



2026:AHC-LKO:67560

AFR

Reserved on August 10, 2026
Pronounced on September 23, 2026
HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW

RERA APPEAL No. - 37 of 2026

Antriksh Developers and
Promoters Pvt. Ltd. Thru.
Authorized Signatory Sarafaraz
Ahmad

....Appellant(s)

Versus

Shyam Sundar Agarwal

..Respondents(s)

Counsel for Appellant(s)	:	Abhishek Khare, Aahuti Agarwal
Counsel for Respondent(s)	:	Aditya Tewari

Court No. - 20

HON'BLE PRASHANT KUMAR, J.

1. Heard Mr. Abhishek Khare, learned counsel for the appellant as well as learned counsel for the respondent.

2. The instant RERA Appeal under Section 58 of the Real Estate (Regulation & Development) Act, 2016 has been preferred by the appellant against the judgement dated 13.05.2025 passed by the Uttar Pradesh Real Estate Appellate Tribunal, at Lucknow (hereinafter referred as 'Appellate Tribunal') in Appeal bearing Case no.824 of 2020 (*Shyam Sundar Agarwal v. Antriksh Developers & Promoters Pvt. Ltd.*).

Factual Matrix -

3. The appellant launched a project namely '**Antriksh Golf View**' in the year 2010 situated at Plot No.GH-005A, Sector-78, Noida, Uttar Pradesh. On 30.04.2010, the respondent booked a unit in the said project and paid the booking amount.

4. The booking of the flat was done pre-launch and as per the allotment letter the total basic price of the unit was Rs.43,53,750/-, which was paid. The allotment letter was executed in favour of the respondent on 21.09.2010 by means of which Unit No. 1903, Floor- 19th Block - L, admeasuring super area approx. 2025 sq.ft., Type 3D (hereinafter referred as 'Unit in Question').

5. The appellant promised to **handover the possession by December, 2012 (plus-minus 6 months)** subject to receipt of entire basic price, extra charges, lease rent charges, registration charges and other extra charges as may be intimated by the appellant company.

6. Demand letter for payment of remaining balance was sent by the appellant to respondent vide letter dated 08.04.2016 asking for Rs.13,12,866/- The said payment was made by the respondent through RTGS on 26.04.2016.

7. The Appellant sent a written offer of possession in the year 2017 vide letter dated 22.05.2017, i.e., nearly four years after the contractual possession date, and that too without any Occupancy Certificate and other relevant papers just to comply with clause 30 of the allotment letter. The respondent being homebuyer compelled to take possession immediately without any Occupancy Certificate and other relevant papers as per agreement.

8. Later, the Occupancy Certificate was received by the appellant on 06.06.2018.

9. The complainant/respondent sent an email to the appellant on 21.02.2019, wherein the respondent asked the appellant to issue possession certificate and pay the delay penalty along with refund of the amount charged as electrical charges and increase in super area from 2025 sq.ft. to 2100 sq.ft..

10. Being aggrieved by inaction of appellant, the respondent made a complaint against the appellant on 04.10.2019 before the Regulatory Authority praying for refund of Rs.4,06,554/-, and for issuance of no dues certificate and possession letter and also to bear all delay charge/penalty levied by Noida Authority for registration of flat.

11. The complaint of the respondent was disposed of by the Real Estate Regulatory Authority vide its order dated 22.09.2020 together with another complaint of some other unit/flat owner one Ms. Tripti Agarwal, whereby the following directions and order was passed : -

"1. विपक्षी को आदेशित किया जाता है कि वह दिनांक 31.12.2020 तक शिकायतकर्तागण से अनुबन्धानुसार उचित धनराशि प्राप्त करते हुए उन्हें नो-ड्यूज जारी करें और देय स्टाम्प शुल्क प्राप्त कर नियमानुसार रजिस्ट्री करायें।"

2. विपक्षी, शिकायतकर्तागण को 45 दिनों के अन्दर बिजली, पानी कनेक्शन एवं किसान प्रतिकर के मद में मांगी जानी वाली धनराशि के सम्बंध में वह साक्ष्यों सहित सम्बंधित विभाग/प्राधिकरण को अदा की गयी धनराशि का विवरण उपलब्ध कराते हुए अनुपातिक तौर पर शिकायतकर्तागण से धनराशि प्राप्त करें। साक्ष्य उपलब्ध कराने के उपरान्त शिकायतकर्ता द्वारा अपनी देय धनराशि का भुगतान किया जायेगा।

