2026:AHC-LKO:52441

**Reserved on : July 16, 2026**
**Delivered on: July 31, 2026**

**HIGH COURT OF JUDICATURE AT ALLAHABAD**

**LUCKNOW**

**RERA Appeal No. - 1 of 2023**

M/s Aims Max Gardenia Developers Pvt. Ltd. Thru. Authorized Signatory

…..Appellant(s)

Versus

Mrs. Pratibha Gupta

…..Respondent(s)

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|---|---|---|
| Counsel for Appellant(s) | : | Shuchita Singh, |
| Counsel for Respondent(s) | : | Aprajita Bansal, |

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**Court No. - 20**

**HON'BLE PRASHANT KUMAR, J.**

1. Heard Ms. Shuchita Singh, learned counsel for the appellant as well as Ms. Aprajita Bansal along with Shri Anilesh Tewari, learned counsel for the respondent and perused the record.

2. The instant RERA appeal under section 58 of The Real Estate (Regulation and Development) Act, 2016 has been preferred by the appellant against the order dated 14.09.2022 passed by the U.P. Real Estate Appellate Tribunal, Lucknow in R.A.- 3271 of 2022 in re : Misc. Case No. 170 of 2019 (Aims Max Gardenia Developers Pvt. Ltd. Vs. Pratibha Gupta) by which the restoration application filed by the appellant has been rejected which was filed for the restoration of the order dated 10.07.2020 passed by Appellate Tribunal in Misc. Case No. 170 of 2019 (Aims Max Gardenia

Developers Pvt. Ltd. Vs. Pratibha Gupta), by which the statutory appeal filed by the appellant under section 44 of the Real Estate (Regulation and Development) Act, 2016, has been dismissed for want of prosecution and the said appeal was filed by the appellant challenging the order dated 26.07.2018, passed by the Real Estate Regulatory Authority (RERA) Gautaumbudh Nagar in complaint case no. 320188450, wherein the RERA vide its order directed the appellant/builder to handover possession of the Unit C-3/402 immediately and directed for payment of interest for the delayed possession at the rate of 24% from 30.06.2013.

**Factual Matrix :**

3. The appellant herein is a builder and the respondent herein is the flat buyer. The respondent booked Flat No. C3-402, admeasuring 1150 sq.ft., with the appellant in its project running in the name and style as 'Golf City', situated at Plot No. 7, Sector-75. Pursuant to the advance payment made by the respondent, a Builder-Buyer Agreement was executed between the appellant and the respondent on 09.04.2011, wherein the appellant promised the buyer to hand over the possession of the flat by the month of June, 2013 on total payment of Rs.34,44,250/-. However, on the demand of appellant, the respondent had paid Rs.35,90,252/- to the appellant, but the appellant failed to keep its promise and the said flat was not handed over in time.

4. The home buyer being aggrieved preferred a complaint bearing Complaint No.320188450, before the Real Estate Regulatory Authority (hereinafter referred to as the 'RERA') and at that point of time more than 7 years have passed and the possession was not given by the builder, wherein the RERA vide order dated 26.07.2018 directed the appellant/builder to handover possession of the Unit C-3/402 immediately and further directed for payment of interest for the delayed

possession at the rate of 24% from 30.06.2013 (the date on which the appellant was supposed to handover the possession).

5. Inspite of the clear order dated 26.07.2018 passed by the RERA, the appellant neither paid the interest nor handed over the possession. It was then respondent moved execution proceeding before the Greater NOIDA on 30.10.2018. Thereafter a recovery certificate was issued on 06.03.2019 to recover an amount of Rs.41,21,411.88/-. It is then after issuance of recovery certificate, the appellant moved an appeal before the U.P. Real Estate Appellate Tribunal, Lucknow (hereinafter referred to as the 'Tribunal') with a delay of 234 days on 16.05.2019, which was registered as Misc. Case No.170 of 2019 (Aims Max Gardenia Developers Pvt. Ltd. Vs. Pratibha Gupta).

6. The appellant after preferring the aforesaid case, also filed a Writ petition before this court (being a Writ-C No.17549 of 2019 - M/S Aims Max Gardenia Developers Pvt. Ltd. vs. State of U.P. and others) seeking stay of recovery proceeding. This writ petition was dismissed vide order dated 23.05.2019 by the High Court. This order of dismissal of the writ petition was assailed by the appellant before Hon'ble Supreme Court by filing Special Leave to Appeal (C) No.14282 of 2019 (M/S Gardenia Aims Developers Pvt Ltd vs. State of U.P. & Ors.), which was dismissed as withdrawn vide order dated 08.07.2019.

7. It was then the appellant pressed his appeal before the Appellate Tribunal which was registered as Misc. Case No.170 of 2019 (Aims Max Gardenia Developers Pvt. Ltd. Vs. Pratibha Gupta). The matter was originally fixed for hearing on 24.10.2019. However, on the request of the learned counsel for the appellant, it was preponed and listed on 05.09.2019. When the matter was again listed on 05.09.2019, no one appeared on behalf of the appellant. Neither any application for adjournment nor any request for a pass over was made. Consequently,

the delay condonation application was rejected, and, accordingly, the appeal was also dismissed for want of prosecution vide order dated 05.09.2019, which reads as under:

> *"List revised.*
>
> *No one appears for the applicant nor any application for adjournment or pass over has been received. Shri Anilesh Tewari, learned counsel for the respondent is present.*
>
> *<u>Order-sheet reveals that initially 24.10.2019 was fixed in this case, but subsequently on the request of Smt. Suchita Singh, learned counsel for the applicant, the same was fixed for 05.09.2009 itself.</u>*
>
> *The application for condonation of delay is rejected. Accordingly, the appeal is also rejected for want of prosecution."*

8. Thereafter on request of counsel for the appellant order dated 05.09.2019 was recalled. The appeal was listed on 03.01.2020, and the Tribunal granted last opportunity to the appellant for filing response to the objections filed by the respondents against the delay condonation application.

> *"List revised.*
>
> *Smt. Suchita Singh Advocate is present on behalf of the applicant. Sri Anilesh Tewari Advocate is present on behalf of the respondent.*
>
> *Sri Anilsh Tewari, learned counsel for the respondent, moved an application for dismissal of application for condonation of delay; the same is taken on record. Sri Anilesh Tewari, learned counsel for the respondent, submitted that copy of the application has been served on the learned counsel for the applicant on 03.12.2019 but till date no response has been filed.*
>
> *On the request of Smt. Suchita Singh, learned counsel for the applicant, a week's and no more time is granted for filing reply to the objection of the respondent to the application for condonation of delay.*
>
> *List on 10.01.2020."*

9. The case was again listed on 10.01.2020. Since, the delay was not properly explained, the Tribunal, vide order dated 10.01.2020, granted another opportunity to the appellant to file better affidavit in support of the application for condonation of delay for the period from 26.07.2018 to 16.05.2019.

10. Surprisingly again, when the case was listed on 07.02.2020, the case was dismissed for want of prosecution. However, on the very same date the said order was recalled on the request of learned counsel for the appellant. The order dated 07.02.2020 is extracted as under:-

> *"List revised.*
>
> *Shri Anilesh Tewari, learned counsel for the respondent is present.*
>
> *No one is present on behalf of applicant.*
>
> *Neither any request for pass over or adjournment has been received on behalf of the applicant.*
>
> *Accordingly, the appeal is dismissed for want of prosecution.*
>
> *Dated: 07.02.2020*
>
> *Tanveer/-*
>
> *Before signing the order Ms. Suchita Singh, learned counsel for the applicant appeared and moved an application for recall of above order, dismissing the case for want of prosecution.*
>
> *Appreciating the request of learned counsel for the applicant and the cause shown in the application, the above order, dismissing the case for want of prosecution, is hereby recalled.*
>
> *List this case on 19.02.2020.*
>
> *Learned counsel for the applicant is directed to inform in writing to learned counsel for the respondent about the date fixed in this case."*

11. The case was again listed on 05.03.2020. The functioning of the Tribunal was suspended because of lock down on account of Covid-19 Pandemic till 08.06.2020. A public notice dated 01.06.2020 was issued with an intimation that hearing of all the matters pending before the Tribunal would be heard after lock down i.e., from 08.06.2020.

