RESERVED JUDGMENT
BENCH NO. 1

UTTAR PRADESH REAL ESTATE APPELLATE TRIBUNAL AT LUCKNOW

1. Appeal No. 196/2024

AR LANDCRAFT LLP ….. Appellant

Versus

RADHAKRISHNAN SRINIVASAN ….. Respondent

2. Appeal No. 48/2024

AR LANDCRAFT LLP ….. Appellant

Versus

RAHUL GUPTA ….. Respondent

3. Appeal No. 49/2024

AR LANDCRAFT LLP ….. Appellant

Versus

SHAILENDRA AND PRIYANKA JAISWAL ….. Respondent

4. Appeal No. 195/2024

AR LANDCRAFT LLP ….. Appellant

Versus

AMITESH KUMAR ….. Respondent

5. Appeal No. 197/2024

AR LANDCRAFT LLP ….. Appellant

Versus

B. B. TIWARI ….. Respondent

6. Appeal No. 394/2024

AR LANDCRAFT LLP ….. Appellant

Versus

RIPAN SYAL ….. Respondent

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Hon’ble Mr. Justice Suneet Kumar, Chairman.
Hon’ble Mr. Rameshwar Singh, Administrative Member.

Per Suneet Kumar J.

1. Heard Shri Sudeep Seth, learned Senior Advocate, assisted by Shri Rohan Malik, Shri S.M. Abid and Shri Shivek Rai Kapoor, learned counsels for the appellant and Sri Javedur Rehman assisted by Shri Dron Mishra & Shri Saharul Alam Laskar, learned counsels for the respondents.

2. On the consent of parties, the batch of appeals (six in number) are being heard together, all the appeals are similar on facts and law. The facts of Appeal No. 196/2024 is being referred to as lead case for the sake of convenience.

3. The appellant promoter by the instant appeal, instituted under Section 44 of Real Estate (Regulation and Development) Act 2016 (for short, ‘Act 2016’), raises challenge to the judgment and order dated 07.03.2024, passed by the U.P. Real Estate Regulatory Authority at Gautam Buddha Nagar (for short, ‘Regulatory Authority’), in Complaint No. NCR144/07/96866/2022, whereby, complaint of the respondent-allottee came to be allowed, directing appellant-promoter to handover physical possession of the unit by 31.05.2024, along with delay interest on the deposit @ MCLR+1 percent from 01.04.2021 till the date of offer of possession or receipt of Occupancy Certificate (OC), whichever is later, except the period of six months w.e.f. 25.03.2020, due to Covid-19 pandemic. The appellant-promoter seeks quashing of the impugned order to the extent granting delay interest, possession of the unit is not being pressed.

Facts:

4. The facts, giving rise to the present appeal, briefly stated, is that the respondent-allottee booked a Villa in the appellant's project, 'Godrej Crest', vide application dated 12.12.2017. The project came to be launched pursuant to Scheme, Recreational Entertainment Park (REP) floated by Greater Noida Industrial Development Authority (for short, 'GNIDA') in 2014. The lease deed for the land (100 acres) came to be executed in favour of the appellant by GNIDA on 12.11.2014. The sale consideration of the Villa was at Rs.1,89,55,746/-, excluding taxes. Pursuant thereof, Villa No. V2-107 Crest came to be allotted to the respondent vide allotment letter dated 31.01.2018. Thereafter, Agreement to Sub lease (sale) dated 23.02.2018 (for short, 'ATS') came to be executed. As per clause 4.2 of the ATS, appellant-promoter was obligated to offer possession of the Villa/unit on or before March 2021. The clause further provided that the completion time period shall stand extended on occurrence of the following events:

(a) Force Majure events.

(b) Reasons beyond the control of the developer, and/or, it's agents;

(c) Due to non-compliance on the part of the buyer, including, on account of any default on the part of the buyer.

5. It is urged that appellant, despite Covid-19 pandemic, duly completed the respondent's unit/project on 12.07.2021, thereafter, appellant-promoter applied for Occupancy Certificate (OC) from the competent authority i.e. Greater Noida Industrial Development Authority (for short, 'GNIDA'), after obtaining the mandated 'No Objection Certificate' (NOC) from the relevant authorities. In this backdrop, it is submitted that having regard to Covid -19 pandemic and the extended period allowed for competing the project/unit, appellant had completed the unit within the extended period, therefore, is not liable to pay delay interest on the deposit of the respondent-allottee till obtaining OC/handing over possession of the unit.

Submission by appellant/promoter

6. It is submitted that delay, in handing over possession of the unit was beyond control of the appellant as GNIDA did not timely issue OC. On 16.10.2021, appellant received a communication from GNIDA, inter alia, informing the

objections on the application for OC on inspection of drawing and documents of the project. The appellant promoter, vide communication dated 24.11.2024, responded, inter alia, stating that the construction and development of the Villa and club area has been constructed in compliance with the Master Plan, applicable Zoning Regulations, Building Regulations and building plan duly approved by GNIDA.

7. The appellant-promoter, accordingly, requested that OC be issued for the project at Plot No. REP 01 Pocket/Block 308 Villas, one Club at Sector 27, Greater Noida. The unit allotted to the respondent falls under the project. The appellant-promoter, having no response from GNIDA, wrote a letter dated 23.12.2021 to the Secretary, U.P. RERA, informing about the status of the construction and development of the Villas and club area. Thereafter, permission was sought by the appellant from the U.P. RERA for handing over possession of the Villa to the respective allottees. The respondent-allottee was also informed, vide e-mail dated 14.04.2022, by the appellant that all the necessary constructions are complete with relevant NOCs. It is further submitted that appellant had got the site of construction of Villas inspected by the respondent. Further, vide letter dated 14.02.2022, addressed to the Chief Executive Officer (CEO) GNIDA, request was again made for release of OC, followed by several other communications.

8. During pendency of the appeal, part OC for 1144 units, including that of the respondent-allottee, came to be issued by GNIDA on 16.07.2024. The appellant-promoter, thereafter, handed over possession of the unit to the respondent-allottee on 04.03.2025, in compliance of order dated 30.01.2025 issued by this Tribunal.

9. In this backdrop, it is urged by the learned counsel for the appellant that the impugned order, directing payment of delay interest in handing over possession of the unit is bad and erroneous. It is further urged that there has been no delay on part of the appellant in handing over possession of the unit as the project came to be completed on 12.07.2021 and delay, if any, in obtaining OC was beyond the control of the appellant. The application for OC was pending with GNIDA, over which appellant had no control. It is, therefore, urged, that appellant is not liable to be fastened with interest for the delay period in view of the force majeure clause.

<u>Submission by respondent/allottee</u>

10. In rebuttal, learned counsel appearing for the respondent-allottee submits that appellant had shown scant regard towards compliance of the mandatory provisions of Act 2016. The ATS was executed on 23.02.2018 after deposit of the booking amount but ATS was not registered in terms of Section 13(1) of Act, 2016. It is further submitted that the project was launched post enactment and enforcement of Act 2016, therefore, appellant after receiving 10 per cent of the sale consideration of the unit was bound to get the ATS registered.

11. Further, interest rate provided in the ATS is not as per the prescribed rate of interest i.e. MCLR+1%, rather, it is at MCLR+2 percent.

12. It is further submitted that appellant has played fraud and indulged in unfair practice. The ATS provided that unit is having carpet area at 1810.59 sq. ft. and exclusive area at 1252.59 sq. ft., aggregating to 3163.18 sq. ft., however, exclusive area was not transferred. It is further urged that plot size of the Villa at 125 sq. yards, has been deliberately omitted in the ATS. It is further submitted that the Master Plan, as well as, the Floor Plans of the project, duly approved by GNIDA, clearly mentions the plot sizes of different Villas of the project. It is further urged that Clause 7.5 of the ATS acknowledges that Villas have lawns attached to them, which are to be sold/conveyed together with the Villas.

13. It is further submitted that since appellant-promoter failed to offer possession of the Villa/unit in terms of Clause 4.2 of the ATS i.e. on or before 01.03.2021, respondent-allottee was constrained to file a complaint on 07.07.2022 under Section 31 of Act 2016, inter alia, seeking possession of the unit and delay interest on the deposit. The complaint came to be allowed on 07.03.2024, inter alia, directing the appellant-promoter to obtain OC/CC and handover possession of the unit and pay delay interest at MCLR+1 percent on the deposited amount from 01.04.2021 till possession is offered. It was further directed that the delay amount towards interest shall be adjusted against the last installment and surplus, if any, shall be refunded to the allottee. The promoter, however, was not held liable to pay delay interest for the force majeure event i.e. Covid-19 pandemic from 25.03.2020 till 25.09.2020.

14. It is further submitted that during pendency of the present appeal, part OC came to be issued by GNIDA on 16.07.2024. However, appellant-promoter indulged in arm-twisting the allottees, including, the respondent to sign certain documents/consent letters sent vide e-mail dated 12.04.2024, forcing the allottees to forego all their legitimate claims against the promoter for the period of delay in handing over possession. In other words, it is submitted that signing of the documents offered by the appellant, seeking waiver of delay interest and other monetary claims, was made a condition precedent for handing over possession of the unit. Learned counsel submits that appellant-promoter indulged in unfair fraudulent practice. It is further submitted that possession of the unit was handed over on 04.03.2025, pursuant to order dated 30.01.2025 passed by the Tribunal. In other words, the possession of the unit was being resisted to harass the respondent.

