



**HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW**

RERA Appeal No.124 of 2023

Yamuna Expressway Industrial Development Authority, Greater
Noida, Gautambudh Nagar through its Authorized Representative

.... Appellant

Versus

Raj Kumar Goyal

....Respondent

ALONG WITH

<i>FIRST SET OF APPEALS</i>			
Sl. No.	Details of Appeals	Sl. No.	Details of Appeals
1	RERA Appeal No.118 of 2023	2	RERA Appeal No.120 of 2023
3	RERA Appeal No.126 of 2023	4	RERA Appeal No.127 of 2023
5	RERA Appeal No.128 of 2023	6	RERA Appeal No.129 of 2023
7	RERA Appeal No.130 of 2023	8	RERA Appeal No.131 of 2023
9	RERA Appeal No.132 of 2023	10	RERA Appeal No.133 of 2023
11	RERA Appeal No.134 of 2023	12	RERA Appeal No.135 of 2023
13	RERA Appeal No.136 of 2023	14	RERA Appeal No.137 of 2023
15	RERA Appeal No.138 of 2023	16	RERA Appeal No.139 of 2023
17	RERA Appeal No.140 of 2023	18	RERA Appeal No.141 of 2023
19	RERA Appeal No.142 of 2023	20	RERA Appeal No.144 of 2023
21	RERA Appeal No.145 of 2023	22	RERA Appeal No.146 of 2023
23	RERA Appeal No.148 of 2023	24	RERA Appeal No.149 of 2023
25	RERA Appeal No.151 of 2023	26	RERA Appeal No.152 of 2023
27	RERA Appeal No.153 of 2023	28	RERA Appeal No.154 of 2023
29	RERA Appeal No.155 of 2023	30	RERA Appeal No.156 of 2023
31	RERA Appeal No.157 of 2023	32	RERA Appeal No.158 of 2023
33	RERA Appeal No.159 of 2023	34	RERA Appeal No.160 of 2023
35	RERA Appeal No.161 of 2023	36	RERA Appeal No.162 of 2023
37	RERA Appeal No.163 of 2023	38	RERA Appeal No.164 of 2023
39	RERA Appeal No.165 of 2023	40	RERA Appeal No.166 of 2023
41	RERA Appeal No.167 of 2023	42	RERA Appeal No.168 of 2023
43	RERA Appeal No.169 of 2023	44	RERA Appeal No.170 of 2023
45	RERA Appeal No.172 of 2023	46	RERA Appeal No.173 of 2023

47	RERA Appeal No.174 of 2023	48	RERA Appeal No.176 of 2023
49	RERA Appeal No.177 of 2023	50	RERA Appeal No.178 of 2023
51	RERA Appeal No.179 of 2023	52	RERA Appeal No.180 of 2023
53	RERA Appeal No.181 of 2023	54	RERA Appeal No.182 of 2023
55	RERA Appeal No.183 of 2023	56	RERA Appeal No.184 of 2023
57	RERA Appeal No.185 of 2023	58	RERA Appeal No.186 of 2023
59	RERA Appeal No.187 of 2023	60	RERA Appeal No.188 of 2023
61	RERA Appeal No.189 of 2023	62	RERA Appeal No.190 of 2023
63	RERA Appeal No.191 of 2023	64	RERA Appeal No.192 of 2023
65	RERA Appeal No.194 of 2023	66	RERA Appeal No.195 of 2023
67	RERA Appeal No.196 of 2023	68	RERA Appeal No.197 of 2023
69	RERA Appeal No.198 of 2023	70	RERA Appeal No.199 of 2023
71	RERA Appeal No.203 of 2023	72	RERA Appeal No.205 of 2023
73	RERA Appeal No.206 of 2023	74	RERA Appeal No.207 of 2023
75	RERA Appeal No.208 of 2023	76	RERA Appeal No.209 of 2023
77	RERA Appeal No.210 of 2023	78	RERA Appeal No.211 of 2023
79	RERA Appeal No.212 of 2023	80	RERA Appeal No.213 of 2023
81	RERA Appeal No.214 of 2023	82	RERA Appeal No.215 of 2023
83	RERA Appeal No.216 of 2023	84	RERA Appeal No.217 of 2023
85	RERA Appeal No.218 of 2023	86	RERA Appeal No.220 of 2023
87	RERA Appeal No.221 of 2023	88	RERA Appeal No.222 of 2023
89	RERA Appeal No.223 of 2023	90	RERA Appeal No.225 of 2023
91	RERA Appeal No.226 of 2023	92	RERA Appeal No.227 of 2023
93	RERA Appeal No.228 of 2023	94	RERA Appeal No.230 of 2023
95	RERA Appeal No.231 of 2023	96	RERA Appeal No.232 of 2023
97	RERA Appeal No.233 of 2023	98	RERA Appeal No.234 of 2023
99	RERA Appeal No.236 of 2023	100	RERA Appeal No.237 of 2023
101	RERA Appeal No.238 of 2023	102	RERA Appeal No.239 of 2023
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106	RERA Appeal No.224 of 2023	107	RERA Appeal No.229 of 2023
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THIRD SET OF APPEALS			
109	RERA Appeal No.243 of 2023	110	RERA Appeal No.244 of 2023
111	RERA Appeal No.245 of 2023	112	RERA Appeal No.246 of 2023
113	RERA Appeal No.247 of 2023	114	RERA Appeal No.248 of 2023
115	RERA Appeal No.249 of 2023	116	RERA Appeal No.250 of 2023
117	RERA Appeal No.251 of 2023	118	RERA Appeal No.252 of 2023
119	RERA Appeal No.253 of 2023	120	RERA Appeal No.254 of 2023
121	RERA Appeal No.256 of 2023	122	RERA Appeal No.257 of 2023

