoA further provides that all incomes, earnings of the society, howsoever, derived shall be utilised for the promotion of its scheme and object; no profits will be made or transferred directly/indirectly, by way of bonus, profits or in any manner, whatsoever, to the society.

5.2. Eleven members duly nominated by the Ministry of Urban Development (MoUD) constitute Government Council, the members are Senior Government Officials of Government of India. The general body of the society comprises fourteen members and shall in no case exceed 30 in numbers. The numbers of the Government Council shall also be deemed

to be members of the society. The management of the affairs of the society is vested in the Government Council (Council).

- 5.3. An eight member Executive Committee composed of ex-officio members shall prepare housing schemes for the society subject to directions, issued by Council and, inter alia, frame rules or guidelines for housing schemes. A Chief Executive Officer (CEO) shall be appointed by the MoUD who shall not be below the rank of Director in Government of India. The normal day-to-day administration of the society would be conducted by the CEO and shall be Secretary to the Council and the Executive Committee.
- 5.4. The funds of the society shall consist of the grants made by the Government, income from investments, and contribution from other sources.
- 5.5. On perusal of the memo of appeal of the appellant organisation, it is evident that it is a society, duly constituted by the MoUD for providing housing to the Central Government Employees (serving/retired) etc.
- 5.6. The appellant promoter floated a housing project, namely, Greater Noida Housing Scheme, which is governed by CGEWHO Housing Rules (for short Housing Rules). The Housing Rules indicate that apart from ongoing housing project at Mohali, Bhuvneshwar and the present scheme, 38 projects at various places, throughout the country have been planned or have since been completed. The Rules indicate the location of the project; several features, estimated cost; beneficiaries, amongst others; eligibility which include, Central Government Employees (serving/retired); spouses of deceased employees fall under Priority 1 category, Priority 2 category includes serving employees of Central Government PSUs, State Government, Union Territories (UTs), Nationalised Banks, Ministry of Defence and employees of Ministry of Railways. Priority 3 category includes general public. The Rules further provide for loan arrangements. It is open to the allottees to obtain loan from scheduled banks, in that event a tripartite agreement is required to be entered with the appellant promoter.

- 5.7. Housing Rules further provide for determining cost of dwelling units which, inter alia, would include interest on investment in land project, cost of reserve funds, review of cost at different stages of construction at market price escalation. All revisions of cost is charged on the beneficiaries and they are liable to pay the same. On delay payment of installment, an interest @ 15% per annum is chargeable. The appellant organisation under Housing Rules is not liable to pay interest on earnest money for the first three months, and, 5% per annum is payable to unsuccessful allottees.
- 5.8. On withdrawal from the project, withdrawal charges @ 15% of the first installment and after allotment of unit, withdrawal charges is @ 20% of the first installment is chargeable. Further, cancellation charges would also be charged from the allottees.
- 5.9. It is relevant to notice that the Housing Rules categorically provide that no interest would be paid to the allottee, if the project is delayed due to any reason whatsoever. Further, any award or cost ordered by any court would be debited to from the project account even after issuance of possession letter and subsequent handing over of the dwelling unit [vide Housing Rules 11 (xiii)].
- 5.10. Having referred to the relevant provisions of the MoA and the Housing Rules of the scheme, it appears that the appellant organisation works on the principle of 'No Profit – No Loss', however, the appellant organisation specifically mandates that in the event of the project being delayed, allottee would not be entitled to delay interest, further, any award/cost ordered by the court would be taken into consideration while computing final cost of the project.
- 5.11. As per admitted facts, *inter-se*, parties the completion date of the project is to be computed from the last date of second installment as originally declared i.e. 09.12.2016 and the respondent complied by making the deposit on 07.12.2016. The 48 months would be computed towards completion of the project from the date of second installment as provided in clause 9 of the Housing Rules which would be 09.12.2020. On registration of the project under Act 2016, the appellant promoter declared 28.08.2021 as the completion date. Thereafter, due to

Covid-19 pandemic, first wave and second wave, extended the completion date to 27.05.2022. In this backdrop it is urged that the project came to be delayed due to a cause which was beyond the control of the appellant.