15. It is further submitted that appellant promoter manipulated the statement of account by deleting/removing rebate under the advance payment rebate scheme, further, reduced the overall size/area of the unit in the registered tripartite sub lease deed, as well as, demanded money not contemplated in the ATS, including, membership fee and security charges for Master club/Golf course, which was made optional being the exclusive property of the appellant/promoter. In other words, it is urged that the demand/charges, which was not part and parcel of ATS, was fastened upon the allottees, including the respondent, compelling payment, thereby, making it condition precedent for execution of the tripartite sub lease deed. In other words, it is urged that appellant illegally and for unjustifiable reasons withheld possession of the unit, therefore, is not entitled to waiver of interest for the delayed period. It is urged that force majeure clause would not be applicable in the given facts of the case. The appeal is liable to be dismissed.

<u>Points for determination</u>

16. On rival pleadings and submissions of the respective parties, the following questions came to be framed:

(i) Whether appellant promoter is entitled to pay interest for the delayed period in terms of proviso to Section 18 of Act 2016, and/or, whether appellant is entitled to claim waiver of the delayed period in handing over possession of the unit in view of force majeure clause of ATS.

(ii) Whether appellant has violated the mandated statutory provisions of Act 2016, Rules and Regulations framed thereunder, if so, the consequences.

(iii) Whether appellant promoter adopted/indulged in unfair method or unfair and deceptive practice or fraudulent practice, if so, the consequences.

(iv) Whether respondent allottee can claim counter reliefs in appeal instituted by the appellant-promoter, and/or, whether Interlocutory Application (IA) filed by the respondent, raising counter objections and seeking reliefs, is maintainable.

Question No. 1

Whether appellant promoter is entitled to pay interest for the delayed period in terms of proviso to Section 18 of Act 2016, and/or, whether appellant is entitled to claim waiver of the delayed period in handing over possession of the unit in view of force majeure Clause of ATS.

17. The facts inter se parties, are not in dispute.

18. The appellant promoter launched 'Godrej Crest Link' project in Greater Noida in 2016. The respondent allottee came to be allotted a Villa/unit V2-107 Crest, admeasuring 125 sq. yds. plot, vide allotment letter dated 31.01.2018 pursuant to his application dated 02.12.2017. An agreement to sub-lease (ATS) came to be executed on 23.03.2018, cost of the Villa was at Rs.1,73,24,214/- exclusive of taxes. As per Clause 4.2 of the ATS, read with, clause 22 of the application form, possession of the Villa unit was to be handed over on or before 01.03.2021, after obtaining occupancy certificate (OC). The appellant applied for OC from GNIDA on 12.07.2021. GNIDA informed appellant of the objections after checking the drawings and documents of the project vide letter dated 16.10.2021. The appellant also approached the Regulatory Authority to grant permission to offer possession of the unit. The appellant requested GNIDA to issue OC to enable the appellant to hand over possession of the unit.

19. The appellant also informed the allottees including the appellant vide communication dated 14.04.2022 with the status of the Villa, including, Club

House and STP. It is submitted that despite having all requisite approvals (NOCs), duly obtained from the various authorities, issuance of OC from GNIDA, for the completed project was beyond control of the appellant.

20. Aggrieved by the delay, respondent allottee was constrained to prefer a complaint under Section 31 of Act 2016, inter alia, claiming possession and interest for the delayed period. The Regulatory Authority allowed the complaint by passing the impugned judgment and order dated 07.03.2024, directing the appellant to hand over possession of the unit by 31.05.2024, along with, OC and pay interest for delayed period at MCLR+1% with effect from 01.04.2021. The Covid-19 pandemic period (6 months) was excluded while computing delay period.

21. Aggrieved by the impugned order, appellant instituted the present appeal; during pendency of the appeal, part OC for 1144 units (Crest Villa 308; President Villas 176; Suites 660 units), including, that of the allottees, came to be issued by GNIDA on 16.07.2024. The appellant made offer of possession of the unit to the respondent allottee during the appeal proceedings on 30.01.2025, along with the statement of account, thereafter, physical possession of the unit came to be handed over to the respondent allottee on 04.03.2025. The tripartite sub lease deed (conveyance) came to be executed between the appellant and respondent on 04.03.2025.

<u>Discussion and Analysis</u>

22. In the afore-noted facts and having considered the rival submissions, learned counsel appearing for the appellant promoter submits that appellant is not entitled to pay any interest for the delayed period due to force majeure event, Covid 19 pandemic and delay in obtaining OC from GNIDA, which was beyond the control of the appellant, reliance has been placed on Clause 4.2 of the ATS, read with, Clause 23 of the application form. It is not being disputed by the learned counsel for the appellant that as per allotment letter dated 30.01.2018 and the ATS dated 23.03.2018, the unit was promised to be handed over on or before 01.03.2021.

23. The application for obtaining OC on completion of the first phase of the project came to be made by the appellant on 12.07.2021. In other words, completion of the project was delayed by few months from the promised date.

However, part OC for 1144 units came to be issued by GNIDA on 16.07.2024 i.e. during pendency of the appeal. The offer of possession of the unit came to be issued to the respondent on 31.01.2025, after lapse of six months, in compliance of an order passed by this Tribunal. The physical possession of the unit came to be handed over on 04.03.2025. In other words, the project though came to be completed on 12.07.2021, however, the occupancy certificate (OC) came to be obtained belatedly by the appellant on 16.07.2024, thereafter, physical possession of the unit came to be handed over to the respondent on 04.03.2025. The period of delay in handing over possession to the other allottees, in the bunch of appeals, is given in tabular form:

S. No.	Allottee Name (Case No.)	Possession handover date as per ATS/Starting Date for computation of 'delay interest'	Actual Physical Possession Handover Date/Ending Date for computation of 'delay interest'
1.	Rahul Gupta (Appeal No. 48 of 2024)	01.03.2021	08.03.2025
2.	Shailendra Jaiswal & Priyanka Jaiswal (Appeal No. 49 of 2024)	01.03.2021	29.04.2025
3.	Amitesh Kumar (Appeal No. 195 of 2024)	22.09.2021	05.03.2025
4.	BB Tiwari (Appeal No. 197 of 2024)	22.09.2021	04.03.2025
5.	Ripan Syal (Appeal No. 394 of 2024)	01.03.2021	04.03.2025

24. It is not being disputed by the appellant promoter that the respondent-allottee was not at default. The total sale consideration of the villa came to be satisfied by the respondent as per ATS. In terms of proviso to Section 18(1) of the Act 2016, respondent allottee would be entitled to interest for the delayed period i.e. with effect from 02.03.2021 till the date of handing over possession i.e. 04.03.2025, save force majeure event.

25. The question that arises for consideration is whether appellant can take shelter of clause 23 of the application form, read with, clause 4.2 of ATS for reasons/events beyond the control of the appellant, for delay caused by GNIDA officials in processing and issuing OC, to claim waiver from paying interest for the delayed period.

<u>Section 18: ambit and scope</u>

26. It would be apposite in the first instance to consider the scope and ambit of Section 18, before adverting to the submission of learned counsel for the appellant.

27. Section 18 of the Act, 2016, falls under Chapter III pertaining to 'functions and duties' of promoter. In other words, Section 18 cannot be read independently but is dependent on satisfying the functions/duties and obligations cast by the Legislature upon the promoter under Act 2016. Section 18 provides for return of amount and compensation on certain eventualities.

Section 18 is extracted:

Section 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.

(2) The promoter shall compensate the allottees, in case of any loss caused to him due to defective title of the land, on which the project is being developed or has been developed, in the manner as provided under this Act, and the claim for compensation under this subsection shall not be barred by limitation, provided under any law for the time being in force.

(3) 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 allottees, in the manner as provided under this Act."

28. Under sub-Section (1) of Section 18, the timeline for the allottee to raise a demand/withdrawal from the project is incorporated under the provision itself. It is mandated that in case the promoter 'fails to complete' or 'is unable to give possession' of an apartment, plot or building, as the case may be, the promoter shall be liable on demand of the allottee, in case the allottee wishes to withdraw from the project, 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 the Act. The right of the allottee to withdraw from the project is unqualified on failure of the promoter to complete or unable to handover possession of the unit as promised. In other words, allottee is required to exercise his option/intention to withdraw before the project is 'complete' or the promoter is 'unable to give possession' of the unit as the case may be.

29. In the event completion of the project or possession of the unit, being offered to the allottee by the promoter belatedly, proviso to Section 18(1) would become operative i.e. such an allottee, who has continued in the delayed project, would be entitled to interest on his deposit for the period of delay till handing over possession of the unit. The allottee is not required to make demand for the interest for the delayed period. The entitlement of interest is by operation of law and not on the whims and fancy of the promoter.

30. Proviso to Section 18(1) of the Act, 2016 mandates 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 possession'*. The consent/ agreement entered into between the promoter and the allottee (details to be discussed later), in so far as, the terms and conditions of any agreement imposed by the promoter on the allottee, being in conflict with proviso to Section 18(1) would not bind the allottee, being against the statutory provision. [Section 28 of the Indian Contract Act, 1872]. The promoter, in the event of default in completing the project by the due declared date of completion, cannot escape the positive statutory mandate of paying interest for the delay period to the allottee, who continued in the delayed project. The obligation cast upon the promoter is unqualified and mandated by law. The promoter is required to compute and pay/adjust the interest at the time of handing over possession of the unit/settlement of accounts and not later.