5. विपक्षी, शिकायतकर्तागण को विभिन्न मदों में मांगी जाने वाली धनराशि का Calculation Sheet उन्हें उपलब्ध करायें।

6. ओपन पार्किंग के सम्बंध में उभयपक्ष अनुबन्ध के अनुसार कार्यवाही करना सुनिश्चित करें।

7. इस आदेश की एक-एक प्रति सम्बंधित पत्रावलियों पर रखी जाये।

इस आदेश का उल्लंघन उ०प्र०भू सम्पदा (विनियमन तथा विकास) अधिनियम, 2016 की धारा-63 तथा अन्य सुसंगत प्राविधानों के अन्तर्गत दंडनीय होगा। आदेश पोर्टल पर अपलोड किया जाये।"

12. Appellant after order passed by the regulatory authority has again issued a fresh demand letter on 03.10.2020 for Rs.24,13,940/-. Being aggrieved, the complainant/respondent challenged the order dated 22.09.2020 passed by the Real Estate Regulatory Authority before the Real Estate Appellate Tribunal on the ground that the concerned authority has failed to consider the plight of the builder and has not granted any relief with respect to payment of delay interest and also failed to pay any heed to the fact that the complainant had cleared all dues in accordance with the terms and conditions of the agreement executed between the parties. The following relief was sought by the complainant before the Appellate Tribunal :

"6. Relief(s) sought:

i. As per Clause 27 of the Agreement, disallow charges for increase in the Super Area and direct builder refund the amount collected on this account.

ii. As per Clause 9 (III) of Annexure-B of the Agreement, disallow charges on account of external electrification and direct builder refund the amount collected on this account.

iii. As per Annexure-A and Annexure-B of the Agreement, direct builder to pay interest on early demand of other charges without completion of the unit.

iv. As the complainants have made all the payments against the final demand letter, direct builder to issue No Dues Certificate to enable registry of the flat and bear all charges if any towards delay in registry.

V. As per Clause 29 of Annexure-B of the Agreement and Section 18 (1) (a) of RERA, direct builder to pay delay delivery compensation."

13. The Appellant filed objections before the learned Appellate Tribunal.

14. After hearing the submissions of the parties and on the basis of pleadings and records, the Appellate Tribunal framed the following questions/issues to decide :-

"(i) Whether the project of the respondent is delayed?

(ii) Whether the appellant is entitled for interest for the delay in possession even after taking physical possession of the unit?

(iii) Whether the demand raised by the respondent towards electricity, water connection and farmers' compensation etc. was justified?

(iv) Whether the appellant is entitled for interest for the delay in completion of the Project under the scheme of Act, 2016 and if yes, what rate of interest is required to be paid by the Promoter to the allottee?"

15. The Appellate Tribunal came to the conclusion that the project was delayed and the appellant (respondent herein) being homebuyer does not lose his right to claim compensation and/or interest for the delay in possession even after taking possession of the Unit/Apartment/Flat booked by him. It was further concluded that the demand raised by the respondent (appellant herein) towards electricity, water connection, farmers' compensation and delay payment interest was not justified. It is concluded that the appellant (respondent herein) being homebuyer is entitled to the interest for the delay in completion of the project for the period from December, 2012 (after promised date of possession November, 2012, as per allotment letter) till 03.03.2017 (the date of handing over physical possession) and the demand letter dated 03.10.2020 is liable to be set aside.

16. The Appellate Tribunal partly allowed the appeal vide its order dated 13.05.2024 with the following directions :-

"(A) The respondent is directed to pay delay interest to the appellant on the deposited amount at the rate of MCLR+1% from December 2012 till 22.05.2017.

(B) The demand letter dated 03.10.2020 is set aside. The respondent is directed to issue fresh demand letter keeping in view the observations made in para 17.1 above read with the provisions of Allotment Letter/Agreement dated 21.09.2010 including its Annexure-B.

(C) The aforesaid directions as well as the directions of the Regulatory Authority by the respondent within 45 days from the date of upload of this judgement/order.

(D) In case of non-compliance of this order the appellant will be at liberty to approach UPRERA for execution of this order."