12. The Tribunal started functioning on 08.06.2020 onwards by virtual mode also. This matter was subsequently listed on different dates, on 15.06.2020 and 25.06.2020, no adverse order was passed by the Tribunal due to Covid-19 pendemic. The appellant neither appeared nor any request for adjournment was sent neither in physical mode nor virtually. The information of this listing was communicated to the parties via E-mail by the Tribunal and the matter was again listed on 10.07.2020 and thereafter, same was dismissed for want of prosecution.

13. Since after issuance of recovery certificate nothing was happening, the respondent herein approached this Court by filing a Writ petition (being Writ-C No.27934 of 2021 - Pratibha Gupta vs. State of U.P. and 3 Others) for execution of recovery proceeding. This writ petition was disposed off vide order dated 10.11.2021 directing the District Magistrate, Gautam Budh Nagar to make all endeavour to execute the recovery certificate dated 06.03.2019 as expeditiously as possible, preferably within a period of one month. The relevant extract of order dated 10.11.2021, passed by the coordinate bench of this court is reads as under :-

> *"Heard Shri Vinod Kumar, learned counsel for the petitioner and learned Standing Counsel representing the respondents No.1 & 2. Sri Wasim Masood, learned counsel has put in appearance on behalf of the Respondent No.3.*
>
> *The petitioner seeks issuance of Writ of Mandamus directing the respondent No.2, District Magistrate, Gautam Budh Nagar to take appropriate action for executing the recovery certificate dated*

*6.3.2019 in Complaint No.320188450 (Pratibha Gupta versus M/s AIMS Max Gardenia Developers Pvt. Ltd.). It has been submitted by the petitioner that the recovery certificate against the Respondent No.4 was issued as far back on 6.3.2019, but the same has not been executed by the District Magistrate, Gautam Budh Nagar, so far and the petitioner is being denied the fruits of the order of RERA Authorities, which was passed in his favour on 26.7.2018.*

*Learned Standing Counsel representing the respondent Nos. 1 and 2 submits that no fruitful purpose would be served by keeping the writ petition pending and the same can be disposed of directing the respondent No.2 to proceed with the recovery certificate.*

*On perusal of the order-sheet, we find that the respondent No.4 against whom the recovery certificate is sought to be enforced has not been noticed. However, since we intend to dispose of the writ petition finally, the notice upon the Respondent No.4 is dispensed with.*

*In view of the above, the writ petition is finally disposed off with a direction to the respondent No.2, District Magistrate, Gautam Budh Nagar, to make all endeavour to execute the recovery certificate dated 6.3.2019, which has been issued for recovery of Rs.41,21,411.88, as expeditiously as possible, preferably within a period of one month of serving a certified copy of this order upon him, if there is no other legal impediment."*

14. This order was communicated to the appellant, who had to be comply with the said order.

15. Thereafter instead of complying with the order, the appellant filed a Review Application (being C.M. Review Application No.3 of 2019 in Writ Petition being Writ-C No.17549 of 2019), for review of order dated 23.05.2019. The said review application has also been dismissed for want of prosecution by the coordinate bench of this court vide order dated 25.02.2022.

16. Pursuant to the order of the this Court, a fresh recovery certificate was issued on 08.04.2022. It is only after the recovery certificate issued, the appellant again filed a recall application along

with application for condonation of delay on 28.08.2022 seeking recall of order dated 10.07.2020 after a delay of 721days. This recall application along with application for condonation of delay was rejected on 14.09.2022. Relevant portion of the order dated 14.09.2022 passed by the Tribunal is reproduced as under:

> *"We have examined the submissions of learned counsels for the parties on the application for recall of order dated 10.07.2020. On examination we found that only explanation for 2 years i.e. from 10.07.2020 to the 30.08.2022, is that the appeal remained out of sight and unnoticed by the applicant till 22.07.2022.*
>
> *The explanation given by the learned counsel for the applicant doesn't fall in the category of sufficient cause, specially in the background that in the Tribunal, no case is undated and the status of any case can also be checked on the portal of the Tribunal by any person, therefore, not taking care of the case for 2 years and waking up only on approaching the amin during the recovery proceedings is also not acceptable. Moreover the perusal of the record reveals that on dismissal of the applicant's case on 10.07.2020, as per the practice at that time, email was sent by the Tribunal to the parties containing the copy of the dismissal order on 14.07.2020 and the receipt of the same has been acknowledged during the course of arguments by the learned counsel for the respondent on 14.07.2020. Nothing has been brought on record regarding the non-receipt of the order dated 14.07.2020, sent on the email ID of the applicant/counsel for the applicant by the Registry of the Tribunal. Apart from the above, the applicant has challenged the order dated 30.10.2018 by filing the appeal on 16.05.2019 without complete compliance of the provisions of Section 43(5) of the Act with a delay of 138 days and the proceedings are pending before this Tribunal since 16.05.2019 i.e. more than 3 years. We are of the considered view that the applicant successfully gained time for delaying the compliance of the order of the Regulatory Authority dated 30.10.2018. Even expiry of the 421 days from 16.05.2019 i.e. from the date filing of the case, complete compliance of the provisions of Section 43(5) of the Act has not been made and the Tribunal can examine the application for condonation of delay only after complete compliance of the provisions of Section 43(5) of the Act. Section 44(5) of the Act, 2016 mandates the Tribunal to make an endeavour to dispose off the appeal within 60 days from its receipt*

*and this mandate cannot be achieved without the cooperation of all the stakeholders.*

*As no sufficient cause has been shown for condoning the delay in filing the application for recall of order dated 10.07.2020, we don't find any reason to condone the delay and recall the order dated 10.07.2020. Accordingly, the application for condonation of delay in filing the recall of order dated 10.07.2020, filed on 30.08.2022 is rejected. Accordingly, the application for recall of order dated 10.07.2020 is also rejected."*

17. This order was uploaded on the portal/website of the Tribunal on 20.09.2022.

18. In spite of clear direction of the this Court given in Writ-C No.27934 of 2021, the order was not complied with.

19. Thereafter the respondent filed contempt petition bearing Contempt Application (Civil) No.6481 of 2022 (Pratibha Gupta vs. Sri Suhas Lalinakere Yathiraj, District Collector/ District Magistrate), for non compliance of order dated 10.11.2021 on which notice was issued on 01.11.2022 and the same is pending before this court.

20. Collector Gautambudh Nagar, vide order dated 02.12.2022, directed the Addl. District Magistrate Gautambudh Nagar, to take action in the matter for recovery of the amount. Thereafter the bank accounts of the appellant were attached by the concerned authority under the threat of contempt proceedings. The appellant paid the required amount of Rs.67,77,518/- vide demand draft number 025909 of Axis Bank dated 13.12.2022 in favour of Tehsilldar Dadri. After deposit the appellant requested Addl. District Magistrate Gautambudh Nagar, to release the attached bank account of appellant.