31. The promoter, having regard to Section 17, read with, Section 19, on completion of the project is required to obtain completion/occupancy certificate of the project. Thereafter, an offer of possession of the unit is to be made to the allottee along with a copy of the OC, calling upon the allottee to settle the accounts. In other words, offer of possession is to be accompanied by final statement of accounts of the unit. It is at this stage the promoter is required to comply its obligation to compute the interest for the delayed period at the prescribed rate and disclose/offer it to the allottee in the statement of accounts and make adjustments accordingly. In other words, offer of possession along with due computation of interest must duly reflect in the statement of accounts which preceedes the exercise to be undertaken by the promoter for execution of conveyance/lease deed. In the event, promoter defaults in computing the interest, promoter fails to comply the statutory obligations mandated under proviso to Section 18(1), read with Section 11(4)(a) of Act 2016.

32. In other words, until and unless the interest is computed for the delayed period and the rate at which it is computed is not informed by the promoter to the allottee in the final statement of accounts, the argument of the learned counsel for the appellant that appellant is not entitled to pay interest due to force majeure event, further, on allottee taking possession or on having executed the waiver/consent/agreement/lease/conveyance deed, thus, having acquiesced/waived its right to delay interest, is misconceived and against law. The question of waiver of right/acquiescence/delay in claiming interest would only arise after the promoter has complied its statutory obligation by computing and quantifying the interest for the delayed period and thereafter informing it to the allottee, whether it is payable or not under the agreement. The cause of action insofar it relates to the allottee arises thereafter in either accepting or disputing the computation or interest/period/force majeure/waiver etc. as the case may be.

Force Majeure Clause 23/4.2

33. Having considered the scope and ambit of Section 18 of Act, 2016, being a mandatory provision. The question that would arise whether appellant can claim waiver from paying delay interest in view of the force majeure clause

of the terms and conditions (clause 23/4.2 of the application from and ATS respectively).

34. Clause 23 of the application form is extracted:

> *"23.Notwithstanding the above, Developer shall be entitled to an extension of time for handing possession of Villa,* ***if the completion of construction of the villa or the part/portion of the Township/Project*** *where the said Villa is situated is delayed on account of any of the following reasons-*
>
> *a. any force majeure events and/or*
>
> *b. reasons beyond the control of the Developer and/or its agents and/or*
>
> *c. due to non-compliance on the part of the Applicant(s) including on account of any default on the part of the Applicant(s) ('Extension Event').*
>
> *For the purpose of this Application form, "force majeure" event shall mean (a) war, civil commotion or act of God; (b) any notice, rule, notification of the Government and/or other public competent authority/Court."*

35. Clause 4.2 of the Agreement to Sub-lease (ATS) reads thus:

> *"4.2 The Developer shall offer possession of the Villa to the Buyer, after obtaining the Occupation Certificate for the said Villa on or before March 2021. Provided, however,* ***the Completion Time Period shall stand extended on account*** *of (i) any Force Majeure events and/or (ii)* ***reasons beyond the control of the Developer*** *and/or its agents and/or (iii) due to non-compliance on the part of the Buyer including on account of any default on the part of the Buyer."*

36. On careful reading of the clauses extracted, herein above, developer/promoter is entitled to an 'extension of time for handing over possession of Villa', if the 'construction' of the Villa or project is 'delayed' on account of the reasons stated therein. For force majeure event i.e. Covid-19 pandemic, appellant shall be entitled to extension of construction/completion time until the date of completion of the construction of the project/unit and not beyond. The project (first phase) came to be completed on 12.07.2021, thereafter, appellant applied

for OC. The Regulatory Authority was justified in granting six months extension time, prior to the date of completion due to Covid-19 pandemic. There was no occasion to grant further extension/construction time, thereafter, for a completed project due to the pandemic. The impugned order to that extent cannot be faulted.

37. The learned counsel for the appellant further submits that appellant would be entitled to further extension of time from the date of application made for OC with GNIDA i.e. 12.07.2021 till grant of part OC on 16.07.2024 for 'reasons beyond the control of the developer', read with, 'any notice, rule, notification of Government and/or competent authority/court'. In other words, delay by GNIDA in processing the application filed for OC, according to the learned counsel for the appellant, was beyond the control of the appellant/promoter, hence, entitled to waiver from the consequences for the delay.

38. The submission taken on face value appears attractive, but on close scrutiny and examination of the clause 23/4.2 read with Section 18(1) of Act 2016 lacks merit. The force majeure clause explicitly mandates for extension of time for 'completion of construction' (clause 23), and/or, for 'completion of time period' of the unit promised on or before 01.03.2021. In other words, the promised date of offer of possession can be extended for any force majeure events, including, 'beyond the control of the promoter' having occurred prior to the date of completion/construction of the project and not thereafter. The only force majeure event that occurred during construction of the project was Covid-19 pandemic. It is not the case of the appellant that construction got delayed, due to any injunction/restraint order or policy change of the government/competent authority/court.

39. On completion of the project, Act 2016 mandates that possession of the unit shall be handed over to the allottee after promoter obtains OC from the competent authority.[Section 11(4)(b)]. In other words, delay in completion/construction of the project due to force majeure event is entirely different from obtaining OC by the promoter from the competent authority of a completed project. The delay in obtaining OC by the promoter from the competent authority for whatever reasons, would not bind the allottee so as to deprive the allottee interest for the delayed period in term of proviso to Section 18(1) of Act, 2016. The provision casts a positive, unconditional and

unambiguous obligation upon the promoter to compensate the allottee for delayed period, the obligation cast upon the promoter by the legislature is by operation of law and not on the demand of the allottee or whims of the promoter. The computation of interest is purely mathematical and calls for no adjudication. [Ratan Buildtech (Pvt.) Ltd. Vs. Anil Kumar, 2025 AHC-LKO-53026].

40. The expression 'beyond the control' employed through a force majure clause in the ATS refers to the event/circumstance that is outside the reasonable power of a party to prevent or avoid, often leading to supersession or excuse (eclipse) from fulfilling contractual obligation. These are typically unpredictable/unforceable and inevitable events, whose consequences could not have been avoided or mitigated by the party. The fault, however, cannot be the fault or negligence of the party seeking relief. The force majure clause in a contract, particularly, is one of length in time, and cannot be overstated so as to relieve a party from statutory obligation or obligation under the contract or suspend its obligation.

41. In ***Dhanrajamal Gobindram Vs. M/s Shamji Kalidas & Company (AIR 1961 SC 1285),*** it was held that, 'where reference is made to "force majeure", the intention is to save the performing party from the consequences of anything over which he has no control. This is the widest meaning that can be given to'.

42. Even if a force majeure clause covers the relevant supervening event, the party unable to perform will not have benefit of the clause where performance merely becomes (i) more difficult (ii) more expensive, and/or, (iii) less profitable. In other words, the force majeure clause would be construed strictly against the promoter and the clause cannot be stretched to include delay in obtaining statutory compliance.

43. It is not being disputed by the learned counsel for the appellant that GNIDA had raised objections vide communication dated 06.10.2021 pointing out that the project does not comply to the drawing and map sanctioned. The learned counsel appearing for the respondent, on the other hand, submits that the communication dated 06.10.2021 is a manufactured/manipulated document, the relevant portion of the document i.e. the portion, listing the defects by GNIDA, has been erased willfully and deliberately by the appellant. Further,

communication dated 07.03.2023, issued by GNIDA to the appellant, obtained by the allottees under the Right to Information Act, wherein, deficiencies, have been detailed by GNIDA for not issuing OC until the deficiency is remedied by the appellant. It is urged that the letter/objections has been deliberately suppressed by the appellant.

44. In this backdrop, it is sought to be urged by the learned counsel for the respondent that appellant is not entitled to claim waiver for the delayed period under Clause 23/4.2 of the ATS**.** Having regard to Section 17 and 19 of Act 2016, it is incumbent and obligated upon the promoter to obtain OC/CC of the project, thereafter, handover possession of the unit. The appellant is at default.

45. In **Fakir Chand Gulati Vs Uppal Agencies, (2008) 10 SCC 345**, Hon'ble Supreme Court was of the opinion, that by filing an application for completion certificate, and if it is not issued, the builder owes a duty to make necessary application and obtain it. If it is wrongly withheld, the builder may have to approach the appropriate court or other forum to secure it. If the builder failed to do so, he will be liable to compensate all the allottees for all losses/damages. The assumption that the obligation of the builder was discharged when he merely applied for a completion certificate is incorrect.

46. In the given facts, admittedly, the application filed by the appellant for obtaining OC was kept pending due to the objections raised by GNIDA. In the circumstances, the onus was upon the appellant-promoter to redress the deficiency to the satisfaction of GNIDA. On removing the deficiency, part OC for the first phase, wherein, the units of the respondent-allottees are situated, came to be issued on 16.07.2024. The appellant, despite receiving OC, withheld the offer of possession until 30.01.2025, thereafter, handed over possession on 04.03.2025. The offer of possession and the physical possession of the unit came to be handed over pursuant to orders passed in the appeal. In other words, after receiving part OC, appellant further resisted offer of possession and physical possession of the unit, despite, having received entire sale consideration. The deficiencies for obtaining OC was duly pointed out by GNIDA, meaning thereby, appellant was in default. The execution of the project was not compliant with the sanctioned layout map, drawings or to the Scheme, Recreational Entertainment Park (REP) [Prof. Rao report discussed later]. The appellant promoter cannot claim waiver of its statutory obligation

[Section 11 (4)(b) and (f)] and default in terms of ATS, thereby, depriving the respondent interest for the delayed period.

47. In the circumstances, having regard to proviso to Section 18(1), read with, Section 11(a) (b) and (f) the respondent-allottee would be entitled to interest on the deposit w.e.f. 01.03.2021 till handing over possession of the unit i.e. on 04.03.2025 at MCLR+1 percent. The **question no. 1, accordingly, is answered**.