123	RERA Appeal No.258 of 2023	124	RERA Appeal No.259 of 2023
125	RERA Appeal No.260 of 2023	126	RERA Appeal No.261 of 2023
127	RERA Appeal No.262 of 2023	128	RERA Appeal No.263 of 2023
129	RERA Appeal No.264 of 2023	130	RERA Appeal No.265 of 2023
131	RERA Appeal No.266 of 2023	132	RERA Appeal No.267 of 2023
133	RERA Appeal No.268 of 2023	134	RERA Appeal No.269 of 2023
135	RERA Appeal No.270 of 2023	136	RERA Appeal No.271 of 2023
137	RERA Appeal No.272 of 2023	138	RERA Appeal No.273 of 2023
139	RERA Appeal No.274 of 2023	140	RERA Appeal No.275 of 2023
141	RERA Appeal No.276 of 2023	142	RERA Appeal No.277 of 2023
143	RERA Appeal No.278 of 2023	144	RERA Appeal No.279 of 2023
145	RERA Appeal No.280 of 2023	146	RERA Appeal No.281 of 2023
147	RERA Appeal Defective No.2 of 2024	148	RERA Appeal Defective No.6 of 2024

Counsel for Petitioner(s) : Prashant Kumar Singh, Al-Aisha

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Reserved: 04.09.2025
Pronounced: 15.10.2025

HON'BLE PANKAJ BHATIA, J.

J U D G M E N T

1. Heard Sri Prashant Chandra, learned Senior Advocate assisted by Sri Prashant Kumar Singh and Sri Anshuman Singh, learned Counsel appearing on behalf of the appellant as well as Sri Amit Chaudhary, Sri Avinash Singh Vishen, Sri Vedant Srivastava and Sri Shishir Raj, learned Counsel appearing on behalf of the respondents. Ms. Mahima Pahwa appears on behalf of the respondents in RERA Appeals No.236 of 2023 and 221 of 2023 and Ms. Jagriti Vashisht in RERA Appeal No.207 of 2023.

2. Since all the appeals raise a common questions of law, as such, all these appeals are being decided by means of this common judgment.

FIRST SET OF APPEALS

3. For the sake of convenience, the facts as recorded in the RERA Appeal No.124 of 2023 are being referred to.

4. The appellant had launched a residential plots scheme known as “RPS01, RRPS01 and RRPS02” in Sectors 18 and 20 adjacent to the Agra-Noida Expressway in the year 2009 comprising of 21000 plots to be allotted at the rate fixed as Rs.4,750 per sq. meter in the brochure. One of the conditions mentioned was that the allotment of the plots was subject to the land acquisition proceedings. The respondent-allottee applied for allotment of a plot and the plots being Plot No.180, Pocket 3A, Sector 18 admeasuring area 300 sq. meter was allotted vide allotment letter dated 20.11.2009, containing the conditions prescribed therein. It is stated that after the scheme was launched in the year 2009, farmers’ agitation took place against the proposed acquisitions, which led to the filing of various petitions before this Court. It was also stated that scheme was launched for addressing and resolving the issues raised by the farmers and a Government Order was issued on 29.08.2014 proposing to recover additional compensation of 64.7% from the allottees to be paid to the land owners as Non-Litigation Incentive. The said amount of additional compensation was to be paid over and above the land, at which, the proposal was created for allotment. It is stated that on account of subsequent litigation, the work could not be executed within time. As there was delay in allotment, the respondent-allottee on 29.04.2021 filed a complaint before the Regulatory Authority under The Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as “the RERA Act”) seeking possession and payment of interest on delay. The said complaint was objected by the appellant highlighting the hindrances faced by the appellant on account of various litigation. It is also stated that after the completion of the development work, the authority was to consider the grant of Occupation Certificate and the process of providing additional compensation to the farmers was also undertaken, after which, the plots were to be handed over to the allottee, who had not received the possession. It is also stated that an option to withdraw from the project was also

given if the allottee was interested in getting its money back with interest @ 6%. It was also stated that the period from November, 2013 to November, 2016 was declared as a zero period for the payment of the installments in terms of the allotment letter.

5. In the light of the aforesaid, it is argued that once various incentives were offered to the allottees, they could not have claimed the benefit of delay of interest under the RERA Act. The complaints filed by the respondents-allottees came to be allowed vide order dated 21.12.2021 passed by the Regulatory Authority. The said order was challenged by preferring an appeal being Appeal No.748 of 2022 before U.P. Real Estate Appellate Tribunal, Lucknow (in short “the Appellate Tribunal”) on various grounds. While doing so, the amount, which was required to be deposited under Section 43(5) of the RERA Act, was deposited. The said Appeal No.748 of 2022 along with other similar appeals have been disposed of by means of the impugned common judgment dated 14.09.2023, wherein following directions were given to the appellant:

“(i) The relief sought by the allottees with respect to setting aside of levy of PLC charges is rejected in view of analysis and finding on issue no.(1).