- 5.12. The appellant organisation was constituted by the MoUD, Government of India for providing housing facilities to the Central Government Employees (serving/retired). It is also not in dispute that the appellant floated a housing project at Greater Noida, to construct 2130 units which was subsequently revised to 1794 units in 28 towers.
- 5.13. The respondent came to be allotted initially a 4 BHK Flat which was subsequently cancelled and on request, respondent was allotted type 'C' Flat 3 BHK at Rs 54,66,930/-. On notification of Act 2016, the project of the appellant organisation was registered on 01.08.2017 with the RERA being an ongoing project. The promoter applied before Competent Authority for OC/CC on 29.12.2021, and received deemed completion certificate on expiry of three months.
- 5.14. The respondent allottee, aggrieved by the delay in completion/handing over possession of the unit, filed complaint before the Regulatory Authority on 11.02.2022. During pendency of the complaint, offer of possession-cum-occupation letter dated 22.12.2022 was issued to the respondent. The complaint came to be allowed vide impugned order dated 09.01.2023 directing the appellant organisation to pay delay interest for the period with effect from 18.11.2020 to 29.03.2022.
- 5.15. In the aforementioned backdrop, submissions that requires consideration is as to whether the appellant organisation is a 'promoter' as defined under Section 2 (zk) of Act 2016.
- 5.16. The relevant portion of Section 2 (zk) defining 'promoter' is extracted:

“2(zk) “*promoter*” means,-

(i) *a person who constructs or causes to be constructed an independent building or a building consisting of apartments, or converts an existing building or a part thereof into apartments,*

for the purpose of selling all or some of the apartments to other persons and includes his assignees; or

- (ii) a person who develops land into a project, whether or not the person also constructs structures on any of the plots, for the purpose of selling to other persons all or some of the plots in the said project, whether with or without structures thereon; or*

.....
.....
.....

- (vi) such other person who constructs any building or apartment for sale to the general public:*

Explanation.- For the purposes of this clause, where the person who constructs or converts a building into apartments or develops a plot for sale and the persons who sells apartments or plots are different persons, both of them shall be deemed to be the promoters and shall be jointly liable as such as for the functions and responsibilities specified, under this Act or the rules and regulations made thereunder;”

5.17. Section 2 (zg) defines ‘person’; the relevant portion for purpose of the appeal is extracted:

“(zg) "Person" includes,—

.....
.....

- (vi) an association of persons or a body of individuals whether incorporated or not;*

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5.18. Hon'ble High Court, decided bunch of appeals on 12.04.2022, leading case RERA Appeal No. 1 of 2022 [Air Force Naval Housing Board (AFNHB), **Air Force Station Vs. U.P. Real Estate Regulatory Authority and Another**], wherein, the appellants therein i.e. AFNHB, a society registered under the Society Registration Act, comprised of serving officials of Air Force and Indian Navy, were engaged in construction/building of affordable houses for their officers. The plea raised was that being an organisation under the Government of India and a 'No Profit – No Loss' organisation, it would not fall within the definition of 'promoter'/'person' under Act 2016. Hon'ble High Court rejected the argument and answered the question against the appellant, holding that the society would fall within the definition of the 'promoter', therefore, are entitled to comply the mandate of Section 43 (5) of Act 2016. Paragraph of 80 of judgement/order is extracted:

“80. Thus, the question framed as to whether appellant is included in the definition of word ‘promoter’, as defined under Section 2 (zk) of Act, 2016 as may enforced upon the appellant in condition of pre-deposit, the entire deposit amount for the purpose of maintaining appeal under Section 43 (5) of the Act, 2016 against the order of Regulatory Authority stands answered in affirmative i.e. the appellants have to comply the mandatory provisions of Section 43 (5) of the Act, 2016 and are included under the definition of ‘promoter’.”

5.19. On scrutinizing the definition of 'person'/'promoter', in the case in hand, the appellant organisation would be covered being an 'association of persons' or 'body of individuals', being a society duly registered for the purpose of constructing and selling dwelling units. Further, explanation to definition "promoter" provides that a person who constructs or causes to be constructed an independent building or a building consisting of apartments, or converts an existing building or a part thereof into apartments, for the purpose of selling all or some of the apartments to other persons and includes his assignees. Further, a person who develops land into a project or any other persons who acts as builder, coloniser, contractor, developer or by any other name would be covered within the scope and ambit of Act 2016. Further, the phrase

“such other person” would include a society (association of persons) who construct any building for sale.