Question No. 2:

Whether appellant has violated the mandated statutory provisions of Act 2016, Rules and Regulations framed thereunder, if so, the consequences.

48. The entire provisions of Act 2016 came into force on 01.05.2017. The aims and object of Act 2016 was to establish a Real Estate Regulatory Authority (RERA) for regulation and promotion of the real estate sector and ensure sale of units of a real estate project in an efficient and transparent manner and to protect the interest of consumers in the real estate sector and for matters connected therewith or incidental thereto. The primary objective is to safeguard the home buyers and promote transparency in real estate transactions.

49. Act 2016 mandates that no promoter shall advertise, market, book, sale or offer for sale or invite person to purchase any unit in a real estate project without registering the real estate project with the Regulatory Authority. The Agreement to Sub-lease (ATS) for the project, launched by the appellant promoter, came to be executed on 23.03.2018 i.e. after enactment and enforcement of Act 2016. In view, thereof, appellant promoter was required to comply the mandate of the provisions of the Act 2016.

50. Section 13 categorically prohibits a promoter from accepting deposit or advance without first entering into agreement for sale. The promoter 'shall not accept' a sum more than 10 percent of the cost of the unit as an advance payment without entering into a written agreement for sale duly registered under the law. The promoter, inter alia, is required to specify particulars of development of the project, including the construction of building and apartments along with specifications, the dates and the manner by which payments towards the cost of the unit are to be made by the allottees and the

date on which possession of the unit is to be handed over, the rates of interest payable by the promoter to the allottee and the allottee to the promoter, in case of default, and such other particulars, as may be prescribed.

51. Admittedly, appellant promoter, after accepting 10 percent of the cost of the unit, failed to register the agreement to sale (ATS) under the prevailing law. The mandate of Section 13 is not an empty formality. Section 11, inter alia, provides for functions and duties of promoter. As per sub-Section 11(h), promoter is prohibited after execution of agreement for sale of the unit to mortgage or create charge on such unit, and if any such mortgage or charge is created then 'notwithstanding anything contained in any other law' for the time being in force, shall not affect the right and interest of the allottee. In other words, on execution of agreement to sale, a lien is created on the unit in favour of the allottee, thus, facilitating loan on the allotted unit, as well as, prohibiting the promoter from subsequent multiple allotment/sale of the unit to third party on escalation of price of the unit. The purpose of the provision is to prohibit and avoid fraudulent transactions. The appellant promoter, thus, breached and violated the mandate of Section 13(1) in a post RERA project, therefore, cannot claim any waiver/ignorance, but has to face and suffer the consequences for such breach.

52. In terms of ATS, appellant promoter proposed to charge interest for default at MCLR+2 percent as against the prescribed rate at MCLR+1 percent. It is, thus, evident that appellant promoter violated the mandated prescribed rate by providing a higher rate towards interest in the ATS.

53. It is not in dispute that the project came to be delayed, in view of proviso to Section 18(1) of Act 2016, appellant promoter was required to compute the interest for the delayed period while settling the accounts of the unit at the time of offer of possession. It was incumbent upon the appellant to have computed and disclosed the money towards delay interest in the statement of account of the unit, and thereafter, claimed waiver from payment in terms of force majeure clause. Proviso to Section 18(1) casts a duty and obligation upon the promoter that allottee 'shall be paid by the promoter, interest for every month delay till handing over possession'. It thus, follows that any agreement, consent letter imposed by the appellant promoter upon the allottee, thereby claiming waiver of liability towards interest would be in conflict with

proviso to Section 18 (1), therefore, would not bind the allottee being against the statutory provision. The promoter cannot claim waiver of its statutory obligation mandated under law by executing an agreement. The appellant, in the event of default in completing the project by the due declared date of completion, cannot escape the positive statutory mandate of paying interest for the delayed period to the allottee. The appellant promoter, admittedly has not complied the mandate of Section 18 (1) of Act, 2016. The interest was neither computed, nor, reflected in the statement of accounts of the unit.

54. Further, one of the duties and functions of the promoter mandated under Section 11 4(e) of Act, 2016 is to enable formation of an association or society of the allottees, or a federation under the laws applicable. In absence of local laws, association of allottees 'shall be formed' within a period of 3 months of the 'majority of allottees having booked their units' in the project. Section 19 (9) mandates that every allottee of the unit shall participate towards formation of an association or society of the allottees. Learned counsel for the appellant promoter does not dispute that appellant promoter had not formed the association on majority of the allottees having booked their units in the project. Learned counsel, however, submits that since first phase of the project has now been completed, an association under the local law i.e., Uttar Pradesh Apartment (Promotion of Construction, Ownership, and Maintenance) Act, 2010 (for short 'Apartment Act, 2010') would be invoked to form an association of the allottees/residents of the units. The Apartment Act, 2010 is not applicable to under construction project and to stand alone units/Villas. The provision is applicable to apartments in multi-storey buildings.

55. In the circumstances, it was incumbent upon the appellant promoter to have constituted the association/society under the Societies Registration Act, 1860 of the allottees of the project. The forming of Resident Welfare Association is on completion of the project comprising of owners/residents of the project. The legislative purpose of mandate of Section 11(4) (e) is to protect the interest of the consumers/allottees, further, to facilitate the promoter to interact and convey to the allottees with the status and development of the project. The association of allottees under Section 11(4)(e) pertains to allottees during construction of the project and not on completion of the project.

56. Section 11 (4) (a) categorically provides that promoter shall be responsible for all obligations responsibilities and functions under the provisions of the Act, Rules and Regulation made thereunder to the allottees as per the agreement for sale or to the association of allottees, as the case may be till execution/ conveyance of unit. The obligation to the association of allottees, include conveyance of common area to the association of allottees or competent authority, as the case may be. [Section 11(4)(f)].

57. The proposed project is required to be developed and completed by the promoter in accordance with the sanctioned plans/layout plans. [Section 14(1)]. The promoter desires to make any alterations or additions in the sanctioned plans/layout plans of the building or common area of the project would have to obtain previous consent of two-thirds of the allottees. Meaning thereby the promoter would have to bring the proposed amendment of the plans to the notice of allottees through their association. The consent has to be obtained prior to the amendment and not thereafter or at the time of execution of the sub-lease deed of the unit. [Section 14(2)(ii)]. The association of the allottees have a right to participate in the proposed amendment of plans to subserve their interest in the common areas of the project. It is not the case of the appellant that the proposed amendment was circulated or informed to the allottees, in absence of association, and consent obtained thereafter. There is a distinction between the bargaining power of an allottee compared with that of an association of allottees on the proposed amendment of the common area.

58. In **Manish Kumar Vs. Union of India, (2021) 5 SCC 1,** Hon'ble Supreme Court, while referring to the provisions of Act 2016, was of the view that Section 11(1)(b) makes it mandatory for the promoter to make available information regarding the bookings. Further, Court was of the opinion that court/forum must take note of the "reality" that the promoters do not make available information as is required to be given by them. Supreme Court reminded the forums/lower courts that it becomes the duty of all the authorities to ensure that promoters stringently abide by their duties, according to the Act 2016. In paragraph 206, the Court was of the opinion that since the law giver has created a mechanism through which the allottees are expected to gather information about the status of the allotments, including the names and address of the allottees with respect to possession and any other areas. It is expected that the provisions play an important role to that effect.

59. In other words, formation of association of allottees and other obligations and duty was a mandatory requirement of Act 2016. The provisions has been violated/flouted by the appellant, noted, herein, above with an ulterior motive.

60. Chapter VIII of Act, 2016, inter alia, provides for offences and penalties. Section 61 provides for penalty for contravention of provisions of Act, 2016 other than Section 3 and Section 4.

61. Section 61 is extracted:-

> **Penalty for contravention of other provisions of this Act.**
>
> ***61***. *If any promoter contravenes any other provisions of this Act, other than that provided under section 3 or section 4, or the rules or regulations made thereunder, he shall be liable to a penalty which may extend up to five per cent of the estimated cost of the real estate project as determined by the Authority.*

62. Having regard to the discussions herein above, admittedly, appellant promoter has contravened the provisions of Act, 2016, Rules framed thereunder, accordingly, appellant promoter has exposed itself for penal consequences under Section 61. The **question no.2, is accordingly, answered**.

<u>Question No. 3</u>

Whether appellant promoter adopted/indulged in unfair method or deceptive practices or fraudulent practices, and/or, if yes, its consequences.

63. The GNIDA invited bids under Scheme REP-01/14-15 for allotment of recreational entertainment park with permitted FAR at 0.40 with ground coverage of 20 percent. Consortium of companies, including, appellant promoter submitted their bids for plot during REP-1, admeasuring 4,03,575 sq. mtr. (100 acres approximately) at Sector-27, Greater Noida. The land came to be allotted on July, 17, 2014 for development/marketing of Recreational Entertainment Park (REP) on the land and the lease deed, thereof, came to be executed on 12.11.2014 in favour of the appellant promoter.

64. The appellant obtained approval of layout for development of the project ‘Godrej Golf Links’ i.e. township. The appellant developed one of the phase of the township, comprising of villa complexes/clusters, known as ‘Crest’, comprising 300 villas and other facilities. Villa/units of the respondent allottee is situated therein. The allottee made an application for the Villa on

10.11.2017, unit came to be allotted vide allotment letter dated 31.01.2018 and agreement to sublease deed (ATS) came to be executed on 23.02.2018.