17. The Appellant being aggrieved by the order dated 13.05.2025 passed by the Appellate Tribunal assailed the same by preferring the instant appeal.

18. The following substantial questions of law were framed in the present appeal for adjudication :-

A. Whether the order passed by the Tribunal is coram non judice as per the provisions of RERA Act, 2016?

B. Whether the claims of an allottee regarding the 'interest for every month of delay till handing over of the possession' made under the proviso to Section 18(1) of RERA Act, 2016 should be considered in absence of a "demand" contemplated under the main proviso of Section 18(1) which was not made within a reasonable period of time and whether such an entitlement to lodge a claim can be kept open for an indefinite/infinite time period?

C. Whether the appellant can be saddled with liability for the delay in obtaining No Objection Certificates from the competent authorities, particularly when the issuance of the Occupancy Certificate/Completion Certificate was stayed by order of the National Green Tribunal?

D. Whether the appellant can be held liable to pay delay interest under the Real Estate (Regulation and Development) Act, 2016, for the period during which the performance of its obligations was rendered legally impossible due to the stay order passed by the National Green Tribunal and the inaction of the competent authority?

Submissions of learned counsel for the Appellant:

19. Mr. Abhishek Khare, learned counsel for the appellant firstly submitted that the impugned order passed by the Tribunal is coram non judice. To buttress his argument he placed reliance upon section 43(3) read with section 55 of the Real Estate (Regulation & Development) Act, 2016.

20. He further submitted that the Tribunal while deciding issue no.1 has failed to consider the fact that the project could not be delivered to the allottee by the month of June, 2013 only because of unforeseen circumstances. He further submitted that the project was completed in the year 2014 and the appellant had duly applied for the Occupancy Certificate / Completion Certificate from the competent authority. The delay was only on the part of authority in issuing the Occupancy Certificate / Completion Certificate and therefore the liability to pay the interest on the delay should not be fastened on the appellant.

21. While the construction work was going on in full swing, the National Green Tribunal (hereinafter referred as 'NGT') vide its orders dated 14.08.2013, 17.09.2013 and 28.10.2013 (in respect to proximity of projects related to the Okhla Bird Sanctuary) had stayed the promoters from carrying out any development activity within 10 Kms radius of the Okhla Bird Sanctuary. The said order was later modified by the NGT on 28.10.2013, which prohibited the concern authority from issuing any Occupancy Certificate / Completion Certificate in respect of the projects which were

within 10 Kms radius of the Okhla Bird Sanctuary. The appellant received a letter from the police authority to stop the construction vide letter dated 15.09.2013.

22. He further submitted that the delay was caused due to stay order passed by the learned National Green Tribunal, Principle Bench, New Delhi. Hence, the liability of delay on this ground should not be fastened on the appellant.

23. He also submitted that the same issue with regards to the interest of compensation during this period of NGT stay order was dealt by the Hon'ble Supreme Court in the matter of ***Griha Pravesh Build Teck Pvt. Ltd. vs. Suresh Chander Sharma, bearing Civil Appeal No. 33 of 2024, vide order dated 03.12.2024, reported in MANU/SCOR/137652/2024***, whereby the Hon'ble Supreme Court clearly held that respondents will not be entitled to claim interest on the compensation for the period commencing from 14.08.2013 to 19.08.2015

24. Mr. Khare further submitted that the respondent has already taken possession and thereafter filed a frivolous compliant before the Real Estate Regulatory Authority.

25. He further placed reliance on provisions Section 18 of The Real Estate (Regulation and Development) Act, 2016 and submitted that the liability to pay interest for the delay period ceases to exist with the handing over possession. In the present case the respondent has already taken the possession before filing the complaint.

26. After arguing at length, learned counsel for the appellant confined his prayer to the benefit as granted by the Hon'ble Supreme Court in the matter of ***Suresh Chander Sharma (supra)***, wherein the home buyer will not be entitled to claim interest on

compensation for the period commencing from 14.08.2013 to 19.08.2015

27. *Per contra*, learned counsel for the respondent vociferously opposed the instant appeal and submitted that argument of the learned counsel for the appellant with regards to coram non judice is unsustainable as the same is not raised before the Tribunal and the Tribunal itself in the impugned judgement has dealt with the same in its very first para.