(ii) The direction of the Regulatory Authority granting 4% simple annual interest to the allottees for the period from 27.01.2014 to 30.04.2017 is modified and Promoter/YEIDA is directed to pay delay interest to the allottees at the rate of MCLR+1% per annum after expiry of four years from the date of allotment letter or deposition of 75% of the total premium of the allotted plot of the respective allottees, whichever is later (vide para 4 of the allotment letter) till obtaining OC/CC or offer of possession, whichever is later.

(iii) If any allottee, in the absence of OC/CC issued by the competent authority of YEIDA, has taken physical possession of the booked unit/plot after execution of lease deed, his right to seek interest for delay will be only till the date of taking physical possession.

(iv) Rest of the directions of the Regulatory Authority are upheld.

(v) The aforesaid directions be complied by the Promoter/YEIDA within 45 days from the date of uploading of this judgment/order on the portal of the Tribunal.

(vi) In case of non compliance of this order by the Promoter/YEIDA within aforesaid period, the allottees will be at liberty to approach UP RERA for execution of this order.

(vii) No order as to costs.”

6. The Appellate Tribunal while deciding the pre-deposit made under Section 43(5) issued following directions:

“33.5 In the instant case, this Tribunal has dismissed the appeals filed by the Promoter/YEIDA. We, therefore, direct the Registry to transfer the entire amount deposited by the Promoter/YEIDA under the provisions of Section 43(5) of the Act to the concerned account of the U.P. Real Estate Regulatory Authority (U.P. RERA) in each case. Further, we direct the Regulatory Authority to dispose of this amount during the execution proceedings in accordance with the order of this Tribunal.”

7. Challenging the said judgment passed by the Appellate Authority, the contention of the Counsel for the appellant is that the delay attributable to the appellant disentitles the allottees to claim interest or compensation. It is also argued that the refund of the pre-deposit ought to have been granted after the decision on the appeals whereas by means of the impugned judgment directions were issued to transfer of the amount of pre-deposit made during the pendency of the appeal under Section 43(5) of the RERA Act to the concerned Regulatory Authority, is bad in law. It is also argued that on account of appreciation of price, the allottees were not entitled for interest as they were beneficiaries in terms of the appreciation of land price. Based upon the arguments raised by the parties, the following substantial questions of law were framed for decision:

“(i) Whether the Appellate Tribunal was justified in granting interest for the delay period at the rate of MCLR + 1% or the interest ought to have been granted in terms of the prescriptions contained and informed by the authority to the allottees?

(ii) Whether the Appellate Authority was justified in directing that the amounts deposited in pursuance to the mandatory prescriptions contained under Section 43(5) of the RERA Act, 2016 would be appropriated or had to be returned to the appellant after the decision of the appeal?”

8. The Counsel for the appellant arguing on first question of law placed reliance on the prescriptions contained in Section 18 and Section 2(z) of the

RERA Act and the Rules, namely, 'The Uttar Pradesh Real Estate (Regulation and Development) Rules, 2016' framed under the Act as well as the The Uttar Pradesh Real Estate (Regulation and Development) (Agreement for Sale/ Lease) Rules, 2018 and were extensively argued that the grant of interest at the rate of MCLR + 1% is neither prescribed in the Rules of 2016 nor even in the Agreement for Sale/ Lease Rules, 2018 and cannot be imposed specifically in respect of the allotments made prior to the Rule being enacted and more so, no agreement to sale as prescribed under 2018 Rules have been executed.

9. The Counsel for the respondents, on the other hand, argues that the provisions contained in Chapter II of the Agreement for Sale/ Lease Rules, 2018 would apply even the agreements/ allotments were made prior to the enforcement of the said Rules 2018. He further argues that in exercise of powers conferred by virtue of Section 37 of the RERA Act, the Regulatory Authority has issued Government Order bearing No.1151/Shakti Parinidhyan/ 2018-19 dated 19.06.2018 prescribing for rate of interest at the rate of MCLR + 1% and, thus, even if, it is held for the sake of arguments that the Rules of 2016 or Agreement for Sale/ Lease Rules, 2018 have no applicability to the allotments made prior thereto, the rate of interest would be governed by prescriptions contained in the circular dated 19.06.2018.

10. On the second question of law, as framed above, the submission of Counsel for the appellant is that in terms of the provisions of Section 43(5) of the RERA Act, 2016, for the appeal to be entertained, statutory condition of deposit of 100% of the amount has been fixed, which according to him, is only for the purpose of maintainability of an appeal and is to be returned after the appeal is decided. Reliance was placed upon the judgment in the case of *Axis Bank vs. SBS Organics Private Limited and another: (2016) 12 SCC 18*, subsequently clarified in the case of *M/s Kut Energy Pvt. Ltd. and others vs. Punjab National Bank and others: (2020) 19 SCC 533*.

11. The Counsel for the respondents, on the other hand, argues that once there is adjudication of dues by the Regulatory Authority, the amount prescribed to be deposited for the maintenance of an appeal, can be adjusted or satisfaction of the dues, that have been adjudicated and the same cannot be

returned to the appellant, as has been argued. They place reliance on the judgment of the Supreme Court in the case of *Harinagar Sugar Mills Ltd. vs. State of Bihar and others: (2003) 11 SCC 40* and also on the judgment of the Supreme Court in the case of *Axis Bank (supra)*, as clarified in *Kut Energy Private Limited (supra)*.