65. In Schedule III of the application form, the details of pricing is mentioned by the appellant promoter, which includes carpet area/exclusive area. Fee for Golf Course and Master Club membership is also mentioned. In other words, the price of the unit, included, Master Club/Golf Course fee. Similarly, in annexure No.1 of the allotment, the details of pricing of the unit included, the cost/fee of Golf Course and Master Club, as well as, exclusive area of the villa. It was clarified that total area shall mean carpet area/exclusive area and exclusive area shall mean and includes 'open area'.

66. The agreement came to be executed on Rs 100/- non judicial stamp paper in violation of Section 13 of Act 2016. In the ATS, apart from carpet area, exclusive area which included open area, common area facilities came to be detailed in Schedule II. The common area facilities in the project were meant for common use, enjoyment and access to the sub-lessees, but, inter-alia, excludes Master Club/Golf Course. The gross amount payable i.e. sale consideration is mentioned in the Schedule III which, however, includes charges/fee towards Golf Course and Master Club membership.

67. In clause 3.4 of the ATS, it has been categorically mentioned that Master Club/Golf Course shall be 'exclusive property' of the developer and shall be open to general public and the buyers may also 'opt to become member' by paying membership fee. The community building, club within the project (Club Crest), recreational facilities, however, shall be part of common area as mentioned in Schedule III.

68. In other words, club Crest was part of the common area, whereas, Master Club/Golf Course was exclusive property of the developer, accessible to general public on payment of fee/security as determined by the appellant. It was open to the allottee to opt for membership. The fee for Master Club/Golf Course was, however, made part and parcel of the gross amount, payable for the unit. The Golf Course/Master Club membership, therefore, was made mandatory and a condition precedent for handing over possession of the unit to the allottee. That apart, at the time of offer of possession, an additional Rs. One lakh was imposed towards the security fee for the Master Club/Golf Course facilities. It is thus evident that the appellant promoter indulged in

misrepresentation and unfair/deceptive practice to fraudulently fleece money from the allottees for facilities that was optional and exclusive property of the appellant. Further, possession of the unit and conveyance deed was resisted by the appellant until the amount was not satisfied by the allottees. It is informed that appellant has collected approximately Rs.100/- crore from the fee/security for the Master Club/Golf Course, which is yet to be completed. The marketability of the Master Club/Golf Course was, thus, imposed upon the allottees, by including it in the cost of the unit and making it a condition precedent for possession and execution of conveyance deed, though, it was exclusive property of the appellant. The conduct of the appellant is an instance of unfair/deceptive and fraudulent practice.

69. Further, brochure and ATS (clause 7.5) acknowledges that Villas have lawn attached to it which were to be sold and conveyed together with the unit. Master plan/Floor plan of the project duly approved by the GNIDA and duly disclosed to the allottees at the time of applying/allotment of the unit states that villas are to be developed on various plot sizes. In other words, villa included built up area on a particular plot size. The Villas allotted to the respondent allottees on respective plot size duly approved by GNIDA, is reproduced in tabular form:-

S.No.	**Respondent Allottee**	**Villa No.**	**Plot Size**
1.	Mr. Rahul Gupta (Appeal No. 48/2024)	V1-032	100 sq. yd.
2.	Mr. Shailendra Jaiswal (Appeal No. 49/2024)	V2-102	125 sq. yd.
3.	Mr. Amitesh Kumar (Appeal No. 195/2024)	V2-119	125 sq. yd.
4.	Mr. Radhakrishanan (Appeal No. 196/2024)	V2-107`	125 sq. yd.
5.	Mr. B.B. Tiwari (Appeal No. 197/2024)	V6-009	300 sq. yd.
6.	Mr. Ripan Syal (Appeal No. 394/2024)	V5-017	220 sq. yd.

70. Further, appellant, during the course of argument, tried to impress upon us that the land appurtenant to the Villa, was not part and parcel of the unit promised for allotment and sale. The argument is untenable, having regard to Clause 7.5 of the ATS, the Master plan/Floor plan of the project duly sanctioned by GNIDA. The Villa was sanctioned on a particular size of plot ranging from 100 sq. yards to 300 sq. yards. The appellant had also displayed/reflected the plot size of different types of Villa in the brochure/sanctioned map. Further, maintenance agency appointed by the appellant i.e. Godrej Golf Links, sister concern of the appellant-promoter has expressly mentioned the unit size and the plot size i.e. 125 sq. yds. (Refer e-mail dated 06.03.2025). Further, Floor plan clearly indicates the size of the plots in millimetre on which the Villa has been erected i.e. 14945 mm (16.34 yd.) X 7000 mm (7.65 yd.), area at 125 sq. yds. In the circumstances, appellant has blatantly indulged in unfair, fraudulent and deceptive practice, thereby exposing itself for penal consequences under Chapter VIII and Section 7 of Act 2016.

71. Perusal of the registered tripartite sublease deed dated 04.03.2025 (conveyance deed) reveals transfers of the Villa bearing number B2-107. The super area of the villa and carpet area of the villa has been disclosed and proportionate rights to use common area attached thereto. It is admitted by the appellant (affidavit verified on 03.05.2025), sworn on by the Deputy Director Golf Link, that inadvertently, exclusive area was not mentioned in the deed. It was stated that appellant is making an endeavor to execute the supplementary correction deed. Admittedly, till the conclusion of hearing of the case, the necessary correction in the tripartite sub-lease deed was not under taken/carried out and it appears that intention of the appellant is otherwise. Further, expression ‘super area’ was introduced for the first time i.e. deceptive practice.

72. Be that as it may, it is evident and explicit that appellant has misrepresented and deceived the respondent allottees of the project by not conveying/transferring the unit as was promised and disclosed to the allottees at the time of allotment and execution of the ATS. The facilities of the common area has since been made open to the general public as against the interest of the allottees in violation of the ATS.

Prof. Rao report/suggestion

73. Learned counsel for the appellant has heavily relied upon the communication between Prof. Rao and GNIDA to emphasize that the appellant has not defaulted but has strictly abided by the sanctioned Master plan of the project and Building Regulation of GNIDA.

74. Prof. Dr. P.S.N.Rao, School of Planning and Architecture, New Delhi vide communication dated 25.05.2023, addressed to the Additional CEO, GNIDA, Uttar Pradesh, on the subject Recreational Entertainment Park (REP), Sector 27, Greater Noida (GNIDA), Uttar Pradesh i.e. the project of the appellant. The suggestions have been given by Prof. Rao pursuant to a request made by the Additional CEO vide, communication dated 27.04.2023, with regard to allotment/development of a Recreational Entertainment plot sanctioned pursuant to a Scheme dated 10.06.2014 with permissible breakup of the total area of the plot for different land use i.e.-

a) Recreational- not less than 75 percent.

b) Support facilities (Residential and Commercial) - not more than 25 percent.

75. It is noted in the communication that the Comptroller and Auditor General of India (CAG) in 2019, made certain observations regarding the planning and norms of the said Scheme. It is in this backdrop, Prof. Rao was called upon to give inputs on the said specific case.

76. The GNIDA Scheme, in the name and style, "Scheme for Recreational Entertainment Park in Greater Noida" (for short, 'Scheme'), was opened on 10.06.2014, which was to be developed on hundred acre land, the broad breakup for different land use was, recreational 75 percent and support facilities 25 percent. Further, as per planning norms for development of the 100 acre plot, the maximum permissible ground coverage of the entire land is 20 percent and maximum FAR at 0.40. As per Annexure No.2 to the Scheme/Brochure, 19 permitted activities was identified and permissible in the recreational area.

77. The site came to be visited by Prof. Rao on 13.05.2023 and upon inspection, Prof. Rao was of the opinion that GNIDA had not stated in its

Scheme/Brochure or lease deed that there should be clear demarcation of 100 acres plot i.e. 75 percent for recreational and 25 percent for residential. The layout plan, however, came to be approved by GNIDA.

78. In para (f) of the opinion, it was categorically noted by Prof. Rao that developer (appellant) has used 'more built up space' under 'villas' and 'condominiums'. In para (h), it has been noted that it is not clear that while 25 percent of the plot includes residential, but why was 'villas and condominiums' permitted in 75 percent recreational green area. It is further noted that this was the condition given to the developer and the developer only followed the same. Further, the construction was done by the developer only after express approval of GNIDA.

79. Further, in para (j), it is noted that the lease deed and Scheme brochure indicate that the project is meant for the inhabitants and not for the general public. It was opined by Prof. Rao that since the Master Plan was created for the welfare of the citizens and the public good, the residents of the entire GNIDA, as a whole, perhaps need to get benefits from the recreational green facilities, even though there is no express mention of the same in the lease deed.

80. In para (k), suggestion was put forth by Prof. Rao, *inter alia*, stating that since development/construction has been carried out as per sanctioned plan and within permissible norms, further, properties created have already been sold to a large number of families/allottees creating third party rights. It was, thereafter, suggested that if completed in all respects, completion certificate can be issued by the GNIDA for the developed portion of this project.

81. Further, it was suggested that the undeveloped pocket of the land within the 100 acre plot, earmarked by the developer for more villas could be used for development of the remaining recreational facilities so that the general public and not necessarily the inhabitants/owners of the villas, condominiums can be benefited. It was suggested that for this purpose a revised layout plan, if required, a supplementary lease deed, may be taken up by GNIDA.

82. On close scrutiny of the report, the submission of the learned counsel for the appellant that development of the project was as per sanctioned map, lacks merit. On the contrary, the document/report, prime facie appears to be a

procured document at behest of the appellant/GNIDA officials to cover up illegalities committed by the appellant/developer in connivance with the officials of GNIDA. It is not open to the appellant to take shelter behind the sanctioned layout map of the project to suggest that they have developed the project according to the sanctioned approvals. On the contrary, the sanctioned layout map of a project should be in consonance with the Scheme of Recreational Entertainment Park, as well as, the Building Regulation.