21. Being aggrieved by the order dated 14.09.2022 passed by the U.P. Real Estate Appellate Tribunal, Lucknow in R.A.- 3271 of 2022 in

re : Misc. Case No. 170 of 2019 (Aims Max Gardenia Developers Pvt. Ltd. Vs. Pratibha Gupta) as well as the order dated 10.07.2020 passed by learned Appellate Tribunal in Misc. Case No. 170 of 2019 (Aims Max Gardenia Developers Pvt. Ltd. Vs. Pratibha Gupta) and the order dated 26.07.2018, passed by the Real Estate Regulatory Authority (RERA) Gautaumbudh Nagar in complaint case no. 320188450, the instant appeal has been filed by the appellant herein on 23.12.2022, under section 58 of The Real Estate (Regulation and Development) Act, 2016 with the following prayers:

> *"A). set aside the order dated 14.09.2022 passed by the Ld. U.P. Real Estate Appellate Tribunal, Lucknow in R.A.- 3271 of 2022 in Misc. Case 170/2019 (M/s Aims Max Gardenia Developers Pvt. Ltd. vs. Pratibha Gupta) by which the restoration application filed by the appellant has been rejected, as well as the order dated 10.07.2020, passed by the Ld. Appellate Tribunal in Misc. Case 170/2019 (M/s Aims Max Gardenia Developers Pvt. Ltd. vs. Pratibha Gupta), by which the statutory appeal filed by the appellant under section 44 of the RERA Act, 2016, has been dismissed for non-prosecution and may allow the said appeal after condoning the delay; OR may direct the Ld. U.P. Real Estate Appellate Tribunal, Lucknow to hear and decide the appeal of the appellant on merits, after treating it to have been filed within limitation and further by treating the recoveries already made from the appellant, as full compliance of the provisions of section 43(5) of the RERA Act, 2016;*
>
> *B). set aside the order dated 26.07.2018, passed by the Ld. Real Estate Regulatory Authority (RERA) Gautaumbudh Nagar in complaint case no. 320188450 (Pratibha Gupta vs. M/s Aims Max Gardenia Developers Pvt. Ltd.)"*

22. This court after hearing the appellant admitted the instant appeal vide order dated 05.01.2023 and framed the following substantial questions of law for adjudication:-

> (1) Whether the Ld. Appellate Tribunal erred in not considering the disruptions caused as a result of COVID 19 pandemic, as 'sufficient

cause', for condoning the delay in filing the restoration application against the dismissal for nonprosecution order dated 10.07.2020.

(2) Whether the Ld. Appellate Tribunal was justified in dismissing the statutory appeal, for non-prosecution during the period of COVID-19 pandemic, when normal life was disrupted due to recurrent outbreaks of COVID-19 pandemic.

(3) Whether the Tribunal erred in law and fact both while rejecting the application for recall of the order dated 10.07.2020 in not considering the statutory provisions i.e. Section 44(4) of the Act of 2016.

**Submissions of learned counsel for the appellant:**

23. Ms. Suchita Singh, learned counsel for the appellant submits that the amount as claim by the respondent was not paid in 2013 as the last installment was paid on 08.07.2017. She further submits that possession of the flat was handed over to the respondent in 08.07.2017. It is after taking possession, the respondent had filed a complaint before the RERA without disclosing actual facts.

24. She further submits that the appeal was dismissed for want of prosecution during the period Covid-19 Pendamic and restoration application was filed but the same was rejected on the ground of delay and on the ground of non compliance of Section 43(5).

25. She submits that the delay in filing the restoration application was neither intentional nor deliberate. She submits that the reason for delay has been well explained in the application for condonation of delay filed along with restoration application but the tribunal has not properly appreciated the reason and rejected the application.

26. She further submits that Section 43(5) was already complied and the same is recorded by the Tribunal in its order dated 07.11.2019,

however, Tribunal ignored this fact while passing impugned order. She placed reliance on the order dated 07.11.2019 passed by the learned Tribunal. The order dated 07.11.2019 is extracted as under :

> *"List revised.*
>
> *Smt. Suchita Singh, learned counsel for the applicant, is present. No one is present on behalf of the respondent. No request for pass over or adjournment has been received from the learned counsel for the respondent. Accordingly we proceed to examine the application for recall of order dated 05.09.2019.*
>
> *Heard Smt. Suchita Singh, learned counsel for the applicant and perused the affidavit filed in support of the application for recall of order dated 05.09.2019 by which the case was dismissed for want of prosecution. The cause shown for absence on 05.09.2019 is found satisfactory. On due consideration the application is allowed. The order dated 05.09.2019 is recalled and Misc. Case No. 170/2019 is restored to its original number.*
>
> *Smt. Suchita Singh filed an application for taking on record a Demand Draft No. 513453 dated 01.11.2019 for Rs 12,36,423/- drawn on ICICI Bank, in favour of the Tribunal towards compliance of the provisions of Section 43(5) of the Act along with a certificate of Chartered Accountant on the basis of which calculation is made for compliance of the provisions of Section 43(5) of the Act. The same are taken on record. Office is directed to deposit the said demand draft in the concerned account of the Tribunal,*
>
> *Objection, if any, to the application for condonation of delay will be filed by the respondent within two weeks. Copy of the same will be sent by the respondent to the applicant on its email address. Reply of the same, if any, will be sent by the applicant to the respondent on her email address. Both the original documents will be filed before the Tribunal on the next date of listing.*
>
> *List this case on 10.12.2019."*

27. She further submits that amount of Rs.67,77,518/- has been paid vide demand draft dated 13.12.2022 in favour of Tehsildar Dadri, and same is lying with them.

28. She further submits that the order passed by the RERA for interest at the rate of 24% is highly excessive and contrary to the provision of Section 2(za) of the Act, 2016. She further submits that as per Section 18 of the Act, 2016, a builder was only liable to pay MCLR+1% interest as prescribed in the Rules and the Section 18 lays down MCLR+1%. Hence at best the builder is liable to pay only MCLR+1% on the delayed possession.

**Submissions of learned counsel for the respondent:**

29. Per contra, Ms. Aprajita Bansal, learned counsel for the respondent vociferously opposes the appeal and submits that the order passed by the RERA could not have been challenged because of the facts that the Tribunal has not heard the case on merits and it was merely dismissed for want of prosecution vide order dated 10.07.2020 and subsequently the recall application was also dismissed on 14.09.2022.

30. In response to the argument advanced by learned counsel for the appellant that possession was handed over to the respondent on 08.07.2017, Ms. Bansal, learned counsel for the respondent submits that possession was never handed over and only an offer was made by the builder to hand over possession on fit out basis, which was also not acted upon. No doubt certain allottee had been handed over possession on fit out basis, but in this case, possession was not handed over to the respondent on the ground that the matter is sub-judice before the Court, as mentioned in paragraph 5 of the order dated 14.09.2020 passed by the Tribunal.

31. She further submits that possession cannot be handed over as no Occupancy Certificate has been obtained and the flat is not ready for possession even today. She also contends that the appellant's argument

is completely incorrect and, in any event, no such plea was raised in the grounds of appeal.

32. She further submits that this is a case of gross negligence and no sufficient case was made out before the Tribunal, which would call for the Tribunal to condone the delay and the appeal suffers from delay and laches. It is only when the recovery proceedings were initiated by the High Court, the appellant had filed recall application along with application for condonation of delay with the delay of 721 days.

33. She places reliance upon Section 44(4) of the Act, 2016, which reads as under:

> *"**44. Application for settlement of disputes and appeals to Appellate Tribunal.**—*
>
> .....
>
> *(4) The Appellate Tribunal shall send a copy of every order made by it to the parties and to the Authority or the adjudicating officer, as the case may be. "*

34. She submits that the provisions of Section 44(4) has been complied by the RERA as well as by the Tribunal as all the order have been sent to the parties via E-mail and also recorded in the finding of the impugned order dated 14.09.2022.