Question No.(i)

“(i) Whether the Appellate Tribunal was justified in granting interest for the delay period at the rate of MCLR + 1% or the interest ought to have been granted in terms of the prescriptions contained and informed by the authority to the allottees?”

Answer:

12. The issue with regard to the quantification of rate of interest at the rate of MCLR + 1% flow from the statute, came up for consideration before this Court in the case of *U.P. State Industrial Development Authority vs Jaysi Ram Dohare; 2025:AHC-LKO:55131* and the following observations were made:

“13. It is an admitted case that the property could not be developed in time on account of farmer agitation, and thereafter an option was given to the respondent either to continue with the property or to seek refund of the deposited money along with 6% interest. It is already recorded above that the respondent had opted for option no.1 in September 2019. Thereafter, when he was given an option to change the property from one part of the project to another part of the project, he gave an application for refund of the amount along with 10% interest. Section 18 of the RERA Act reads as under:

"18. Return of amount and compensation.-(1) If the promoter fails to complete or is unable to give possession of an apartment, plot or building-

(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or

(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,

he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:

Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed.

(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 sub-section 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."

14. On a plain reading of Section 18 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as "RERA Act, 2016"), it is essential for grant of interest and compensation under the said section that there should be failure on the part of the promoter to complete and hand over possession of the apartment, plot or building within the time prescribed in the terms of the agreement for sale, and on demand of the allottee, in case the allottee wishes to withdraw from the project, to return the amount received from him along with interest at such rate as may be prescribed.

15. In the present case, clearly there was a failure on the part of the promoter to complete and offer possession of the plot within the time as indicated in the brochure, even if it was on account of farmers' agitation. It is also clear that subsequently a demand was made by the allottee for refund of the amount. Thus, on a plain reading of Section 18 of the RERA Act, 2016, the respondent was entitled to refund of the amount given by him along with interest.

16. The contention of the appellant is that the respondent had initially given an undertaking to continue with the project, which would have material bearing. He further argued that the completion certificate itself was granted some time in the year 2022 and, as such, the same would also have a material bearing, since the failure on the part of the promoter was on account of factors beyond their control and thus he cannot be directed to pay the interest in terms of the prescriptions contained under Section 18 of the RERA Act. The said arguments deserve to be rejected for the sole reason that for bringing Section 18 of the RERA Act, 2016 into play, the only essential features are; (i) the promoter failed to complete or give possession of the apartment in terms of the agreement for sale, and (ii) there was a demand by the allottee for refund of the amount.

17. In the present case, there is no agreement for sale between the parties. There exists only a brochure and an application filed by the respondent, and thereafter an allotment letter issued. The payment of

part of the sale consideration is also on record. In terms of there being an offer in the form of the brochure, an acceptance in the form of the allotment application filed by the respondent, and there being part payment of consideration as well as quantification of the entire sale consideration, all the trappings of a contract were in existence. Thus, even if the agreement for sale, as prescribed in the Rules, 2018, is not in existence, all the trappings of a contract would amount to an agreement to sell between the parties.

18. That being the case, no error can be found in the order of the Appellate Tribunal in granting interest from the date of deposits made by the respondent till actual realization, at an interest rate of MCLR + 1%. The said mandate is also indicated in Section 2(za) of the RERA Act, which defines 'interest'. Section 2 (za) reads as under:

"2 (za). "Interest" means the rates of interest payable by the promoter or the allottee, as the case may be.

Explanation. - For the purpose of this clause –

(i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;

(ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid."

19. The explanation to Section 2(za) of the RERA Act is very clear, in terms of which the date from which interest is payable is indicated in Explanation II, and there being no other prescription contained in the Act prescribing the date from which interest is to be paid, there is no reason to hold otherwise.

20. With regard to the rate of interest at MCLR + 1%, although the rules framed by the State of U.P., particularly Rule 15, are silent with regard to the prescribed rate of interest, a circular has been issued by the RERA Authority in exercise of powers under Section 37 of the RERA Act, 2016 being Government Order/ Circular No.1151/Shakti Parinidhyan/2018-19 dated 19.06.2018, prescribing the rate of interest at MCLR + 1%. There being no prescribed rate of interest, the prescription issued by virtue of powers conferred under Section 37 of the RERA Act, 2016 would hold the field. Thus, with regard to the quantum of interest also, no interference is required."

13. The findings recorded above squarely applies to the present case, thus, on the reasoning contained in the judgment and recorded above, the submission

of the Counsel for the appellant with regard to the quantification of rate of interest deserves to be rejected and is accordingly rejected.

Question No.(ii)

(ii) Whether the Appellate Authority was justified in directing that the amounts deposited in pursuance to the mandatory prescriptions contained under Section 43(5) of the RERA Act, 2016 would be appropriated or had to be returned to the appellant after the decision of the appeal?”

Answer:

14. The aforesaid question with regard to the powers of the Appellate Tribunal under Section 43(5) of the RERA Act was also considered in the case of ***Ratan Buildtech Private Limited vs Anil Kumar; 2025: AHC-LKO:53026*** (RERA Appeal No.72 of 2025 decided on 04.08.2025) to the following effect:

“33. Coming to the Question No.(ii), as framed with regard to the power and the nature of deposit made under Section 43(5) and the power to direct the appropriation of the said amount as has been done by the Tribunal.