28. He further submitted that the benefit of ***Suresh Chander Sharma (supra)***, cannot be extended to the appellant as the said project in question has to be completed and possession has to be given by November 2012. To buttress his argument he places reliance on annexure-B of the builder-buyer agreement.

29. He further submitted that the Tribunal has rightly decided the issues in favour of Homebuyer. The present appeal is an attempt to avoid liability as imposed upon the appellant-builder and the same is liable to be dismissed with cost.

Analysis :

30. Heard learned counsel for the appellant as well as learned counsel for the respondent and perused the records.

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

32. The first substantial question of law is as to whether the order passed by the Tribunal is coram non-judice as per the provisions of RERA Act, 2016.

33. On a bare perusal of the impugned judgment, it is evident that the appellant had never raised such an objection before the

Tribunal. Apart from the same, before proceeding to adjudicate the matter, the Tribunal had duly considered the issue regarding its constitution and recorded its reasons for exercising jurisdiction in the matter. The relevant paragraph is extracted hereunder :

“1. Before we proceed to examine the instant matter/issue, we deem it proper to place on record that on demitting office by Technical Member from 26.09.2023 the judicial functioning of the Tribunal had come to stand still with effect from 27.09.2023. On receipt of the notification dated 28.11.2023 with respect to appointment of Judicial Member, in the larger interest as well as to resume the judicial functioning of the Tribunal and to achieve the mandate of Section 44(5) of the Real Estate (Regulation & Development) Act 2016 read with Regulation 22 and 25 a Bench consisting of Chairman and Judicial Member was constituted vide order dated 01.12.2023. The Registry was directed to issue cause list of fresh appeals and re-schedule the cause list of pending appeals from 27.09.2023 on joining of the Judicial Member. Accordingly an office order dated 02.12.2023 was issued by the Registrar, which reads as under:--

OFFICE ORDER

It is hereby informed to all the concerned that the Tribunal was working with single Bench consisting of Hon'ble Chairman and Hon'ble Technical Member after demitting office by the Hon'ble Judicial Member on 31.12.2022. Hon'ble Technical Member also demitted office on 26.09.2023 and Hon'ble Administrative Member being on unauthorized leave from 30.09.2022 (who finally resigned on 29.10.2023) resulting the judicial functioning of the Tribunal to tune to standstill with effect from 27.09.2023.

The State Government vide Notification dated 28.11.2023 has appointed Hon'ble Judicial Member and as such presently, Hon'ble Chairman and Hon'ble Judicial Member having judicial back ground are available.

As per Section 43(3) of the Act 2016 every Bench of the Appellate Tribunal is to consist of at least one Judicial Member and one Administrative or Technical Member. The Appellate Tribunal is required to scrutinize judicially the appeals against the order of Regulatory Authority or Adjudicating Officer. Rule 30 of the Rules 2016 empowers the Appellate Tribunal to call upon such experts or consultants from the fields of economics, commerce, accountancy, real estate, competition, construction, architecture or engineering or from any other discipline as it deems necessary, to assist the Appellate Tribunal in the conduct of any enquiry or proceedings before it.

Section 55 of the Act 2016 protects the acts and proceedings of the Appellate Tribunal from being invalid merely for the reason of any vacancy in, or any defect in the constitution of the Appellate Tribunal or any defect in the appointment of a person acting as a Member of the Appellate Tribunal or any irregularity in the procedure of the Appellate Tribunal not affecting the merits of the case.

Accordingly in the larger interest and expeditious disposal of appeals as per mandate of Section 44(5) of the Act 2016 the Bench for hearing of appeals is constituted with Hon'ble Chairman & Hon'ble Judicial Member for judicial scrutiny of the appeals and in case any expert opinion/assistance is required the same will be taken as per provisions of Rule 30 of the Rules 2016 in appropriate cases or such cases will be deferred till availability of Administrative/Technical Member.

On joining of Hon'ble Judicial Member, the Registry is directed to issue cause list of fresh appeals and re-schedule the cause list of pending appeals from

27.09.2023 and upload the same on the website of the Tribunal and also inform all the parties/legal representatives about the same.

This order is issued with the approval of Hon'ble Chairman.

The judicial functioning of the Tribunal resumed with effect from 18.12.2023 after joining of the Judicial Member and the said Bench is still continuing on account of non-appointment of Technical and Administrative Members.”