35. She further submits that the appellant in his recall application has specifically stated that he could not move application before the Tribunal earlier because of 'out of sight'. They did not say order of listing passed by the Tribunal or order of listing was not communicated to them. Hence the provisions of Section 44(4) of the Act, 2016 have been complied with by the Tribunal.

36. She further submits that since all the orders were duly communicated to the parties and all the applications were also filed online, the appellant cannot claim that he was unaware of the proceedings.

37. She further submits that the appellant was fully aware of the recovery proceeding that is why, they preferred a writ petition before the Allahabad High Court. They cannot now say that they were unaware of the recovery proceeding and filed the appeal with an inordinate delay of 721 days.

38. With regards to the issue Whether the RERA was justified in granting interest at the rate of 24%, She submits that the issue of interest cannot be challenged in this appeal as the same has not been decided by the Regulatory Authority and the Tribunal has dismissed the Appeal on the ground of non prosecution and delay. The said order was not passed on merit.

39. She further submits that the doctrine of merger would not be applicable as per the ratio laid down by Hon'ble Supreme Court in the matter of **Chandi Prasad v. Jagdish Prasad, (2004) 8 SCC 724**. Therefore, the issue of interest cannot be taken at this stage as the impugned order is the dismissal of appeal for want of prosecution and delay, and not on merits.

40. She further submits that an offer was made by the appellant/builder to give an option for handover the possession of the flat for fit out work on 08.07.2017, where the respondent signed on dotted line and he did not had any bargaining power. This offer was accepted under duress and hence, the appellant cannot hold the same against the respondents. To buttress her argument, she places reliance upon a judgement passed by Hon'ble Supreme Court in the matter of

**Pioneer Urban Land and Infrastructure Limited vs. Govindan Raghavan;** reported in **(2019) 5 SCC 725**, wherein it has been held as under:

> *"6.7. A term of a contract will not be final and binding if it is shown that the flat purchasers had no option but to sign on the dotted line, on a contract framed by the builder. The contractual terms of the Agreement dated 08.05.2012 are ex-facie one-sided, unfair and unreasonable. The incorporation of such one-sided clauses in an agreement constitutes an unfair trade practice as per Section 2 (r) of the Consumer Protection Act, 1986 since it adopts unfair methods or practices for the purpose of selling the flats by the Builder.*
>
> *7. In view of the above discussion, we have no hesitation in holding that the terms of the apartment buyer's agreement dated 08.05.2012 were wholly one-sided and unfair to the respondent flat purchaser. The appellant builder could not seek to bind the respondent with such one-sided contractual terms."*

41. She further places reliance upon a judgement passed by this Court in the matter of **Lko. Development Authority v. Sushma Shukla;** reported in **Neutral Citation : 2026:AHC-LKO:4610** wherein it has been held as under:

> *"45. One-sided, unfair clauses in a contract or a agreement amount to an unfair trade practice under Section 2(1)(r) of the Consumer Protection Act, 1986. Hon'ble Supreme Court in the matter of Pioneer Urban Land & Infrastructure Ltd. v. Govindan Raghavan (supra) has held as under :-*
>
>> *"6.8. A term of a contract will not be final and binding if it is shown that the flat purchasers had no option but to sign on the dotted line, on a contract framed by the builder. The contractual terms of the agreement dated 8-5-2012 are ex facie one-sided, unfair and unreasonable. The incorporation of such one-sided clauses in an agreement constitutes an unfair trade practice as per Section 2(1)(r) of the Consumer Protection Act, 1986 since it adopts unfair methods or practices for the purpose of selling the flats by the builder."*
>
> *(emphasis added)*

*Conclusion*

*46. In view of the above discussions and considering the judgements referred above, this Court has no hesitation in holding that the private settlement or an agreement cannot circumvent or supersede the obligations imposed on the parties by the provisions of the statute and also hold that an agreement or settlement arrived at any level of duress or is against the provisions of statute, such agreement would be void."*

***(emphasis supplied)***

**Rejoinder**

42. Learned counsel for the appellant in rejoinder submits that as per Section 2(zi) "prescribed" means prescribed by rules made under this Act. Thus, as per rule framed, the interest at best could be MCLR+1%.

43. No other argument raised by learned counsel for the parties.

**Analysis**

44. Heard learned counsel for the parties and perused the available records.

45. The substantial questions of law raised in the present appeal are answered here in seriatim.

46. The first substantial question of law is as to whether the Ld. Appellate Tribunal erred in not considering the disruptions caused as a result of COVID 19 pandemic, as 'sufficient cause', for condoning the delay in filing the restoration application against the dismissal for nonprosecution order dated 10.07.2020. and the second question is as to whether the Ld. Appellate Tribunal was justified in dismissing the statutory appeal, for non-prosecution during the period of COVID-19 pandemic, when normal life was disrupted due to recurrent outbreaks of COVID-19 pandemic.

47. Since, the first and second substantial questions of law are intrinsically connected and, therefore, they are considered and decided together.

48. There was a delay of more than 720 days in filing restoration application. To examine whether the cause and reason placed before the Tribunal in delay condonation application filed along with restoration application falls under the category of 'sufficient cause', this court has to peruse the cause shown in the before the Appellate Tribunal. The relevant para of delay condonation application is extracted as under:

> *"2. That there has arisen a delay of almost 24 months in filing the application for recall of order dated 10/07/2020, hence this application with affidavit for condonation of delay is being filed.*
>
> *3. That the aforesaid case was listed on 19/02/2020 and next date fixed in the matter was 05/03/2020 for further hearing on delay condonation application and thereafter the matter was posted for 21/03/2020 for further hearing.*
>
> *4. That it is relevant to state that due to the outbreak of COVID-19 pandemic the regular work of this Hon'ble Tribunal was suspended on 21/03/2020 and further vide notice dated 31/03/2020 this Hon'ble Tribunal decided to suspend its regular functioning till further order.*
>
> *5. That the cases listed during COVID lockdown were subsequently listed on different dates but due to bonafide oversight, neither the appellant nor its counsel could notice or could get knowledge about the listing of the present case and as such the counsel for the appellant could not appear on 10/07/2020 when the case was called on for hearing, as a result the appeal was dismissed for non-prosecution vide order dated 10/07/2020 passed by this Hon'ble Tribunal.*
>
> *6. That thereafter the aforesaid appeal remained out of sight and unnoticed by the appellant until 22/07/2022, when the recovery amin along with the copy of Recovery Certificate dated 15/07/2022, reached the office of appellant for recovery of amount in pursuance of*

*the order dated 26/07/2018 passed by learned RERA and then the appellant inquired about the aforesaid appeal from its counsel and thereafter when the appellant's counsel further inquired from the registry of this Hon'ble Tribunal then the appellant got knowledge about the dismissal order dated 10/07/2020 on 25/07/2022.*

*7. That thereafter the counsel for the appellant was instructed to take remedial measures for restoration of the appeal and accordingly the appellant's counsel, after searching the old record of the present case from her office, started preparing the present applications.*

*8. That it is relevant to state that due to the outbreak of COVID-19 pandemic the Hon'ble Supreme Court took Suo Motu cognizance of the difficulties faced by the litigants in filing petitions/suits/appeals/all other proceedings within the period of limitation prescribed under the general law of limitation or under any special law and extended the period of limitation in all proceedings before the courts/Tribunals from time to time.*

*9. That the Hon'ble Supreme Court vide order dated 10/01/2022 in SMW(C) No. 3 of 2020, inter alia, has excluded the period from 15/03/2020 to 28/02/2022, from computing the period of limitation and afresh limitation period for 90 days has been provided with effect from 01/03/2022, which expired on 31/05/2022.*