*34. To analyse the said provision, Section 43(5) provides for a condition to be fulfilled by the appellant/ promoter as pre-deposit for the appeal to be entertained by the Tribunal. The nature and scope of predeposit as prescribed under Section 43 (5) is contained in various statutes as a condition for preferring an appeal and was considered extensively by Hon’ble Supreme Court in the case of *Harinagar Sugar Mills Ltd. vs State of Bihar and others:(2003) 11 SCC 40*, wherein, Hon’ble Supreme Court analyse the similar provisions, which are as under:*

11. The main question, however, that needs to be considered is whether the amount deposited in view of Section 27-B of the Act is deposit of the liability of dues of fee assessed or not.

12. The amount in respect of which the Appellate Authority is to be satisfied that it has been so deposited, according to Section 27-B of the Act has to be in certain proportion of the amount of fee assessed and due. That is to say, the liability of the assessee is already fixed and the amount assessed is treated to be amount due to be paid, it is an ascertained amount out of dues which must be paid to the Committee. Therefore, there can hardly be any doubt about the fact that it is a part of the amount out of the total liability outstanding against the appellant which the appellant is required to pay to the party viz. the Market Committee before filing an appeal. It is not a

*deposit in court or with the Appellate Authority. Merely because liability in certain proportion is ensured to be in deposit before filing of an appeal, does not change the character of the deposit of a part of dues which is also specifically described to be fee assessed as due. It is not provided that the deposit is by way of security which would generally not be required to be paid to the party. Such deposits like security deposits are of different kind which are sometimes found provided for without reference to any monetary liability involved in the case e.g. in an election petition or other proceedings where some amount of security may be required to be deposited. In the present case, there is no scope to treat the amount deposited as anything else except part of the fee assessed and due. It is to be noted that the provision under Section 27-B of the Act is that the Appellate Authority is to be satisfied that the appellant has deposited with the Market Committee one-third of the fee assessed before he files an appeal. It is quite obvious that in case the appeal fails what would be required to be deposited would only be the balance of the amount of the liability, if that too is not already paid. In case the appeal succeeds, the amount paid against assessed liability which is later set aside cannot be retained and in the normal course, it is liable to be refunded, unless of course for some good reasons, it is ordered otherwise. For example, where it may amount to undue enrichment of the appellant. In the case of the appeal being unsuccessful, in the normal course, nothing more would be required to be done to the extent of deposit made. Therefore, merely, because the amount deposited may have to be refunded in case an appeal succeeds that alone does not mean that the nature of the deposit is changed or it is anything else except the amount of levy assessed and due, particularly looking to the language used and provision made under Section 27-B of the Act, where the Appellate Authority has only to be satisfied about the payment made to the Committee. Some observations relating to deposit of the tax liability while filing an appeal, though in a slightly different context, throw some light as to the nature of the deposit. In *Anant Mills Co. Ltd. v. State of Gujarat* [(1975) 2 SCC 175], SCC at pp. 202-03, para 40, this Court observed:*

“In the absence of any special reasons there appears to be no legal or constitutional impediment to the imposition of such conditions. It is permissible, for example, to prescribe a condition in criminal cases that unless a convicted person is released on bail, he must surrender to custody before his appeal against the sentence of imprisonment would be entertained. Likewise, it is permissible to enact a law that no appeal shall lie against an order relating to an assessment of tax unless the tax had been paid. Such a provision was on the statute-book in Section 30 of the Indian Income Tax Act, 1922. The proviso to that section provided that ‘... no appeal shall lie against an order under sub-section (1) of Section 46 unless the tax had been paid’. Such conditions merely

regulate the exercise of the right of appeal so that the same is not abused by a recalcitrant party and there is no difficulty in the enforcement of the order appealed against in case the appeal is ultimately dismissed. It is open to the legislature to impose an accompanying liability upon a party upon whom legal right is conferred or to prescribe conditions for the exercise of the right. Any requirement for the discharge of that liability or the fulfilment of that condition in case the party concerned seeks to avail of the said right is a valid piece of legislation, and we can discern no contravention of Article 14 in it.”

(Emphasis supplied)

It appears that imposition of a precondition of deposit of the liability before filing an appeal was challenged but it is clearly held that a party while availing of a right to appeal conferred under a statute can be required to discharge the tax liability. Such a deposit made is described as discharge of liability. Such a condition imposed, would not change the nature of the amount paid or deposited out of the amount as assessed and found due. No doubt it is true that order assessing the liability remains under challenge but such a deposit made discharges the liability of the payment of the amount assessed and found due, to the extent of deposit made, subject indeed to the decision of the appeal.

13. We have already noticed that in all the cases cited by the learned Senior Counsel Shri Shanti Bhushan on behalf of the appellant, the appeals were allowed and the amount was held to be refundable. Even in one of the cases, Voltas case [(1999) 112 ELT 34 : (1998) 76 DLT 841 (Del)] where after setting aside the order of assessment the matter was remanded, it was held that there was no good reason or any order against which the amount deposited as a precondition to file an appeal, could be retained. Fresh order was awaited. But where amount of liability has been assessed and fixed and the order exists, pre-appeal deposit will be nothing else but payment of a part of the liability assessed and discharged to the extent of the amount of liability paid, subject to the result of the appeal. We are not concerned with other kinds of cases where there may be different reasons for deposit of security or any amount of any other nature. Mere filing of the appeal does not absolve the appellant nor suspends the liability assessed during pendency of the appeal. It continues unless paid or set aside. Any payment made during that period when liability subsists shall be in discharge of that liability as fixed. As provided under Section 27-B of the Act the Appellate Authority has only to be satisfied that a given part of the fee assessed and due has been paid to the Committee before it entertains the appeal. There is no direction as such for the appellant to make any payment under Section 27-B of the Act. It is for the Appellate Authority to be satisfied that a part of the liability is in deposit with the Committee.