83. Further, it has been categorically questioned by Prof. Rao that how villas and condominiums i.e. permanent construction was permitted in 75 percent Recreational Green part by GNIDA. It is settled law that green area or parks cannot be utilized for any other purpose, including permanent constructions thereon. The illegality is incurable and cannot be compounded.

84. Prof. Rao though noting the irregularities and illegalities suggested that since third party right on the property has been created, therefore, development/construction carried out be retained. In other words, the irregularities and illegalities committed by appellant/GNIDA was suggested to be made ‘regular’ because third party right was created. In other words, allottees were to suffer for fault of appellant/GNIDA. This is against the law. [Refer: Supertech Ltd. Vs. Emerald Court Owner Residents Welfare Association; 2021 (10) SCC 1]. Further, suggested revised layout plan and if required a supplementary lease deed may be taken up by GNIDA. It is also relevant to note that the recreational facilities as per the lease deed/brochure of the REP was not open to the general public, but only to the inhabitants/owners, it was, however, suggested that the recreational facilities be opened to the general public by levying membership fee or user charge by the developer. The beneficiary of the suggestion was none other than the appellant-promoter by depriving the facilities of the common area to the allottees.

85. It appears that GNIDA acted upon the report, accordingly, certain new conditions came to be imposed for granting OC by GNIDA vide letter dated 20.01.2024. The appellant duly accepted the new conditions and deposited the demands raised by GNIDA, inter alia, for additional land premium purportedly for land use deferential.

86. The submission of learned counsel for the appellant that the report/suggestions submitted by Prof. Rao, absolves the appellant of not having violated the Scheme, rather, developed the project as per sanctioned layout map, is far from truth. The report clearly suggests that the layout map sanctioned by GNIDA for the development of Recreational Entertainment Park was not in terms of the Scheme. It has been categorically noted in the report that villas and condominium structures were permitted to be constructed in the recreational green area. In other words, land use of the Scheme was flouted. In the circumstances, it cannot be said that appellant was not at fault, prima facie, appellant and GNIDA violated the Scheme. The layout plan sanctioned, rather procured by the appellant, was in connivance with the erring officials of GNIDA. The report is merely a camouflage to cover up the violations and illegalities of the developer and GNIDA, prima facie, evident from the report. The irregularities calls for inquiry/investigation as per law. The report and GNIDA acting thereupon by amending the Master Plan and land use/facilities being opened to general public only benefits the appellant at the cost of the allottees. The common area facilities promised to the allottees has been traded with the appellant.

87. It is thus evident that the appellant promoter since inception of the project has indulged in the unfair fraudulent practices and deception in the following manner:

88. Recreational facilities including Master Club/Golf Course was not open to the general public as is noted in the report. The appellant, however, while allotting villa had categorically mentioned (clause 3.4) that the Master Club/Golf Course is the exclusive property of the appellant promoter and facilities would be opened to general public on payment of prescribed fee by the respondent.

89. Master Club/Golf Club facilities being exclusive property of the appellant promoter, however, membership/security fee was compulsorily imposed on the allottee by including it in the sale consideration of the villa/unit. The allottee was deceived since inception. The allottees who did not desire to avail facilities were compelled to pay fee being made part of the total cost of the Villa.

90. The 'exclusive area' was willfully and deliberately excluded while executing the registered tripartite sublease deed/conveyance deed, and was not transferred though price towards exclusive area was charged.

91. The parcel of land (plot size) on which the villa was constructed duly disclosed in sanctioned map and as per the definition of the exclusive area and clause 7.5 that villas would have a lawn, was not included in the registered sublease deed.

92. The appellant willfully and deliberately excluded the plot area and included in it in the common area so as to meet the shortcomings of the recreational/common areas and land use differential as noted by the Prof. Rao in the report.

93. The violation and shortcoming noted in the report was subsequently sought to be rectified/covered up by the appellant promoter by the proposed amendment to the sanctioned Master plan, which was not circulated to the allottees for want of association of allottees.

94. The facilities as per Scheme REP 01/14-15, floated by the GNIDA was not open to general public, however, the appellant promoter since inception had in mind to open these facilities for general public as is reflected from Clause 3.4 of the ATS and subsequently under the garb of the report managed that all other facilities (common area) be opened to general public by making it exclusive property of the appellant.

<u>Undertaking/consent of allottee for no claim</u>

95. That apart, perusal of email dated 11.04.2024 and consent letter attached thereto proposes to obtain consent of the allottees for proposed amendment of the Master plan. In the consent letter, an undertaking was also taken/imposed on the allottee that, 'I/We agree to undertake to not claim any penalty, losses, damages and/or, compensation whatsoever including on account of delay from the developer'. Further, for specific consent/NOC letter was also circulated by the appellant for approval by the appellant promoter. Paragraph 5 consent/letter reads thus:-

> *"5. I hereby acknowledge that in compliance of the said Directions, the Developer has prepared a revised master plan*

(copy of which is enclosed herewith and marked as Annexure-1) reflecting, among other things, 75 percent recreational areas and amenities along with above said 12.5 acres of land as recreational green. I have seen, perused and understood the proposed revisions in the master plan prepared by the developer and I have no objection to the same".

96. In paragraph No.6 consent was sought from the allottees that area forming part of common areas and facilities including, but not limited to recreational area comprising of golf course, recreational club, parks and shopping mall etc., of the project shall be opened for the general public/third parties on payment of standard periodic subscription and usage charges fixed from time to time.

97. Thereafter, in paragraph 10 in the same breath an undertaking was obtained from the allottees not to claim from the developer for any damages, losses, compensations, cost and expenses or any other amount on account of delay in handing over possession of the unit by the developer. Paragraph 10 is extracted:-

"10 I hereby agree and undertake not to claim from the developer any penalty, losses, damages, compensation, costs, expenses or any other amount on account of delay in handing over of the possession of the unit by the developer to me/us. Further, I shall not raise any objection or make any claim or initiate any dispute/legal action of any nature against the developer on account of any of losses damages/compensation which may be suffered by me on account of my consents no objections as stated under this letter".

98. Incorporating consent/undertaking of an allottee in the nature noted hereinabove tantamounts to blatant conduct of unfair practice and fraud upon the statutory provisions of Act, 2016, in particular, proviso to Section 18. The clause is void in view of Section 2, read with, Section 28 of the Indian Contract Act 1872. The appellant promoter by imposing/extracting such a condition and clubbing it with consent sought for proposed amendment of the sanctioned map of the project is unfair fraudulent practice. Further, promoter

by extracting such an undertaking from the allottee, in principle, is seeking waiver of its statutory obligations mandated under proviso to Section 18 (1) of the Act i.e., to pay interest for the delayed period. The consent/under taking is void-ab-intio being in teeth of a statutory provision and would not bind the allottee, nor enforceable in law [Section 41 (a) of Specific Relief Act, 1963].

99. A bare perusal of the document circulated by the appellant, it is explicit that the appellant promoter had the audacity of adopting/indulging in unfair/fraudulent and deceptive practices since inception of the project which was sought to be waived by procuring a report from Prof. Rao.

100. The fraudulent and malicious conduct of appellant is also evident from the registered tri-partite sublease dated 04.03.2025 (conveyance deed). The tripartite sublease deed employs the expression 'super area' (absent in ATS), but exclusive area has been omitted. The sublease deed transfers only the structure of the Villa and the land under the structure, but excludes the proportionate land of the common area and plot size of the each of the Villa. The stamp duty on the building and land on which the building is constructed are at different rates. In other words, the instrument probably is under stamped, in the circumstances, is liable to be impounded and referred to the Collector for re-assessment and payment of deficient stamp duties [Section 33 of the Indian Stamp Act, 1899].

Fraud

101. A fraud is an act of deliberate deception with the design of securing something by taking unfair advantage of another. It is a deception in order to gain by another's loss. It is a cheating intended to get an advantage **[S.P. Chengalvaraya Naidu Vs. Jagannath, 1994 SCC (1) 1].**

"Fraud" means an intention to deceive ; whether it is from any expectation of advantage to the party himself or from the ill will towards the other is immaterial. The expression "fraud" involves two elements, deceit and injury to the person deceived. In short, the benefit or advantage to the deceiver, will almost always call loss or detriment to the deceived **[Indian Bank Vs. Satyam Febres (India) Pvt.Ltd., 1996 (5) SCC 550].**

Fraud is anathema to all equitable principles and any unfair tainted with fraud cannot be perpetuated or saved by the application of any equitable doctrine including res judicata. **(Ram Chandra Singh Vs. Savitri Devi and Ors (2003 (8) SCC 319).**

Fraud and collusion vitiate even the most solemn proceedings in any civilized system of jurisprudence.

Fraud arises out of deliberate active role of representator about a fact, which he knows to be untrue yet he succeeds in misleading the representee by making him believe it to be true. **Central Bank of India Vs. Madhulika Guru Prasad Dahir and Ors**, 2008 (13) SCC 170; **Ramesh Kumar & Anr vs Furu Ram & Anr**, 2011 (8) SCC 613.

<u>No person can take advantage of ones wrong</u>

102. Further, it is settled principle of law that no person can take advantage of ones wrong. It is settled law that no party can take advantage of their own fault to non-suit the statutory right of the other party.