*10. That certified copy of dismissal order dated 10/07/2020 was applied on 23/08/2022 and has been received on 25/08/2022 and thereafter the accompanying restoration application is being filed without any further delay.*

*11. That the appellant has a strong case on merits and inter alia, the rate of interest at the rate of 24% awarded by learned RERA vide the impugned order is not only against the law but also unjustified and excessive, which if allowed to stand, would amount to unjust enrichment of the complainant, at the cost of the project in which bonafide allottees have invested their hard earned money.*

*12. That as such the absence of the appellant or its counsel on 10/07/2020, when the appeal was called on for hearing, was on account of the aforesaid reason, which is bonafide, unintentional,* *unavoidable and thus is liable to be condoned in the interest of justice."*

49. Before proceeding further, this Court would like to delve into various observations of the Hon'ble Supreme Court and also deems it appropriate to look into the provisions of Section 5 of the Limitation Act, which is reproduced herein-under:-

> ***"5. Extension of prescribed period in certain cases.-***
>
> *Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908 (5 of 1908), may be admitted after the prescribed period, if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period.*
>
> *Explanation.-The fact that the appellant or the applicant was misled by any order, practice or judgment of the High Court in ascertaining or computing the prescribed period may be sufficient cause within the meaning of this section."*

50. A plain reading of Section 5 of the Limitation Act clearly shows that a second appeal may be admitted after the prescribed period, if the appellant satisfies the court that he had sufficient cause for not preferring the appeal within such time. The burden to prove 'sufficient cause' lies on the appellant, who is seeking condonation of delay and he has to prove sufficient cause, and the reasons for not approaching the court are real, bonafide and free of negligence. No doubt this expression has been constituted with justice-oriented approach so as to not punish an innocent litigant for circumstances beyond the control. However, the Courts must not condone gross negligence, deliberate inaction, or casual indifference, for to do so would undermine the maxim ***interest reipublicae ut sit finis litium*** and destabilise the certainty that limitation law seeks to secure.

51. It has been emphasised by the Hon'ble Supreme Court way back in 1962 in the matter of **Ramlal v. Rewa Coalfields Ltd**., reported in **AIR 1962 SC 361**, that even after sufficient cause has been shown by a party for not filing an appeal within time, the said party is not entitled to the condonation of delay as excusing the delay is the discretionary jurisdiction vested with the court. The court, despite establishment of a "sufficient cause" for various reasons, may refuse to condone the delay depending upon the bona fides of the party. The relevant extract is as follow :-

> *"7. In construing Section 5(of the Limitation Act) it is relevant to bear in mind two important considerations. The first consideration is that the expiration of the period of limitation prescribed for making an appeal gives rise to a right in favour of the decree-holder to treat the decree as binding between the parties. In other words, when the period of limitation prescribed has expired the decree-holder has obtained a benefit under the law of limitation to treat the decree as beyond challenge, and this legal right which has accrued to the decree-holder by lapse of time should not be light-heartedly disturbed. The other consideration which cannot be ignored is that if sufficient cause for excusing delay is shown discretion is given to the court to condone delay and admit the appeal. This discretion has been deliberately conferred on the court in order that judicial power and discretion in that behalf should be exercised to advance substantial justice.*
>
> ***
>
> *12. It is, however, necessary to emphasise that even after sufficient cause has been shown a party is not entitled to the condonation of delay in question as a matter of right. The proof of a sufficient cause is a condition precedent for the exercise of the discretionary jurisdiction vested in the court by Section 5. If sufficient cause is not proved nothing further has to be done; the application for condoning delay has to be dismissed on that ground alone."*

***(Emphasis added)***

52. Sticking to the time limit for litigation is based on public policy fixing a life span for legal remedy for the purpose of general welfare. They are meant to see that the parties do not resort to dilatory tactics but avail their legal remedies promptly. To assail the remedy, the person

has to be vigilant and has to approach court within the prescribed limitations.

53. The Hon'ble Supreme Court in the matter of **Maniben Devraj Shah v. Municipal Corporation of Brihan, Mumbai**, reported in **(2012) 5 SCC 157** has held in para 24 as under:

> *"24. What colour the expression "sufficient cause" would get in the factual matrix of a given case would largely depend on bona fide nature of the explanation. If the Court finds that there has been no negligence on the part of the applicant and the cause shown for the delay does not lack bona fides, then it may condone the delay. If, on the other hand, the explanation given by the applicant is found to be concocted or he is thoroughly negligent in prosecuting his cause, then it would be a legitimate exercise of discretion not to condone the delay."*

***(Emphasis added)***

54. The Hon'ble Supreme Court in the matter of **Chennai Metropolitan Water Supply & Sewerage Board v. T.T. Murali Babu, (2014) 4 SCC 108**, had held that the doctrine of delay and laches should not be lightly brushed aside. It is the duty of the court to protect the rights of the citizens but simultaneously it is to keep itself alive to the primary principle that when an aggrieved person, without adequate reason, approaches the court at his own leisure or pleasure, the court would be under legal obligation to scrutinize whether the lis at a belated stage should be entertained or not. Delay reflects inactivity and inaction on the part of a litigant, a litigant who has forgotten the basic norms, namely, "procrastination is the greatest thief of time" and second, law does not permit one to sleep and rise like a phoenix. Delay does bring in hazard and causes injury to the lis.

55. Hon'ble Supreme Court in the matter of **Union of India and Another V. Jahangir Byramji Jeejeebhoy(D) Through His Lr**, reported in **2024 SCC OnLine SC 489** has held as under :-

> *"27. We are of the view that the question of limitation is not merely a technical consideration. The rules of limitation are based on the principles of sound public policy and principles of equity. We should not keep the 'Sword of Damocles' hanging over the head of the respondent for indefinite period of time to be determined at the whims and fancies of the appellants."*

***(Emphasis added)***

56. On a harmonious consideration of the provisions of law the Hon'ble Supreme Court in the matter of **Pathapati Subba Reddy v. Collector (LA), reported in (2024) 12 SCC 336**, has held as follow :-

> *"28. On a harmonious consideration of the provisions of the law, as aforesaid, and the law laid down by this Court, it is evident that:*
>
> > *(i) Law of limitation is based upon public policy that there should be an end to litigation by forfeiting the right to remedy rather than the right itself;*
> >
> > *(ii) A right or the remedy that has not been exercised or availed of for a long time must come to an end or cease to exist after a fixed period of time;*
> >
> > *(iii) The provisions of the Limitation Act have to be construed differently, such as Section 3 has to be construed in a strict sense whereas Section 5 has to be construed liberally;*
> >
> > *(iv) In order to advance substantial justice, though liberal approach, justice-oriented approach or cause of substantial justice may be kept in mind but the same cannot be used to defeat the substantial law of limitation contained in Section 3 of the Limitation Act;*
> >
> > *(v) Courts are empowered to exercise discretion to condone the delay if sufficient cause had been explained, but that exercise of power is discretionary in nature and may not be exercised even if sufficient cause is established for various factors such*

*as, where there is inordinate delay, negligence and want of due diligence;*

*(vi) Merely some persons obtained relief in similar matter, it does not mean that others are also entitled to the same benefit if the court is not satisfied with the cause shown for the delay in filing the appeal;*

*(vii) Merits of the case are not required to be considered in condoning the delay; and*

*(viii) Delay condonation application has to be decided on the parameters laid down for condoning the delay and condoning the delay for the reason that the conditions have been imposed, tantamounts to disregarding the statutory provision."*

***(emphasis added)***

57. On the touchstone of the dicta noted above, it is crystal clear that the discretion to condone the delay has to be exercised judiciously based on facts and circumstances of each and every case. The expression 'sufficient cause' cannot be liberally interpreted, if negligence, inaction or lack of bona fides is attributed to the party. The burden to prove 'sufficient cause' lies on the applicant, who is seeking condonation of delay and he has to prove sufficient cause that the reasons for not approaching the court are real and bonafide and free of negligence.