- 5.20. It would be relevant to note that definition of ‘real estate project’ at this stage. Section 2 (zh) of Act, 2016 is extracted:

“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 apartment, 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;”

- 5.21. As per the MoA and the Housing Rules, it is explicit that the appellant society was created for providing housing, in particular, to the Central Government Employees (serving/retired) and under Priority 3 category, there is a provision of allotting apartments to the general public. Having regard to the facts noted in the earlier paragraphs and explicit definition of “person”/“promoter” and ‘real estate project’, the Legislature intended to cover all such person, undertakings, collaborations, societies, individuals or any person who constructs apartments for sale would fall within the ambit and scope of being a ‘promoter’. The project undertaken would fall within the definition of ‘real estate project’.

- 5.22. The appellant organisation, as per their own setup case, have floated a housing scheme for constructing apartments for a class of beneficiaries’ viz Central Government employees and also for sale to the general public. Even taking a case that the appellant organisation would confine the sale of apartments only to the Central Government employees and to employees of other Central Government organisations, even then the apartments are being sold for a consideration to the beneficiaries, though pleaded on ‘No Profit – No Loss’ basis. Not charging any profit from the Central Government Employees (serving/retired) would not exclude or absolve the appellant organisation from the ambit, scope and definition of ‘person’/ ‘promoter’, under the Act 2016, as no such

exception has been carved out by the Legislature. The appellant organisation would fall within the definition of ‘promoter’.

5.23. **Question No. (i)** is accordingly answered.

Question (ii).

6. We are required to examine as to whether proviso to Section 18 (1) would apply to the appellant organisation i.e. payment of delay interest till handing over of possession of the unit being a welfare/‘No profit’ – ‘No loss’ organisation.
 - 6.1. As per long title of Act 2016, the Act was enacted to establish RERA for regulation and promotion of the real estate sector and, inter alia, to protect the interest of consumers in the real estate sector. The Act 2016, came to be notified on 14.05.2016 and Section Nos 3 to 19 came to be notified subsequently on 01.05.2017.
 - 6.2. Section 3 of Act 2016, mandates registration of real estate project with the RERA, before inviting persons to purchase in any manner a plot, apartment or building, as the case may be, in the project. It further provided that a project that is ongoing on the date of commencement of the Act 2016, promoter shall make an application to the Regulatory Authority for the registration of its project within a period of three months from the date of commencement of the Act.
 - 6.3. It is not in dispute that the project floated by the appellant organisation being an ongoing project had applied for registration which was duly accorded in terms of Section 4 and Section 5 of Act 2016. Section 11, inter alia, provides for regularly monitoring of day to day status of the project. Sub Section (4) of Section 11 provides that the promoter is responsible for all obligations, and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per agreement of sale till the conveyance of all the apartments to the allottees.
 - 6.4. Section 18 of Act 2016 provides for return of amount and compensation if the promoter fails to complete or is unable to give possession of the apartment/unit , inter alia, in accordance with the terms of the agreement

for sale, duly completed by the date specified therein. The promoter shall be liable on the demand of the allottees, in case the allottee wishes to withdraw from the project, to return the amount, received by him with interest at such rate as may be prescribed. However, where the allottee does not intend to withdraw from the project, he shall be paid by the promoter, interest for every month delay till handing over the possession, at such rate as may be prescribed.

6.5. Section 18 (1) is extracted:

“(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.”