14. Considering the facts of the present case in the light of what has been observed by us above, we find that orders of assessment had been made. The liability had been fixed and the amount was determined. The Appellate Authority was satisfied that one-third amount of the fee assessed and due was paid to the Committee before filing of appeals. The appeals were dismissed. The revisions preferred thereafter were also dismissed. All statutory remedies stood exhausted. Writ petitions filed under Article 226 of the Constitution were pending when the order of this Court was rendered in Belsund Sugar Co. case [(1999) 9 SCC 620: AIR 1999 SC 3125]. The writ petitions were disposed of in the light of the judgment of this Court without interfering with the orders of assessment and the appellate and revisional orders. In the case of Belsund Sugar Co. [(1999) 9 SCC 620: AIR 1999 SC 3125] specific directions have been issued in exercise of powers under Article 142 of the Constitution as to in what circumstances the amount paid is to be refunded and not to be refunded. We have already quoted earlier the relevant part of the judgment in Belsund Sugar Co. case [(1999) 9 SCC 620: AIR 1999 SC 3125] according to which the judgment was prospective in effect without affecting the past transactions and the orders, but the amount of the liability of the fee which had already been paid till the date of the order was not to be refunded but the balance which remained unpaid was also not to be recovered. In this case we have already held that the amount deposited before filing of appeals was a part of the liability assessed and found due and partly in discharge thereof. It was, therefore, not liable to be refunded and the High Court has rightly held so.”

35. A similar provisions came up for consideration before Hon’ble Supreme Court in the case of Axis Bank vs SBS Organics Private Limited and another: (2016) 12 SCC 18, wherein, the prescription is contained under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act (SARFAESI Act) for a pre-deposit under Section 18. While preferring an appeal against any of the measures initiated under Section 13(4) of the SARFAESI Act, the Court after considering the prescriptions contained in Section 18 with regard to pre-deposit held as under:

“18. Any person aggrieved by the order of DRT under Section 17 of the SARFAESI Act, is entitled to prefer an appeal along with the prescribed fee within the permitted period of 30 days. For “preferring” an appeal, a fee is prescribed, whereas for the Tribunal to “entertain” the appeal, the aggrieved person has to make a deposit of 50% of the amount of debt due from him as claimed by the secured creditors or determined by DRT, whichever is less. This amount can, at the discretion of the Tribunal, in appropriate cases, for recorded reasons, be reduced to 25% of the debt.

19. This Court, in *Lakshmiratan Engg. Works Ltd. v. CST* [*Lakshmiratan Engg. Works Ltd. v. CST*, AIR 1968 SC 488], had the occasion to consider the meaning of the expression “entertain” in the context of a similar provision in the *Uttar Pradesh Sales Tax Act, 1948* wherein it was held that in such context, the expression has the meaning of “admitting to consideration”. The relevant discussion is available at paras 9 and 10: (AIR pp. 492-93)

“9. The word “entertain” is explained by a Division Bench [*Kundan Lal v. Jagan Nath Sharma*, 1962 SCC OnLine All 38: AIR 1962 All 547] of the Allahabad High Court as denoting the point of time at which an application to set aside the sale is heard by the court. The expression “entertain”, it is stated, does not mean the same thing as the filing of the application or admission of the application by the court. A similar view was again taken in *Dhoom Chand Jain v. Chaman Lal Gupta* [*Dhoom Chand Jain v. Chaman Lal Gupta*, 1962 SCC OnLine All 29 : AIR 1962 All 543] in which the learned Chief Justice Desai and Mr Justice Dwivedi gave the same meaning to the expression “entertain”. It is observed by Dwivedi, J. that the word “entertain” in its application bears the meaning “admitting to consideration”, and therefore when the court cannot refuse to take an application which is backed by deposit or security, it cannot refuse judicially to consider it. In a Single Bench decision of the same court in *Bawan Ram v. Kunj Behari Lal* [*Bawan Ram v. Kunj Behari Lal*, 1960 SCC OnLine All 87: AIR 1962 All 42] one of us (Bhargava, J.) had to consider the same rule. There the deposit had not been made within the period of limitation and the question had arisen whether the court could entertain the application or not. It was decided that the application could not be entertained because proviso (b) debarred the court from entertaining an objection unless the requirement of depositing the amount or furnishing security was complied with within the time prescribed. In that case (sic meaning) of the word “entertain” is not interpreted but it is held that the court cannot proceed to consider the application in the absence of deposit made within the time allowed by law. This case turned on the fact that the deposit was made out of time. In yet another case of the Allahabad High Court in *Haji Rahim Bux v. Firm Sanaullah & Sons* [*Haji Rahim Bux v. Firm Sanaullah & Sons*, 1962 SCC OnLine All 156: AIR 1963 All 320], a Division Bench consisting of Chief Justice Desai and Mr Justice S.D. Singh interpreted the words of Order 21 Rule 90, by saying that the word “entertain” meant not “receive” or “accept” but “proceed to consider on merits” or “adjudicate upon”.