58. On bare perusal of the application for condonation of delay filed along with restoration application before the Tribunal shows that the appellant was well aware of the order dated 10.07.2022 and choose not to challenge the same within prescribed time. The only reason shown by the appellant for the explaination of delay for the period from 10.07.2020 to 30.08.2022 is that the appeal remained out of sight and unnoticed by the appellant till 22.07.2022 and there after further delay is caused in preparation of filing the restoration application.

59. In the said application the appellant has also taken reference of the direction of Hon'ble Supreme Court in **Suo Moto Writ (Civil) No. 3/2020 In Re : Cognizance for Extension of Limitation,** whereby the period from 15.03.2020 to 28.02.2022 is excluded from computing the period of limitation and a fresh limitation period for 90 days has been provided with effect from 01.03.2022.

60. Even if this court gives the benefit of the supreme court direction and exclude the period from the from the date of dismissal order dated 10.07.2020 to 28.02.2022, then also the restoration application suffers from delay.

61. In a plethora of decisions of Hon'ble the Supreme Court as well as this Court, it has been said that delay should not be excused as a matter of generosity. Rendering substantial justice is not to cause prejudice to the opposite party. The appellant has failed to prove that they were reasonably diligent in prosecuting the matter and this vital test for condoning the delay is not satisfied in this case.

62. Thus, the delay of caused in filing the restoration application by the appellant is miserably barred by limitation as neither sufficient cause is shown in the application seeking condonation of delay nor the same is found to be the satisfaction of the Court. Therefore, the valid test for condonation of delay is not satisfied, thus the delay at belated stage cannot be condoned.

63. The Hon’ble Supreme Court in the matter of **Narendra and others v. Ajabrao S/o Narayan Katare (dead) through legal representatives, reported in (2018) 11 SCC 564** has clearly held as under:-

> *".....interference in second appeal with finding of fact is permissible where such finding is found to be wholly perverse to the extent that no judicial person could ever record such finding or where that finding is found to be against any settled principle of law or pleadings or evidence. Such errors constitute a question of law permitting interference in Second Appeal."*

***(emphasis added)***

64. In view of the above dictum **Narendra (supra)**, the Tribunal has rightly recorded the finding as per the law and rejected the delay condonation application as well as the restoration application on the ground of delay and latches the Tribunal has rightly rejected the application for condonation of delay and the Tribunal has subsequently rejected the appeal for want of compliance of Section 43(5) of the Act. Thus, as per the present facts and circumstances, interference with the facts in the present case is barred under section 100 of Code of Civil Procedure, 1908.

65. Accordingly, question no.1 and 2 is adjudicated against the appellant.

66. The third substantial question of law is, as to whether the Tribunal erred in law and fact both while rejecting the application for recall of the order dated 10.07.2020 in not considering the statutory provisions of Section 44(4) of the Act of 2016.

67. Before proceeding further this court would like to delve into the provisions of section 44(4) of RERA Act, 2016, which reads as under :-

> *"44. **Application for settlement of disputes and appeals to Appellate Tribunal.*** - ....

*(4) The Appellate Tribunal shall send a copy of every order made by it to the parties and to the Authority or the adjudicating officer, as the case may be.*

*......"*

68. A plain reading of section 44(4) of the RERA Act, 2016, clearly shows that it is mandatory for the Appellate Tribunal to send a copy of every order to the parties.

69. The impugned order clearly shows that the Tribunal started functioning from 08.06.2020, a Public Notice dated 01.06.2022 was issued, and was also uploaded on official website and the information were sent to the parties, and further this information was also given via WhatsApp to the learned Advocates. The Public Notice dated 01.06.2020 issued by the Judicial Member of U.P. REAT Lucknow is extracted as under :-

*"By public notice dated 31.03.2020 the regular work of this Tribunal was suspended and its offices were closed till further order. In the meantime the Tribunal was shifted from 6-Jagdish Chandra Bose Marg, Lalbagh, Lucknow (old LDA building) to 4th Floor, Indira Bhawan, Ashok Marg, Lucknow and information of the same was published in the newspaper and also information was given to the WhatsApp Group of the learned Advocates along with information on the website of the Tribunal. With effect from 6th May, 2020 the Tribunal started functioning for urgent fresh matters at 4th Floor, Indira Bhawan, Ashok Marg, Lucknow*

*Through this notice it is hereby informed that the Tribunal will resume its regular routine function w.e.f. 8th June, 2020. The revised cause list will be posted on the website of the Tribunal and information will also be given through WhatsApp Group of the learned Advocates.*

*All the concerned are informed that the regular functioning of the Tribunal was suspended due to Covid-19 Pandemic and, therefore,*

> *in the interest of litigants as well as to achieve the mandates of Section 44(5) of the Real Estate (Regulation & Development) Act, 2016 it is decided that the Tribunal will function in the month of June, 2020 (during summer vacations).*
>
> *This notice is issued with the approval of Hon'ble Chairman, U.P. REAT, Lucknow."*

70. The impugned order clearly reveals that the email was sent by the Tribunal to the parties containing the copy of dismissal order on 14.07.2020 and the receipt of the same has been acknowledged during the course of arguments by the learned counsel for the respondents before the Tribunal.

71. There is nothing substantial to consider, specially when there is a proper setup, and each and every case is updated on the portal of the Tribunal. This fact is also recorded by the Tribunal in its order, that the date fixed in every matter and case status is uploaded on the portal of the Tribunal. So, it cannot be said that the appellant was not aware of the case. Thus, it is clear that the Tribunal has complied with the provisions of Section 44(4) of RERA Act, 2016.

72. In view of the above, question no.3 is also adjudicated against the appellant.

73. So far as the completion of the project and handing over possession of the flat is concerned it is evident that the builder does not have occupancy certificate till date. In absence of occupancy certificate, possession of the flat cannot be handed over to the allottee. The appellant submitted that the possession of the flat has already been handed over to the respondent on 08.07.2017. Pre-formatted letter of the appellant, wherein it has been stated that the possession of the flat

was given only for fit out basis, which was that formal possession was handover and pre-formatted, the respondent was made his sign.

74. Hon'ble Supreme Court in the case of **Pioneer Urban Land and Infrastructure Limited** (supra) has clearly stated that any term of one sided agreement will not be final binding. Further this Court in the matter of **Sushma Shukla** (supra) stipulated that any agreement or settlement of one-sided cannot be made a condition precedent by the promoter to handover possession of the unit to the allottee. The settlement is void ab initio.