34. Section 55 of the Real Estate (Regulation and Development) Act, 2016, clearly provides that no act or proceeding of the Appellate Tribunal shall be invalid merely by reason of any vacancy in, or any defect in the constitution of, the Appellate Tribunal. The provisions of Section 55 of the Real Estate (Regulation and Development) Act, 2016, read as under:

Section 55: Vacancies, etc., not to invalidate proceeding of Appellate Tribunal. - No act or proceeding of the Appellate Tribunal shall be invalid merely by reason of—

(a) any vacancy in, or any defect in the constitution of, the Appellate Tribunal, or

(b) any defect in the appointment of a person acting as a Member of the Appellate Tribunal; or

(c) Any irregularity in the procedure of the Appellate Tribunal not affecting the merits of the case.

35. In view of the aforesaid, this Court finds that the arguments with regard to the coram of the Tribunal was not raised by the appellant before the Tribunal. Further, the Tribunal had itself considered and recorded its reasons regarding its constitution and

jurisdiction before proceeding to adjudicate the matter. In these circumstances, and having regard to the provisions of section 55 of the Act, this Court finds no ground to interfere with the impugned order merely on the ground that the Tribunal was not duly constituted.

36. Accordingly, the first substantial question of law is answered against the appellant.

37. The second substantial question of law is as to whether the claim of an allottee regarding interest for every month of delay till handing over possession under the proviso to Section 18(1) of the Real Estate (Regulation and Development) Act, 2016 can be entertained in the absence of a "demand" contemplated under the main provision of Section 18(1), and whether such claim can be maintained after a reasonable period of time.

38. The project was launched in the year 2010. The Respondent booked the unit on 30.04.2010, and an Allotment Letter was issued on 21.09.2010 whereby Unit No. 1903, Floor- 19th Block - L, admeasuring super area approx. 2025 sq.ft., Type 3D was allotted to the Respondent. The Respondent duly paid the basic consideration as stipulated under the Allotment Letter, and later, a demand letter dated 08.04.2016 was raised by the appellant, and respondent paid remaining extra demand of Rs.13,12,866/- through RTGS on 26.04.2016.

39. On bare perusal of the agreement shows that there is a contradiction between the date of completion of Project. The Allotment agreement shows that the possession has to be given by December 2012 plus minus 6 months, however, the Annexure B states that the possession has to be given by November 2012.

40. The related extract of Annexure-B clarifies this position, the relevant portion of extract is quoted hereinbelow:

Annexure-B to allotment letter

This annexure is in addition to the allotment letter. Various clarification given here against respective clauses of allotment letter shall govern and be binding on both the parties. **In case of contradiction in clarification and respective clause of allotment letter, the clarifications given below shall govern.**

Cl. /Page No. of allotment letter	Clarification
Second Page	Possession of unit shall be given by November, 2012 . Date of demand for other charges payment shall be after completion of unit. Other charges shall be paid within one month from date of possession intimation letter.

41. The admitted facts reveals that under the Allotment Agreement dated 21.09.2010, read with Annexure-B thereof, possession of the allotted unit was contractually required to be delivered by November, 2012 as it is specifically provided that in the event of any inconsistency between the clauses of the Agreement and Annexure-B, the provisions of Annexure-B shall prevail. Thus, the contractual date for handing over possession was November, 2012.

42. Section 18(1) of the Real Estate (Regulation and Development) Act, 2016 provides two distinct remedies to an allottee in case of delay by the promoter. Firstly, the allottee may withdraw from the project and seek refund with interest and

compensation. Secondly, where the allottee chooses not to withdraw, he is entitled to interest for every month of delay until possession is handed over. The provisions of Section 18(1) of the Real Estate (Regulation and Development) Act, 2016 is extracted 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."

43. A plain reading of Section 18(1) shows that no limitation or prescribed time frame has been provided by the legislature for raising a claim for delay interest where the allottee continues with the project. The expression "demand" occurring in the provision cannot be interpreted to defeat the substantive statutory right conferred upon an allottee to receive compensation for delayed possession.

44. The record further demonstrates continuous correspondence and representations exchanged between the parties regarding delayed possession. Such correspondence clearly establishes that the Respondent never acquiesced in the delay nor abandoned the statutory claim for interest.