6.6. In the given facts, the respondent herein had not withdrawn from the project and continued with the project which admittedly was delayed, therefore, in terms of proviso to Section 18 (1) of Act 2016, promoter was liable to pay interest for delay till handing over possession of the unit. Section 18 (1), inter alia, confers an absolute right on the allottee to claim delay interest; the right cannot be curtailed/taken away by the

promoter by entering into an agreement or settlement. The right to claim delay interest in view of Section 18 (1) is a statutory right. On Act 2016, being notified, the terms and conditions of the brochure/agreement, entered into between the promoter and the allottee which is in teeth of the statutory provisions would not bind the allottee. The Housing Rules mandates that in the event of delay of the project, the allottee would not be entitled to any interest, the clause would not bind the respondent allottee who has not withdrawn from the project in view of proviso to Section 18, which confers an absolute right upon an allottee to claim interest in a delayed project at the rate prescribed.

- 6.7. In the circumstances, the complaint of the respondent allottee before learned Regulatory Authority was maintainable as the respondent allottee was seeking interest for delay in handing over possession of the apartment/unit in terms of Section 18 (1).
- 6.8. In the aforementioned backdrop, the question that arises for consideration is as to whether an association of persons, registered under the Societies Registration Act and claiming to be a 'No Profit – No Loss' organisation can bypass the mandate of Section 18 of Act 2016.
- 6.9. It has already been held while answering question No. 1 that appellant organisation would fall within the ambit and scope of the definition promoter/person. The intent of the legislature is not to absolve any such person/promoter, organisation/association of persons engaged in development/construction of housing project, be it a 'No Profit – No Loss' organisation, from paying delay interest. In the event, the argument that is being advanced by the learned counsel for the appellant is accepted, it would tantamount to re-writing or reading something more than the explicit provisions of Act 2016, which is impermissible by way of interpretation. The Act 2016, has not carved out any exemption/exception, whatsoever, in the definition of person/promoter, from compliance of the mandate of Section 18, and/or, curtailing/diluting the rights, conferred by the legislature on the allottee.
- 6.10. The submission of learned counsel for appellant organisation that while granting interest to the respondent allottee, the other similarly situated allottees who have not taken recourse for redressal of delay interest

under section 18 (1), in that event, it would amount to undue enrichment of the respondent and fasten additional burden by way of cost upon other allottees who stand on the same footing. In our opinion, the argument taken on face value, appears to be attractive, but on close scrutiny, the argument has no legs to stand in view of the unambiguous language of proviso to Section 18.

6.11. MoA/Housing Rules of the appellant organisation categorically provides that any award or cost ordered by any court would be included while computing total cost of the project and have to be shared by the allottees. In the case at hand, the order passed under proviso to Section 18 (1) granting delay interest, which is not punitive but compensatory, which can be taken to be an additional cost, being in the nature of an award passed in judicial proceedings. It is for the appellant organisation to deliberate upon as to how interest admissible and payable in a delayed project is to be adjusted/distributed amongst the allottees while computing final cost of the project.

6.12. It is also relevant to note that the moment the project is delayed, all the allottees who have desired to continue in the project are entitled to delay interest till handing over possession of their apartment, irrespective of the fact, that they have not taken legal recourse before the Regulatory Authority. Section 18 (1) of Act 2016, confers absolute right upon an allottee, mandating that the allottee who does not intend to withdraw from the project, shall be paid by the promoter interest for every month delay till handing over of possession. The expression 'shall' makes the proviso to Section 18 (1) mandatory. The promoter is bound to pay/adjust delay interest amount from the dues, in the event, the project is delayed without the asking of the allottee. In a delayed project, an allottee desires to withdraw from the project, he has to make a demand for delay interest on the deposit, whereas, an allottee who continues in the project, he shall be paid delay interest by the promoter till the date in handing over possession of the unit, thus, casting a mandatory duty on the promoter to compute and pay the delay interest at the prescribed rate. The proviso to Section 19 (1) is an exception to the main provision. Proviso is a clause in a statute by which a condition is introduced or a stipulation or condition. The function of a proviso is to carve out an

exception or exclusion to the main provision which otherwise would have been in the main Section. As such, the function of a proviso is to qualify something or to exclude, something from what is provided in the enactment which, but for the proviso, would be within the purview of the enactment. **[Refer : S. Sundaram Pillai Vs. V.R. Pattabiraman (1985) 1 SCC 591].**

6.13. It, therefore, follows that an allottee who desires to withdraw from a delayed project has to make a demand for refund, interest, including compensation. But in cases where the allottee continues in the delayed project, the proviso, mandates the promoter shall pay delay interest at the prescribed rate. In the earlier case it is on demand and in the later case it is mandatory duty cast on the promoter to pay delay interest without the asking/demand of the allottee.