75. Clause 19 of the builder-buyer agreement dated 09.04.2011 executed between the parties clearly shows that if the buyer failed to perform his obligation for more than one month, a penalty of interest at the rate of 24% would be charged for the delayed payment. The relevant Clause -19 of the agreement dated 09.04.2011 is reproduced as under:

> *"That in the event of failure of the Flat Allottee(s) to perform his/their obligations or to fulfill all the terms and conditions set out in this Agreement, the Flat Allottee(s) hereby authorizes the Developer to forfeit, out of the amounts paid by him, the earnest money as aforementioned together with any interest on Installments, Interest on delayed payment due or payable and the allotment of the said Flat shall stand cancelled. However, in exceptional circumstances the Developer may, in its absolute discretion, condone the delay in payment by charging penal interest @ 18% p.a. for up to one month delay from the due date of outstanding and @ 24% p.a. up to next two months thereafter on all outstanding dues from their respective due dates. The amount paid over and above the earnest money, if any, shall however be refunded to the Flat Allottee(s) by the Developer without any interest after re-allotment of the said Flat and after compliance of certain formalities by the Flat Allottee(s)."*

76. Since the agreement was entered by the parties prior to the enactment of the Real Estate (Regulation and Development) Act, 2016

(which came into force on 01.05.2016) , the respondent preferred a complaint before the RERA and the RERA after hearing the parties directed the appellant to handover the possession of the flat immediately and also directed to pay a compensation at the rate of 24% from 30.06.2013 (that is the day on which the builder was supposed to handover the possession). The provisions of the Act, 2016 specially Section 2(za) makes it clear that the interest means the rate of interest paid by the builder to the allottee, which would be equal to the interest charged from the allottee in case of default. In this case, Clause-19 of the agreement, clearly stipulates that in case of default by the allottee, he would be charged 24% interest. The argument raised by the parties was whether the rate of interest should be 24% or MCLR+1%, this aspect of the matter has been duly considered by Hon'ble Supreme Court in the matter of **Newtech Promoters & Developers (P) Ltd. v. State of U.P.,** reported in **(2021) 18 SCC 1 : 2021 SCC OnLine SC 1044**, wherein it has been held as under:

> *"43. To meet out different nature of exigencies, it was noticed by Parliament that pan India, large number of real estate projects where the allottees did not get possession for years together and complaints being filed before different forums including under the Consumer Protection Act has failed to deliver adequate/satisfactory results to the consumer/allottees and their life savings is locked in and sizeable sections of allottees had invested their hard-earned money, money obtained through loans or financial institutions with the belief that they will be able to get a roof in the form of their apartments/flats/unit.*
>
> *44. At the given time, there was no law regulating the real estate sector, development works/obligations of promoter and allottee, it was badly felt that such of the ongoing projects to which completion certificate has not been issued must be brought within the fold of the 2016 Act in securing the interests of allottees, promoters, real estate agents in its best possible way obviously, within the parameters of law. Merely because enactment as prayed is made retroactive in its operation, it cannot be said to be either violative of Article 14 or 19(1)(g) of the Constitution of India. To the contrary, Parliament*

*indeed has the power to legislate even retrospectively to take into its fold the pre-existing contract and rights executed between the parties in the larger public interest.*

*45. The consequences for breach of such obligations under the Act are prospective in operation and in case ongoing project, of which completion certificate is not obtained, are not to be covered under the Act, there is every likelihood of classifications in respect of underdeveloped ongoing project and the new project to be commenced.*

*46. The legislative power to make the law with prospective/retrospective effect is well recognised and it would not be permissible for the appellants/promoters to say that they have any vested right in dealing with the completion of the project by leaving the allottees in lurch, in a helpless and miserable condition that at least may not be acceptable within the four corners of law.*

*47. The distinction between retrospective and retroactive has been explained by this Court in Jay Mahakali Rolling Mills v. Union of India [Jay Mahakali Rolling Mills v. Union of India, (2007) 12 SCC 198] , which reads as under : (SCC p. 200, para 8)*

> *"8. "Retrospective" means looking backward, contemplating what is past, having reference to a statute or things existing before the statute in question. Retrospective law means a law which looks backward or contemplates the past; one, which is made to affect acts or facts occurring, or rights occurring, before it comes into force. Retroactive statute means a statute, which creates a new obligation on transactions or considerations or destroys or impairs vested rights."*

*48. Further, this Court in Shanti Conductors (P) Ltd. v. Assam SEB [Shanti Conductors (P) Ltd. v. Assam SEB, (2019) 19 SCC 529 : (2020) 4 SCC (Civ) 409] , held as under : (SCC p. 557, paras 67-68)*

> *"67. Retroactivity in the context of the statute consists of application of new rule of law to an act or transaction which has been completed before the rule was promulgated.*
>
> *68. In the present case, the liability of buyer to make payment and day from which payment and interest become payable under Sections 3 and 4 does not relate to any event which took place prior to the 1993 Act, it is not even necessary for us to say that the 1993 Act is retroactive in operation. The 1993 Act is clearly prospective in operation and it is not necessary to*

> *term it as retroactive in operation. We, thus, do not subscribe to the opinion dated 31-8-2016 [Shanti Conductors (P) Ltd. v. Assam SEB, (2016) 15 SCC 13] of one of the Hon'ble Judges holding that the 1993 Act is retroactive."*

*49. In the recent judgment of this Court rendered in Vineeta Sharma v. Rakesh Sharma [Vineeta Sharma v. Rakesh Sharma, (2020) 9 SCC 1 : (2021) 1 SCC (Civ) 119] wherein, this Court has interpreted the scope of Section 6(1) of the Hindu Succession Act, 1956, the law of retroactive statute held as under : (SCC p. 53, para 61)*

> *"61. The prospective statute operates from the date of its enactment conferring new rights. The retrospective statute operates backwards and takes away or impairs vested rights acquired under existing laws. A retroactive statute is the one that does not operate retrospectively. It operates in futuro. However, its operation is based upon the character or status that arose earlier. Characteristic or event which happened in the past or requisites which had been drawn from antecedent events. Under the amended Section 6, since the right is given by birth, that is, an antecedent event, and the provisions operate concerning claiming rights on and from the date of the Amendment Act."*

*50. Thus, it is clear that the statute is not retrospective merely because it affects existing rights or its retrospection because a part of the requisites for its action is drawn from a time antecedent to its passing, at the same time, retroactive statute means a statute which creates a new obligation on transactions or considerations already passed or destroys or impairs vested rights.*

*51. Parliament intended to bring within the fold of the statute the ongoing real estate projects in its wide amplitude used the term "converting and existing building or a part thereof into apartments" including every kind of developmental activity either existing or upcoming in future under Section 3(1) of the Act, the intention of the legislature by necessary implication and without any ambiguity is to include those projects which were ongoing and in cases where completion certificate has not been issued within fold of the Act.*

*52. That even the terms of the agreement to sell or homebuyers agreement invariably indicate the intention of the developer that any subsequent legislation, rules and regulations, etc. issued by competent authorities will be binding on the parties. The clauses have imposed the applicability of subsequent legislations to be applicable and* *binding on the flat buyer/allottee and either of the parties, promoters/homebuyers or allottees, cannot shirk from their responsibilities/liabilities under the Act and implies their challenge to the violation of the provisions of the Act and it negates the contention advanced by the appellants regarding contractual terms having an overriding effect to the retrospective applicability of the Authority under the provisions of the Act which is completely misplaced and deserves rejection.*

*53. From the scheme of the 2016 Act, its application is retroactive in character and it can safely be observed that the projects already completed or to which the completion certificate has been granted are not under its fold and therefore, vested or accrued rights, if any, in no manner are affected. At the same time, it will apply after getting the ongoing projects and future projects registered under Section 3 to prospectively follow the mandate of the 2016 Act."*

***(emphasis added)***

77. Considering the aforesaid judgement, it is clear that interest as provided under Section 18 of the Act, 2016, is compensatory in character and therefore, it cannot operate retrospectively and hence Section 2(za) of the Act, 2016, are deployed for levy of interest for the delay which occurred prior to the said Act, it cannot be said to be illegal or arbitrary. The levy of interest at the rate of 24% for delay in handing over the possession has been made applicable from the promised date of possession i.e., 30.06.2013, which is prior to the Act of 2016.

78. In view of the law laid down by Hon'ble Supreme Court in **Newtech Promoters and Developers Pvt. Ltd.** (supra), the promoter cannot escape from responsibility/liability, the contractual terms will not have any overriding effect.