45. The object of the second proviso to Section 18(1) is to compensate an allottee who chooses to retain the allotment despite delayed delivery of possession. Such beneficial legislation deserves liberal interpretation so as to advance its object rather than defeat it.

46. Accordingly, this Court is of the considered opinion that the Respondent's claim for interest for every month of delay till handing over possession is fully maintainable under the proviso to Section 18(1) of the Act. The second substantial question of law is answered accordingly in favour of the Respondent/homebuyer.

47. The third substantial question of law, is as to whether the Appellant can be saddled with liability for delay in obtaining the Occupancy Certificate/Completion Certificate when the issuance thereof was allegedly affected by the stay order passed by the Hon'ble National Green Tribunal.

48. The fourth substantial question of law is as to whether the Appellant can be held liable to pay delay interest under the Real Estate (Regulation and Development) Act, 2016 for the period during which performance of its obligations was allegedly rendered impossible because of the stay order passed by the Hon'ble National Green Tribunal and the inaction of the competent authority.

49. Since, the third and fourth substantial questions of law are intrinsically connected and, therefore, they are considered and decided together.

50. At the outset, it is evident that the Appellant has taken mutually destructive and inconsistent stands in the present appeal. On the one hand, the Appellant has sought to justify the delay in handing over possession by contending that the project was affected by the stay order passed by the Hon'ble National Green Tribunal, Principal Bench, New Delhi, relating to projects falling within the radius of 10 kilometres of the Okhla Bird Sanctuary. On the other hand, the Appellant has categorically admitted in the memorandum of appeal (Para 30) that the construction of the project stood completed in the year 2014 and the Occupancy Certificate was also applied year 2014 before the authority concern.

51. These two pleas cannot stand together. If the project had in fact been completed in the year 2014 and the Appellant had applied for the Occupancy Certificate during the subsistence of the alleged stay, the Appellant cannot simultaneously contend that the very same stay prevented completion of the project and caused the delay in handing over possession. Such contradictory pleas strike at the root of the Appellant's case.

52. It is a settled principle of law that 'a person cannot approbate and reprobate simultaneously or blow hot and cold in the same breath. A party cannot be permitted to adopt inconsistent stands in the same proceedings merely to suit its convenience. Consequently, the plea of the Appellant attributing the delay entirely to the NGT stay order deserves to be rejected.

53. The project in question was stayed by the National Green Tribunal, New Delhi as the said project falls within radius of 10

Kms of the Okhla Bird Sanctuary. The issue with respect to the interest on compensation for the period between 14.08.2013 to 19.08.2015 which was recognised as 'Zero Period' was raised before the Hon'ble Supreme Court in the matter of ***Suresh Chander Sharma (supra)***, whereby it has been clearly held that the appellant being a real estate developers can not be made entitled to pay interest on compensation for the period from 14.08.2013 to 19.08.2015. The relevant para is extracted herein-below:-

"9. Having considered the matter in detail, we will restrict the consideration in the present appeal to grant of interest for the period between 14.08.2023 to 19.08.2015. In view of the orders passed by the (i) National Green Tribunal, (ii) Standing Committee of the National Board for Wildlife, (iii) Report of the Committee constituted by the Ministry of Housing and Urban Affair (MoHUA) and (iv) certain orders passed by the National Commission, we direct that the respondents will not be entitled to claim interest on compensation for the period commencing from 14.08.2013 to 19.08.2015."

(emphasis supplied)

54. The contractual obligation of the Appellant was to complete the project and deliver possession by November, 2012. Significantly, the stay order of the Hon'ble National Green Tribunal came into effect only in August, 2013, which was well after the contractual date for delivery of possession. Therefore, the Appellant had already defaulted in performing its contractual obligation before the stay order came into existence.

55. Further, the Appellant itself admits that the Occupancy Certificate was applied for only on 27.08.2014. The relevant para of the appeal is extracted hereinbelow:

"30. That while dealing with the issue no.1 the Learned Tribunal has failed to considered the fact that due to unforeseen circumstance the project could not be

delivered to the allottee in the month of December, 2016. Further the Learned Tribunal has failed to considered the fact that the project was completed in the year 2014, and the appellant has duly applied for the OC/CC from the competent authority. The delay was on the part of the authority in issuing the OC/CC and therefore the appellant should not be liable to pay the delay interest.”