103. In ***Mrutunjay Pani Vs. Narmada Bala Sasmal, AIR 1961 SC 1353***, Hon'ble Supreme Court observed as under:

> ***"5****…… The same principle is comprised in the Latin maxim commodum ex injuria sue nemo habere debet,* ***that is, convenience cannot accrue to a party from his own wrong. To put it in other words, no one can be allowed to benefit from his own wrongful act."***

104. Hon'ble Supreme Court in the matter of ***Kusheshwar Prasad Singh Vs. State of Bihar and others, (2007) 11 SCC 447,*** held as follows:-

> *"12...... The appellant is right in contending that final statement ought to have been issued immediately or in any case within "reasonable time". The authority cannot neglect to do that which the law mandates and requires doing. By not issuing consequential final settlement under Section 11 (1) of the Act, the authority had failed to discharge its statutory duty.* ***Obviously, therefore, the appellant is justified in urging that such default in discharge of statutory duty by the respondents under the Act cannot prejudice him. To that extent, therefore, the grievance of the appellant is well founded.***
>
> *16. It is settled principle of law that a man cannot be permitted to take undue and unfair advantage of his own wrong to gain favourable interpretation of law.* ***It is sound principle that he who prevents a thing from being done shall not avail himself of the non-***

> ***performance he has occasioned. To put it differently, "a wrongdoer ought not to be permitted to make a profit out of his own wrong."***
>
> *(Refer:* ***Nirmala Anand Vs. Advent corporation (Pvt.) Ltd. and others (2002) 5 SCC 481****)*.

105. Recently Hon'ble Supreme Court in the matter of ***Municipal Committee Katra & others Vs. Ashwani Kumar (Civil Appeal Nos. 1470-71 of 2017),*** decided on 09.05.2024. held that no one can be permitted to take undue and unfair advantage of its own wrong to gain favourable interpretation of law. It is a sound principle that he who prevents a thing from being done shall not avail himself of the non-performance he has occasioned. A wrong doer ought not to be permitted to make profit out of his own wrong. Relevant para No.19 of the judgment is being extracted: -

> *19. It is beyond cavil of doubt that no one can be permitted to take undue and unfair advantage of his own wrong to gain favourable interpretation of law. It is a sound principle that he who prevents a thing form being done shall not avail himself of the non-performance he has occasioned. To put* ***it differently, a wrong doer ought not to be permitted to make profit out of his own wrong****.* [Refer: **Nirmala Anand Vs. Advent Corporation (Pvt.) Ltd. & others, (2002) 5 SCC 481), Union of India vs. Maj.Gen. Madan Lal Yadav, (1996) 4 SCC 127]**

106. In the given facts, admittedly, appellant has indulged in fraudulent practice, unfair/deceptive practice. Having regard to the nature of fraud/deception and unfair practice, appellant promoter cannot be permitted to pocket the advantage, monetary or otherwise, thereby, perpetuating fraud/deception and unfair practice. The appellant promoter has also exposed itself for consequences under Section 7 of Act, 2016 also.

107. Fraud/deception indulged in by the promoter for securing undue advantage at the cost of the allottee cannot be allowed to be perpetuated, in particular, of a project that is post RERA enactment. If permitted the entire regulatory system and mechanism of real estate project and the objective of protecting the rights of the consumer/allottee, mandated under Act 2016 would collapse.

108. In the circumstances having regard to power and authority of the Regulatory Authority to conduct enquiry/ investigation under Section 35, read with, Rule 22(1)(a) of Rules 2016 and Section 37, it would be appropriate to direct the

Regulatory Authority to call for records of the project, including, offer of possession and statement of accounts of the units of each of the allottees of the first phase of the project and ensure payment of interest for the delayed period to each allottee. In the event, of non-compliance, the amount of money shall be recovered as arears of land revenue and paid to the allottees.

109. We are constraint to pass such an order, failing which, not only fraud and misrepresentation would perpetuate but at the same time appellant promoter has managed to consume/retain/pocket the money, statutorily due and admissible to the allottees, of the project tantamounting to unjust fraudulent enrichment. The allottees in a post RERA project, need not file individual complaints for delay interest, it was rather incumbent upon the Regulatory Authority to have passed appropriate orders under Section 35 of Act 2016 to protect and safeguard the interest of the allottees on having noticed it in the complaint filed by the respondent. The computation towards interest for the delayed period is pure mathematical calculation calling for no adjudication. (Refer: ***Ratan Buildtech Private Limited vs Anil Kumar;*** 2025: AHC-LKO: 53026 (RERA Appeal No.72 of 2025 decided on 04.08.2025).

110. The **question No. (3) is accordingly, answered**.

Question No. 4

Whether respondent allottee can claim counter reliefs in appeal instituted by the appellant-promoter, and/or, whether IA filed by the respondent, seeking reliefs against the appellant, is maintainable.

111. During pendency of the appeal the respondent allottee filed IA dated 04.04.2025 for directions seeking the following reliefs :-

a) direct the Appellant Promoter to restore the APR amount of Rs. 2,67,123.29/-, duly credited in the Respondent's SoA on 27.07.2021 but illegally removed on 12.02.2025, and to immediately credit the same into the bank account of the Respondent allottee along with reasonable interest from 27.07.2021 till the said amount is credited into the Respondent's bank account; and

b) direct the Appellant Promoter to credit the APR amount due on the balance advance payment of Rs. 32,28,586/- from 13.07.2021 till

30.01.2025, in terms of the P@CE Scheme, and to immediately credit the same into the bank account of the Respondent allottee along with reasonable interest from 30.01.2025 till the said amount is credited into the Respondent's bank account; and

c) direct the Appellant Promoter to immediately refund the Rs. 100,000/-, illegally collected by it at the time of possession under the head 'Security Deposit Master Club', into the bank account of the Respondent allottee along with reasonable interest; and

d) direct the Appellant Promoter to execute a supplementary sub-lease deed, sub-leasing the open area/lawn area in the front/rear portion of the villa unit so as to restore the plot size of the Respondent allottee's unit to 125 sq. yrds and give proper description of the boundaries of the Respondent's villa unit;

e) direct the Appellant Promoter to form an Association of Allottees in terms of Section 11 (4)(e) r/w Sec. 19(9) of the RERA Act, 2016.

f) Pass any other further order(s) as this Hon'ble Appellate Tribunal may think fit in the facts and circumstances of the present case in the interests of justice

112. The appellant promoter filed objections to the application on 04.04.2025, inter-alia, submitting that it is not permissible for the respondent to expand the scope of present appeal filed by the appellant. The issues were neither raised before UP RERA, nor, were part of subject matter of the complaint filed by the respondent. It is further submitted that in the event, reliefs made by the respondent are considered, that would cost serious prejudice to the appellant. Accordingly, it is prayed that the application of the respondent allottee be dismissed with costs. In other words, appellant has raised objections against the maintainability of the IA application, (cross objection/releifs) filed by the respondent allottee in the appeal instituted by the appellant.

113. The appellant promoter being aggrieved by the impugned order instituted the present appeal, learned Senior counsel categorically stated that appellant was aggrieved by the impugned order to the extent of granting interest for the delay period. The appellant promoter does not oppose possession of the unit. In other words, part of impugned order/decree was being challenged. However, on the

date of filing of the appeal, possession of the unit was not handed over, neither, OC of the project/unit came to be received by the appellant promoter. It is during the pendency of the appeal, appellant promoter received part OC of the project for 1144 units on 16.07.2024, thereafter, offer of possession came to be made and physical possession of the unit came to be handed over on 04.03.2025 after execution of tripartite sublease deed. It is after execution of sublease deed and handing over possession of the unit, it transpired to the respondent allottee that the appellant promoter has played fraud and misrepresented in not transferring/conveying the unit, that was promised. It is evident from the tripartite sublease deed, exclusive area and plot area, attached to the Villa, promised in the ATS and as per sanctioned map was not transferred to the respondent. It is, having regard to the subsequent development pertaining to the subject matter, the present application, seeking additional ancilliary reliefs against appellant promoter came to be filed by the respondent by way of cross objections.

114. The question to be considered is as to whether reliefs sought by the respondent by filing IA can be granted in the appeal instituted by the appellant promoter.

115. At this stage we deem it proper to examine the provisions of Act 2016 pertaining to scope and powers of the Tribunal to consider the appeal. Section 43 (5) mandates that any person aggrieved by any direction or decision or order made, inter-alia, by the Regulatory Authority may prefer an appeal before the Appellate Tribunal. Section, 44 provides for ‘application for settlement of disputes and appeals’ to the Appellate Tribunal. Sub-Section (1), inter alia, mandates that any aggrieved person by any direction or order or decision of the Regulatory Authority may prefer an appeal. Sub-Section (6) of Section 44 authorizes the Tribunal for the purpose of examining the legality or propriety or correctness of any order decision of the Regulatory Authority on its ‘own motion or otherwise’ call for the record relevant to deposing of such appeal and make such orders, as it thinks fit. Section 44 (6) is extracted:-

> *“The Appellate Tribunal may for the purpose of the examining the legality or propriety or correctness of any order or decision of the Authority or Adjudicating Officer,* ***on its own motion or otherwise call for the record relevant to deposing of such appeal and make such orders, as it thinks fit”.***

116. On conjoint reading of Section 43 (5) and sub-Section (6) of Section 44 of Act, 2016, vide powers has been conferred upon the Appellate Tribunal while exercising appellate jurisdiction. The powers conferred under sub-Section (6) of Section 44 is not only a revisional power but at the same time while adjudicating on the legality and propriety of the correctness of any order in settlement of disputes inter-se parties, Tribunal may call for relevant records to dispose of such appeal/ application and make such orders thereon. Section 44 pertains not only to appeal but also to 'application for settlement of disputes' in the appeal that may arise, *inter se,* parties.