79. In view of the aforesaid, I see no illegality or infirmity in the impugned order passed by the Appellate Tribunal.

80. The instant appeal being *sans* merit and accordingly **dismissed**.

81. Taking note of the hardships and vulnerabilities faced by home-buyers, the Government of India had enacted the Real Estate (Regulation and Development) Act, 2016 with the object of ensuring greater transparency and accountability in the real estate sector and providing an expeditious and effective mechanism for redressal of the grievances of allottees. However, in the present case, the very object and purpose of the Act has been frustrated by the builder, through the institution of various frivolous and vexatious litigation, apparently with a view to delay and evade the discharge of its statutory obligations and liabilities arising under the Act of 2016.

82. The present case is a classic example of a homebuyer, who invested her lifetime savings with the hope of securing a roof over her head. The respondent booked a residential flat in the year 2011 and paid almost the entire sale consideration. The builder had assured that possession of the flat would be handed over within two years, i.e., by June, 2013. However, after lapse of more than 13 years and receipt of almost the entire consideration amount, the builder has failed to complete the project and deliver possession of the flat to the respondent. Such inordinate delay, without any justifiable cause, has deprived the respondent of the fruits of her investment and subjected her to prolonged financial hardship and mental agony.

83. In the present case, the respondent has been compelled to initiate multiple rounds of litigation solely to secure the enforcement of her lawful rights. The details of the litigation are as follows:

(i) Firstly, she approached the Real Estate Regulatory Authority (RERA) and succeeded in obtaining relief in her favour.

(ii) Secondly, as the appellant failed to comply with the order passed by the RERA, she was constrained to institute Execution Proceedings before the competent authority.

(iii) Thirdly, when no effective steps were taken to enforce the recovery certificate, allegedly on account of clout of the appellant, the respondent approached this Court by filing a writ petition seeking enforcement of the recovery certificate.

(iv) Fourthly, despite the directions issued by this Court in the writ proceedings, the authorities failed to ensure compliance, leaving the respondent with no alternative but to institute contempt proceedings for enforcement of the Court's order.

84. On the other hand, the appellant has consistently resorted to successive rounds of litigation with a view to challenge or delay the enforcement of the orders passed against it. The chronology of such proceedings is as follows:

(i) Aggrieved by the order passed by the Real Estate Regulatory Authority (RERA), the appellant preferred an appeal before the Real Estate Appellate Tribunal (first litigation).

(ii) During the pendency of the proceedings, the appellant file Writ–C No.17549 of 2019 before this Court seeking a stay of the recovery proceedings. The said writ petition was dismissed (second litigation).

(iii) Challenging the dismissal of the writ petition, the appellant approached the Hon'ble Supreme Court by filing a Special Leave Petition, which was dismissed (third litigation).

(iv) Thereafter, the appellant filed a recall application before the Tribunal, which was rejected. Subsequently, another recall application was preferred, and the same was also rejected by order dated 10.07.2020 (fourth litigation).

(v) The appellant thereafter filed a review application before this Court seeking review of the order passed in the writ proceedings. The review application was dismissed (fifth litigation).

(vi) The appellant also preferred a recall application seeking recall of the order dated 10.07.2020. The said recall application was rejected (sixth litigation).

(vii) The present appeal constitutes the seventh round of litigation initiated by the appellant in relation to the same dispute (seventh litigation).

85. The aforesaid sequence of proceedings demonstrates that, despite the matter having attained finality at various stages, the appellant has continued to initiate repetitive proceedings, thereby delaying the enforcement of the respondent's lawful entitlement under the orders passed by the competent authorities and this Court.

86. The dispute, in essence, pertains to the appellant's liability to discharge the dues payable under the order passed by the Real Estate Regulatory Authority (RERA). Admittedly, even after more than 13 years from the date of booking, the appellant has neither completed the project nor obtained the requisite Occupancy Certificate. Despite this, instead of complying with the statutory obligations and the orders passed by the competent authorities, the appellant has chosen to engage in repeated litigation.

87. Hon'ble Supreme Court in the matter of ***Bhusawal Municipal Council Vs Nivrutti Ramchandra Phalak and others, 2014(2) AWC 1407 (SC)*** has observed that the judicial process of the court cannot subvert justice for the reason that the court exercises its jurisdiction only in furtherance of justice. The appellant often drags poor uprooted respondent even for payment of a paltry amount upto this Court, wasting the public money in such luxury litigation without realising that poor citizens cannot afford the exorbitant costs of litigation.

88. It would be apt to quote the well known words of Justice Brennan:

> *"Nothing rankles more in the human heart than a brooding sense of injustice. Illness we can put up with. But injustice makes us want to pull things down. When only the rich can enjoy the law, as a doubtful luxury, and the poor, who need it most, cannot have it because its expense puts it beyond their reach, the threat to the continued existence of free democracy is not imaginary but very real, because democracy's very life depends upon making the machinery of justice so effective that every citizen shall believe in and benefit by its impartiality and fairness."*

89. The Supreme Court in the case of ***Subrata Roy Sahara v. Union of India and others, (2014) 8 SCC 470*** has taken a judicial note that huge number of frivolous petitions are choking roaster of the courts. The Supreme Court put a note of caution that the High Courts should discourage such type of litigation and should impose heavy costs. In the case of ***Phool Chandra and another v. State of Uttar Pradesh, (2014) 13 SCC 112*** the Supreme Court has held that the High Courts should curb the tendency of filing frivolous writ petitions by imposing heavy costs on the petitioners and the advocates too. Hon'ble Supreme Court has further held that of late, there has been an increase in the trend of litigants rushing to the courts for all kinds of trivial and silly matters which results in wastage of public money and time. A closer scrutiny of

all such matters would disclose that there was not even a remote justification for filing the case. It is a pity that the time of the court which is becoming acutely precious because of the piling arrears has to be wasted on hearing such matters. There is an urgent need to put a check on such frivolous litigation.

Hon’ble Supreme Court further has held that it is high time that the courts should come down heavily upon such frivolous litigation and unless it ensure that the wrongdoers are denied profit or undue benefit from the frivolous litigation, it would be difficult to control frivolous and uncalled for litigation. In order to curb such kind of litigation, the courts have to ensure that there is no incentive or motive which can be ensured by imposing exemplary costs upon the parties. *{Vide Varinderpal Singh v. M.R. Sharma, 1986 Supp SCC 719, Ramrameshwari Devi v. Nirmala Devi, (2011) 8 SCC 249 : (2011) 4 SCC (Civ) 1, and Gurgaon Gramin Bank v. Khazani, (2012) 8 SCC 781 : AIR 2012 SC 2881.}”*

**(emphasis supplied)**

90. This Court in the matter of ***Manoj Kumar v. State of U.P. and others; Writ-A No.37257 of 2017*** had held that ‘it is high time that the courts should come down heavily upon such frivolous litigation and unless this Court ensures that the wrongdoers are denied profit or undue benefit from the frivolous litigation, it would be difficult to control frivolous and uncalled for litigation. In order to curb such kind of litigation, the courts have to ensure that there is no incentive or motive which can be ensured by imposing exemplary costs upon the parties.’

91. Undoubtedly it is a case, where the respondent had been running from pillar to post since 2018 and in spite of getting favourable order, she could not get the benefit of the same. The respondent, who is a lady, had spent huge money, time and effort on the litigation because of

the appellant's fault. It is a fit case, where exemplary cost could be imposed as the respondent being a lady had been harassed for the last 13 years and had to run from pillor to post and also face a multiple litigation, for no fault of her own.

92. Accordingly, a cost of Rs.2,50,000/- (Rupees Two Lakh and Fifty Thousand Only) is imposed upon the appellant to be paid to the respondent within a period of four weeks for filing various frivolous case.

**(Prashant Kumar,J.)**

**July 31, 2026**
Anupam S/-