10. In our opinion these cases have taken a correct view of the word “entertain” which according to dictionary also means

“admit to consideration”. It would therefore appear that the direction to the court in the proviso to Section 9 is that the court shall not proceed to admit to consideration an appeal which is not accompanied by satisfactory proof of the payment of the admitted tax. This will be when the case is taken up by the court for the first time. In the decision on which the Assistant Commissioner relied, the learned Chief Justice (Desai, C.J.) holds that the words “accompanied by” showed that something tangible had to accompany the memorandum of appeal. If the memorandum of appeal had to be accompanied by satisfactory proof, it had to be in the shape of something tangible, because no intangible thing can accompany a document like the memorandum of appeal. In our opinion, making “an appeal” the equivalent of the memorandum of appeal is not sound. Even under Order 41 of the Code of Civil Procedure, the expression “appeal” and “memorandum of appeal” are used to denote two distinct things. In Wharton's Law Lexicon, the word “appeal” is defined as the judicial examination of the decision by a higher court of the decision of an inferior court. The appeal is the judicial examination; the memorandum of appeal contains the grounds on which the judicial examination is invited. For purposes of limitation and for purposes of the rules of the Court it is required that a written memorandum of appeal shall be filed. When the proviso speaks of the entertainment of the appeal, it means that the appeal such as was filed will not be admitted to consideration unless there is satisfactory proof available of the making of the deposit of admitted tax.”

20. We are also conscious of the fact that such a precondition is present in several statutes while providing for statutory appeals, like the Income Tax Act, 1961, the Central Excise Act, 1944, the Consumer Protection Act, 1986, the Motor Vehicles Act, 1988, etc. However, unlike those statutes, the purpose of the SARFAESI Act is different, it is meant only for speedy recovery of the dues, and the scheme under Section 13(4) of the Act, permits the secured creditor to proceed only against the secured assets. Of course, the secured creditor is free to proceed against the guarantors and the pledged assets, notwithstanding the steps under Section 13(4) and without first exhausting the recovery as against secured assets referred to in the notice under Section 13(2). But such guarantor, if aggrieved, is not entitled to approach DRT under Section 17. That right is restricted only to persons aggrieved by steps under Section 13(4) proceeding for recovery against the secured assets.”

36. Thus, Hon'ble Supreme Court while analyzing the interest of predeposit prescribed under Section 18 held that there was no quantification of dispute in the proceedings under Section 13(4) and thus, the pre-deposit prescribed under Section 18, cannot be adjudicated dues. This aspect was further clarified by Hon'ble Supreme Court in the

case of *M/s Kut Energy Pvt. Ltd. and others vs Punjab National Bank and others*: (2020) 19 SCC 533, wherein, the earlier judgment of the Hon'ble Supreme Court in the case of *Axis Bank (Supra)* was analysed to the following effect:

“11. In the present case, the deposit of Rs 40 crores in terms of the order of the High Court on 11-10-2017 [*Kut Energy (P) Ltd. v. Punjab National Bank*, 2017 SCC OnLine HP 2616] was only to show the bona fides of the appellants when a revised offer was made by them. The deposit was not towards satisfaction of the debt in question and that is precisely why the High Court had directed that the deposit would be treated to be a deposit in the Registry of the High Court.

12. Going by the law laid down by this Court in *Axis Bank [Axis Bank v. SBS Organics (P) Ltd., (2016) 12 SCC 18 : (2016) 4 SCC (Civ) 681]* the “secured creditor” would be entitled to proceed only against the “secured assets” mentioned in the notice under Section 13(2) of the SARFAESI Act. In that case, the deposit was made to maintain an appeal before the DRAT and it was specifically held that the amount representing such deposit was neither a “secured asset” nor a “secured debt” which could be proceeded against and that the appellant before DRAT was entitled to refund of the amount so deposited. The submission that the bank had general lien over such deposit in terms of Section 171 of the Contract Act, 1872 was rejected as the money was not with the bank but with the DRAT. In the instant case also, the money was expressly to be treated to be with the Registry of the High Court.

13. On the strength of the law laid down by this Court in *Axis Bank [Axis Bank v. SBS Organics (P) Ltd., (2016) 12 SCC 18: (2016) 4 SCC (Civ) 681]*, in our view, the appellants are entitled to withdraw the sum deposited by them in terms of said order dated 11-10-2017 [*State Bank of Travancore v. Mathew K.C., (2018) 3 SCC 85: (2018) 2 SCC (Civ) 41*]. Their entitlement having been established, the claim of the appellants cannot be negated by any direction that the money may continue to be in deposit with the Bank.”

37. Thus in view of the Judgments referred above and on the plain interpretation of Section 43(5) read with the context in which, the appeal is prescribed under the RERA Act, it is clear that the interest and/ or compensation, awarded can be challenged before the Tribunal after making the pre-deposit as required for the entertainment of the appeal. The said amount can be appropriated towards the adjudicated amount decided by the authority or the adjudicating authority as the case may be and there is no entitlement of refund unless the appeal is allowed and the order impugned is quashed by the Tribunal. The issue is answered accordingly.

38. It is however directed that the amount so deposited before the Regulatory Authority in terms of the directions given by the Appellate Authority shall be returned to the appellant, where the amounts are found

to be in excess of the interest to be awarded to the allottees. It is further clarified that any amount found to be in excess of the interest payable to the allottee shall be refunded to the appellant on his moving appropriate application.”