117. Section 53 of Act, 2016 provides powers of Tribunal, wherein, it has been categorically mandated that the Appellate Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908 (5 of 1908) (for short – Code of Civil Procedure) but shall be guided by the principles of natural justice. Further, rules of evidence contained in the BSA, 2023 (earlier, Indian Evidence Act, 1872) are not applicable. In other words, the procedural rigours laid down in Code of Civil Procedure are not applicable to proceedings before Tribunal but the principles of natural justice enshrined therein that espouse fair play and facilitates the cause of justice is applicable. Code of Civil Procedure is primarily an embodiment of principles of natural justice to be followed by the court/party during different stages while deciding the suit/appeals etc.

118. The appeal is continuity of the compliant and all issues arising therein between the parties on the subject matter in issue, can be gone into in appeal instituted by the appellant on counter objections being raised by the respondent, though separate/cross appeal may not have been filed. The issues that has been raised by the respondent allottee, by filing IA, claiming reliefs therein is subject matter arising from the decree i.e. possession of the unit and statement of account of the unit. In the event, appeal having not been filed, possession of the unit as promised by the appellant judgment debtor would have to be gone into in execution proceedings. All ancillary questions arising between the parties would have to be adjudicated upon by the executing forum and not by filing a separate complaint. The principle is to avoid multiplicity of the complaint arising from the decree between the parties.

119. It, therefore, follows, all questions relating to the possession of the property/unit/accounts arising between the parties are questions relating to the

judgment and decree i.e. possession of the unit and having regard to the ambit and scope of the appellate jurisdiction and powers conferred upon the Appellate Tribunal under Section 44 (6), which is akin to the power conferred upon the appellate court in civil jurisdiction under Section 47, read with, and Order 41 Rule 22, and Rule 33. The principles therein being principles of natural justice, would be applicable to proceedings under Act 2016 and can be gone into in the appeal being continuity of the complaint. The procedure is hand maiden to facilitate justice and not to scuttle justice on technicalities.

120. The procedural rule, based on the principles of natural justice mandates that any respondent though he may not have filed an appeal from any part of the decree, may not only support the decree but may also state that any issue ought to have been in his favour. The appellate court shall have powers to pass any decree and could also pass other such decree or order as the case may require.

121. Supreme Court in **Mahant Dhangir and another Vs. Madan Mohan others, (1987) Supp SCC 528,** on having examined the scope and ambit of Order 41, Rules 22 and 33 of Code of Civil Procedure, was of the view that the cross objections of the respondent in an appeal would be maintainable. The appellate court can exercise power under Rule 33 even if the appeal is only against part of the decree. The scope of power under Rule 33 to determine any question not only between appellant and respondent but also between the respondent and co-respondent in rare circumstances. The appellate court can pass any decree/order which ought to have been passed under the circumstances of the case. The Court further was of the opinion that the application of cross objections, filed by the respondent not be refused on technicalities (**Refer: Muthuswami Gounder Vs. Palaniappa Gounder (1998) 7 SCC 327: 1998 SCC OnLine SC 558).**

122. The respondent through their application, inter-alia, are merely seeking correction/incorporation in the registered tripartite sub-lease deed the accounts/property/unit and plot/land size, boundaries promised to the respondent, which in any case can be gone into by the executing court/ forum in execution of decree, inter-alia for possession of the unit. The appeal being continuation of the complaint between the parties, all questions arising therein can be gone into by the Appellate Tribunal and shall have power to pass any order/decree which ought to have been passed and make such further order or

other decree as the case may require and this power may be exercised notwithstanding that appeal is only against part of the decree, and may be exercised in favour of all or any of the respondents or parties, though such respondent or party may not have filed any appeal or objections. **(Refer: Delhi Electric Supply Undertaking Vs. Basanti Devi, AIR 2000 SC 43).**

123. In the case of ***Ratan Buildtech Private Limited vs Anil Kumar;*** 2025: AHC-LKO: 53026, Hon'ble High Court examined the scope and ambit of the power of the Appellate Tribunal. Para 31 of the judgment is reproduced as :

> *"31. The question no.(i) is with regard to the scope of powers of the Tribunal in granting the interest directly in exercise of its appellate powers prescribed under Section 43. Heading of Section 44 of the RERA Act describes application for settlement of disputes and appeals to appellate tribunal, thus, the said Section has two parts, firstly prescribing for an appeal against an order of an Adjudicating Officer, which can be entertained and decided within the time prescribed and in the manner as prescribed, and the second power conferred on the Tribunal as mentioned in Section 44(6) which is basically revisional powers vested in the Appellate Tribunal for examining the legality and propriety and correctness of any order or direction of the Authority or the Adjudicating Officer on its own motion or otherwise, thus, the Tribunal is vested with appellate as well as revisional powers. Although not mentioned in strict sense, it is clearly well settled that the Appellate Authority, wherever prescribed, is entitled to exercise the powers of the authority, against whose order, the appeal has been preferred at the appellate stage, more so, when no appreciation of evidence is required and only a mechanical exercise is to be performed by the Regulatory Authority. The said analogy also flows from the mandate of Order XLI Rule 24 of C.P.C., although not applicable in stricto RERA APPEAL No.124/2023 20 sensu, however, the principles can be applied to hold that the authority has the power to pronounce judgment based upon the material on record, which according to the appellate court is sufficient to pronounce the judgment or finally determine the lis in the present case being award of interest."*

124. In our opinion the application (IA) filed by the respondent would be maintainable having regard to the ambit and scope of sub-Section (6) of Section 44 of Act, 2016, conferred upon the Appellate Tribunal while deciding the

appeal. The appeal is not separate proceedings but continuity of the complaint. The title of the section itself states *"applications for settlement of disputes and appeals"* to Appellate Tribunal. In view thereof, we do not find any merit in the objections of the appellant promoter, that respondent should file separate complaint, and/or, application filed by the respondent in an appeal instituted by the appellant cannot seek relief by filing cross objections for subsequent developments i.e. possession of the unit/accounts, during pendency of the appeal.

125. On perusal of the tri-partite sublease deed, only structure of the Villa and land under the structure has been transferred, while land appurtenant to the Villa has not been referred nor transferred. The respondents are entitled to possession and transfer of the Villa duly promised and money paid by the respondent-allottee. Further, exclusive area has also not been transferred.

126. The question is answered accordingly.

127. Having due regard to the facts and circumstances of the case and for the reasons and law, stated, herein above we do not find any merit in the appeal.

128. The appeal is accordingly, **disposed of** by passing the following orders:

(i) Appeal being devoid of merit is accordingly **dismissed.**

(ii) Respondent-allottee shall be entitled to interest on his/her deposit @ MCLR+1 percent w.e.f. 02.03.2021 till the date of handing over physical possession of the unit, except for the Covid pandemic period w.e.f. 23.03.2020 to 25.09.2020 to be paid by the appellant promoter within 45 days from the date the order is uploaded on e-portal.

(iii) In the event of the appellant failing to comply with direction (ii), respondent shall be entitled to interest @ MCLR+1 percent on the computed interest component till the date of payment.

(iv) Appellant shall execute supplementary correction deed to incorporate the plot size, exclusive area, boundary of the unit and proportionate undivided share of the common area in the tripartite sub lease deed dated 04.03.2025 within 45 days.

(v) Appellant shall refund to the respondent the fee and security charge for Master Club/Golf Course along with interest @ MCLR+1 percent till the date of payment.

(vi) Regulatory Authority is directed to call for information/records from the appellant of all the allottes/units of the project and, upon investigation (Section 35/37), pass order/directions for computation and payment of interest @ MCLR+1 percent for the delayed period after due notice and ensure payment, thereof, by the appellant, to the allottees, failing which the amount be recovered in accordance with law, and disbursed to the allottees.

(vii) Regulatory Authority shall ensure and compel the appellant to refund the fee and security charges for Master Club/Golf Course at MCLR+1 percent to all unwilling allottees of the project.

(viii) Regulatory Authority is directed to proceed against the appellant for penal consequences under Chapter VIII, Section 61 for not complying the mandatory provisions of Act 2016, Rules framed thereunder.

(ix) Regulatory Authority shall summon and place the records of the project/REP Scheme, sanctioned maps of the project, copy of registered sub-lease deed and any other material/document before Principal Secretary, Housing and Urban Development, Government of U.P. within 45 days.

(x) Principal Secretary, Housing and Urban Development, on receiving the records shall examine/ investigate, inter alia, whether the Scheme (REP) and Building Regulations of GNIDA was flouted by GNIDA to benefit the appellant, in exercise of powers under Uttar Pradesh Industrial Area Development Act, 1976, read with, duly incorporated provisions of the Uttar Pradesh Urban Planning and Development Act, 1973 and pass appropriate orders, after due notice to the appellant/GNIDA/Chairman, U.P. RERA and representatives of the allottees, without being influenced by the observations made in this order. The Principal Secretary to take independent decision.

(xi) Registrar to forward copy of this order to the Regulatory Authority and Principal Secretary, Housing and Urban Development, Lucknow, Government of U.P. for information and compliance.

(xii) Registry to refund the amount of money deposited by the appellant under Section 43(5) of Act 2016 to the respondent allottee upon due verification from U.P. RERA.

(xiii) Cost of litigation assessed at Rs.50,000/- to be paid to each of the respondent allottee by the appellant within 45 days.

Dated: 12.12.2025 **(Rameshwar Singh)** **(Suneet Kumar)**
Tanveer/Irfan