56. The benefit of the said Zero Period has been recognized in favour of the developers for the limited purpose of excluding the said period while computing delay. This benefit of zero period would have been granted only to those projects which are completely stopped because of the stay order passed by the NGT. However, in this case the project ought to have been completed much prior to the said stay order. The Appellant, in his pleadings, has stated that he completed the project in the year 2014 and thereafter applied for the Occupancy Certificate. If the entire project was subject to a ban imposed by the NGT order, how could the project be completed during the said period. This clearly shows that they continued with the construction work contrary to the stay order passed by the NGT. The appellant cannot blow hot and cold at the same time, on one side they say that they have completed their project in the year 2014 and on other side they wants to take advantage of the stay order passed by the NGT, wherein all the construction work was stopped.

57. If, according to the appellant, the project had already been completed, there was no explanation whatsoever for not applying for the Occupancy Certificate within the contractual timeline or immediately upon completion. The delay in seeking the Occupancy Certificate is attributable solely to the Appellant and the same also clearly shows that the project was not completed as per agreement.

58. Clause 30 of the Agreement provides that the allottee shall take possession within ninety days of the written offer of

possession after payment of the balance consideration. Clarification of that clause is given in Annexure-B of the allotment letter. The relevant extract is as under :

Annexure-B to allotment letter

.....

Cl. /Page No. of allotment letter	Clarification
.....	
Page No. 9 Cl. No. 30	The allottee/s has to make payment of the balance amount and take possession of the unit within 90 days of the written offer of possession from the company falling which the allottee/s shall be liable to pay holding charges, at Rs. 51- per square feet, in addition to his proportionate share of all the other charges to the company for the period of delay in taking over actual possession of the unit after the expiry of the said period of 90 days.

59. However, the Appellant admittedly issued the written offer of possession in the year 2017, i.e., on 22.05.2017 nearly more than four years after the contractual possession date, and that too without any Occupancy Certificate and other relevant papers. The respondent being homebuyer who had invested a huge amount was compelled to take possession immediately without any Occupancy Certificate and other relevant papers as per agreement. This offer of possession was made just to comply with clause 30 of the allotment letter and to avoid extra burden of additional charges which had arisen only due to the failure of Appellants for not getting Occupancy Certificate / Completion Certificate and other relevant papers on time.

60. The conduct of the Appellant clearly establishes that it neither completed the project within the agreed period nor diligently pursued the statutory approvals. Consequently, the delay cannot be attributed entirely to the NGT stay.

61. Moreover, the Appellant cannot simultaneously contend that the project stood completed in 2014 while also claiming that the NGT stay prevented completion of the project. These inconsistent pleas are mutually destructive and cannot be accepted.

62. The benefit of the "Zero Period" granted by the Hon'ble Supreme Court in the matter of ***Suresh Chander Sharma (supra)***, extends only to the period from 14.08.2013 to 19.08.2015. The contractual obligation to deliver possession had already arisen in November, 2012, much before the commencement of the said Zero Period.

63. The Appellant's initial default had already occurred before the NGT stay order came into operation. Consequently, the Appellant cannot seek to extend the benefit of the Zero Period so as to obliterate the delay which had already accrued prior to August, 2013.

64. Even after excluding the Zero Period granted by the Hon'ble Supreme Court in ***Suresh Chander Sharma (supra)***, there remains substantial and unexplained delay attributable exclusively to the Appellant. The subsequent inaction of the competent authority during the Zero Period cannot absolve the Appellant of its contractual and statutory obligations which had already been breached.

65. The Tribunal has rightly appreciated the facts and correctly held that the Appellant is liable to compensate the Respondent by

payment of delay interest in accordance with Section 18 of the Real Estate (Regulation and Development) Act, 2016.

66. Accordingly, the third and fourth substantial question of law is also answered against the Appellant and in favour of the Respondent.

67. In view of the foregoing discussion, all the substantial questions of law are answered in favour of the Respondent and against the Appellant.

68. In view of the aforesaid, the instant RERA appeal *sans* merit, is accordingly ***dismissed***.

69. Office is directed to send the lower court record to the court concerned along with a copy of this order, forthwith.

70. Before parting with this case, this Court places on record its deep appreciation for the remarkable assistance rendered by Mr. Utkarsh Shukla, Research Associate.

(Prashant Kumar , J.)

September 23, 2026

Arjun/-