Thus the Question No.(ii) is also decided on the same reasoning as extracted above and the contrary submission on that behalf by the appellant deserves to be rejected and is accordingly rejected.

15. The First Set of Appeals (Sl. No.1 to 105) including the leading appeal are ***disposed of*** with direction that in case, the amounts deposited by the appellant under Section 43(5) of the RERA Act, while preferring the appeals, are found to be in excess of the claim of the allottees in respect of the interest as decided in the impugned judgment passed in Appeal No.748 of 2022, the same shall be refunded to the appellant.

16. The Regulatory Authority shall pass orders with regard to the claim of interest strictly in terms of the impugned judgment passed in Appeal No.748 of 2022 and from the dates and up to the dates as clarified by the Appellate Tribunal in the impugned judgment within a period of four months from today and thereafter proceed to refund the amount if the same is found to be in excess of the claim of the allottees.

SECOND SET OF APPEALS

17. In addition to the arguments raised and considered in First Set of Appeals including leading RERA Appeal No.124 of 2023, an additional issue has been made in the Second Set of Appeals being RERA Appeal No.224 of 2023, RERA Appeal No.229 of 2023 and RERA Appeal No.235 of 2023 to the effect that the appeals were preferred before the Appellate Tribunal against the order passed by the Adjudicating Officer in granting interest, which according to them was without jurisdiction in view of the law laid down in the case of ***M/s Newtech Promoters and Developers Pvt. Ltd. vs State of U.P.*** (Civil Appeal No.6745-6749 of 2021) arising out of SLP (Civil) No(s).3711-3715 of 2021.

18. In response to the said argument, the Counsel for the respondents argued that no doubt, the Adjudicating Authority has no jurisdiction to grant interest as held by the Hon'ble Supreme Court in the case of *M/s Newtech Promoters and*

Developers Pvt. Ltd. (Supra), however, it was open to the appellate authority to exercise his powers under Sections 43 and 44 of the RERA Act to grant interest at the prescribed rate without remanding the matter.

19. In the light of the rival submissions, in addition to all the questions that arose in the First Set of Appeals including leading RERA Appeal No.124 of 2023, an additional substantial question of law has been framed in Second Set of Appeals (Sl. No.106 to 108 to the following effect:

“(iii) Whether, in the absence of any jurisdiction vested in the adjudicating authority for the grant of interest, the appellate tribunal could have granted interest without relegating the matter to the regulatory authority for grant of interest or not?”

Answer:

20. The said issue was extensively considered in the case of *Ratan Buildtech Private Limited (Supra)* wherein, the powers of the Appellate Tribunal was considered in terms of the mandate of Section 44 and Section 45 of the RERA Act and decided to the following effect:

“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

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.”

21. Following the said judgment, the additional Question No.(iii) as raised is decided on the same terms and conditions and reasoning extracted above against the appellant.

22. The Second Set of Appeals being RERA Appeal No.224 of 2023, RERA Appeal No.229 of 2023 and RERA Appeal No.235 of 2023 are accordingly ***dismissed*** on the said additional question no.(iii) and the order/ directions with regard to the two other questions of law as framed above in First Set of Appeals including the leading RERA Appeal No.124 of 2023, have already been decided above, thus all the questions are decided against the appellant and the directions contained with regard to the appropriation of the pre-deposit given in First Set of Appeals including leading RERA Appeal No.124 of 2023 shall apply to the present appeals also.

THIRD SET OF APPEALS

23. The Third Set of Appeals has been filed challenging the judgment and order dated 25.09.2023 passed in Appeal No.517 of 2023 along with other appeals preferred by the respondents before the Appellate Tribunal, while doing so, the Appellate Tribunal recorded that the issues raised in the present bunch of appeals by the allottees is squarely covered by the judgment and order dated 14.09.2023 passed in Appeal No.748 of 2022 (Raj Kumar Goyal vs YEIDA) impugned in the First Set of Appeals. Before the Appellate Tribunal, the Counsel for the respondent, appellant herein, was asked to seek instructions, but he agreed that the present bunch appeals is squarely covered by the judgment dated 14.09.2023 passed in Appeal No.748 of 2022, thus, on the basis of the reasoning recorded in the order dated 14.09.2023 passed in Appeal No.748 of 2022 all the appeals, which are impugned in the second set of appeals herein, have been disposed of.

24. One of the arguments raised by the Counsel for the appellant is that a concession of an advocate is not binding on the authority. Irrespective of the said concession, First Set of RERA Appeals including leading RERA Appeal

No.124 of 2023 preferred by the appellant challenging the impugned order dated 14.09.2023 passed by the Appellate Tribunal in Appeal No.748 of 2022 has already been disposed of by this Court.

25. In the present impugned order also, the reliefs given by the Tribunal are similar to the orders passed in bunch of appeals led by Appeal No.748 of 2022, thus the present impugned order also does not require any interference. All the directions given by this Court in the First Set of Appeals including the leading RERA Appeal No.124 of 2023 shall apply to the present Third Set of Appeals also. The present Third Set of Appeals is also decided on the same ground and analogy as contained in the First Set of Appeal including leading RERA Appeal No.124 of 2023. The Third Set of Appeals stands *disposed of* accordingly.

October 15, 2025

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[Pankaj Bhatia, J.]