6.14. It is bounden obligation cast upon the promoter under (4) of Section 11 which mandates that the promoter shall be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder, or to the allottees as per the agreement for sale till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees. The respondent allottee is entitled to delay interest from the appellant promoter, irrespective, of the nature/composition of the organisation.

6.15. **Question No. (ii)** is accordingly answered.

Question No. (iii).

7. We are required to examine as to whether the appellant organisation is entitled to 15 months' zero period with effect from 25.03.2020 to 24.06.2021 as per Office Order dated 18.08.2021 suffered due to Covid-19 pandemic.

7.1. As per Scheme Brochure, the project was to be completed within 48 months from the last date of second installment as provided under clause 9 of the Housing Rules. The extended last date of second installment was 09.12.2016, hence, the project as promised should have been completed on or before 09.12.2020. The respondent deposited the amount on 07.12.2016. The project got delayed for various reasons including Covid-19 pandemic and finally the appellant promoter applied

for Occupation Certificate/Completion Certificate (OC/CC) on 09.12.2021. The date of deemed OC/CC as per the second proviso to Section 4(5) of the Apartment (Promotion of Construction, Ownership and Maintenance) Act, 2010, (for short 'Apartment Owners Act') would be three months from the date of application i.e. 29.03.2022. The Regulatory Authority has considered the said date for computation of delay interest at the prescribed rate.

- 7.2. As per Government Notification dated 13.05.2020, since the project completion date was beyond 25.03.2020 (cutoff date), the completion date of such project was automatically, extended/shifted for six months. In the case of the appellant promoter would be until 08.006.2021 from the due date of completion as declared in Housing Scheme i.e. 07.12.2016.
- 7.3. The UP Government subsequently vide order dated 21.12.2023, benefit of zero period i.e. relaxation period granted in view of Covid-19 pandemic was declared from 01.04.2020 to 31.03.2022. In other words, for the zero period, no penal interest is to be imposed on the real estate developers/promoters due to *force majeure* i.e. Covid-19 pandemic. In this backdrop, it is submitted that learned Regulatory Authority committed an error in granting zero period due to Covid-19 *force majeure* from 25.03.2020 to 25.09.2020. It is submitted that appellant promoter is entitled to 15 months zero period benefit until 09.03.2022.
- 7.4. Having regard to the admitted facts, the appellant organisation applied for OC/CC on 29.12.2021 and adding three months as per Section 4 (5) of the Apartment Owners Act, read with Section 19 (10), mandating that the physical possession of the apartment shall be taken over by the allottee within a period of two months of the Completion Certificate. In other words, the project, as per the appellant organisation came to be completed on 29.12.2021 and the offer of possession-cum-occupation letter was issued on 20.12.2022. In other words, delay interest is to be computed from 07.12.2020(48 months completion period) till 20.12.2022 i.e. date of offer of possession-cum-occupation certificate was issued to the respondent. From the aforementioned period, the appellant

promoter is entitled to deduct the period, suffered due to *force majeure* i.e. from 01.04.2020 to 29.12.2021 i.e. date of deemed completion.

7.5. **Question No. (iii)** is accordingly answered.

8. The appeal succeeds, is allowed in part by passing following orders:

- (1) Respondent allottees shall be entitled for delay interest with effect from 07.12.2020 to 20.12.2022 and from the said period, period from 01.04.2020 to 29.12.2021 would be deducted due to *force majeure*.
- (2) Impugned order shall stand modified to the extent hereinabove.
- (3) Appellant to comply the order within 45 days from the date of uploading the order on the portal.
- (4) Regulatory Authority to ensure that the mandate of proviso to Sub section (1) of Section 18 of Act 2016 is compulsorily complied by all the promoters irrespective of the allottee making demand for delay interest.
- (5) No order as to costs.

Dated: 13.12.2024

M. Singh/-

(Rameshwar Singh) (Sanjai Khare) (Suneet Kumar)